

December 30, 2009

INSTRUCTIONS
FOR
PREPARING AND SUBMITTING
ACT 381 WORK PLANS



Pursuant to the
Brownfield Redevelopment Financing Act,
1996 PA 381, as amended

Jennifer M. Granholm, Governor



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December 30, 2009

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INTRODUCTION

Background

The [Brownfield Redevelopment Financing Act](#), 1996 PA 381, as amended (Act 381), provides a method to finance environmental response activities on contaminated property. Eligibility is based on property that is a “[facility](#)” as defined under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). It allows municipalities to adopt and implement brownfield redevelopment financing plans to capture local and school property taxes from a contaminated property (those that are a facility) to reimburse the costs associated with conducting environmental response activities necessary to safely redevelop the eligible property.

Act 381 also provides municipalities with additional brownfield redevelopment tools by allowing capture of local and school property taxes for non-environmental activities. In a qualified local governmental unit (QLGU, see Appendix C for the revised QLGU list adopted by the State Tax Commission on August 25, 2009), eligible properties include those that are a [facility](#), [blighted or functional obsolete](#). Eligible activities include public infrastructure improvements, demolition that is not a response activity, lead or asbestos abatement, and site preparation that is not a response activity. Demolition that is not a response activity and lead and asbestos abatement are eligible activities on eligible properties statewide including those that are a facility, blighted or functional obsolete.

Act 381, as amended, can be found at www.legislature.mi.gov by using the Public Act MCL Search and entering “381” in Public Act Number and “1996” in Public Act Year.

Tax Capture Provisions

- ◆ Additional property taxes generated by the increased value of an eligible property over a base year, including taxes levied for school operating purposes, may be captured for up to thirty (30) years. Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations are exempt.
- ◆ A Brownfield Redevelopment Authority (BRA) may issue revenue and tax increment financing bonds/notes to finance eligible activities and capture taxes from the eligible property to repay the obligations.
- ◆ If captured school taxes will be used to reimburse the cost of certain environmental response activities or any non-environmental activities, prior approval of a work plan by the Department of Environmental Quality (DEQ) or the Michigan Economic Growth Authority (MEGA) is necessary.
- ◆ A BRA may establish a local site remediation revolving fund (LSRRF) and place excess captured taxes into the fund from properties where eligible response activities are conducted. Capture of excess school taxes on eligible activities approved by the MEGA is prohibited for deposit into the local site remediation revolving fund. The BRA may use the revolving fund to conduct eligible activities on other eligible properties. **An approved work plan is needed to use captured school taxes from the LSRRF.**
- ◆ Sunset date for DEQ or MEGA approval of a work plan is December 31, 2012.

- ◆ Use of school taxes for response activities that benefit a party who is liable under [Section 20126 of the NREPA](#) is prohibited with the exception of response activities associated with a landfill.
- ◆ A BRA may use school taxes without the approval of a work plan by the DEQ for the reasonable costs of the following activities if a liable party will not benefit and if school taxes will not be used for reimbursement of interest associated with these activities:
 1. Site investigation activities required to conduct a [baseline environmental assessment](#) and to evaluate compliance with section [20107a of the NREPA](#) (more commonly referred to as [due care](#)).
 2. Completing a baseline environmental assessment report.
 3. Preparing a due care plan.
- ◆ The state or BRA may take appropriate legal action to recover the costs of eligible activities funded through tax capture from person(s) who are liable for the contamination.
- ◆ Depending on the number of active projects, a BRA may capture up to \$300,000 in local taxes per year for reasonable and actual administrative and operating expenses of the BRA.

Act 381 Information – For more information about the brownfield redevelopment tax increment financing program, visit www.michigan.gov/brownfieldauthority & www.themedc.org/brownfields.

Brownfield Program Information – For more information on Michigan's brownfield program see the Land Redevelopment section of the DEQ website at www.michigan.gov/deg & the Michigan Economic Development Corporation (MEDC) website at www.themedc.org/brownfields.

SUBMISSION INSTRUCTIONS

Prior to submission of an Act 381 work plan, we strongly recommend that the appropriate agency representatives be contacted to discuss the project (see agency contacts below). This will help save time on preparation of the work plan, prevent inclusion of ineligible activities that would not be approved, and reduce agency review time and cost.

Who/what – The work plan must be submitted to the DEQ and/or MEGA (the “agency/ies”) by the Brownfield Redevelopment Authority (BRA) and include a signed transmittal letter from the BRA representative. The work plan must include a copy of the brownfield plan as approved, by resolution, by the governing body of the municipality and include a copy of the resolution. **Do not submit a work plan until the brownfield plan has been approved.** **For projects that have both DEQ and MEGA eligible activities, one work plan that includes both DEQ and MEGA eligible activities should be prepared and submitted to both agencies.**

Where/how many copies to submit for each agency – For eligible activities requiring DEQ review: Send one (1) copy to the Remediation and Redevelopment Division (RRD) in the district office serving your county (see DEQ/RRD Office Locations map at www.michigan.gov/brownfieldauthority) and one (1) copy to:

Darlene Van Dale
DEQ-RRD
2100 West M-32
Gaylord, MI 49735

For eligible activities requiring **MEGA** review: Send two (2) copies to:

Brownfield Program Unit
Michigan Economic Development Corporation
300 N. Washington Square, 3rd Floor
Lansing, MI 48913

The official receipt date is the date the work plan is received by the MEDC and/or DEQ district office. However, the work plan must be administratively complete.

Format – **unbound** and printed both sides on recycled paper.

Questions? – Questions should be directed to the agency responsible for reviewing the eligible activity.

DEQ – General Contact: Darlene Van Dale
989-705-3453
vandaled@michigan.gov

Site Specific Contact: RRD staff in the district office serving your county (see DEQ/RRD Office Locations map at www.michigan.gov/brownfieldauthority)

MEGA – General and Site Specific Contacts: Eric P. Helzer Sarah L. Rainero
517-241-5230 517-241-4801
helzere@michigan.org raineros@michigan.org

GENERAL INFORMATION

1. **Review/Determination** – The statute specifies different review/response periods depending on the type of eligible activities and which agency is completing the review. They are as follows:
 - a. **Baseline Environmental Assessment (BEA) and due care activities** – sixty (60) days for DEQ work plan review.
 - b. **MEGA-eligible activities** – sixty-five (65) days for MEGA work plan review.
 - c. **Additional response activities** – the statute does not specify a review period; however, work plans must be reviewed within six (6) months under Part 201 of the NREPA. You can expect a response from the DEQ within this timeframe and generally considerably less.
 - d. **Additional information requested by DEQ** – forty-five (45) days for DEQ review.

If a response is not received within the timeframes indicated above for BEA, due care, and MEGA eligible activities, the work plans are considered approved. There is an exception to the BEA/due care review time. See [Section 15\(6\) of Act 381](#) for details.

The statute requires a written response regarding work plan acceptability. You will receive separate written and/or electronic responses from each agency regarding their review and determination.

2. **Multiple work plans/amendments** – Subsequent work plans or amended work plan(s) do not require you to re-submit the brownfield plan or basic project information required by Section 15(2)(b-e) if the brownfield plan or basic project information remains unchanged. Should a change in the scope of work require changes to the brownfield plan or basic project information, an entire revised work plan is required for agency review.
3. **Reasonable Costs** – The statute requires the agencies to determine whether cost estimates for the proposed activities are reasonable. Proposed activities may be denied on the basis of unreasonably high costs. It is expected that the governing body of the municipality is responsible for approving the brownfield plan will also assure the costs in the brownfield plan and work plan are reasonable.
4. **Fifteen (15) Percent Contingency** – A fifteen (15) percent contingency for unforeseen circumstances and cost overruns may be added to the estimated cost of the proposed activities. The contingency should not be calculated on the costs for brownfield plan and work plan preparation and agency review.
5. **Increased Costs** – If actual costs will exceed the amount approved by the agencies and reimbursement with school taxes will be sought for the excess costs, approval by the appropriate agency is required before the work may be conducted and excess costs are incurred.
6. **Work Plan Review Costs** – The DEQ and MEGA will invoice each BRA for work plan review costs as allowed by Act 381. Historically, review costs have been averaging approximately \$1,000 per work plan for the DEQ and a fixed cost of \$1,000 per work plan for the MEDC. Authorities will be billed for agency review regardless of whether a project goes forward and taxes are captured. Please take this into consideration when

negotiating a reimbursement agreement. *Note:* BRAs delinquent in the payment of work plan review costs may have subsequent work plans administratively denied until payments are current or a payment plan is agreed to by the DEQ or MEGA as appropriate.

7. **Administrative Costs** – the BRA administrative and operating expenses may be reimbursed with local taxes only. Agency approval is not required and, therefore, should not be included in a work plan.
8. **Interest Costs** – Use of captured school taxes for reimbursement of interest costs associated with financing of eligible activities differs by agency. See [Section 13\(17\) of Act 381](#).

DEQ – If a BRA wants to use school taxes for interest associated with DEQ-eligible activities, the activities must be included in a work plan approved by the DEQ. This includes the BEA and due care activities identified in Section 15(1)(a)(i-iii). The ability to capture and use school taxes for payment of interest is inherent in the work plan approval.

MEGA – For non-environmental activities approved in a work plan by the MEGA, the BRA may request the use of school taxes for payment of the interest associated with the approved activities provided that MEGA also approves the use of school taxes to pay such interest. Further guidance is provided in the MEDC’s MEGA Brownfield interest policy, as amended and located on the MEDC’s Brownfield website www.themedc.org/brownfields.

9. **Cost Gap Between a Brownfield Site and a Greenfield Site –**

For **DEQ** activities that are necessary on both a brownfield site and a similar greenfield site, reimbursement with school taxes will be allowed only for the increased costs in performing the activity due to the brownfield conditions.

Example: Additional engineering and construction costs are necessary to construct a building foundation on unstable waste material. Document the cost gap by providing the cost of constructing the foundation on a greenfield site and the selected brownfield site.

For each **MEGA** eligible activity, please provide a brief narrative that identifies the cost difference for that activity between redevelopment of a brownfield site and development of a greenfield site. For certain **MEGA** eligible activities that are necessary on both a brownfield site and a similar greenfield site, reimbursement with school taxes will be allowed only for the incremental increase in costs to conduct that eligible activity. Please contact the MEDC or visit www.themedc.org/brownfields for additional requirements and a guidance document titled “Eligible MEGA Non-Environmental Activities Guidance”.

Example: Additional engineering and construction costs for the Site Preparation activity “Foundation Work to Address Special Soil Concerns”, in order to be considered for this activity, document the cost gap by providing the cost of constructing the foundation on a similar nearby greenfield site containing indigenous soil material and the selected brownfield site.

10. Prior Approval Required – With the exception of the DEQ response activities identified in [Section 15\(1\)\(a\) of Act 381](#) (e.g., site investigation, completing a BEA, evaluating due care) and brownfield plan and work plan preparation costs, to be eligible for reimbursement of eligible activities with school taxes, approval is required **before** conducting those activities. *Any eligible activity initiated or completed in advance of a DEQ or MEGA work plan approval may be allowed for reimbursement with **local only** taxes if approved by the local governing body.*

11. Underground Storage Tanks (USTs) – Generally, removal of USTs regulated under [Part 211, Underground Storage Tank Regulations, of the NREPA](#), is not an eligible activity and should not be included in a work plan. The property owner is responsible for emptying the tanks and for removal/closure under Part 211. The DEQ may consider approval of school tax capture for UST removal under the following circumstances:

- a. The property is owned by the local unit of government or the state who acquired it involuntarily through tax-reversion.
- b. The property is owned by the local unit of government who acquired it voluntarily for a nominal fee (e.g., a dollar).
- c. The USTs were previously unknown (e.g., they were discovered subsequent to performing adequate pre-purchase due diligence).

Cleanup of contamination from the UST system may be an eligible due care activity or additional response activity. Compliance with [Part 213, Leaking Underground Storage Tanks, of the NREPA](#), is required for all regulated UST work.

If the UST is not regulated under Part 211 per Section 21101(i), (e.g., farm or residential tank of 1,100 gallons or less for storing motor fuel for noncommercial purposes, heating oil tank used for consumptive use on the premises, etc.), then removal of the product and tank may be eligible as a due care or additional response activity.

12. Aboveground Storage Tanks (ASTs) – Emptying/purging of ASTs regulated under the Michigan Fire Prevention Code, 1941 PA 207, as amended, and subsequent Executive Reorganization Orders 1997-2 and 1998-2, and the Flammable and Combustible Liquid Rules are not eligible activities. These are the responsibility of the property owner. Removal of the AST and addressing any resulting contamination may be eligible as due care or additional response activities.

13. Liable Parties – Section 15(1)(e) of Act 381, as amended, prohibits a BRA from capturing school taxes **to conduct response activities** that benefit a party liable under Section 20126 of the NREPA with the exception of response activities associated with a landfill. Under Act 381, it is considered a benefit to a Section 20126 liable party only if the developer or person seeking reimbursement for eligible activities at the eligible property is liable under Section 20126 of the NREPA. Authorities are responsible for inquiry into the status of liable parties for eligible properties and assuring that work plans submitted for DEQ review do not propose such activities. If liability for contamination on the eligible property is uncertain, we recommend contacting the DEQ for assistance in determining the potential liability prior to preparation of a brownfield plan or submission of a work plan. **NOTE: Act 381, as amended does not prohibit a BRA from using school taxes to conduct MEGA eligible activities for a Part 201 liable party. MEGA does not need to consider liable party issues in its review of an Act 381 work plan.**

14. School Tax Capture – The amount of allowable local and school tax capture is limited to the actual costs of the eligible activities as approved by the DEQ and/or MEGA, except as provided by Section 8 of Act 381 for deposit into the local site remediation revolving fund. ***Unless otherwise explicitly stated in the work plan approval by DEQ and/or MEGA, capture of school and local taxes to reimburse the cost of eligible activities must be proportional to the existing ratio of school to local taxes being captured at the time such approval is granted.***

15. Tax Capture/Reimbursement Schedule – For work plans containing both DEQ and MEGA eligible activities, please provide a tax capture schedule that identifies the reimbursement of environmental response and non-environmental costs separately. We also recommend that separate tax capture/reimbursement schedules be prepared for approval in the brownfield plan.

16. DEQ Grant/Loan and State Tax Credit Coordination – School taxes cannot be used for any eligible activities that are funded by DEQ grants or claimed under state tax credits (e.g., Site Assessment Grant, Brownfield Redevelopment Grant, and Michigan Business Tax Brownfield Redevelopment Credit). If school taxes will be used to repay a DEQ loan, approval of the Act 381 work plan and the loan work plan is required prior to commencing work. In addition, a liable party may not benefit by repayment of the loan with school taxes.

17. Think Green! – The DEQ and the MEDC encourage brownfield redevelopment practices that minimize the environmental footprints of assessment, cleanup, and redevelopment activities. This includes, but is not limited to, practices that:

- ✓ Conserve natural resources and energy;
- ✓ Reduce pollutant and green house gas production;
- ✓ Use renewable energy;
- ✓ Use cleaner fuels;
- ✓ Use site assessment tools and techniques, such as geophysical methods and direct push sampling, to minimize energy consumption and time required to perform environmental assessments;
- ✓ Minimize impacts to water quality and water resources;
- ✓ Minimize material use and waste production;
- ✓ Encourage building reuse, preservation, and renovation;
- ✓ Encourage building deconstruction over demolition, when practicable;
- ✓ Reuse and recycle construction and demolition debris; and
- ✓ Employ green building and infrastructure design.

There is a lot of information available about greener cleanups and redevelopment. Here are some EPA websites to help you get started: <http://clu.in.org/greenremediation/>; <http://www.epa.gov/oswer/greencleanups/index.html>; and <http://www.epa.gov/greenbuilding/>.

18. Ineligible Activities/Expenses – In addition to the activities previously mentioned, the following activities and expenses are not eligible for reimbursement with school taxes:

- Legal fees (may be an eligible expense for MEGA projects).
- Permitting fees.
- Site improvements.
- Administration by staff of the local unit of government.

- Land acquisition (except in certain circumstances by a land bank).
- Costs incurred for certain environmental response and all non-environmental activities outside of a DEQ or MEGA-approved work plan.
- Registration fees, including registration of an underground storage tank.
- Taxes (except sales tax).
- Solid waste disposal (except as contaminated wastes or for structural support issues).
- Equipment purchase, maintenance, and repairs.
- Third party damages.
- Insurance (except environmental insurance as provided in Sec. 2(o) of Act 381) .

APPENDIX A

ACT 381 WORK PLAN

TO CONDUCT
ELIGIBLE DEQ RESPONSE
AND/OR
MEGA NON-ENVIRONMENTAL
ACTIVITIES

PROJECT NAME
PROJECT ADDRESS

Date

Prepared by:

ACT 381 WORK PLAN OUTLINE

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OUTLINE INSTRUCTIONS

An Act 381 work plan must be a **stand-alone** document that includes all necessary information to demonstrate property eligibility and activity eligibility. Following is the minimum information necessary for submission of an Act 381 work plan. Please include any other information, reports, maps, tables, etc. that you feel are pertinent for a complete review and consideration of your work plan.

1.0 INTRODUCTION

1.1 Eligible Property Information

- a. **Property Eligibility** – Indicate if the property is a facility, located in a qualified local governmental unit and functionally obsolete, and/or blighted, or tax reverted property owned or under the control of a land bank fast track authority. Indicate whether the eligible property includes adjacent or contiguous parcels. Properties adjacent or contiguous to the eligible property but located outside of the local unit of government and/or brownfield plan area are not eligible properties.
- b. **Location** – Include street address, city or township, county, parcel number(s) for each eligible property, (including adjacent or contiguous properties that are part of the eligible property) and, parcel size or total acreage. Provide property location map and eligible property map as Figures 1 and 2 in the Exhibits portion of the work plan. Adjacent or contiguous parcels should be identified as such on the maps.
- c. **Current Ownership** – Name, address, and contact person for all current owner(s). If property ownership has changed within the past six (6) months, provide the name of the previous owner.
- d. **Proposed Future Ownership** – Name, address, and contact person for all known future owner(s).
- e. **Delinquent Taxes, Interest, and Penalties** – Total of delinquent taxes including penalties and interest for each eligible property.
- f. **Existing and Proposed Future Zoning** – Identify existing and proposed future zoning for each eligible property. Indicate if the zoning will remain unchanged.

1.2 Historical Use of Each Eligible Property

Summarize the historical use of each eligible property dating back as far as information is available. Include the types of residential, public, commercial, and industrial uses and the corresponding dates for each use. Provide the name(s) of previous owners and operators. Include the types of equipment, machinery, storage tanks, etc. that were operated on each property and known or possible hazardous substance use. Provide information about persons who may be liable for the contamination.

1.3 Current Use of Each Eligible Property

Summarize the type(s) of residential, public, commercial, and industrial uses that are currently operating on each eligible property. Indicate which uses will continue operating after redevelopment. Also, indicate if the property is vacant.

1.4 Proposed Redevelopment and Future Use

Provide a detailed summary of the proposed redevelopment project including the number, types, and square feet of the structures, for what purposes they will be used, the number of units (if residential condos/apartments), the number of new jobs created, the amount of private investment, and the total cost of the project. Provide a rendering of the redevelopment as an Exhibit.

1.5 Information Required by Section 15(15) of the Statute

Work plans submitted for MEGA consideration require responses to the following questions:

- How are the individual activities included in the work plan sufficient to complete the eligible activity?
- How is each individual activity included in the work plan required to complete the eligible activity?
- How were the costs for each individual activity determined to be reasonable?
- What is the overall benefit to the public?
- The extent of reuse of vacant buildings and redevelopment of blighted property?
- How many jobs will be created by the project and the type of jobs; a) fulltime, part-time, managerial, professional.
- Is the eligible property in an area of high unemployment?
- What is the level and extent of contamination alleviated by or in connection with the eligible activities?
- What is the level of private sector contribution to the project?
- If a greenfield site was considered, what is the cost gap between the site and a similar greenfield site? Alternatively, what extraordinary costs for this site are related to it being a brownfield?
- If the developer or projected occupant of the new development is moving from another location in this state, will the move create a brownfield?
- Provide project pro forma, financial statements or other acceptable documentation, which demonstrates that the project is financially and economically sound.
- Identify the amount of all other anticipated state or local incentives that directly or indirectly benefit this project.
- Provide any additional information you want MEGA to consider while reviewing this work plan.

2.0 CURRENT PROPERTY CONDITIONS

2.1 Summary of Environmental Conditions

(Complete this section if the eligible property is qualifying as a facility). Provide what is known about environmental contamination for each eligible property. Summarize the results of previous environmental studies including Phase I and II

environmental site assessments, baseline environmental assessments, remedial investigations, etc. Indicate if a BEA has been conducted/completed for the eligible property by any party associated with the redevelopment. Indicate what conditions make the property a facility including the types of contaminants and concentrations found above residential cleanup criteria and the associated laboratory analytical data demonstrating the property is a facility. Include a site map showing the lateral and vertical extent of known contamination with soil boring and monitor well locations and concentrations identified. **Note: Do not submit environmental reports with the work plan. The DEQ will request further documentation if needed.**

***Special Note Regarding Contaminated Properties (those that are a facility) –** *(This information is required whether or not school taxes will be used for response activities).* MEGA requires that the property be investigated to the extent necessary for a reasonable identification of eligible activities and cost necessary to address the contamination. A description of existing conditions and anticipated environmental activities must be submitted to MEGA. MEGA approval of non-environmental activities may be conditioned on certain requirements intended to protect the public health, safety, and welfare and the environment consistent with applicable state and/or federal laws.

- 2.2 Summary of Functionally Obsolete and/or Blighted Conditions** *(This information is required for work plans seeking MEGA approval).* Describe why the property is blighted and/or functionally obsolete as defined in Sections 2(e) and 2(r), respectively, of Act 381. A property qualifying as functionally obsolete requires an affidavit, attached as an Exhibit, signed by a level 3 or level 4 assessor, which states in the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion. A property qualifying as blighted requires a detailed description of the property conditions and a formal declaration by the local unit of government designating the area blighted.

3.0 SCOPE OF WORK

All proposed activities and costs are for work to be conducted and must be consistent with the approved brownfield plan.

- 3.1 DEQ Eligible Activities**
Proposed activities should be placed into one of the following categories. Provide as much detail as possible regarding each proposed activity and the reason the activity is necessary. For all proposed environmental sampling activities, include the types of samples to be collected (soil, groundwater, waste, sediments, surface water, etc.), method of sample collection (surface soil, hand auger, drill rig, geoprobe, temporary well, monitor well, etc.), number of samples, and analytes for each type of sample. A Proposed Sampling Location Map is required as an Exhibit.

- a. **Baseline Environmental Assessment (BEA)** – activities may include:
- Environmental assessments (e.g., Phase I and Phase II).
 - Sampling and analysis.
 - Data interpretation and reporting.
 - Development and installation of engineering controls or isolation zones.
 - Disclosure of BEA.
 - Petitioning for a DEQ determination.
- b. **Due Care** – activities to meet Section 7a due care obligations may include:
- Investigation (sampling, analysis, interpretation, reporting) to define contamination.
 - Assessment of intended use with regard to contamination and identification of due care issues.
 - Development of a plan for response activities to meet due care obligations.
 - Contaminant treatment or removal to prevent exposure or exacerbation.
 - Barriers to prevent exposure, exacerbation, or third party impacts.
- c. **Additional Response Activities** – Conducting of additional response activities is at the discretion of the BRA and may include the following activities:
- Evaluation including investigation and feasibility study.
 - Interim response activity.
 - Remedial action.
 - Demolition that is a response activity (e.g., demolition is necessary to address the contamination; the structure has been condemned, formally declared dangerous, etc). Describe why it is necessary for environmental and/or public health, safety, or welfare reasons. If the demolition is necessary for public health, safety, or welfare reasons, documentation that the local unit of government has formally declared the building a danger to the community must be provided in the Attachments. Include the size, type, and number of structures. Include the deconstruction/demolition procedure and recycling/disposal practices. Bids should be obtained for all demolition activities.
 - Lead abatement that is a response activity. Describe why it is necessary for environmental and/or public health, safety, or welfare reasons. Describe the type of lead abatement activities to be performed including procedures and disposal practices. This includes surveying for lead-containing materials and sampling.
 - Asbestos abatement that is a response activity. Describe why it is necessary for environmental and/or public health, safety, or welfare reasons. Describe the type of asbestos abatement activities to be performed including procedures and disposal practices. This includes surveying for asbestos-containing materials and sampling.
 - Response activities that are more protective of the public health, safety, and welfare and the environment than required for due care. Describe the proposed activities and how they provide public health or environmental benefit and address the following:
 - 1) The proposed new land use and the reliability of land use restrictions to prevent exposure to the contamination.

- 2) The activities and costs minimally necessary to achieve due care compliance and the incremental cost of the proposed additional response activities that are more protective.
 - 3) The long-term obligations (deed restrictions, monitoring, operation & maintenance, etc.) associated with leaving contamination in place and the value of reducing or eliminating these obligations.
- Other actions necessary to protect the public health, safety, welfare, environment, or natural resources.
- d. **Environmental Insurance** – The reasonable cost of liability insurance for environmental contamination and cleanup that is not otherwise required by state or federal law (e.g. storage tank insurance). Due to Michigan’s causation liability standard, describe why the insurance is needed, include the type of coverage that will be provided (types of risks), the term of the policy that will be purchased for the funding requested, and any other relevant information that will assist in determining if the is cost is reasonable.
- e. **Develop/Prepare Brownfield Plan and Work Plan** – The reasonable cost of developing and preparing the brownfield plan and work plan. *Note: The DEQ and MEDC allow an agency-combined total of up to \$20,000 for preparation of Brownfield Plans and/or Act 381 Work Plans.*

The work plan review cost charged by DEQ may also be included in this section. The BRA will be billed for actual review costs which average about \$1,000 per work plan. If more than one work plan is anticipated, adjust accordingly. The complexity of the site can also increase the review costs and should be considered when estimating this cost.

3.2 MEGA Eligible Activities

Proposed activities should be placed into one of the following categories. Provide as much detail as possible for each proposed activity, including existing conditions which make the activity necessary. Also note that communities that are not designated as a Qualified Local Governmental Unit (QLGU) are allowed to include demolition and lead and asbestos abatement as an eligible activity. Separate from this document, additional detailed guidance has been established for eligible activities under Act 381 Work Plan requests. Please contact the MEDC or visit www.themedc.org/brownfields for additional requirements and a guidance document titled **“Eligible MEGA Non-Environmental Activities Guidance”**.

- a. **Infrastructure Improvements** – This MEGA Eligible Activity is available on eligible properties in a QLGU, eligible properties include those that are a facility, blighted or functional obsolete. Describe why Infrastructure Improvements are necessary for the redevelopment project. Provide maps showing the location of the public Infrastructure Improvements relative to the project. As appropriate, identify on a per unit cost basis the improvements and describe the size and scale of the project in terms of linear feet basis, the square footage or other appropriate measures.

Upon a detailed evaluation of any proposed Infrastructure Improvements, the MEGA will make a determination of eligibility for state school tax capture so long as the Infrastructure Improvements are publicly owned and maintained, support the project and also serve others/public. Therefore, Infrastructure Improvements can also extend into private property so long as there is a dedicated easement or the area of Infrastructure Improvements is deeded to the governing body. Potentially eligible Infrastructure Improvements include but are not limited to: roads; curbs and gutters; storm sewers; water mains; sanitary sewer mains; sidewalks; bike paths; lighting; signage; landscaping; marinas; boardwalks; park/seating areas; publically owned parking decks and lots; rail lines; bridges, and; other similar or related structure or improvement at the discretion of the MEDC and approval by the MEGA so long as they are publicly owned and maintained, support the project and also serve others/public.

- b. **Demolition that is not a response activity** – This MEGA Eligible Activity is available on eligible properties statewide including those that are a facility, blighted or functional obsolete. Potentially MEGA Eligible Demolition Activities include Building Demolition and Site Demolition that is not a response activity. Include the size, type, location, and number of buildings, structures or improvements to be demolished, and if applicable recycling/disposal practices. This includes both Building Demolition (interior and partial/whole building) and Site Demolition as follows:

Building Demolition (for the interior of a building or for the partial/whole building) – Activities include but are not limited to: a Pre-Demolition Audit or Survey; deconstruction or select demolition of building elements (products or materials) to be reused or recycled; demolishing of the building; proper disposal of non-reusable or non-recyclable building elements; recycling of demolition arisings (such as concrete and brick) to produce recycled aggregates if conducted on-site for re-use at the project; foundation and basement removals; dewatering during foundation and basement removals; sheeting/shoring to protect adjacent buildings, structures or improvements during foundation and basement removals; fill; compaction, and; rough grading to balance the site where the former building was located.

Site Demolition - Activities include but are not limited to: the removal of abandoned utilities (storm sewers, water mains, and sanitary sewer mains); parking lots; roads; curbs and gutters; rail spurs; sidewalks; bike paths; other similar or related structure or improvement; fill; compaction, and; rough grading to balance the site where the former structures or improvements were located at the discretion of the MEDC and approval by the MEGA.

- c. **Lead Abatement** – This MEGA Eligible Activity is available on eligible properties statewide including those that are a facility, blighted or functional obsolete. Potentially MEGA Eligible Lead Abatement Activities may be allowed during Building Demolition activities or as a requirement to rehabilitating an existing structure. For Lead Abatement include the location, and number of buildings, structures or improvements to be abated, the procedure, and practices. Assessing/surveying for lead-containing materials

and sampling/reporting are allowable activities to successfully complete the MEGA Eligible Lead Abatement Activities.

- d. **Asbestos Abatement** – This MEGA Eligible Activity is available on eligible properties statewide including those that are a facility, blighted or functional obsolete. Potentially MEGA Eligible Asbestos Abatement Activities may be allowed during Building Demolition activities or as a requirement to rehabilitating an existing structure. For Asbestos Abatement include the location, and number of buildings, structures or improvements to be abated, the procedure, and practices. Assessing/surveying for asbestos-containing materials and sampling/reporting are allowable activities to successfully complete the MEGA Eligible Asbestos Abatement Activities.
- e. **Site Preparation that is not a response activity** – This MEGA Eligible Activity is available on eligible properties in a QLGU, eligible properties include those that are a facility, blighted or functional obsolete. Under Act 381, as amended, the Site Preparation activity is defined as: “site preparation that is not response activity under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101”.

Provide maps showing the location of the Site Preparation activities. As appropriate, include enough detail for the MEDC to evaluate each of the proposed Site Preparation activities, such as the size, type, location, or number and describe on a linear feet basis, the square footage or other appropriate measures. Potentially MEGA Eligible Site Preparation Activities include but are not limited to: Staking; Geotechnical Engineering; Clearing and Grubbing; Temporary Construction Access and/or Roads; Temporary Facility; Temporary Traffic Control; Temporary Erosion Control; Temporary Site Control (e.g., security, fencing, lighting); Excavation for Unstable Material; Excavation to Support Underground Parking; Foundation Work to Address Special Soil Concerns; Fill, Dewatering; Land Balancing; Grading; Relocation of Existing Utilities; Compaction & Sub-base Preparation; Alternative Green Stormwater Management Practices; Cut & Fill Operations; Retaining Walls; Temporary Sheeting/Shoring; Soft Costs directly associated with Site Preparation activities (including engineering and design) legal and professional fees and costs, and; MEGA may consider Site Preparation activities that demonstrate a specific and unique need due to the site specific brownfield conditions which are necessary for the successful redevelopment of the eligible property.

- f. **Assistance to a land bank fast track authority** – Identify activities necessary to clear or quiet title to, or sell or otherwise convey, property owned by a land bank fast track authority or the acquisition of property by the land bank if the acquisition of the property is for economic development purposes (including reasonable costs associated with the acquisition).
- g. **Relocation of Public Buildings or Operations** – Public buildings or operations can be moved for economic development purposes. Prior approval from MEGA is required. The QLGU must describe how the relocation will benefit economic development and provide detailed plans and

maps showing the current usage and proposed changes for the eligible properties.

- h. **Develop/Prepare Brownfield Plan and Work Plan** – The reasonable cost of developing and preparing the brownfield plan and work plan. *Note: The DEQ and MEDC allow an agency-combined total of up to \$20,000 for preparation of Brownfield Plans and/or Act 381 Work Plans.*

The fee charged by MEDC for its review of the work plan may also be included in this section. Currently the MEDC fee is \$1,000 per work plan.

4.0 SCHEDULE AND COSTS

4.1 Schedule of Activities

Provide an anticipated schedule for completing the proposed eligible activities; including the month and year the activities are to be completed. For BEA and due care activities, sixty (60) days for DEQ work plan review should be reflected in the schedule. For additional response activities, allow six (6) months for DEQ work plan review. Sixty-five (65) days should be incorporated into the schedule for the MEGA work plan review.

4.2 Estimated Costs

Costs should be itemized within each type of proposed eligible activity (e.g., BEA, due care, infrastructure improvements, demolition, etc.). Estimates may include line items for brownfield plan preparation, work plan preparation and DEQ or MEGA work plan review costs (see #6 under General Information for expected review costs). *Note: See Appendix B, TEMPLATE Table 1 - Summary of Costs for Eligible Activities.*

Interest Expense – Use of captured school taxes for reimbursement of interest costs associated with financing of eligible activities differs by agency. See item 8. on page v. of these instructions for more information.

MEGA – If the costs to conduct the eligible activities will be financed and use of school tax capture is being sought for reimbursement of interest expense, include these costs as a separate line item in the estimated costs. See page v. of these instructions for additional information. Further guidance is also provided in the MEDC's MEGA Brownfield interest policy, as amended, and on the MEDC's Brownfield website, www.themedc.org/brownfields.

DEQ – DEQ approval of interest expense is not required by statute, therefore, the interest expense amount does not need to be included in the estimated costs. However, the interest rate must be provided and should conform to the MEDC's MEGA Brownfield interest policy.

EXHIBITS – Exhibits are required for all projects unless indicated otherwise.

NOTE: Please utilize shading/hatch marks/callouts/key codes or other indicators to differentiate items on submitted drawings/maps. NO color.

Figures

- Figure 1 Scaled Property Location Map
- Figure 2 Eligibility Property Map(s) – that clearly depicts the eligible property (by Parcel number and address) and its parcel boundaries including dimensions for the eligible property, project boundaries, and existing building locations. The preference is to have this Eligible Property Map as an overlay (layers) to an ALTA/ACSM Land Title Survey or as an overlay to a Metes and Bounds Survey.
- Figure 3 Proposed Sampling Location Map
- Figure 4 Color Site Photographs – include "before" photographs depicting the current conditions of the eligible property. Digital photographs may be requested by the reviewing agency. Photographs of the property after redevelopment may also be requested.
- Figure 5 Public Infrastructure Improvements Map(s)
- Figure 6 Redevelopment Project Renderings(s)
- Figure 7 Engineering Site Plan(s) – or at a minimum a Site Plan(s) illustrating the proposed future use of buildings and site improvements.

Tables

- Table 1 Summary of Costs for Eligible Activities, see Appendix B
- Table 2 DEQ Tax Capture/Reimbursement Schedule (if applicable) – for work plans containing DEQ eligible activities you are required to provide the following information so that it can be clearly identified:
- List in detail all of the local and state mill rates separately.
 - Show the percentage of the project that is estimated to be homestead versus non-homestead property in relationship to the total investment.
 - Identify the methodology for calculating the local-only tax capture portion (local-only eligible activities and administrative/operating costs of the BRA) to ensure the local-only portion has not been included in the shared state-to-local tax capture calculations.
 - Any other information requested at the discretion of the MDEQ.
- Table 3 MEGA Tax Capture/Reimbursement Schedule (if applicable) – for work plans containing MEGA eligible activities you are required to provide the following information so that it can be clearly identified:

- List in detail all of the local and state mill rates separately.
- Show the percentage of the project that is estimated to be homestead versus non-homestead property in relationship to the total investment.
- Identify the methodology for calculating the local-only tax capture portion (local-only eligible activities and administrative/operating costs of the BRA) to ensure the local-only portion has not been included in the shared state-to-local tax capture calculations.
- Any other information requested at the discretion of the MEDC for approval by the MEGA

Please note that after the MEGA Board approves the Work Plan if there is any change in millage that increases the capture percentage of school operating taxes by more than 5 percentage points, the MEGA Board must approve the change prior to the collection of any school operating taxes.

Attachments

Attachment A Approved Brownfield Plan and Resolution(s) Approving – As approved by the governing body with a copy of the signed resolution(s) approving the plan attached.

Attachment B Development Reimbursement Agreement – An executed copy of the agreement between the Municipality and Property Owner or developer - this is required for MEGA projects. The agreement must include: a) terms and conditions for the acquisition of property associated with the project; b) development objectives; c) performance and financial responsibilities of the local community; d) performance and financial responsibilities of the developer and e) defaults and remedies. In addition, the agreement shall include the identification of all ownership interests; monetary considerations, fees, revenue and cost sharing, charges, other financial arrangements; and other consideration between the parties.

Attachment C Declaration of Dangerous Building – documentation of local unit of government’s declaration of a dangerous building (required for DEQ demolition projects).

Attachment D Declaration of Blighted Condition and/or Level 3 or Level 4 Assessor’s Signed Affidavit for Functionally Obsolete – documentation of local unit of government’s declaration of blighted condition and/or Level 3 or Level 4 Assessor’s signed affidavit for functionally obsolete (required for MEGA projects).

APPENDIX B

Table 1

Summary of Costs for Eligible Activities

<u>MEGA Eligible Activities</u>	<u>MEGA Request</u>
Demolition	\$ _____
Lead and/or Asbestos Abatement	\$ _____
Infrastructure Improvements	\$ _____
Site Preparation	\$ _____
<i>Sub-Total</i>	\$ _____
Contingency (indicate %)*	\$ _____
<i>Sub-Total</i>	\$ _____
Interest**	\$ _____
Brownfield/Work Plan Preparation***	\$ _____
MEGA Review Cost	\$ 1,000
MEGA TOTAL	\$ _____
<u>DEQ Eligible Activities</u>	<u>DEQ Request</u>
Baseline Environmental Assessment	\$ _____
Due Care Activities	\$ _____
Additional Response Activities	\$ _____
Environmental Insurance	\$ _____
<i>Sub-Total</i>	\$ _____
Contingency (indicate %)*	\$ _____
<i>Sub-Total</i>	\$ _____
Brownfield/Work Plan Preparation***	\$ _____
DEQ Review Cost****	\$ _____
DEQ TOTAL	\$ _____
GRAND TOTAL OF ELIGIBLE ACTIVITIES (MEGA + DEQ)	\$ _____

*The DEQ and MEDC allow up to a 15% contingency.

**Upon request, the MEGA Board will consider interest in accordance with the current MEDC Brownfield Program Guidelines.

***The DEQ and MEDC allow an agency-combined total of up to \$20,000 for preparation of Brownfield Plans and/or Act 381 Work Plans. This should be appropriately split between the agencies.

****DEQ Review Costs average \$1,000 per work plan.

APPENDIX C

Qualified Local Governmental Units
(135 Total Qualifying Communities)

The definition of "Qualified local governmental unit" in Section 2(k) of the Obsolete Property Rehabilitation Act (OPRA), 2000 PA 146, as amended, identifies the criteria which must be met in order for a local unit to be a qualified local governmental unit. There are separate qualifications for cities, for townships, and for villages. As approved by the State Tax Commission, the following are the qualified local governmental units in Michigan as adopted by the State Tax Commission at its August 25, 2009 meeting.

<u>CITIES:</u>			
Adrian	Escanaba	Kalamazoo	Portage
Albion	Ferndale	Lake City	Reed City
Allegan	Flint	Lansing	River Rouge
Alma	Gaastra	Lapeer	Rogers City
Alpena	Gaylord	Lincoln Park	Saginaw
Ann Arbor	Gibraltar	Livonia	Saint Ignace
Bad Axe	Gladstone	Ludington	Saint Johns
Bangor	Gladwin	Manistee	Saint Joseph
Battle Creek	Grand Haven	Manistique	Saint Louis
Bay City	Grand Rapids	Marquette	Sandusky
Benton Harbor	Grayling	Marshall	Sault Saint Marie
Bessemer	Hamtramck	Mason	Southfield
Big Rapids	Harbor Beach	Melvindale	Standish
Bronson	Harper Woods	Menominee	Stanton
Burton	Harrison	Midland	Sturgis
Cadillac	Harrisville	Monroe	Tawas City
Carson City	Hart	Mount Clemens	Taylor
Caspian	Hartford	Mount Morris	Three Rivers
Center Line	Hastings	Mount Pleasant	Traverse City
Charlevoix	Hazel Park	Munising	Trenton
Charlotte	Highland Park	Muskegon	Vassar
Cheboygan	Hillsdale	Muskegon Heights	Wakefield
Coldwater	Holland	Niles	Warren
Coleman	Houghton	Norton Shores	Wayne
Corunna	Howell	Norway	West Branch
Crystal Falls	Inkster	Oak Park	White Cloud
Dearborn	Ionia	Omer	Wyandotte
Dearborn Heights	Iron Mountain	Onaway	Wyoming
Detroit	Iron River	Owosso	Ypsilanti
Dowagiac	Ironwood	Petoskey	
East Lansing	Ishpeming	Pinconning	
Eastpointe	Ithaca	Pontiac	
Ecorse	Jackson	Port Huron	

<u>TOWNSHIPS:</u>		<u>VILLAGES:</u>	
Benton Charter Twp.	Berrien County	Baldwin	Lake County
Buena Vista Charter Twp.	Saginaw County		
Genesee Twp.	Genesee County		
Mt. Morris Charter Twp.	Genesee County		
Redford Charter Twp.	Wayne County		
Royal Oak Charter Twp.	Oakland County		

For information about the OPRA tax exemption, see the Michigan Department of Treasury's webpage at http://www.michigan.gov/taxes/0,1607,7-238-43535_53197-213177--,00.html.

APPENDIX D

GLOSSARY

The following words and phrases are used in this Instruction document. Complete definitions can be found in the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), or Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

"Additional response activities" means response activities identified as part of a brownfield plan that are in addition to baseline environmental assessment activities and due care activities for an eligible property.

"Authority" means a brownfield redevelopment authority created under Act 381.

"Baseline Environmental Assessment" or **"BEA"** is an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the facility, so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination.

"Baseline Environmental Assessment activities" means those response activities identified as part of a brownfield plan that are necessary to complete a BEA for an eligible property in the brownfield plan.

"Blighted" means property that meets any of the following criteria as determined by the governing body:

(i) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(ii) Is an attractive nuisance to children because of physical condition, use, or occupancy.

(iii) Is a fire hazard or is otherwise dangerous to the safety of persons or property.

(iv) Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.

(v) Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state after the property's inclusion in a brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

(vi) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, whether or not located within a qualified local governmental unit. Property included within a brownfield plan prior to the date it meets the requirements of this subdivision to be eligible property shall be considered to become eligible property as of the date the property is determined to have been or becomes qualified as, or is combined with, other eligible property. The sale, lease, or transfer of the property by a land bank fast track authority after the property's inclusion in a brownfield plan shall not

result in the loss to the property of the status as blighted property for purposes of this act.

(vii) Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

"Board" means the governing body of an authority.

"Brownfield plan" means a plan that meets the requirements of Section 13 and is adopted under Section 14 of Act 381.

"Due care activities" means those response activities identified as part of a brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of Section 20107a of the NREPA.

"Eligible activities" means BEA activities, due care activities, additional response activities, and relocation of public buildings or operations for economic development purposes, reasonable costs of developing and preparing brownfield plans and work plans, and reasonable costs of environmental insurance. In a qualified local governmental unit, eligible activities also mean infrastructure improvements that directly benefit eligible property, demolition of structures, lead or asbestos abatement, site preparation, assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned or under the control of a land bank fast track authority, or the acquisition of property by the land bank fast track authority if the acquisition of the property is for economic development purposes.

"Eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is 1 or more of the following:

(i) Is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(ii) Is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.

(iii) Is tax reverted property owned or under the control of a land bank fast track authority.

(v) Is not in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, if the eligible activities on the property are limited to demolition and/or lead or asbestos abatement.

"Facility" means any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the requirements of Section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213, of the NREPA, has been released, deposited, disposed of, or otherwise comes to be located.

"Functionally obsolete" means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself, or the property's relationship with other surrounding property.

"Governing body" means the elected body having legislative powers of a municipality creating an authority under Act 381.

"Land bank fast track authority" means an authority created under the land bank fast track act, Public Act 258 of 2003.

"Local taxes" means all taxes levied other than taxes levied for school operating purposes.

"Municipality" means a city; a village; a township in those areas of the township that are outside of a village; a township in those areas of the township that are in a village upon the concurrence by resolution of the village in which the zone would be located; or a county.

"Qualified local governmental unit" means that term as defined in the Obsolete Property Rehabilitation Act (PA 146 of 2000).

"Response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment, or the natural resources.

"Work plan" means a plan that describes each individual activity to be conducted to complete eligible activities and the associated costs of each individual activity.