TRANSFORMATIONAL BROWNFIELD PLAN
PROGRAM GUIDELINES

PROGRAM OVERVIEW

The Brownfield Redevelopment Financing Act, 1996 Public Act (PA) 381, as amended (Act 381), effective July 24, 2017, incorporates Transformational Brownfield Plans (TBP), which affords developers the opportunity to capture a portion of specific incremental taxes generated from large-scale transformational projects for a specified time period.

A TBP is defined under Act 381 as a Brownfield Plan that, among other requirements, will have a transformational impact on local economic development and community revitalization based on the extent of brownfield redevelopment and growth in population, commercial activity, and employment that will result from the plan. The plan must be either a mixed-use development project with planned integration of some combination of retail, office, residential, or hotel uses or a development in a municipality that is not a county and that has a population of less than 25,000 that utilizes one of the listed uses and has had the mixed-use requirement waived by the MSF. Other requirements include minimum thresholds of capital investment depending on the population size of the municipality in which the development is proposed.

A TBP allows for the capture of five sources of tax revenues associated with a project. The available tax revenues include the following: (1) Construction Period Income Tax; (2) Property Tax Capture; (3) Income Tax Capture; (4) Withholding Tax Capture; and (5) Sales and Use Tax Capture Revenues. These tax revenues can be used in financing a wide array of eligible activities where costs were incurred no more than 90 days prior to MSF approval of the TBP, specifically including any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property. Income Tax Capture, Withholding Tax Capture, and Sales and Use Tax Capture are all limited to up to 20 years. The TBP may also authorize the exemption of construction period sales and use tax.

The Michigan Strategic Fund (MSF) is the project-authorizing entity and can approve no more than five TBPs in a calendar year statewide. In the event the MSF approves fewer than five plans in a calendar year, the unused approval authority shall carry forward into future calendar years and remain available until December 31, 2027. No new TBPs can be approved after December 31, 2027, and no unused plans can carry over past that date. A TBP approved prior to that date would remain in effect and could be amended.

An equitable geographic distribution of plans is required, balancing the needs of municipalities of different sizes and geographic areas. Per the statute, not less than 33% and not more than 38% of the total transformational brownfield plans approved before December 31, 2027, will be located in cities, villages, and townships with a population of less than 100,000. Furthermore, not less than 33% and not more than 38% of the total transformational brownfield plans approved before December 31, 2027, will be located in cities, villages, and townships with populations of not less than 100,000 and not more than 225,000. In order to ensure a balance on December 31, 2027, the MEDC will not extend any invitation to apply after January 31, 2027 to a project located in a population band where there is a difference of greater than one plan approved or in active application review above the number of plans approved or in active application review in either of the other population bands.

AMENDMENTS

A TBP may be amended to add parcels of property, increase or reduce capture, or change project scope of work. Any amendment that proposes to change the project so that it would no longer qualify as transformational, will result in the TBP being revoked. Amendments are not considered new plans and plans may be amended beyond December 31, 2027.

If specific aspects of the Transformational Brownfield Plan within Act 381 are legislatively amended in the future, the MSF may amend existing TBP plans to make conforming and consistent changes to the approved TBPs on an administrative basis, provided that those changes do not result in any increase in the aggregate total amount of reimbursement authorized under the initial TBP.

FEES

The MSF will charge and collect application fees, amendment fees, transfer fees and annual administrative fees[1]. All costs of the independent, MSF-contracted third-party underwriting analysis and third-party sales and use tax capture analysis shall be paid by the owner or developer of the eligible property and are non-refundable.

- Annual administrative fees are estimated to be between 0.8 and 0.9 percent of the average annual projection of Income Tax Capture, Withholding Tax Capture and Sales Tax Capture Revenues at the time of MSF approval. If the safe harbor option is elected for Withholding and Income Tax Capture revenue streams for all applicable project sites, the annual average fee will be reduced to 90% of the initial fee calculation beginning the year following the first disbursement of Withholding and Income Tax Capture for all project sites included in the TBP. This fee will remain static until the disbursement of Income Tax Capture, Withholding Tax Capture and Sales and Use Tax Capture Revenues have concluded.
- A non-refundable application fee of $30,000 plus the actual cost of any necessary MSF-contracted, third-party analysis (estimated amount to be between $100,000 and $150,000) will be charged and collected by the MSF for TBP requested awards greater than or equal to $10 million in combined Income Tax Capture, Withholding Tax Capture Revenue, and Sales and Use Tax Capture Revenue in any single year[2].
- In the event that an amendment is required for TBP awards greater than or equal to $10 million in combined Income Tax Capture, Withholding Tax Capture Revenue; and Sales and Use Tax Capture in any single year, or that was awarded sales and use tax capture regardless of amount, a non-refundable amendment fee of $30,000 plus actual cost of any necessary MSF-contracted, third-party analysis will be charged and collected by the MSF. In the event that the MSF-contracted, third-party analysis costs exceed the application or amendment fee, the costs shall be paid by the owner or developer of the eligible property.
- A non-refundable application fee of $30,000 will be charged and collected by the MSF for TBP requested awards or amendments to award for projects with less than $10 million in combined Income Tax Capture, Withholding Tax Capture, and Sales and Use Tax Capture Revenue in any single year. For any transfer of a TBP award the MSF will charge and collect a $7,000 transfer fee.

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[1] PA 46 of 2017 Sec. 8a. (3)(a),(i),(ii),(iv) (p. 7)

[2] MSF Act 270 of 1984, 125.2007 Powers and duties of fund, Sec. 7. (j)

- An application fee of $***TBD*** will be charged and collected by the MSF for a TBP that is not requesting Income Tax Capture, Withholding Tax Capture Revenue, or Sales and Use Tax Capture.
- In addition, the cost of an independent third-party, MSF-contracted analysis of sales and use tax capture revenue estimates will be required for any proposed TBP that requests approval of sales and use tax capture.
- The MSF reserves the right to require an independent third-party underwriting analysis, at the applicant's cost, for any project requesting a TBP award and that it deems necessary due to project complexity or capacity. If a project does not statutorily, or by policy, require third-party underwriting, an applicant may also opt to select the MSF-contracted third-party underwriting at their own cost.

ELIGIBLE APPLICANTS

A project may be located in any community but must involve a minimum level of capital investment based on the size of the community, as follows:

Population	Investment
Greater than or equal to 600,000	$500,000,000
150,000 - 599,999	$100,000,000
100,000 - 149,999	$75,000,000
50,000 - 99,999	$50,000,000
25,000 - 49,999	$25,000,000
Less than 25,000	$15,000,000

These limitations can be waived by the MSF to allow TBPs in certain areas where:

- the population is under 25,000, if the development would not be economically feasible otherwise;
- the Michigan State Housing Development Authority has approved the expenditure of federal blight elimination funds;
- the municipality is subject to a state of emergency for drinking water contamination; or
- the eligible property is a historic resource and would not otherwise be transformed.

The community's population for the purposes of meeting the capital investment threshold will be based on the most recent federal decennial census.

ELIGIBLE ACTIVITIES

TBP eligible activities include any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property, along with eligible activities currently allowed under Act 381.

ELIGIBLE PROPERTY

The proposed redevelopment must meet the definition of eligible property in Section 2 of Act 381 and be a previously developed property within a mixed-use and walkable area.

PROGRAM KEY COMPONENTS

1. The project must be a mixed-use development, defined as a real estate project with planned integration of some combination of retail, office, residential, or hotel uses. A project may also

be a development that utilizes one of the named mixed-use components if the development is located in a municipality that is not a county and has a population of less than 25,000 and has had the mixed-use requirement waived by the MSF. The project can be a single development on eligible property, or consist of a series of developments on eligible properties (even if they are not contiguous) that are part of a related program of investment meeting the following requirements:

- The developments are proposed to be undertaken concurrently or in reasonable succession.
- For developments under affiliated ownership, the developments are reasonably contiguous and are a part of a program investment in a logically defined geographic area, including, but not limited to, a Downtown District (as defined in the Downtown Development Authority Act) or a principal shopping district or business improvement district (as defined in the Shopping Areas Redevelopment Act). Other areas related to those districts that will promote infill development may also be considered.
- For developments with unrelated ownership, projects must meet the provisions above, and are part of a master development plan, area plan, sub-area plan, or similar development plan that has been approved or adopted by resolution of the governing body.
- The designation of the developments as a related program of investment is consistent with the purposes of this act and is not a combination of unrelated or minimally related projects calculated to meet the minimum investment threshold.

2. The TBP allows for construction period sales and use tax exemption and and five kinds of revenue from construction period income tax capture, income tax capture, withholding tax capture, sales and use tax capture and traditional property tax capture as follows:

- <u>Construction Period Income Tax Capture Revenues</u>: Funds equal to the amount of income tax levied and imposed in a calendar year on wages paid to individuals physically present and working within the eligible property for the construction, renovation, or other improvement of eligible property that is an eligible activity within the TBP. Excluded are wages paid to employees of the owner or developer of the project.

- <u>Construction Period Sales Tax and Use Tax Exemptions:</u>
  a. A sales tax exemption for the purchase of tangible personal property for use in eligible brownfield redevelopment activities on eligible property included in a TBP, to the extent that the tangible personal property will be affixed and made a structural part of the real property or infrastructure improvements included within the TBP.

  b. A use tax exemption on tangible personal property acquired by a person engaged in the business of altering, repairing, or improving real estate for others, or to the manufacture of a specific product if the property or product is to be affixed or made a structural part of the real property included within a TBP, to the extent that those improvements are eligible activities on eligible property within a TBP.

  The MSF shall require the owner or developer of the eligible property to report the actual value of the sales and use tax exemptions each tax year of the construction period and at the end of the construction period.

- <u>Income Tax Capture Revenues</u>: Funds equal to the amount for each tax year by which the aggregate income tax from individuals domiciled within the eligible property subject to a TBP exceeds the initial income tax value (the value in the tax year when the resolution adding TBP property is adopted). A TBP cannot propose to use more than 50% of the income tax capture revenues, with the following exceptions:

- The proposed eligible property is designated as a Renaissance Zone and otherwise meets the criteria in Section 13c(13).
- The applicable eligible properties are subject to a written binding affordable housing agreement with the local governmental unit. This exception may include a proposal of up to 100% of income tax capture revenues, subject to an underwriting and financial analysis.

- Withholding Tax Capture Revenues: The amount for each calendar year by which the income tax withheld from individuals employed within the eligible property subject to a TBP exceeds the initial withholding tax value. Excludes those domiciled within the eligible TBP property and construction period tax capture revenues. A TBP cannot propose to use more than 50% of the withholding tax capture revenues.

- Sales and Use Tax Capture Revenues: Funds equal to the amount for each calendar year by which the sales tax and use tax collected from persons within the eligible property exceeds the initial sales and use tax value.

These tax increment revenues can be used in financing a wide array of eligible activities, specifically including as new activities, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property. Capture of post-construction income tax, withholding tax, and sales and use tax revenue is limited to up to 20 years.

The owner or developer may elect to utilize a safe harbor method for the calculation of Income Tax and Withholding Tax Capture revenues rather than a traditional calculation. The detailed parameters of the safe harbor option can be found in the Program Limits section of these guidelines.

3. A TBP that proposes to use more than $10 million in any one year in withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues, or any TBP proposal that requests sales and use tax capture require the developer or owner to pay for an independent third-party underwriting analysis as outlined later in this document.

4. If the MSF supports a TBP, that project(s) may also be considered for additional funding programs as necessary to fill financing gaps and make the project feasible. Additional MSF incentive requests must consist of no more than one incentive request per incentive program per TBP request.

5. Additional incentive support must be presented at the same MSF Board meeting that the TBP request will be considered.

6. Project construction for TBPs undertaken on a single site must start within 12 months of MSF Board approval. For projects that are considered a related series of investment, construction on at least one of the sites must start within 12 months of MSF Board approval.

7. The owner or developer must certify the actual capital investment upon completion of TBP construction, or completion of a specific phase, or prior to the MSF initiating reimbursement from the construction period income tax capture, income tax capture, withholding tax capture,

and sales and use tax capture. If the actual capital investment is less than the amount included in the plan, the MSF has the right to modify the amount of reimbursement and take other recourse.

8. The MSF is required to approve a proposed change in ownership of eligible property subject to a transformational brownfield plan for which reimbursement will continue, prior to the assignment or transfer of the development and reimbursement agreement.

9. An eligible property may only be included in a TBP request if eligible activities are required to complete the proposed project on the proposed eligible property and the underwriting analysis concludes there is a financial need. Furthermore, a parcel with a completed and operational building shall not be included in a TBP request.

10. An applicant may not formally request a TBP approval by the MSF until the financial analysis of the TBP is complete.

11. Solely with respect to a related program of investment, subject to the approval of the governing body and MSF, the authority may amend the beginning date of capture for withholding tax capture revenues, income tax capture revenues, and sales and use tax capture revenues for an eligible property to a date later than 5 years following the date the MSF approved the inclusion of the eligible property in the TBP. The governing body and MSF must determine that the developer has proceeded in good faith and made reasonable and substantial progress in the implementation of the project. An amendment to request a new beginning date of capture may not be submitted prior to three years following MSF approval of the TBP or later than 7 years following MSF approval of the TBP.

PROGRAM LIMITS

The MSF may authorize TBP incentives for large development projects totaling income tax capture, withholding tax capture, sales and use tax capture, construction period income tax capture, and sales and use tax exemptions of up to $1.8 billion across all TBPs for the duration of the program.

1. Income Tax, Withholding Tax, and Sales and Use Tax:
   - Commitments and disbursements of post-construction income, withholding, and sales and use tax capture revenue are limited to $1.6 billion over the life of the program.
     - Commitments and disbursements of post-construction income, withholding tax capture, and sales and use tax capture revenue are limited to $80 million annually across all TBPs.
     - If the $80 million threshold is not reached in a given year, a maximum of $30 million will be carried forward into subsequent years for commitment or disbursement.
   - A TBP cannot use, or propose to use, more than 50% of the income tax capture revenues to reimburse eligible activities, with the following exceptions:
     - The proposed eligible property is designated as a Renaissance Zone and otherwise meets the criteria in Section 13c(13).
     - The applicable eligible properties are subject to a written binding affordable housing agreement with the local governmental unit. This exception may include proposal of up to 100% of income tax capture revenues, subject to an underwriting and financial analysis.
   - A TBP cannot use, or propose to use, more than 50% of the post-construction withholding

tax capture revenues to reimburse eligible activities.

- A TBP cannot award more than 25% of the annual allocation to any one project per year, not including amendments. With amendments, no more than a total 50% of annual allocation.
- The available tax increment reimbursement from any source for a TBP will be limited to an amount that is needed to make the project economically viable based on estimates at time of TBP application.
- In lieu of traditional calculations of Income Tax Capture, the owner or developer may elect to utilize a safe harbor method of calculating Income Tax Capture Revenues.
  - The MSF shall establish the safe harbor amount by imputing no more than 90 percent of the estimated annual taxable income for households residing within the eligible property or portion of the eligible property.
  - The safe harbor shall be effective only to the extent that the residential units within the eligible property or portion of the eligible property are actively leased or, in the case of units made available for sale, sold in arms-length transaction. The owner or developer will be required to submit copies of all leases and certification of the percentage of space in the project or specific phase of project that is leased or sold with each request for reimbursement.
  - The MSF may adjust the safe harbor amount after approval to reflect changes in the TBP, provided that any changes to the TBP do not result in an aggregate increase in the level of Income Tax Capture Revenues from the initial approval amount.
  - The owner or developer may elect to utilize the safe harbor method any time prior to the first reimbursement of Income Tax Capture Revenues, provided that an election, once made, cannot be rescinded.
- In lieu of traditional calculations of post-construction Withholding Tax Capture Revenues, the owner or developer may elect to utilize a safe harbor method of calculating Withholding Tax Capture Revenues.
  - The MSF shall establish the safe harbor amount by imputing no more than 90 percent of the average estimated employee occupancy that corresponds to the size and use of the eligible property or portion of the eligible property and a safe harbor of no more than 90 percent of the estimated average annual taxable wage for the individuals employed within the eligible property or portion of the eligible property.
  - The safe harbor shall be effective only to the extent the eligible property or portion of the eligible property is actively occupied, as evidenced by the existence of a binding lease agreement or similar instrument. The owner or developer will be required to submit copies of all leases and certification of the percentage eligible property occupied with each request for reimbursement.
  - The MSF may adjust the safe harbor amount after approval to reflect changes in the TBP, provided that any changes to the TBP do not result in an aggregate increase in the level of Withholding Tax Capture Revenues from the initial approval amount.
  - The owner or developer may elect to utilize the safe harbor method any time prior to the first reimbursement of Withholding Tax Capture Revenues, provided that an election, once made, cannot be rescinded.
- No income or withholding tax capture will occur after the permitted costs under the TBP are met or after 20 years from the start of capture.

2. <u>Construction Period Tax Capture Revenue and Sales and Use Tax Exemptions:</u>
   - A total of up to $200 million can be captured from construction period tax capture revenue in the TBP A TBP can capture 100% of the construction period tax capture for transmittal to the brownfield authority or developer.

- Disbursements of construction period tax capture revenue and the value of the sales and use tax exemptions do not have an additional annual reimbursement cap.
- The available tax increment reimbursement from any source for a TBP is limited to an amount that is needed to make the project economically viable based on estimates at time of TBP application.
- No tax capture will occur after the permitted costs under the TBP are met or after construction is complete and certified.

3. Sales and Use Tax Capture Revenue:
   For persons with multiple business location, the applicable amount of sales tax and use tax is only the sales tax and use tax collections attributable to the business location within the eligible property. To calculate sales and use tax capture revenues for a calendar year under a TBP, the state treasurer or the MSF shall do all of the following
   a. The state treasurer shall develop methods and processes that are necessary for each applicable person within the eligible property to report the amount of sales and use tax from that location.
   b. The MSF shall include all the following provisions in the redevelopment or reimbursement agreement for any TBP that utilizes sales and use tax capture revenues:
      i. The owner or developer of the property shall require each applicable person occupying the eligible property to comply with the reporting requirements through a contract requirement, lease requirement, or other similar means.
      ii. Reimbursement of sales and use tax capture revenues is limited to amounts that are reported in accordance with this section, and this state has no obligation with respect to sales and use tax captures that are not reported or paid.

UNDERWRITING CRITERIA

TBPs will be awarded based on financial need for the incentive and the award amount will be determined based on a demonstrated gap in financing.

TBPs proposing to use more than $10 million in any one year in withholding tax capture, income tax capture revenues, and sales and use tax capture, as well as any TBP proposal requesting approval of sales and use tax capture, require an independent underwriting analysis conducted by a third-party entity, paid for by the developer via the application fees or amendment fees. MSF will determine the third-parties eligible to conduct such an analysis. Developer must provide all necessary information (details of which will be relayed to the developer at the time of the project) to the appropriate MEDC contact before the analysis is conducted. TBPs proposing to use less than $10 million in annual withholding and income tax capture may undergo analysis through the MEDC, in participation with the State Treasurer. The MSF reserves the right to require an independent third-party underwriting analysis for any project requesting a TBP award and that it deems necessary due to project complexity or capacity.

If a TBP proposes to use more than $10 million in any one year in withholding tax capture, income tax capture, and sales and use tax capture, then the State Treasurer must be consulted before a recommendation is made to MSF for project approval.

1. Evaluation of specific underwriting criteria, including at minimum the following:
   - Assessment of how much traditional debt the project should be able to support/attract
   - Developer and consultant fees limited to 4% of the total development cost of the project
   - Reasonableness assessment of any related-party costs and expenses

- Minimum Owner Equity Investment: 20% of Total Development Costs (net of developer and consulting fees). Deferred fees will not be counted in the calculation
- Minimum Debt Service Coverage Ratio: 1.20:1.00, calculated based on all scheduled debt service requirements following stabilization and conversion to permanent financing
- Returns in relation to the land use mix, location, size and complexity of the project and the risk involved. Unleveraged IRR and yield on cost will be evaluated if financing is preliminary. If financing term sheets are provided, leveraged IRR and cash on cash return will be evaluated. Average annual return metrics will be for the first three years following project stabilization.

2. Reasonableness assessment of the proposed rental structure and assumptions

3. Reasonableness assessment of the proposed operating expenses

4. Reasonableness assessment of the proposed development costs

5. Process conducted to analyze and determine the project's economic viability

6. A full financial and underwriting review will be completed on any future amendments and requests for project support.

PROJECT EVALUATION, PROCESS AND MSF SUPPORT

The process below is a high-level overview of the Transformational Brownfield Plan (TBP) consideration process from project identification through execution of a final agreement. TBP projects require the approval of the Brownfield Redevelopment Authority (BRA), the local unit of government, and the Michigan Strategic Fund (MSF). If department-specific activities are included in the project, approval of the Michigan Department of Environment, Great Lakes and Energy (EGLE) is also required.

1. Local partners, developers, or the BRA engage early with the Michigan Economic Development Corporation (MEDC) for initial project evaluation and determination of appropriate incentive match. The MEDC will collect intake evaluation documentation including, but not limited to, project investment summary, local letter of support, intake questionnaire and a projected tax increment revenue table.

2. Project will undergo an internal review. Upon initial determination of appropriate TBP fit, the MEDC will issue an invitation to submit information necessary to complete the full underwriting and financial review.

3. Development team and BRA prepare a TBP Combined Transformational Brownfield Plan and financial review package, including the financial review fee and TBP questionnaire, and submit to MEDC staff for review.

4. MEDC will conducts a background check in accordance with MSF Background Review Policy and evaluates the full TBP package including conducting an underwriting and financial analysis. Projects anticipating more than $10 million of income tax, withholding tax, and Sales and Use Tax capture in any single year are required to undergo an MSF-contracted 3rd party underwriting analysis. In addition, any TBP proposal requesting approval of sales and use tax capture is required to undergo an MSF-contracted 3rd party analysis of the sales and use tax capture estimates. The applicant will pay the necessary 3rd party fees as part of the application fee.

5. Development team will provide any additional materials and fees necessary to finalize the TBP analysis and MEDC staff recommendation.

6. After confirming the TBP package is administratively complete[3], MEDC staff will issue a letter if interest to the development team and local partners

7. Following feedback from MEDC (and any applicable 3rd party analysis) the TBP documents will be updated and submitted for local BRA and governing body approval; then the TBP final package is submitted to MEDC for MSF consideration.

8. MEDC presents the TBP recommendation to the MSF Board with the local partner and development team. Concurrent with MSF action, a final reimbursement agreement will be drafted by the MEDC and executed between MSF, Treasury, the BRA and the development entity(ies).

9. The developer is required to report project information to the MEDC, Treasury and the associated BRA. The BRA is required to report information to the MEDC via online portal.

ADDITIONAL TERMS AND CONDITIONS

1. Owners or developers that receive a TBP incentive will be subject to the MSF Background Review Policy, as may be revised from time to time by the MSF. Additional due diligence may be required at the discretion of the MSF.

2. Owners or developers that receive a TBP incentive from the MSF will be required to execute a reimbursement agreement with the local BRA, MSF and the Department of Treasury, which will be performance-based and will set forth the terms and conditions of the TBP designation including, but not limited to, the term of the plan, the total amounts of tax capture the owner or developer may receive and periodic reporting requirements.

3. Owners or developers are expected to maintain detailed records demonstrating that the award recipient incurred and paid the required investment at the project location. Failure to maintain adequate records may result in adverse action by the MSF, up to and including termination of the reimbursement agreement. In addition, the MSF, MEDC, Auditor General, and the Department of Technology, Management, and Budget shall have access to all records related to the project and reserve the right to conduct on-site reviews and inspections to confirm compliance with the terms and conditions of the agreement.

[3] Administratively complete means the TBP and all required supporting documentation is determined to be complete by MEDC staff, the underwriting analysis is complete, and the financial need has been confirmed.