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 a mixed-use development project with planned integration of some combination of retail, office, residential, or hotel uses. 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 new sources of tax revenues associated with a project, in addition to incremental revenue from property taxes. The additional tax revenues available include the following: (1) Construction Period Income Tax; (2) Construction Period Sales Tax Exemptions, (3) Construction Period Use Tax Exemptions; (4) Income Tax Capture; and (5) Withholding Tax Capture. These tax 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 the new sources of revenue is limited to up to 20 years.

The Michigan Strategic Fund (MSF) is the project-authorizing entity, and can approve no more than five TBPs in a calendar year statewide and no more than five TBPs in any individual local unit for the duration of the program, which ends December 31, 2022. 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, 2022. No new TBPs can be approved after December 31, 2022, 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 with a target that at least 35 percent of all TBPs over the life of the program be located in cities, villages, and townships with populations under 100,000. The MSF will reserve 15 percent of the funds for these projects.

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 be transformational, will result in the TBP being revoked. Each amendment must be approved by both the local unit of government and the MSF, and must be consistent with approval requirements of a TBP. Amendments are not considered new plans and plans may be amended beyond December 31, 2022.

FEES

The MSF will charge and collect application fees, amendment fees, transfer fees and annual administrative fees of 0.375 percent of TBP awards. For TBP requested awards greater than or equal to $1.5 million a non-refundable application fee of $130,000 will be charged and collected by the MSF. This application fee includes the estimated costs of statutorily required third-party economic impact analysis and third-party underwriting analysis. In the event that an amendment is required for TBP awards greater than or equal to $1.5 million, a non-refundable amendment fee of $130,000 will be charged and collected by the MSF. This amendment fee includes the estimated costs of statutorily required third-party economic impact analysis and third-party underwriting analysis. For TBP requested awards less than $1.5 million a non-refundable application fee of $30,000 will be charged and collected by the MSF. In the event that an amendment is required for TBP requested awards less than $1.5 million, a non-refundable amendment fee of $30,000 will be charged and collected by the MSF. For any transfer of a TBP award the MSF will charge and collect a $7,000 transfer fee.

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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.

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

Documentation that the project is located on an eligible property is required at the time the application is submitted. While subject to legislative change, eligible property includes one or more of the following:

1. **Facility:** As defined in Public Act 451 of 1994, MCL 324.20101, means any area, place, or property where a hazardous substance in excess of concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located. A Phase I and Phase II Baseline Environmental Assessment is used to determine whether the property is a facility. The MEDC will confirm with the MDEQ who will certify the property as a facility after adequate documentation is received from the developer.
2. **Historic resource:** Means a publically or privately owned historic building or structure, individually listed, or located within a historic district designated by the National Register of Historic Places, the State Register of Historic Sites, or a local unit acting under the Local Historic Districts Act, 1970 PA 169. Documentation is required to verify any of the above designations. These projects must meet the federal Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, (Standards) (36 CFR 67);
3. **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 overcapacity, changes in technology, deficiencies or super adequacies in design, or other similar factors that affect the property itself, or the property's relationship with other surrounding property as determined by a Michigan Advanced Assessing Officer or a Michigan Master Assessing Officer.
4. **Blighted:** Means any property that meets any of the following criteria as determined by the respective unit of government, building official, or assessor when applicable:
   - Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance;
   - Is an attractive nuisance to children because of physical condition, use, or occupancy;
   - Is a fire hazard, or is otherwise dangerous to the safety of persons or property;
   - 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;
   - Is tax reverted property owned by a qualified local governmental unit (QLGU), by a county, or by the state of Michigan. Tax–reverted property that is sold, leased, or transferred after the property is in a Brownfield Plan is still considered blighted property for purposes of Act 381;
   - Is property owned, by or under the control of, a land bank fast track authority (LBFTA) under the Land Bank Fast Track Act, 2003 PA 258, whether or not it is located within a QLGU. Property that is sold, leased or transferred by a LBFTA after the property is in a Brownfield Plan is still considered blighted property for purposes of this act; and
   - Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.
5. **Transit-oriented property:** Means property that houses a transit station in a manner that promotes transit ridership or passenger rail use.
6. **Transit-oriented development:** Means infrastructure improvements that are located within one-half mile of a transit station or transit-oriented property that promotes transit ridership or passenger rail use as determined by the municipality.
7. **Undeveloped property:** Means property that was eligible property in a previously approved brownfield plan abolished under Section 14(8).

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. 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 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 five kinds of revenue from income tax and withholding tax capture and exemptions from sales tax and use tax as follows:
   - Construction Period Income Tax Capture Revenues: 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.
   - Construction Period Sales Tax and Use Tax Exemptions:
     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.
   - Income Tax Capture Revenues: 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 percent of the income tax capture revenues.
   - 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 percent of the withholding tax capture revenues.

   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 the new sources of revenue is limited to up to 20 years.

3. A TBP that proposes to use more than $1.5 million in withholding tax capture revenues and income tax capture revenues require the developer or owner to:
   - Pay for an independent, third-party economic and fiscal impact analysis to determine whether the plan will result in an overall positive fiscal impact to the state;
   - Pay for an independent, third-party underwriting analysis to determine whether the amount of captured taxable value, construction period tax capture revenues, withholding tax capture revenues and income tax capture revenues estimated to result from the plan are reasonable; and
   - Verify with the MSF that the state treasurer concurs with the third party fiscal and economic analysis determination that the project will result in an overall positive fiscal impact to the state.

4. Projects that are requesting consideration for a TBP will not be eligible if other MSF program assistance is available to fill the financing gap. If the MSF supports a TBP, that project(s) is not eligible for funding under any other MSF program.

5. Project construction must start within 12 months of MSF board approval.
6. The owner or developer must certify the actual capital investment upon completion of TBP construction, or completion of a specific phase, prior to the MSF initiating reimbursement from the construction period income tax capture, income tax capture, and withholding 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.
7. 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.

PROGRAM LIMITS

The MSF may authorize incentives for large development projects totaling up to $1 billion across all TBPs for the duration of the program.

1. Income Tax and Withholding Tax:
   - Commitments and disbursements of income and withholding tax capture revenue are limited to a total of up to $800 million over the life of the program.
   - Commitments and disbursements of income and withholding tax capture revenue are limited to $40 million annually across all TBPs. If the $40 million threshold is not reached in a given year, the remaining balance will be carried forward into subsequent years for disbursement.
   - A TBP cannot use more than 50 percent of the income and withholding tax capture revenues to reimburse eligible activities.
   - A TBP cannot award more than 25 percent of the annual allocation to any one project per year, not including amendments. With amendments, no more than a total 50 percent of annual allocation.
   - The available tax revenue from any source for a TBP will be limited to an amount that is needed to make the project economically viable.
   - No tax capture will occur after the permitted costs under the TBP are met or after 20 years from the start of capture.
2. Construction Period Tax Capture Revenue and Exemptions:
   - A total of up to $200 million can be captured from a combination of construction period tax capture revenue in the TBP and sales and use tax exemptions on certain tangible personal property. A TBP can capture 100 percent 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 revenue from any source for a TBP is limited to an amount that is needed to make the project economically viable.
   - No tax capture will occur after the permitted costs under the TBP are met or after 20 years from the start of capture.

ECONOMIC AND FISCAL IMPACT ANALYSIS CRITERIA

MSF must determine that a TBP will result in an overall positive fiscal impact to the state before it is approved. In making that determination, the following will be taken into account:

- The potential displacement of tax revenue from other areas of the state, and
- The effects of the TBP on economic development in the surrounding area.

TBPs proposing to use more than $1.5 million in tax capture revenues require an independent economic and fiscal impact analysis conducted by a third-party, paid for by the developer via the application fee or amendment fee. 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 $1.5 million in tax capture will undergo analysis through the MEDC, in participation with the state treasurer.

The state treasurer must concur with the conclusions of the third-party analysis before a recommendation is made to MSF for project approval.

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 $1.5 million in tax capture revenues require an independent underwriting analysis conducted by a third-party, paid for by the developer via the application fee or amendment fee. 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 $1.5 million in tax capture will undergo analysis through the MEDC, in participation with the state treasurer.

The state treasurer must concur with the conclusions of the third-party analysis before a recommendation is made to MSF for project approval.

1. Identification 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 percent of the total development cost of the project
   - Reasonableness assessment of any related-party costs and expenses
   - Minimum Owner Equity Investment: 20 percent 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
   - Leveraged cash-on-cash return not to exceed an average of 15 percent over life of project (20 year horizon)
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

TBP projects require the approval of the Brownfield Redevelopment Authority (BRA), the local unit of government, and the MSF.

1. BRA engage early with MEDC's Community Assistance Team (CAT) staff for initial project scoping.
2. Project will undergo an internal review and determination of support. CAT staff will issue a letter of interest outlining MSF support.
3. Locals prepare and submit draft TBP to MEDC brownfield staff for review. Economic impact analysis, financial/underwriting analysis and Michigan Department of Treasury (Treasury) review will occur concurrently.
4. Locals approve TBP and submit final TBP and required supporting documentation to MEDC brownfield staff for statutory and financial review/analysis.
5. MEDC and Treasury collaborate and identify any questions or concerns before the application is deemed administratively complete.
   - Administratively complete: Transformational Brownfield Plan (TBP) and all other required supporting documentation has been reviewed and determined to be complete by MEDC Brownfield Program staff.
6. MEDC staff will take a TBP to the MSF board for consideration. A treasury representative should attend MSF board meeting to address any questions regarding the income tax revenue, withholding tax revenue, and construction period tax capture revenues.
7. Project completion, required reporting following project completion, and closeout.

ADDITIONAL TERMS AND CONDITIONS

1. Owners or developers that receive a TBP designation 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 designation from the MSF will be required to execute a development agreement with the MSF. The development agreement 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, 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.