



# **Act 381**

## **Work Plan**

### **Guidance**

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



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[www.michigan.gov/deqBrownfields](http://www.michigan.gov/deqBrownfields)



Orleans Landing Redevelopment – City of Detroit



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## INTRODUCTION

The Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), or at <http://www.legislature.mi.gov> is an Act to authorize Brownfield Redevelopment Authorities (BRAs) to facilitate the implementation of Brownfield Plans and associated Work Plans that promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, or historic resources. Act 381 prescribes the powers and duties of BRAs and certain powers and duties of the Michigan Department of Environmental Quality (DEQ) and the Michigan Strategic Fund (MSF). The Michigan Economic Development Corporation (MEDC) serves as staff support to the MSF.

Act 381 authorizes and permits the use of school and local tax increment financing to help reduce the burden of Brownfield related costs when redeveloping affected properties. The following document is the guidance developed by DEQ for environmental activities, and by MSF for non-environmental activities to alleviate Brownfield conditions on a property. These guidelines detail the activities that may be considered for support at eligible properties.

***This guide is designed to clarify parts of Act 381, but should not be relied upon as a substitute for a thorough reading and understanding of the statute. Users should contact their legal counsel regarding any issues with Act 381.***

## Part 1 - Eligibility

### Eligible Property

To be considered eligible, property must be included in a Brownfield Plan and qualify as either a facility/site, functionally obsolete, blighted, historic resource, transit oriented property/development or targeted redevelopment area;

***Properties are tax identification parcels that have corresponding legal descriptions.***

**“Facility/site/property”:** Defined by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) (also see Part 201 Citizen’s Guide) or a site or property under Part 213, Leaking Underground Storage Tanks of NREPA. The parcel(s) needs to be determined as a facility (site or property) *prior* to submission of a Work Plan to the DEQ. Parcels adjacent or contiguous to a facility (site or property) do not have to be facilities (sites or properties) for MSF eligible activities to be conducted on them if the development of those parcels is estimated to increase the captured taxable value of the eligible property.

**“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 (QLGU). 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.

*The MSF will generally not support the use of state school Tax Increment Finance (TIF) for reimbursement of public infrastructure or site preparation if the project is not in a QLGU, regardless of the qualifying status of the property.*

*The MSF strongly discourages an artificial adjustment in the initial taxable base value on a project, such as resetting the base taxable value to zero through inclusion of a non-tax reverted property. In such instances, the MSF may require projects to include a measure to adjust capture in order to maintain payment to the state school taxes based on the base taxable value prior to the resetting to zero.*

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

**"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.

**"Historic Resource"** means a publically or privately owned historic building, structure, site, object, feature or open space either man-made or natural, individually listed, or located within and contributing to 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, MCL 399.201-399.215.

**"Targeted Redevelopment Area (TRA)"** means between at least 40 and no more than 500 contiguous parcels located within a QLGU and designated as a TRA by resolution of the governing body and approved by the MSF.

*A Brownfield Plan must be developed for a TRA. The TRA designation must be approved by both the local jurisdiction and the MSF, regardless if it is local only tax capture. No more than five TRAs may be approved per year across the state, and there is a maximum of two per jurisdiction, per year.*

*The TRA Brownfield Plan should fully describe what the goals of the project are and why the area should qualify for the designation. MSF will consider support for a TRA based on the prevalence of Brownfield conditions throughout the proposed area, and the likelihood that designation will lead to significant alleviation of Brownfield conditions. Capture on all parcels must begin at the same time within 5 years of inclusion in the Brownfield Plan.*

**"Transit oriented property"** means property that houses a transit station in a manner that promotes transit ridership or passenger rail use.

**"Transit oriented development"** means infrastructure improvements that are located within ½ mile of a transit station or transit oriented property that promotes transit ridership or passenger rail use as determined by the municipality.

**"Adjacent and/or contiguous"** means parcels adjacent and/or contiguous to eligible property if the development of the adjacent and/or contiguous parcels is estimated to increase the captured taxable value of that property. *Property adjacent to a facility may be included in a Brownfield Plan, but eligible activities can only occur on the eligible property.*

*Publicly owned streets, alleyways, waterways, public or private easements, or similar divisions crossing or separating parcels may be ignored when determining adjacent and/or contiguous status, as long as the divided or separated parcel is under the same ownership as the qualifying property and is within reasonable distance and no major obstruction between the parcels.*

## Eligible Activities

Eligible Activities are actions that are undertaken to redevelop a Brownfield property, the costs for which are eligible for reimbursement via tax increment financing. Qualified Local Governmental Unit (QLGU or Core Community) status determines which MSF eligible activities a project can receive funding approval. Please see the detailed list to determine whether your municipality is a QLGU found [here](#).

***It is highly recommended that consultation with DEQ and/or MEDC staff takes place prior to incurring costs so that it is clearly understood by all parties what activities are potentially eligible, and what the timeframe is for incurring the costs. Please refer to DEQ and MSF Summary of Eligible Activity Costs (Schedule 1) for further guidance below. Please note that this is the required format for Work Plans or Combined Brownfield Plans. Any costs associated with MSF eligible activities incurred prior to the approval of the Brownfield Plan, Work Plan, or Combined Brownfield Plan are made at the risk of the project, and may not receive reimbursement for those activities. Any DEQ eligible activities incurred prior to Work Plan approval are not eligible for reimbursement for school tax with the exception of pre-approved activities.***

## Prior Approval Required and Excessive Costs

Other eligible activities may be conducted prior to the approval of a Work Plan by the DEQ utilizing only local tax increment revenues (TIR). The amount of TIR approved by the DEQ (including the 15 percent contingency) is the maximum that can be captured under that particular Work Plan.

## General Ineligible Activities/Expenses

The following activities and expenses are not eligible for reimbursement with school taxes:

- Site improvements.
- Land acquisition (except in certain circumstances by a Land Bank).
- Interest will not be approved for Brownfield or Work Plan preparation costs.
- Registration fees, including registration of an underground storage tank.
- Taxes (except sales tax).
- Equipment purchase, maintenance, and repairs.
- Third party damages.
- Insurance (except environmental insurance as provided in MCL 125.2652(P) of Act 381).

## Part 2 - Tax Increment Financing

### Initial Taxable Value and Increment

Cleanup and redevelopment of a Brownfield property will increase the taxable value of the property, and therefore, will increase the property taxes generated from the property. The increased tax revenues that rise above the base taxable value after redevelopment are known as “tax increment revenue” (TIR), and more commonly, as captured taxes. These captured taxes can then be used to reimburse the expenses for eligible environmental response and non-environmental activities. The taxing jurisdictions continue to receive their base year tax revenue until the Brownfield Plan ends, at which time the TIRs revert to the taxing jurisdictions.

The initial taxable value (or “base year”) for a property can be set to either the year in which the Brownfield Plan is approved, or the next assessment year following approval of the Brownfield Plan.

If the tax increment financing plan fails to generate capture for three consecutive years due to declines in assessed (taxable) value, the initial assessed (taxable) value may be lowered once during the term of the Brownfield Plan through an amendment.

### Tax Increment Revenue (TIR) Initial Capture Date and Capture Period

For eligible property included in a Brownfield Plan, the beginning date of capture of TIR shall be identified to begin up to five years from the Brownfield Plan approval date, after which, the 30 year limit for capture begins. The beginning date of capture may not be amended if the jurisdiction has begun to reimburse costs on the eligible property.

*TIR capture does not have to be collection of actual dollars, but is the date that was set in the Brownfield Plan to begin capture within five years of the eligible property being approved in the Plan.*

*In the case of a Brownfield Plan that was approved with the eligible property in the Plan without tax capture (an “MBT only plan”), that Plan may not be amended to begin capture if it is outside of five years from the original approval date, but the plan is considered valid for the term of the MBT credit eligible investment period.*

If an eligible property was not previously included in the Brownfield Plan and is being added via an amendment, the beginning date of capture of tax increment revenues can begin up to five years from the date that the eligible property is included in the amended Brownfield Plan. The number of years of tax capture for the eligible properties in the original plan remains the same as originally approved.

For Work Plans containing both DEQ and/or MSF eligible activities, please provide a [TIF table](#) that identifies the reimbursement of environmental and non-environmental costs separately. The [TIF table template](#) must be utilized when requesting MSF and or DEQ approvals.

### Tax Increment Revenues (TIR) and Applicable Taxes

Tax increment revenues that are eligible for capture are all ad valorem, personal property and specific taxes including taxes levied for school operating purposes with approval from the DEQ and/or MSF. The intermediate school district tax is not a state school tax under Act 381.

If a new millage is passed by the jurisdiction after the Brownfield Plan has been approved, that new millage is added to, and captured as, tax increment revenue.

Neither ad valorem special assessments, nor State Essential Services Assessments (“SESA”) are available for capture under a Brownfield plan. Taxes levied to pay off specific obligations such as bonds are typically not available for 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 MSF, except as provided by Section 8 of Act 381 for deposit into the local brownfield revolving fund (LBRF).

### **Proportionality of School and Local Taxes**

*Unless otherwise explicitly stated in the Work Plan approval by the DEQ and/or MSF, 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.*

The MSF and DEQ strongly encourage Downtown Development Authorities (DDAs), Corridor Improvement Authorities (CIAs) or other finance authorities, to forgo capture when taxes are captured as part of an existing tax increment financing plan. The preferred way to resolve the issue is to develop an agreement or via resolution by both authorities, whereby the DDA, CIA, etc., forgoes capture to the BRA for Brownfield related TIR capture for the duration of the Brownfield approval timeframe.

If the existing authority doesn’t choose to forgo local capture, the existing ratio of school to local taxes must still remain the same proportionally, as if the authority not been in place. The same local proportion must be contributed through some other local source.

In these instances, the starting point for determining state support for the project will be to determine the maximum amount of TIR that would have been provided through a Brownfield Plan, as if the tax capture entity was not capturing the taxes. The proportionality test, based on existing millage rates is then applied against this maximum amount. The tax capture entity will be expected to contribute resources to the project in an amount equal to or greater than their proportional amount. Likewise, the state will determine their share under this scenario and adjust their contribution proportionally.

*In the instance where a BRA is passing a percentage of the captured taxes through to the taxing jurisdictions, state support using the proportionality test will be applied in the same percentage. For example, if the BRA utilizes 90 percent of local taxes for reimbursement of eligible activities, then only 90 percent of state school taxes can be utilized for the same.*

### **Tax Increment Revenue and Other Incentives**

Tax increment revenue may not be utilized to reimburse developers for any activities utilizing DEQ, Michigan Community Revitalization Program (MCRP) grant funds, or Brownfield MBT credits, but may be used to repay loans. Similarly, TIR should not be utilized to reimburse a developer for costs paid for by other federal, state, or local grants. When utilizing multiple incentives to complete a project, it is suggested that the DEQ and/or MSF is consulted to determine whether the incentives can be utilized together. MEDC prefers that projects that request incentives to cover costs that can fall under both Brownfield TIF and MCRP (e.g. demolition, or lead and asbestos abatement) be placed under the Work Plan for TIR reimbursement.



## Part 3 - Liability

### Liable Party Prohibitions for Environmental Activities

Use of school taxes for environmental response activities that benefit a party who is liable for the contamination is prohibited, with the exception of response activities associated with a landfill. Under Act 381, it is considered a benefit to a liable party only if the developer or person seeking reimbursement for eligible activities at the eligible property is liable under Section 20126 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). If the developer or person seeking reimbursement is a business entity with a member who is liable, school taxes cannot be used based on the direct and/or indirect benefit that the liable party would receive.

Authorities are responsible for inquiry into the status of liable parties for eligible properties and assuring that plans submitted for DEQ review do not propose activities that a liable party is required to perform. 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. 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. Liable parties do not have to be notified that eligible activities will be undertaken on the eligible property; however, if cost recovery will be considered in the future, the authority should consider notifying the liable party of activities occurring at the eligible property.

Act 381, as amended does not prohibit a BRA from using school taxes to conduct MSF non-environmental eligible activities for a Part 201 liable party. The MSF does not need to consider liable party issues in its review of an Act 381 Work Plan. In a case where the municipality was the liable party for contamination, as the owner or operator of a specific property, school tax increment financing cannot be utilized to address the contamination because in that case the TIF would be benefitting the liable party.

## **Part 4 - Local Brownfield Revolving Fund**

A BRA may establish a local brownfield revolving fund (LBRF) and place excess captured taxes into the fund from properties where DEQ approved eligible environmental response activities are conducted. The BRA may use both the school and non-school portions of the revolving fund to conduct eligible activities on other eligible properties without DEQ approval unless the BRA plans on capturing additional school taxes for deposit into the LBRF. The DEQ would require the submittal of a Work Plan which includes the description of the eligible activities and will undertake its normal review of those activities and ability to capture additional school taxes for the LBRF.

Act 381 does not expressly prohibit the BRA from establishing an LBRF after the Brownfield Plan has been adopted. However, if tax capture has begun or is completed for a specific project, then the BRA should amend the Brownfield Plan to include capture for an additional five years or up to the statutory limits of funding (no more than the original amount of tax increment financing and no more than the amount of school taxes approved for capture) for the LBRF.

**Capture of excess school taxes on eligible activities approved by the MSF is prohibited for deposit into the LBRF.**

## Part 5 – Work Plans

The Act 381 Work Plan is a document that details the proposed project, what specific eligible activities will be undertaken to alleviate Brownfield conditions, their costs and the time frame of the project. If captured school taxes will be used to reimburse the cost of certain environmental response activities or any non-environmental activities, approval of a Work Plan by the DEQ and/or the MSF is necessary. The MSF Chairperson or delegates may approve a Work Plan with non-environmental eligible activities of \$1,000,000 or less, rather than going to the full MSF Board approval, if not combined with any other MSF incentive.

Prior to submission of an Act 381 Work Plan, the DEQ and MSF strongly recommend that the appropriate agency representatives be contacted to discuss the project. 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. The official receipt date is the date an administratively complete Work Plan is received and confirmed complete by the DEQ Brownfield Redevelopment Unit and MEDC.

### Submission

Prior to submission of a Work Plan to DEQ and/or MSF, it is recommended that a draft be provided to the respective agency for comment. MEDC [Community Assistance Team](#) (CAT) and [Business Development](#) (BD) staff depending on project type should be the first point of contact for Work Plans that propose MSF non-environmental activities. To obtain approval for a project with MSF costs, CAT or BD will have to scope the project and issue a letter of interest outlining agency support.

The Work Plan must be submitted to the DEQ and/or MSF by the BRA. The Work Plan must include a copy of the Brownfield Plan as approved via resolution by the governing body of the municipality, and include a copy of the resolution. For DEQ Work Plans, a signed transmittal letter from the BRA or local government representative must be submitted. For MSF Work Plans, please wait for staff to request the transmittal letter. For projects that have both DEQ and MSF eligible activities, one Work Plan that includes both DEQ and MSF eligible activities should be prepared and submitted concurrently to both agencies.

For eligible activities requiring **DEQ** review: Send one (1) unbound, double-sided hardcopy to the Remediation and Redevelopment Division (RRD) in the district office serving your county see [DEQ Office Locations map](#) and one (1) unbound, double-sided hardcopy to:

Michigan Department of Environmental Quality  
Remediation and Redevelopment Division  
Brownfield Redevelopment Unit  
Constitution Hall, 5<sup>th</sup> Floor South  
525 West Allegan Street Lansing,  
Michigan, 48933  
(Mail Code: 76116)

The DEQ may request an electronic copy of the documents as well.

**DEQ** Remediation and Redevelopment Division– General Contacts:  
[degbrownfields@michigan.gov](mailto:degbrownfields@michigan.gov) or 517-284-5153.

**MSF related Brownfield questions should be addressed to:** [brownfield@michigan.org](mailto:brownfield@michigan.org) or 517.373.6213  
(This number is anticipated to change mid-2017 and will be updated).

## **Determination/Review**

The statute specifies review/response periods depending on the type of eligible activities and which agency is completing the review. They are as follows:

**MSF-eligible activities** – sixty (60) days for Work Plan review.

**DEQ eligible specific activities** – sixty (60) days for DEQ Work Plan review.

**Additional information requested by DEQ** – forty-five (45) days for DEQ review.

If a response is not received from the appropriate agency within the timeframes indicated above for DEQ and MSF eligible activities, the Work Plans are considered approved.

There are exceptions to DEQ approval in Sections 15(5) and (6) regarding timelines. See [Section 15\(6\) of Act 381](#) for details.

DEQ's Review Process: The DEQ staff will review the Work Plan according to Section 15(3) for once it is determined to be administratively complete and then determine the following:

- Whether some or all of the activities are DEQ activities.
- Whether the due care activities and response activities are protective of the public health, safety, and welfare and the environment.
- Whether the estimated costs for the activities as a whole are reasonable.

The DEQ's response as required in Section 15(2) will indicate one of the following determinations:

- An unconditional approval.
- A conditional approval that delineates specific necessary modifications to the Work Plan including, but not limited to, individual activities to be added or deleted from the Work Plan and revision of costs.
- If the work plan lacks sufficient information or requires changes, the DEQ will issue a letter stating the necessary additions or changes to the work plan before that activity will be considered by the DEQ.
- A denial if the property is not an eligible property, if the Work Plan proposes the use of school taxes that benefit a liable party, or for any activity conducted before approval of the Brownfield Plan. The DEQ will state the reason for the denial. If the DEQ denies all or a portion of a Work Plan, the BRA may resubmit the Work Plan.

Response letters will be issued under signature of the DEQ/Remediation and Redevelopment Division District Supervisor.

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.

## **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.

The BRA may wish to amend the Brownfield Plan (or develop a new Work Plan if there is enough money approved in the Brownfield Plan) to include the additional costs and can either seek approval

from the agencies for those costs if they will utilize school tax capture, or approve the additional costs using only local taxes.

### **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 responsible for approving the Brownfield Plan will also assure the costs in the Brownfield Plan and Work Plan are reasonable, and will provide justification to the agencies.

### **Fifteen Percent (15%) Contingency**

A maximum fifteen percent (15%) 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, Work Plan preparation, or for activities previously conducted. The DEQ and MSF will approve the fifteen percent contingency only on the approved eligible activities

### **Administrative Costs**

The BRA administrative and operating expenses may be reimbursed with local taxes only. DEQ and/or MSF approval is not required and, therefore, it is optional whether they are included in a Work Plan.

### **State Brownfield Redevelopment Fund**

According to Section 13b.(14), the 50% SET contribution to the State Brownfield Revolving Fund (SBRF) should continue throughout the LBRF capture period up to the 25 year limit on capture of the SBRF.

Any SET due to the SBRF will be based off from annual reported data from the BRA to the MEDC, and an invoice will be generated upon submittal and verification. Please do not submit funding until an invoice the BRA receives the invoice from the MEDC.

### **Development or Reimbursement Agreements**

A development or reimbursement agreement is a legal document that describes the terms of TIR capture and reimbursement to the developer by the BRA or municipality. The DEQ and/or MSF are not involved in the reimbursement process. An executed development or reimbursement agreement is required for MSF Work Plan consideration. Adequate records should be maintained for auditing purposes.

### **Combined Brownfield Plan**

According to Section 15, a BRA may submit a Combined Brownfield Plan that encompasses Brownfield and Work Plan requirements to the DEQ and/or MSF for review. A Combined Brownfield Plan contains all of the information required in a separate Brownfield Plan and separate Work Plan into one Combined Brownfield Plan, potentially reducing review and approval time.

At least 30 days prior to the public hearing on the Combined Brownfield Plan the Authority shall consult, in writing, with the DEQ and/or MSF to allow for adequate notice that the Authority is seeking approval of the Combined Brownfield Plan.

Instructions on how to develop and submit a Combined Brownfield Plan can be found on the [MEDC website](#).

## **Part 6 - Brownfield Annual Reporting**

Brownfield Redevelopment Authorities are required by law to report Act 381 Brownfield Tax Increment Financing to the MEDC. Reporting is due annually no later than August 31 for the previous year via an online portal. Please note that jurisdictions are required to report both “local only” and state tax capture.

If your jurisdiction has no TIR to report, the Authority is still responsible for completing all appropriate information in the portal in order to be compliant.

Please be aware that failure to report by the deadline will result in the MSF and DEQ withholding financial support from the jurisdiction’s future projects.

Annual reporting information can be found at this link <http://www.michiganbusiness.org/legislative-reports/#section6>.

## Part 7 - DEQ Eligible Activities Guidance

This section describes some of the criteria used by the DEQ to evaluate proposed projects. Brownfield Redevelopment Unit staff evaluate DEQ-eligible activities, defined in [Section 2\(n\)](#) of Act 381, to confirm eligibility for state school tax capture. The DEQ considers site-specific brownfield conditions, applicable laws, regulations and established policy when evaluating eligibility. DEQ staff may request additional information before determining eligibility for state school tax capture. Please note, DEQ-eligible activities will only be considered on eligible property that is a facility as defined in [324.20101\(s\)](#) or a site or a property as those terms are defined in [324.21303\(d\)](#) and [324.21303\(l\)](#), respectively.

Refer to this guidance when preparing your Act 381 Work Plan for DEQ approval. It will facilitate consistent, accurate, efficient and timely completion of Work Plan review. The guidance is based on current policy and statute, and supersedes previous Act 381 guidance.

### Pre-Approved Activities

According to [125.2663b\(7\)](#) and [\(8\)](#) of the Brownfield Redevelopment Financing Act, 1996 PA 381 as amended (Act 381), state school tax capture can be used for Pre-Approved Activities without approval by the DEQ and/or MSF.

<i>Pre-Approved Activities</i>	<i>Guidance</i>
<p><b><u>Phase I and Phase II environmental site assessments (ESAs)</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Sampling and analysis;</li> <li>• Record and data interpretation; and</li> <li>• Reporting.</li> </ul>	<p><a href="#">All Appropriate Inquiry (AAI) standards</a> for a land transfer, purchase, acquisition, occupancy, renovation, or redevelopment typically require Phase I and Phase II ESAs to determine whether the land is contaminated.</p>
<p><b><u>Asbestos, mold, and lead surveys</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Inspections;</li> <li>• Sampling and analysis; and</li> <li>• Reporting.</li> </ul>	<p>Asbestos, mold, and lead paint surveys may be necessary in structures that will be demolished, renovated, or reused. Surveys determine the presence, quantity, and condition of potential hazards.</p>
<p><b><u>Baseline environmental assessments (BEAs)</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Completing;</li> <li>• Submitting; and</li> <li>• Updating BEAs.</li> </ul>	<p>A BEA is a document that describes the results of AAI and the sampling and analysis that confirm that the land is a facility or a site (<a href="#">324.20101(1)(f)</a> and <a href="#">324.21302(c)</a> of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)). The AAI or its components must be conducted or updated prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. The BEA must be submitted to the Department within six months of the same date to be considered valid.</p>

<i>Pre-Approved Activities</i>	<i>Guidance</i>
<p><b><u>Pre-demolition surveys</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Inspections;</li> <li>• Sampling and analysis; and</li> <li>• Reporting.</li> </ul>	<p>A pre-demolition survey may be required to determine the presence, quantity, and condition of hazardous materials or the structural integrity of a structure if it will be reused or if demolition could cause a safety hazard. Pre-demolition surveys do not include asbestos, mold, and lead paint surveys, but may be combined with asbestos, mold, and lead paint surveys described above.</p>
<p><b><u>Plan for compliance with 324.20107a and 324.21304c (due care) of the NREPA</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Investigation (sampling, analysis; interpretation, reporting) to define contamination;</li> <li>• Assessment of the intended use and site-specific conditions to identify due care requirements; and</li> <li>• Development of a plan for response activities to meet due care obligations.</li> </ul>	<p>A land owner or operator who has knowledge that it is a facility or is contaminated has due care obligations under <a href="#">324.20107a</a> and <a href="#">324.21304c</a> of the NREPA. In general, the land owner or operator is required to:</p> <ul style="list-style-type: none"> <li>• Prevent unacceptable exposure;</li> <li>• Use the land in a manner that is protective of public health and safety;</li> <li>• Prevent exacerbation of hazardous substances or acts of a third party;</li> <li>• Provide access to authorized personnel to assess or conduct response activities ; and</li> <li>• Comply with and not impede land use or resource use restrictions on the parcel.</li> </ul> <p>Implementation of due care is not a Pre-Approved Activity under Act 381, but due care activities can be submitted to the DEQ for approval under Act 381. See below for guidance on due care implementation.</p>

### Eligible Activities Needing DEQ Approval Prior to Implementation

The following activities require DEQ approval for state school tax capture and include both due care and response activities. The tables below provide general guidelines that are not meant to be a comprehensive list of all potentially eligible activities. The DEQ should be consulted to assure activity eligibility in any situation not addressed below.

**NOTE: Contaminated means a hazardous substance in soil or groundwater in excess of concentrations for unrestricted residential use.**

<i>DEQ-Eligible Activities*</i>	<i>Guidance</i>
<p><b><u>Evaluation</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Investigation;</li> <li>• Characterization of wastes for landfill disposal; and</li> <li>• Soil verification sampling.</li> </ul>	<p>Evaluation that exceeds AAI requirements or due care compliance falls under this task.</p>



<b><i>DEQ-Eligible Activities*</i></b>	<b><i>Guidance</i></b>
<p><b><u>Implementing land and/or resource use restrictions (LRURs) and other institutional controls</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Developing a LRUR for the eligible property;</li> <li>• Filing restrictions with the county register of deeds;</li> <li>• Placing permanent markers to describe restricted contaminated areas and the nature of any restrictions; and</li> <li>• Protecting the integrity of exposure controls that prevent contact with contaminants.</li> </ul>	<p>Institutional controls are legal or administrative tools used to meet obligations under <a href="#">324.20107a</a> and <a href="#">324.21304c</a>.</p>
<p><b><u>Lead, mold, or asbestos abatement</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Proper removal and disposal of lead, mold, or asbestos containing materials;</li> <li>• Air monitoring; and</li> </ul> <p>Reporting.</p>	<p>Lead, mold, or asbestos abatement may be a DEQ-eligible activity when the land is contaminated and the DEQ confirms that these substances pose an imminent and significant threat to human health.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>
<p><b><u>Building demolition (interior, partial, or whole building)</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Deconstruction or select demolition of building elements for reuse or recycling;</li> <li>• Proper disposal of non-reusable or non-recyclable building elements;</li> <li>• On-site reuse of demolition debris (such as concrete and brick); and</li> </ul> <p>Foundation and basement removal.</p>	<p>Building demolition may be a DEQ-eligible activity when the land is contaminated and the DEQ confirms that demolition is a response activity.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>

<b>DEQ-Eligible Activities*</b>	<b>Guidance</b>
<p><b><u>Site demolition</u></b></p> <p>May include removal of</p> <ul style="list-style-type: none"> <li>• Abandoned utilities;</li> <li>• Parking lots;</li> <li>• Roads;</li> <li>• Curbs and gutters;</li> <li>• Rail spurs; sidewalks;</li> <li>• Other structures or improvements; and</li> </ul> <p>Backfill, compaction, and rough grading where structures or improvements were located may also be eligible.</p>	<p>Site demolition may be a DEQ-eligible activity when the land is contaminated and the DEQ confirms that site demolition is a response activity.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>
<p><b><u>Excavation, treatment, transportation, and/or disposal of contaminated soil</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Treatment of contaminated soil; and</li> <li>• Transportation and disposal of contaminated soil.</li> </ul>	<p>During redevelopment, proper handling of contaminated soil may be necessary to comply with due care, or may be a response activity to remediate contamination. Costs that would not be incurred on uncontaminated land for treatment, transportation, and/or disposal of contaminated soil are DEQ-eligible activities. Further, excavating unstable contaminated material may be a DEQ-eligible activity when the land is contaminated and (1) a government agency (e.g., LUGs, Michigan State Housing Development Authority [MSHDA], United States [U.S.] Department of Housing and Urban Development [HUD], etc.) or lending institution requires removal to finance the project or (2) removal is more protective than required to comply with due care (e.g., a “hot spot” removal, excavation above and beyond what is needed for construction, etc.).</p> <p>Please note:</p> <ul style="list-style-type: none"> <li>• Contaminated soil should be taken to the nearest appropriate landfill. Alternative disposal locations may be approved by the DEQ;</li> <li>• The DEQ should be consulted when contamination will be left in place and treating or capping would be less expensive than transportation and disposal; and</li> <li>• The lowest-cost feasible option must be provided to the DEQ. Higher-cost alternatives may be proposed, but reimbursement with state school taxes will be limited to the equivalent of the lowest-cost feasible option.</li> </ul> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>

<b>DEQ-Eligible Activities*</b>	<b>Guidance</b>
<p><b><u>Sheeting/shoring</u></b></p> <p>May include:</p> <p>Bracing, sheeting, or shoring may be necessary prior to excavation of contaminated material to protect life, the land, or the integrity of the excavation.</p>	<p>Sheeting and shoring may be eligible at properties that require a permit pursuant to Parts <a href="#">301</a>, <a href="#">303</a>, or <a href="#">325</a> of NREPA.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>
<p><b><u>Fill (backfill)</u></b></p>	<p>Clean backfill, placement, and compaction are eligible when removal of soil, tanks, or structures is a DEQ-eligible activity. The backfill method and material must be approved by a P.E. to confirm required soil density. Any fill material may be proposed but reimbursement with school taxes will be limited to the equivalent of the lowest-cost feasible option, as determined by a P.E.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>
<p><b><u>Pumping, treatment, transportation, and/or disposal of contaminated groundwater</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Pumping of accumulated water due to runoff or rain;</li> <li>• Treatment and discharge of contaminated groundwater (e.g., National Pollutant Discharge Elimination System [NPDES] permit and storm discharge, discharge to a local sanitary sewer system, etc.); and</li> <li>• Transportation and disposal of contaminated groundwater (e.g., frac tank transportation and disposal at a licensed disposal facility).</li> </ul>	<p>During redevelopment, proper handling of contaminated groundwater may be necessary to comply with due care, or may be a response activity to remediate contamination. Costs that would not be incurred on uncontaminated land for treatment, transportation, and/or disposal of contaminated groundwater are DEQ-eligible activities. Further, when land is contaminated, only runoff or rain dewatering (pumping) costs may be DEQ-eligible activities.</p> <p>Please note:</p> <ul style="list-style-type: none"> <li>• The DEQ should be consulted when contamination will be left in place and treating or engineering controls would be less expensive than transportation and disposal; and</li> <li>• The lowest-cost feasible option must be provided to the DEQ. Higher-cost alternatives may be proposed, but reimbursement with state school taxes will be limited to the equivalent of the lowest-cost feasible option.</li> </ul> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>

<b><i>DEQ-Eligible Activities*</i></b>	<b><i>Guidance</i></b>
<p><b><u>Engineering controls</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Vapor intrusion mitigation systems;</li> <li>• Infiltration prevention and diversion barriers (e.g., topsoil, grass, mulch, gravel, asphalt, concrete or other acceptable cover); and</li> <li>• Direct contact exposure barriers (six inches of topsoil, seed, and mulch, unless otherwise approved by the DEQ).</li> </ul>	<p>When contamination is left in place, engineering controls or other options to comply with due care obligations may be necessary. Activities under this task may include design and construction or installation of engineering controls to prevent exposure, exacerbation, or third party impacts.</p> <p>If the DEQ requires a barrier that exceeds standard thickness, then reimbursement with state school taxes will be limited to the incremental increase in costs to meet the requirement.</p> <p>Alternatives may be proposed, but reimbursement with school taxes will be limited to the equivalent of the lowest-cost feasible option.</p> <p>Please consult with the DEQ to ensure that proposed engineering controls will achieve due care compliance.</p>
<p><b><u>Interim response</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Cleanup or removal of a released hazardous substance;</li> <li>• Measures to limit access to land;</li> <li>• Water supply replacement;</li> <li>• Temporary relocation of people; and</li> <li>• Actions that prevent, minimize, or mitigate a threatened release.</li> </ul>	<p>Interim response is conducted prior to a remedial action and prevents, minimizes, or mitigates injury to the public health, safety, or welfare, or to the environment.</p>
<p><b><u>Remedial action</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment; and</li> <li>• Monitoring, maintenance, or other actions at the DEQ’s discretion.</li> </ul>	<p>Remedial actions are those activities undertaken to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.</p>

<b>DEQ-Eligible Activities*</b>	<b>Guidance</b>
<p><b><u>Container removal</u></b></p> <p>May include categorizing, staging, removing, and properly disposing of:</p> <ul style="list-style-type: none"> <li>• Hazardous materials;</li> <li>• Drums;</li> <li>• Hoists;</li> <li>• Hoist tanks;</li> <li>• Above ground storage tanks (ASTs); and</li> <li>• Containers other than underground storage tanks (USTs) containing hazardous materials.</li> </ul>	<p>Container removal necessary to comply with due care obligations or mitigate future releases may be eligible.</p>
<p><b><u>Industrial cleaning</u></b></p> <p>May include cleaning the following to allow new tenants to install equipment or complete interior renovations:</p> <ul style="list-style-type: none"> <li>• Walls;</li> <li>• Floors;</li> <li>• Pits; and</li> <li>• Drains.</li> </ul>	<p>Industrial cleaning necessary to reuse an existing structure may be eligible.</p>
<p><b><u>Disposal of solid waste</u></b></p> <p>Eligible solid waste could include:</p> <ul style="list-style-type: none"> <li>• Used tires;</li> <li>• Old appliances and furniture; and</li> <li>• Used car batteries.</li> </ul>	<p>Solid waste, as defined in <a href="#">324.11506</a> of the NREPA, may be removed, transported to, and disposed of at a licensed waste disposal facility, provided the waste was not generated or accumulated by the BRA or the developer. Remediation of landfills is not an eligible activity.</p>

<b><i>DEQ-Eligible Activities*</i></b>	<b><i>Guidance</i></b>
<p><b><u>Dust control</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Spraying mist or hosing down a demolition area to minimize on- and off-site dust that may impact air quality;</li> <li>• Minimization of soil disturbance;</li> <li>• Applying cover;</li> <li>• Water spraying; and</li> <li>• Surface roughening.</li> </ul>	<p>Dust control includes actions necessary to prevent or reduce the surface and air transport of dust during demolition and construction. Other activities related to general construction that require an air permit or air monitoring may be considered by the DEQ as an eligible activity.</p>
<p><b><u>Other DEQ-specific activities</u></b></p>	<p>The DEQ may approve other actions necessary to protect public health, safety, welfare, the environment, or natural resources, including actions that are more protective than required to comply with due care considering the following: (1) proposed land use and reliability of restrictions to prevent exposure; (2) least cost alternative; and (3) long-term obligations of leaving contamination in place.</p>
<p><b><u>Specialized foundations</u></b></p>	<p>Construction of specialized foundations on contaminated land may be a DEQ-eligible activity when a cost-benefit analysis provided by a licensed Professional Engineer (P.E.) demonstrates that the cost of specialized foundations would be less than the cost for transportation and disposal of contaminated material.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>
<p><b><u>UST removal and leaking underground storage tank (LUST) closure under Part 213</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Removal of regulated or unregulated USTs, piping, and above-ground dispensing systems;</li> <li>• Corrective action; and</li> <li>• Preparation and submittal of reports and documentation.</li> </ul>	<p>Activities necessary to remove or achieve UST closure may be DEQ-eligible activities.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>

<b>DEQ-Eligible Activities*</b>	<b>Guidance</b>
<p><b><u>Dredging in waterways</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Dredging;</li> <li>• Testing;</li> <li>• Transportation and disposal to a licensed waste disposal facility; and</li> <li>• Upland disposal or cover; provided that on-site disposal does not result in contaminated land.</li> </ul>	<p>Removal, transportation and proper disposal of sediment from navigable waterways may be DEQ-eligible activities if (1) sediments pose a risk to human health and dredging is a response activity, (2) dredging is tied to an economic development project with a committed developer, and the upland parcel(s) is contaminated, or (3) the sediment is contaminated and would create or exacerbate contaminated land if deposited on the upland parcel(s).</p> <p>The DEQ should be consulted prior to sediment removal for preliminary evaluation of eligibility and to ensure that permits are in place.</p> <p>If not a DEQ-eligible activity, it may be covered as a MSF eligible activity.</p>
<p><b><u>Environmental insurance</u></b></p>	<p>Liability insurance for environmental contamination and cleanup that is not required by state or federal law is an eligible activity. A copy of the insurance policy must be provided to the DEQ to ensure applicability of the coverage to land conditions.</p>
<p><b><u>Unanticipated response activities</u></b></p> <p>Include:</p> <ul style="list-style-type: none"> <li>• Unexpected activities encountered during development and not originally accounted for in a brownfield plan, combined brownfield plan, or work plan.</li> </ul>	<p>Unanticipated response activities may be reimbursed with state school taxes if:</p> <ul style="list-style-type: none"> <li>• The eligible property is already included in a brownfield plan;</li> <li>• The DEQ is consulted in writing before the activities are conducted or costs incurred (i.e., eligible activity costs will need to be specifically itemized via email or letter to the district supervisor in whose district the project is being conducted); and</li> <li>• The activities are subsequently included in a brownfield plan and work plan or combined brownfield plan (i.e., within six months after the approval of unanticipated costs, the brownfield authority must submit a work plan and approved revised brownfield plan to the DEQ for review and approval of the activities themselves).</li> </ul> <p>The DEQ must reply to the request in writing (i.e., the consultation must be verified by the district supervisor in an email or written letter to the brownfield authority requesting the activities) before unanticipated response activities are approved.</p>

*\*Soft costs (e.g., engineering, design, legal services, oversight, project management, reporting, etc.) and temporary costs (e.g. staking, land control, soil erosion and sedimentation control, construction access roads, truck washes, traffic control, facility, utilities, etc.) may be DEQ-eligible activities.*

## **Part 8 - MSF Non-Environmental Eligible Activities Guidance**

This appendix is intended to be used as a “road map” to guide the reader through the technical approaches and the criteria used to evaluate projects proposed to the MSF. This guidance will also facilitate consistent, accurate, efficient and timely completion of a project’s approval process where the capture of state school taxes is desired. The MEDC Brownfield Redevelopment Program will evaluate MSF eligible activities for each particular project, taking into consideration all the facts and circumstances of a site, under the authority of applicable laws, regulations and established policy. No provision of this guidance document should be construed to limit the MSF's authority to require additional information based upon site-specific and project conditions. This guidance document shall replace and supersede any previously established guidance document. Upon a detailed evaluation of any proposed MSF eligible activity, the MSF will make a determination of eligibility for state school tax capture based upon site specific Brownfield related conditions, other relevant factors and the information below.

The MSF reserves the right to request a licensed Professional Engineer (P.E.) opinion including appropriate testing/data for requested MSF eligible activities.

Any activity eligible for inclusion in a DEQ Act 381 Work Plan should not be part of an MSF eligible activity request. If contamination is present, consultation with the Department of Environmental Quality is expected.

The following table of MSF activities is organized as follows:

### **Activities Eligible Statewide:**

- Demolition
- Lead, Asbestos or Mold Abatement

### **Activities Available to Qualified Local Governmental Units Only:**

- Infrastructure Improvements
- Site Preparation

### **Miscellaneous Activities Available Statewide**

### **Ineligible Activities/Expenses**



<b><i>Demolition – Activity Available Statewide</i></b>	<b><i>Guidance</i></b>
<p><b><u>Building Demolition (Interior, Partial or Whole Building)</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Pre-demolition audit or survey</li> <li>• Deconstruction or select demolition of building elements (products or materials) to be recycled or reused</li> <li>• Building Demolition</li> <li>• Proper disposal (including transportation costs) of non-reusable or non-recyclable building elements</li> <li>• Recycling of demolition debris (such as concrete and brick) to produce recycled aggregates if conducted on-site for re-use</li> <li>• Foundation and basement removals</li> <li>• Dewatering during foundation and basement removals</li> <li>• Sheeting/shoring to protect adjacent buildings, structures or improvements during foundation and basement removals</li> <li>• Fill, compaction and rough grading to balance the side where to the former building was located.</li> </ul>	<p>Include the size, type, location, and number of buildings, structures or improvements to be demolished</p> <p>Building demolition that is not a MSF-eligible activity may be eligible for DEQ approval.</p>

<b><i>Demolition – Activity Available Statewide</i></b>	<b><i>Guidance</i></b>
<p><b><u>Site Demolition</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Removal of abandoned utilities, underground storage tanks; parking lots; roads; curbs and gutters; rail spurs; sidewalks; bike paths; other similar or related structure or improvements</li> <li>• Proper disposal (including transportation costs) of non-reusable or non-recyclable elements</li> <li>• Recycling of demolition debris (such as concrete and brick) to produce recycled aggregates if conducted on-site for re-use</li> <li>• Fill, compaction, and rough grading to balance the site where the former structures or improvements were located</li> </ul>	<p>Include the size, type, location, and number of buildings, structures or improvements to be demolished</p> <p>Site demolition that is not a MSF-eligible activity may be eligible for DEQ approval.</p>

<b><i>Lead, Asbestos or Mold Abatement – Activity Available Statewide</i></b>	<b><i>Guidance</i></b>
<p><b><u>Lead, Asbestos or Mold Abatement</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Assessing</li> <li>• Surveying</li> <li>• Sampling</li> <li>• Reporting</li> <li>• Abatement work</li> </ul>	<p>For lead, asbestos or mold abatement, include the location, number of buildings, structures or improvements to be abated, the procedure, and practices.</p> <p>Lead, Asbestos or Mold Abatement that is not a MSF-eligible activity may be eligible for DEQ approval.</p>

<b>Infrastructure Improvements – Activity Available to Qualified Local Governmental Units Only</b>	<b>Guidance</b>
<p><b><u>Public Right-of-Way Only</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Bike paths and/or walking trails</li> <li>• Boardwalks</li> <li>• Bridges</li> <li>• Curbs and gutters</li> <li>• Landscaping</li> <li>• Lighting</li> <li>• Marinas</li> <li>• Park/Seating Areas</li> <li>• Public Rail Lines</li> <li>• Publicly Owned Utilities (Ex. Electric)</li> <li>• Roads</li> <li>• Sanitary Sewer Mains</li> <li>• Sidewalks</li> <li>• Storm Water Systems</li> <li>• Transit Oriented Development/Property</li> <li>• Watermains</li> </ul>	<p>Describe why infrastructure improvements are necessary for the redevelopment project. Provide legible maps showing the location of the infrastructure improvements relative to the project, both within the public right-of-way, or on private property, as applicable. As appropriate, identify on a per unit cost basis the improvements and describe the size and scale of the project in terms of the linear feet, square footage or other appropriate measures.</p>

<b>Infrastructure Improvements – Activity Available to Qualified Local Governmental Units Only</b>	<b>Guidance</b>
<p><b><u>Public Right-of-Way OR Private</u></b> Vertical, Underground or Integrated Parking</p>	<p>Soil removal and transportation costs will be permitted for Integrated, Underground or Vertical Parking. Parking decks that integrate building foundations may include the cost for that portion of the foundations that exceed the estimated cost for a typical slab foundation. Parking structures that contain shared elements (e.g. elevators) within a larger building may request the costs that are specific to the parking structure only.</p> <p>Soil removal related to vertical, underground or integrated parking activities that are not a MSF-eligible activity may be eligible for DEQ approval.</p>
<p><b><u>Public Right-of-Way OR Private</u></b> Urban Storm Water Management System - Traditional</p>	<p>This activity seeks to capture storm water and divert or slow its discharge to the municipal sewer system during a storm event. This activity may be considered in situations where an increase in urban density is desired and limited space requires underground retention, or similar systems. Costs included under this activity will be considered only if they exceed costs that would be incurred to construct a storm water retention system on a similarly scaled Greenfield site, and when appropriate design information and support, is provided. This activity <u>does not</u> include surface retention ponds in non-urban areas.</p>

<b>Infrastructure Improvements – Activity Available to Qualified Local Governmental Units Only</b>	<b>Guidance</b>
<p><b><u>Public Right-of-Way OR Private</u></b></p> <p>Urban Storm Water Management System – Low Impact Design (LID)</p> <p>May include installing a device or practice with an associated system to retain the water onsite or designed specifically to encourage infiltration, as long as due care is undertaken to prevent the spread of contamination, if present:</p> <ul style="list-style-type: none"> <li>• Dry Well</li> <li>• Infiltration Trench or Berm</li> <li>• Subsurface Infiltration Bed</li> <li>• Bio Retention (Rain Garden) Area</li> <li>• Level Spreader</li> <li>• Permeable Pavement</li> <li>• Purification equipment for the harvesting of rainwater in cisterns (including underground systems), rain barrels or other devices to reduce use of potable water used for landscape irrigation, fire suppression and other uses</li> <li>• Evapotranspiration techniques</li> <li>• Vegetated filter strips, green roofs and swales designed specifically for mitigation of storm water</li> </ul>	<p>This activity covers 100% of the costs that manage storm water by mimicking the pre-settlement hydrologic cycle of a site. Storm water runoff is detained and infiltrated, evaporated, or used close to its source. The use of these LID storm water management practices may be allowed when appropriate design information and support, is provided.</p>

<b><i>Ineligible Infrastructure Activities</i></b>	<b><i>Guidance</i></b>
<p><b><u>Ineligible Infrastructure Activities include:</u></b></p> <ul style="list-style-type: none"> <li>• Sanitary sewer leads or taps</li> <li>• Water leads or taps</li> <li>• Private utilities/services (project communication lines, networks, fiber optics, cable lines, etc.)</li> </ul>	

<b><i>Site Preparation – Activity Available to Qualified Local Governmental Units Only</i></b>	<b><i>Guidance</i></b>
<p><b><u>Clearing and Grubbing</u></b></p>	<p>For some projects, the removal of organic matter including vegetative cover and topsoil within the limits of the proposed work and removal of the material to a depth which is sufficient to permit the construction of the structure, utility or road in accordance with the plans may be allowed. Grubbing means to disturb the soil by removing the vegetative cover including its root mass. Vegetative Cover means grasses, shrubs, trees, and other vegetation which holds and stabilizes soil. This task shall include the proper recycling, reuse and/or disposal of the cleared and grubbed organic matter including vegetative cover and topsoil.</p>
<p><b><u>Compaction and Sub-base Preparation</u></b></p>	<p>This task is allowed upon demonstration that this work is required on-site as a result of Excavation for Unstable Material, Foundation Work to Address Special Soil Concerns, or Relocation of Active Utilities as referenced in the site prep activity “Relocation of Active Utilities.” Sub-base preparation and compaction of approved materials shall be performed by any reasonable method to achieve the required soil strength (density).</p>
<p><b><u>Cut and Fill Operations</u></b></p>	<p>The excavating of material in one place and the depositing of it nearby (as in building a road or canal) may be allowed where specific site conditions warrant.</p>

<b>Site Preparation – Activity Available to <u>Qualified Local Governmental Units Only</u></b>	<b>Guidance</b>
<b><u>Dewatering</u></b>	<p>A method or operation in which water is removed due to a high water table level only during Excavation for Unstable Material, Excavation to Support Underground Parking, Foundation Work to Address Special Soil Concerns, Fill, or Urban Storm Water Management tasks as outlined above.</p> <p>Dewatering that is not a MSF-eligible activity may be eligible for DEQ approval.</p>
<b><u>Dredging in Waterways</u></b>  May include: <ul style="list-style-type: none"> <li>• Testing</li> <li>• Dredging</li> <li>• Transportation and disposal at an appropriate landfill, and upland disposal and cover</li> </ul>	<p>Removal, transportation and proper disposal of sediment from navigable waterways if the dredging will lead to economic development of the Brownfield property.</p> <p>Dredging activities that are not a MSF-eligible activity may be eligible for DEQ approval.</p>
<b><u>Excavation for Unstable Material (i.e. Urban or Historic Fill)</u></b>	<p>The removal of the unstable material may be allowed when a site is found to consist of unstable material that will not provide adequate structural support.</p> <p>Specifically, this task is for the purposes of removing Urban or Historic Fill and/or as a part of Foundation Work to address Special Soil Concerns. Urban or Historic Fill material means non-indigenous material, deposited or disposed of which is a deterrent/disincentive to redevelop a site, and may include: existing basements, below grade structures, foundations (if not part of the MSF eligible activity “Demolition”), construction debris, dredge spoils, and/or demolition debris. The costs can also include proper disposal including transportation costs of non-reusable or non-recyclable materials. In addition, Urban or Historic Fill material does not include a municipal solid waste disposal site.</p>

<b>Site Preparation – Activity Available to <u>Qualified Local Governmental Units Only</u></b>	<b>Guidance</b>
<b><u>Fill</u></b>	<p>The addition or replacement of soils shall be allowed where: (1) the removal of the unstable material has occurred as outlined above (<i>see Excavation for Unstable Material</i>), (2) an open excavation or void below grade has been created to remove the foundation or basement of a building as a part of the MSF eligible activity “Demolition”, or (3) any below grade void created as a result of any Geotechnical Engineering task as outlined above. This includes placement and the compaction of fill materials, and shall be performed by any reasonable method to achieve the required soil strength (density).</p>
<b><u>Foundation Work to Address Special Soil Concerns</u></b>	<p>Based upon the load characteristics of the structure and the properties of the soils, foundation systems that are designed in the safest and most economical manner to allow for the construction of the structure may be allowed. This foundation work to address special soil concerns shall be validated by a licensed Professional Engineer (P.E.) and shall be supported with appropriate testing/data to evidence said opinion.</p> <p>Reimbursement with school taxes will be allowed only for the <u>incremental increase</u> in costs to address special soil concerns. In order to be considered for this activity, <u>document the cost gap</u> by providing the cost of constructing the foundation on a similar nearby Greenfield site containing indigenous soil material and the selected Brownfield site.</p>
<b><u>Geotechnical Engineering</u></b>	<p>A method in which to obtain and determine soil type and/or stability. If Brownfield site conditions warrant, geotechnical engineering may be allowed and may include investigating existing subsurface conditions and materials; determining their physical/mechanical and chemical properties that are relevant to the project, assessing risks posed by site conditions; designing earthworks and structure foundations; and monitoring site conditions, earthwork and foundation construction. Sometimes, geophysical methods may be used to obtain data about sites. Subsurface exploration usually involves soil sampling and laboratory tests of the soil samples retrieved.</p>



<b>Site Preparation – Activity Available to <u>Qualified Local Governmental Units Only</u></b>	<b>Guidance</b>
<b><u>Grading</u></b>	Changing the natural cover or topography of the land, including the movement or placement of soil from excavation, construction or land balancing, and cut and fill activities. Includes reasonable mass grading of the entire project site.
<b><u>Land Balancing</u></b>	The process of filling a lower area with soil or other acceptable material from another on-site location that is higher in accordance with an approved site plan.
<b><u>Relocation of Active Utilities</u></b>	<p>Due to an eligible property’s previously developed condition, private or public utilities located within the legally established parcel boundaries of an eligible property that must be removed or relocated as a result of the new development, and that are an identified hindrance to the new development plans, may be allowed. The relocation of active utilities may include overhead utilities; burial of overhead utilities (including electrical and phone lines); excavating for the utilities removal; excavating and the replacement of that utility; backfill material for the void created from the original utilities’ removal; backfill material around the relocated utility; placement of the backfill material, and/or the compaction of the backfill material as outlined below (See <i>Compaction &amp; Sub-base Preparation</i>).</p> <p>This <u>does not</u> include capacity upgrades for public and/or private utilities.</p>
<b><u>Retaining Walls</u></b>	Structures that hold back the earth, stabilize soil from down-slope movement or erosion and provide support for vertical or near-vertical grade changes may be considered. The use of retaining walls may be allowed when it is demonstrated that their use will substantially reduce the amount of grading due to site-specific conditions.
<b><u>Solid Waste Disposal</u></b>	Solid waste, as defined in Part 115, <a href="#">Section 11506</a> , of the NREPA, may be removed, transported to, and disposed of at a licensed waste disposal facility, provided the waste was not generated or accumulated by the BRA or the developer. Eligible solid waste could include used tires, old appliances and furniture, or used car batteries. Remediation of landfill sites is not an eligible activity.

<b><i>Site Preparation – Activity Available to Qualified Local Governmental Units Only</i></b>	<b><i>Guidance</i></b>
<b><u>Staking</u></b>	Prior to the commencement of site work, construction staking may be allowed for the completion of MSF eligible activities.
<b><u>Temporary Construction Access and/or Roads</u></b>	Temporary construction access and/or roads may be allowed and may include roughing in the road by cutting out all unsuitable soils, grading, subgrade preparation, and placement of the fill material deposited and compacted for the completion of the roadbed.
<b><u>Temporary Erosion Control</u></b>	Temporary construction site erosion and sediment control practices intended to minimize the amount of soil and other material carried from the site by storm water runoff where the construction activities do not include the construction of a building. These can include structural measures, non-structural measures, vegetative planting or management practices. Specifically, these temporary measures allowed may include the installation of silt fence, utilizing manhole treatment devices, the construction of silt traps, the mulching and temporary planting of areas exposed by grading, the construction of diversions, channel linings, grade stabilization structures and bank protection structures.
<b><u>Temporary Facility</u></b>	A structure or use permitted by the local building codes to exist during periods of construction, development, and land balancing or soil extraction during site preparation activities may be allowed.
<b><u>Temporary Sheeting/Shoring</u></b>	The temporary measure of bracing, sheeting or shoring which is necessary to address special soil concerns during construction of open cut trenches for utility work or foundation work as required by any governing laws or ordinances and as may be necessary to protect life, property or the work. During demolition activities, Temporary Sheeting/Shoring may be allowed to protect adjacent buildings, roads or utilities.
<b><u>Temporary Site Control (i.e. Security, Fencing, Lighting)</u></b>	In certain instances, it may be necessary to secure the project site to protect human health or the project investment. Only temporary site control measures may be allowed and may include furnishing and installing fencing, posts, gates, locking devices, guardrails, signage, or lighting.

<b><i>Site Preparation – Activity Available to <u>Qualified Local Governmental Units Only</u></i></b>	<b><i>Guidance</i></b>
<b><u>Temporary Traffic Control</u></b>	This task may be allowed and may include those items necessary to control the flow of traffic as required and approved by governing authorities. Items required may include road closure, signage, barricades, lights, guards or flaggers.
<b><u>Specific and Unique Activities</u></b>	MSF may consider site preparation activities that demonstrate a specific and unique need due to the site-specific Brownfield conditions necessary for the successful redevelopment of the eligible property.

<b><i>Ineligible Site Preparation Activities</i></b>	<b><i>Guidance</i></b>
<b><u>Topsoil and Seeding</u></b>	Not allowable unless as a Temporary Erosion Control, or an Infrastructure Improvement if located within a public right-of-way.
<b><u>Landscaping</u></b>	May be allowed as an Infrastructure Improvement if located within a public right-of-way.
<b><u>Underground Sprinkler System (Irrigation)</u></b>	May be allowed as an Infrastructure Improvement if located within a public right-of-way, or located on private land if it is part of a Low Impact Design storm water management system exclusively utilizing collected water.
<b><u>Site Lighting</u></b>	Not allowable unless a part of Temporary Site Control as outlined above, or as an Infrastructure Improvement if located within a public right-of-way or located within an underground or vertical parking ramp.
<b><u>Engineered Fill</u></b>	Not allowable unless a part of Fill as outlined above.
<b><u>Backfill Around Foundations and Private/Site Utilities</u></b>	Backfill around foundations and private/site utilities is generally not allowed because clean backfill (typically clean earth fill composed of sand, or other municipally approved fill) is required around all foundations and underground utility installations, regardless of location or of the Brownfield conditions present at the site.

<b>Miscellaneous – Activity Available Statewide</b>	<b>Guidance</b>																
<p><b><u>Soft Costs</u></b></p> <p>May include:</p> <ul style="list-style-type: none"> <li>• Geotechnical</li> <li>• Architectural</li> <li>• Engineering</li> <li>• Design</li> <li>• Legal</li> <li>• Other Professional Fees</li> </ul>	<p>MSF may consider soft costs as long as the costs are directly related to the MSF eligible activity. Soft costs generated by municipal employees related to infrastructure improvement are <u>not</u> considered eligible costs.</p>																
<p><b><u>Administrative Fees</u></b></p>	<p>BRA administrative and operating expenses may be reimbursed with <u>local taxes only</u>. In each fiscal year, the amount of TIR that can be used for administrative and operating expenses purposes is as follows:</p> <table border="1" data-bbox="764 1115 1167 1409"> <thead> <tr> <th>Number of Projects</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>5 or Fewer</td> <td>\$100,000</td> </tr> <tr> <td>6 to 10</td> <td>\$125,000</td> </tr> <tr> <td>11 to 15</td> <td>\$150,000</td> </tr> <tr> <td>16 to 20</td> <td>\$175,000</td> </tr> <tr> <td>21 to 25</td> <td>\$200,000</td> </tr> <tr> <td>26 to 30</td> <td>\$300,000</td> </tr> <tr> <td>31 or more</td> <td>\$500,000</td> </tr> </tbody> </table> <p>Under two situations, these fees may be increased by increments of two percent (2%) up to ten percent (10%) total; 2% for each written agreement entered into by a County BRA to serve as another municipality’s BRA, or 2% if an BRA enters into an agreement with one or more other authorities to administer one or more administrative operations of those other authorities.</p>	Number of Projects	Amount	5 or Fewer	\$100,000	6 to 10	\$125,000	11 to 15	\$150,000	16 to 20	\$175,000	21 to 25	\$200,000	26 to 30	\$300,000	31 or more	\$500,000
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<b>Miscellaneous – Activity Available Statewide</b>	<b>Guidance</b>
<p><b><u>Contingency</u></b></p>	<p>A maximum fifteen percent (15%) contingency for unforeseen circumstances and cost overruns may be added to the estimated cost of the proposed activities. The contingency <u>should not</u> be calculated on the costs for Brownfield plan, work plan preparation or implementation, or for activities previously conducted. The MSF will approve the fifteen percent contingency only on the approved eligible activities.</p>
<p><b><u>Interest</u></b> MSF may support up to 5% simple interest</p>	<p>MSF may consider interest on principal eligible activities including demolition, lead, asbestos &amp; mold abatement, infrastructure improvements and site preparation on a case-by-case basis for projects that demonstrate a financial need. MEDC may determine the level of interest support based on a needs analysis, taking all financing into consideration, including the layering of state and local incentives. Interest must be supported by the local BRA and the interest rate must be included in an approved Brownfield Plan. The BRA has the ability to cap the amount of interest and the MSF will not support more than the capped amount. Projects contemplating interest should engage the MEDC early in the planning process.</p>
<p><b><u>Work Plan and/or Brownfield Plan Preparation</u></b></p>	<p>Includes reasonable costs of developing and preparing Brownfield Plans, Combined Brownfield Plans or Work Plans, including, but not limited to, legal and consulting fees but cannot exceed \$30,000.</p> <p>NOTE: If the Plan includes MSF and DEQ eligible activities, the maximum state school tax capture for the Plan development remains at \$30,000 and should be split between the two agencies.</p>
<p><b><u>Work Plan and/or Brownfield Plan Implementation</u></b></p>	<p>Includes reasonable costs of Brownfield Plan or Work Plan implementation, including, but not limited to, tracking, submittal, review of invoices for reimbursement; plan compliance and reporting of data, but cannot exceed \$30,000.</p> <p>NOTE: If the Plan includes MSF and DEQ eligible activities, the maximum state school tax capture for the Plan implementation remains at \$30,000 and should be split between the two agencies.</p>

<i>Ineligible Activities/Expenses</i>	<i>Guidance</i>
<p>Ineligible Activities Include:</p> <ul style="list-style-type: none"> <li>• Legal Fees</li> <li>• Permitting Fees</li> <li>• Site Improvements</li> <li>• Administration by staff of the local unit of government</li> <li>• Land Acquisition</li> <li>• Costs incurred for environmental response and all non-environmental activities outside of a DEQ or MSF approved Work Plan</li> <li>• Registration fees, including registration of an underground storage tank</li> <li>• Taxes (except sales tax)</li> <li>• Solid waste disposal (except as contaminated wastes or for structural support issues)</li> <li>• Equipment purchase, maintenance and repairs</li> <li>• Third Party Damages</li> <li>• Insurance (except Environmental Insurance)</li> </ul>	

## Part 9 - Schedule 1 Eligible Activities Table

DEQ Eligible Activities Costs and Schedule		
DEQ Eligible Activities	Cost	Completion Season/Year
<b>Department Specific Activities</b>		
<i>Itemize Site Assessment and BEA Activities</i>		
<i>Itemize Pre-Demo, Hazardous Material, Lead, Mold, and Asbestos Surveys</i>		
<i>Itemize Due Care</i>		
<i>Itemize Response Activities</i>		
<i>Itemize Environmental Insurance</i>		
<b>DEQ Eligible Activities Sub-Total</b>		
Contingency (Indicate %)*		
Interest (Indicate %)****		
Brownfield Plan and/or Work Plan Preparation**		
Brownfield Plan and/or Work Plan Implementation***		
<b>DEQ Eligible Activities Total Costs</b>		

MSF Eligible Activities Costs and Schedule		
MSF Eligible Activities	Cost	Completion Season/Year
<b>Demolition Sub-Total</b>		
<i>Itemize Demolition Activities</i>		
<b>Lead, Asbestos, Mold Abatement Sub-Total</b>		
<i>Itemize Lead Abatement Activities</i>		
<b>Infrastructure Improvements Sub-Total</b>		
<i>Itemize Infrastructure Improvement Activities</i>		
<b>Site Preparation Sub-Total</b>		
<i>Itemize Site Preparation Activities</i>		
<b>MSF Eligible Activities Sub-Total</b>		
Contingency (Indicate %)*		
Interest (Indicate %)****		
Brownfield Plan and/or Work Plan Preparation**		
Brownfield Plan and/or Work Plan Implementation***		
<b>MSF Eligible Activities Total Costs</b>		

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

\*\*The DEQ and MSF allow up to a total of \$30,000 for preparation of Brownfield Plans and/or Act 381 Work Plans.

\*\*\*The DEQ and MSF allow up to a total of \$30,000 for Brownfield Plan and/or Work Plan implementation including but not limited to tracking and reporting of data and Plan compliance.

\*\*\*\*Interest may be approved according to [MSF Policy Interest Calculator](#). In the event that a DEQ loan is being used in conjunction with TIF, the current DEQ loan interest rate will be used to calculate interest on DEQ activities instead of the interest rate approved in the Brownfield plan. Contact DEQ for current loan rates.