



# **LEELANAU COUNTY**

## **BROWNFIELD REDEVELOPMENT AUTHORITY PROGRAM**

### **POLICIES AND PROCEDURES**

*Approved – February 18, 2020*

## **INTRODUCTION**

The Michigan Brownfield Redevelopment Financing Act (Public Act 381 of 1996, as amended) (PA 381) authorizes counties to create brownfield redevelopment authorities as a corporate public body that possesses all the powers necessary to carry out the purpose of its incorporation. An authority established by a county shall exercise its powers with respect to eligible property within a city, village, or township within the county only if that city, village, or township has concurred with the provisions of a brownfield plan that apply to a specific eligible property within the city, village, or township.

The Leelanau County Brownfield Redevelopment Authority (**LCBRA**) was created by the Leelanau County Board of Commissioners and is managed by the Board of Directors of the **LCBRA**, except as otherwise provided by statute or the Authority Bylaws. The **LCBRA** is responsible for the implementation and management of various brownfield incentives and tools including tax increment financing through Brownfield Plans, pursuit of and management of federal, state grants and loans, and implementation of the Leelanau County Local Brownfield Revolving Fund Program.

The purpose of this manual is to establish general principles on which sound decisions can be made and to determine specific parameters to guide the actions of the Leelanau County Brownfield Redevelopment Authority (**LCBRA**). Additionally, the Policies and Procedures provide instructions for applicants to the program.

Policies and procedures in this manual will be reviewed, adopted, and amended as needed by the LCBRA. The Authority Board has developed a set of Operational By-laws which in conjunction with Act 381, as amended and other applicable statutes of the State of Michigan will govern its activities and actions.

## **BROWNFIELD REDEVELOPMENT PROGRAM**

The Leelanau County Brownfield Redevelopment Program brings together local, state, regional and federal agencies with private sector, non-profit and community organizations to improve the quality of life for residents throughout Leelanau County.

### ***MISSION STATEMENT***

The Leelanau County Brownfield Redevelopment Authority will provide resources and expertise to help investigate, clean up, eliminate blight and return properties to productive use for the benefit of the county, its communities, and its citizens.

## ***GOALS***

Redevelopment will improve the quality of life for residents by stimulating economic growth, creating new jobs, encouraging development of affordable housing and supporting community pride. Residents of the county and targeted areas will benefit from reduction of health risks and increased property values resulting from cleanup of contaminated sites. The LCBRA will work closely with local governments to identify viable community supported and driven redevelopment projects that will result from the transformation of contaminated, blighted, functionally obsolete and/or historic resource properties throughout the County.

## **I. Programs Administered**

It is widely recognized that there often is a greater cost associated with redeveloping Brownfield properties compared to undeveloped or uncontaminated property. The LCBRA, through a variety of mechanisms and authorizations, can provide significant incentives to facilitate the redevelopment of brownfield sites throughout the county. Eligible property, as defined by Act 381, is property that is primarily one or more of the following:

- a “facility” as defined by Part 201 of P.A. 451 of 1994, as amended (contaminated);
- Blighted (as determined by the local unit of government);
- Functionally obsolete (as determined by the local assessor);
- Historic resource
- Other listed eligible property as defined by Act 381.

The LCBRA assists in Brownfield Redevelopment activities at eligible properties through tax increment capture, grants, loans, and other incentives to assist with compensating for the costs related to various eligible Brownfield Redevelopment activities including:

- Department Specific Activities:
  - Phase I and II Environmental Site Assessments (ESAs), Baseline Environmental Assessments (BEAs), Due Care Activities, Response activities, removal and closure of Underground Storage Tanks (USTs), disposal of solid waste, dust control, removal and disposal of lake or river sediments, industrial cleaning, certain sheeting or shoring, lead, mold or asbestos abatement (when pose imminent and significant threat to human health)
- Preparation of Brownfield Plans and Act 381 Work Plans
- Brownfield Plan and Work Plan implementation
- Demolition that is not a response activity
- Lead, asbestos or mold abatement.

In addition, in a Qualified Local Governmental Unit (QLUG) or “Core Community” (*Southeast portion of Elmwood Township, only location in Leelanau County*), property under ownership or control of a Land Bank Authority, and former mills, the eligible activities listed above and:

- Infrastructure improvements
- Site preparation activities
- Quieting the title, conveying or selling property under control of a Local Unit of Government (LUG), Land Bank, or LCBRA or acquisition of property if for economic development purposes.

The eligibility of these activities is described in Public Act 381 of 1996, the Brownfield Redevelopment Financing Act, as amended, and guidance developed by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) formerly known as the MDEQ, Michigan Economic Development Corporation (MEDC) and the Michigan Strategic Fund (MSF).

The LCBRA administers the following programs to assist in these activities, depending upon funding availability and eligibility:

- Brownfield Plans utilizing tax increment financing.
- Local Brownfield Revolving Fund (LBRF) – This fund is generated from the excess capture of tax increment through an approved Brownfield Plan. Preference is to use these funds for loans or grants for eligible activities on eligible properties (i.e. project will involve a Brownfield Plan). Loan terms and conditions will be outlined in a Loan Repayment Agreement. Only one loan and/or grant will be allowed per project.
- U.S. EPA Assessment Grant Funds (Hazardous Substances and Petroleum-Contaminated Sites) – Used for eligible assessment activities at eligible properties. Preference is given to projects that create economic growth and increase taxable value.
- Access to State Grants and Loans – As available, the LCBRA and/or County may secure Grants and Loans from the State of Michigan to assist in redevelopment of a site.
- Other funding sources.

Developer financing is the typical method to fund eligible activities. The developer is responsible for the upfront costs and is repaid through tax increment capture. The terms and conditions of this arrangement, which may or may not include interest, are codified in a Development and Reimbursement Agreement.

Any data, information, or reports that are generated from activities conducted utilizing Federal, State, or Local grant funding will be shared with the applicable regulatory agencies and/or funding agencies.

## II. Application Process

The LCBRA has developed a Brownfield Project Application (Part 1 and Part 2) for those interested in access to funding or program support. The application form(s) must be completed by the applicant to initiate the Brownfield process by the LCBRA. Applications will be accepted on an ongoing basis. The applicant should provide a complete application (with appropriate fee) at least two weeks prior to the next regularly scheduled meeting in order to be heard at the next regularly scheduled meeting.

The Part 1 Application is the first step for **all** Brownfield redevelopment projects coming through the LCBRA. The Part 1 Application also allows for the applicant to request funding that *may* be available. Applicants are expected to provide a minimum of 10% of the funds required for any project. Approval of an application by the LCBRA is not approval of a Brownfield Plan and the requested tax increment financing (TIF) and/or other economic incentives. Application approval is required by the LCBRA in order to move forward with the process.

A Part 2 Brownfield Project Application Form is required if a Brownfield Plan, Act 381 Work Plan, (EGLE) Grant/Loan, MEDC Grant/Loan, EPA Revolving Loan, or Local Brownfield Revolving Funding is requested as a project incentive. All Brownfield applicants requesting approval of incentives under a Part 2 Application will be assessed a Fee (refer to Fee Schedule), which must be returned with an application. Both applications have an Application Checklist that identifies the items that must be included with a complete application. Project applications will not be reviewed until all items are completed.

Projects that are presented to the LCBRA for consideration of eligible activities and potential funding will follow the procedure outlined below:

1. An initial verbal inquiry or meeting with LCBRA staff will be scheduled to review the proposed project including estimated project investment, potential eligible activities and costs, funding needs and timing requirements. LCBRA staff will evaluate the project and determine if it would qualify for one of the incentive programs available. If LCBRA staff determines the project has merit, the developer will be invited to complete and submit a Part 1 Application.
2. Upon receipt of a complete Part 1 Application and applicable fee the LCBRA staff will present the application to the LCBRA Board for consideration.
3. If support is required for a Brownfield Plan/Act 381 Work Plan, (EGLE) Grant/Loan, MEDC Grant/Loan, EPA Revolving Loan, or Local Brownfield Revolving Funding and based on the Part 1 Application review, the LCBRA staff will invite the interested party to complete and submit a Part 2 Application.
4. Upon receipt of a complete Part 2 Application and applicable fee the LCBRA staff will present the application to the LCBRA Board for consideration.

5. If the LCBRA Board recommends approval of the application, the applicant can proceed with the development of a Brownfield Plan.
6. The applicant will contract with environmental consultants and others to prepare all information necessary for the Brownfield Plan, Act 381 and/or MSF Work Plan, and (EGLE), LUG and LCBRA approvals.
7. Upon receipt of a draft Brownfield Plan, LCBRA staff will review the Plan and will present the Brownfield Plan to the LCBRA or request additional information from the applicant.
8. Upon receipt of a LCBRA approved Brownfield Plan, the LCBRA staff will negotiate a draft Development and Reimbursement Agreement with the Developer (subject to final approval of the Brownfield Plan and Act 381 Work Plan, if applicable) and present the agreement to the LCBRA for approval.
9. Once a Development and Reimbursement Agreement are approved, the developer and staff will present the Brownfield Plan to the LUG for approval.
10. If the LCBRA and LUG approve the Brownfield Plan, the LCBRA will recommend approval to the County Board of Commissioners requesting that a public hearing date be established with the appropriate notices.
11. Any eligible costs related to a Brownfield project incurred by the LCBRA will be included in a Brownfield Plan for reimbursement including allowable administrative costs. Additionally, the LCBRA intends to capture the allowed five full years into their LBRF.
12. If it is necessary to pursue other Federal or State grant or loan funding or an Act 381 Work Plan for the capture of school taxes, all applications/work plans will be coordinated and submitted by the LCBRA and depending on whether the Applicant completes the application to the various agencies, the applications will be subject to approval by the LCBRA and the application may be subject to additional application fees.
13. Upon completion of a successful public hearing and acceptance of the Brownfield Plan by the Board of Commissioners, the Developer can proceed with the project as outlined in the Application and Development Agreement.
14. The LCBRA reserves the right to accept or reject all applications for assistance under this program.

### **III. Fees**

The LCBRA is responsible for establishing all fees and cost shares related to Brownfield Applications and projects. The LCBRA reserves the right to modify this fee schedule as needed and changes will be authorized by the LCBRA Board. Refer to the LCBRA's Fee Schedule for all applicable fees and related policy.

## **IV. DEVELOPMENT AND REIMBURSEMENT AGREEMENTS**

Developer financing is the typical method to fund brownfield eligible activities. The developer incurs the upfront costs and is repaid through tax increment capture. The terms and conditions of this arrangement, which may or may not include interest, are codified in a Development and Reimbursement Agreement. If other funding is made available for a project, i.e. (EGLE) grant and/or loan, LCBRA loan, etc., a Development and Reimbursement Agreement will also be required.

### ***BROWNFIELD REDEVELOPMENT TRANSACTION COSTS***

Costs and expenses related to the authorization, execution, administration, oversight, or fulfillment of the LCBRA's obligations as allowed by Act 381 and incurred as a result of assistance to a brownfield redevelopment project shall be borne by the developer. These costs and expenses shall be defined in an executed Development and Reimbursement Agreement between the LCBRA and the developer. These transaction costs include, but are not limited to:

1. direct or indirect fees and expenses incurred as the result of an application;
2. amendment to a brownfield plan;
3. review of a proposed brownfield development project and/or plan;
4. approval of a proposed brownfield development project and/or plan;
5. printing costs;
6. costs of reproducing documents;
7. filing and recording fees;
8. attorney fees;
9. financial expenses;
10. insurance fees and expenses;
11. administration and accounting for loan proceeds and tax increment revenues,
12. oversight and review;
13. all other costs, liabilities, or expenses related to preparation and execution of or enforcing of brownfield plans, Act 381 (EGLE)/MEDC work plans, any and all agreements with a developer;

14. and any other costs, charges, expenses, and professional and attorney fees in connection with the foregoing.

If the LCBRA (i) incurs costs and expenses on behalf of a developer with respect to a project, and (ii) the developer initiates, participates in or supports any proceeding or process which results in a reduction of the tax increment capture for a project from that projected and along the same term as contained within a Brownfield Plan, the developer indemnifies and will fully reimburse the LCBRA for the costs and expenses or reduction in revenue from what was projected as the tax increment capture.

### ***CONDITIONS PRECEDENT TO OBLIGATIONS***

The obligations to conduct Eligible Activities or reimburse for them are subject to the following conditions which must be satisfied by the developer prior to execution of a development and reimbursement agreement between the developer and the LCBRA.

1. An affidavit stating that no action, suit, proceeding or investigation involving the developer is pending or before any court, public board related to this development or any previous development project, which could result in an adverse decision having one or more of the following effects:
  - a) A material adverse effect upon the ability of the LCBRA to collect and use Tax Increments to pay the obligations under a brownfield plan or development agreement.
  - b) A material adverse effect on a party's ability to comply with the obligations and terms of an agreement, a brownfield plan, or an Act 381 Work Plan.
2. There shall have been no Event of Default or Breach by the developer and no action or inaction by such party, which, with the passage of time, could become an Event of Default.
3. The developer shall have performed all of the terms and conditions to be performed pursuant to the terms of an agreement, a brownfield plan, or an Act 381 Work Plan.
4. Tax increment revenues and other needed revenues which are assured from actual development, imminent development, or contractual obligations.
5. Approval of an Act 381 Work Plan by the MEDC and/or (EGLE), if applicable, as required by law.
6. Any party receiving assistance shall comply, always, with all applicable local, state and federal laws and regulations.
7. The owner shall not be in default to the County with respect to the owner's covenants and obligations to the County under an agreement, a brownfield plan, or an Act 381 Work Plan.

8. The LCBRA will not enter into any contract or sub award with parties that are debarred, suspended or excluded from Federal assistance.
9. The current owner of the property has executed, or agreed that they will execute, conveyance documents for the sites necessary for the developer to construct and maintain the property and/or facilities as presented to the LCBRA.

### ***REIMBURSEMENT CONDITIONS***

The reimbursement (debt obligation) of LCBRA to a party in a development and reimbursement agreement is subject to the following conditions applicable to that party:

1. Approval by the LCBRA, local jurisdiction, and Leelanau County Board of Commissioners of the Brownfield Plan, including any amendments or supplements.
2. Approval by LCBRA and (EGLE) or MEDC of the Act 381 Work Plan, if applicable, including any amendments or supplements.
3. The developer shall have performed all the covenants, obligations, terms and conditions pursuant to the development and reimbursement agreement.
4. Required documentation shall be submitted to the LCBRA confirming that the developer is current with respect to real and personal property taxes levied on those portions of the development that are subject to such taxes and owed by the developer/owner on or before the date taxes are payable, without interest or penalty. Failure to stay current with real and personal property taxes shall result in termination of all agreements between the LCBRA and the developer; and all obligations to the LCBRA shall become immediately due in full.
5. In the event a developer, or any other owner of any portion of a property, files an appeal with the Michigan Tax Tribunal, related to the taxable value of parcels of property included in a Brownfield Plan, the LCBRA shall do the following:
  - a. The LCBRA will remit Tax Increment Financing Reimbursement payments based upon the lowest taxable value being sought pursuant to the appeal;
  - b. Any Tax Increment Revenue that is collected but not remitted as a result of a tax appeal shall be held in a separate account of the LCBRA until the pending appeal is adjudicated;
  - c. Once any tax appeals are adjudicated, the LCBRA will either return the escrowed funds to the local unit in compliance with any tax appeal rulings or will make payments pursuant to the policies and procedures contained herein.
6. The developer shall provide proof of ownership with title, easement, or other property interest of the development property required for eligible activities or infrastructure, if applicable.

7. The developer shall provide the LCBRA with a list of any potentially responsible party (PRP) for the contamination on the property.
8. Owner and developer shall provide to the LCBRA any sworn written waivers of liens by consultants, contractors, and subcontractors who may be providing services for their respective eligible activities.
9. If expressly written in the Brownfield Plan and approved by the LCBRA, local jurisdiction, and Leelanau County Board of Commissioners, and to the extent captured revenues are available, and as allowed by Act 381 and (EGLE)/MSF policy, the LCBRA may allow interest as an eligible expense on a case by case basis using the following guidelines:
  - a. The LCBRA Board will consider employment, total investment, developer return on investment, and length of reimbursement when considering interest expense for a project.
  - b. If interest expense is granted, a maximum of 3% simple interest is calculated from the date of the first approved eligible expenses.
  - c. Interest will be calculated based on the total remaining non-interest eligible expense approved at the end of each calendar year.
  - d. The cumulative interest expense cannot exceed 20% of the total reimbursable expenses.
  - e. Principal is paid before interest.
  - f. Terms and conditions of the payment of interest will be defined in the development and reimbursement agreement.

### ***REIMBURSEMENT PROCESS***

Applicants who have successfully completed a project and seek reimbursement shall prepare a Reimbursement Package for submittal to the LCBRA Staff. The Reimbursement Package shall be provided to LCBRA staff within 12 months of completion of the project. The Reimbursement Package shall contain the following:

- a.) A cover letter shall be included with each reimbursement request. This letter shall be signed by the property owner. The letter should include the following items:
  - Project name and location where the work was performed
  - Description of work
  - Total amount requested
  - Name and address of the owner (person or corporation) who is to receive payment

- b.) A letter from an environmental professional shall be included with each reimbursement request with the following certifications and information, as applicable:
- The environmental professional shall certify that the reimbursement request is an eligible expense under Act 381, as amended.
  - Project name and address where the work was performed
  - Description of work
  - Certification that the work was performed as stated in the Brownfield Plan, Work Plan and/or Development and Reimbursement Agreement
  - Total amount requested
  - Cost breakdown by line item consistent with the budget in the Brownfield Plan, Work Plan and/or Development and Reimbursement Agreement
  - Signature and certification by an environmental professional regarding the above information
- c.) Copies of invoices, including detailed invoice sheets shall be provided for all expenses included in a reimbursement request.
- d.) Waivers of construction and material supplier liens
- e.) Upon request by the LCBRA, the developer or owner shall provide evidence that the work was completed, such as notes, reports, pictures of work performed or a letter from an engineer or environmental professional certifying that the work was performed.

If the person or corporation who is to receive payment is not the owner of record of the parcel(s) at the time of the reimbursement request, there shall be included in the reimbursement request a signed affidavit that the parcel owner of record authorizes the reimbursement to the other party.

Reimbursements shall not be paid to contractors or consultants who have worked on the project. Reimbursements shall be paid only to persons or corporations with an ownership interest in the parcel (or with the owner's consent, the development) at the time of request for reimbursement.

## **V. POLICY ON TIF COLLECTION AND DISBURSAL**

The Owner and/or Developer of a brownfield site shall pay all real and personal property taxes levied on those portions of the Development that are subject to such taxes on or before the date said taxes become subject to interest or penalty.

Tax Increment Financing (TIF) shall be collected for a brownfield site as follows:

1. After summer tax bills are released, and after winter tax bills are released, the County Treasurer, or designee, shall submit a written request to the local taxing jurisdiction requesting collection and release of TIF funds to the County Treasurer.
2. The County Treasurer shall verify funds collected and transfer said funds to the LCBRA account.
3. The County Treasurer shall provide a brief summary to the LCBRA of collected, and non-collected funds.

To the extent captured revenues from Tax Increment Financing (TIF) are available in the LCBRA account, reimbursement for Eligible Activities for a brownfield site shall be as follows:

1. First, to be applied to any amounts loaned to Owner and/or Developer under a Loan Agreement between the Owner and/or Developer and the LCBRA, and/or, to any loan received from the Michigan Department of Environment, Great Lakes, and Energy (EGLE), including a reasonable reserve for future payments to assure availability of funds.
2. Second, LCBRA administrative/operating and accounting costs and other eligible activities as incurred by the LCBRA, as allowed by law.
3. Third, to be applied to any amounts properly submitted by the Owner and/or Developer for Eligible Activity expenses, provided that the Owner and/or Developer is in compliance with the applicable agreements and instruments relating to the project.
4. Local Brownfield Revolving Fund.

The Owner and/or Developer shall keep all taxes and other accounts current, in order to be eligible for TIF reimbursement.

The LCBRA review and approval process for TIF Disbursement will be as follows:

**April** of each year – Review of requests.

**May** of each year – Consider TIF Disbursal

**October** of each year – Review of requests.

**November** of each year – Consider TIF Disbursal

The above review and disbursal meetings will be held at a Regular scheduled LCBRA meeting. In the event a meeting is cancelled or all materials for the request are not available, they will be reviewed at the next Regular scheduled meeting. Requests will NOT be considered for projects that have unpaid taxes.

Under no circumstances will TIF reimbursement be made from the Delinquent Tax Fund.

## **VI. Amendments to Policy**

The Leelanau County Brownfield Redevelopment Authority reserves the right to amend this policy for different purposes which may include but are not limited to: improvements which serve to benefit the Brownfield Redevelopment Process; changes in law and other applicable regulations on a local, state or federal level; and organizational changes affected by the County.

Changes to the policy will be approved by the Brownfield Redevelopment Authority and made available to the community at large through its Web site and other mechanisms available to the Authority.

