

City of Alpena Authority for Brownfield Redevelopment

Brownfield Plan/Act 381 Work Plan Approval Policies and Procedures

Act 381 provides requirements for the consideration and approval of brownfield plans and Act 381 work plans by local brownfield redevelopment authorities. The following document intends to outline the policies and procedures for consideration of brownfield plans and Act 381 Work Plans by the Alpena Authority for Brownfield Redevelopment (the "Authority").

Brownfield Plan Requirements

The Authority has set certain minimum requirements that all projects must meet in order to be considered for approval of a Brownfield Plan and Act 381 Work Plan. The Authority may consider a variance to these minimum requirements; however, variances would be provided only under circumstances that have substantial benefit to the community.

Eligible Property: All property and activities considered under the Brownfield Plan and Act 381 Work Plan must be consistent with the provisions of Act 381. All eligible property must meet the definitions of Act 381 as a Part 201 facility, blighted, or functionally obsolete (or adjacent property that will increase taxable value).

Eligible Activities:

Standard Activities (Environmental):

- Site Assessments
- Site Remediation
- Lead and Asbestos Abatement
- Demolition
- Preparation and Approval of Due Care Plan
- Interest (see below)

Core Community Activities:

- Infrastructure Construction (Public)
Often required for both greenfield and brownfield projects. Public infrastructure costs will be considered eligible if a significant impact on municipal infrastructure funds is demonstrated.
- Site Preparation
Generally required for all development projects, whether located in a brownfield or greenfield. Costs in excess of typical will be considered an eligible activity only if both of the following conditions are satisfied: 1) unusual site conditions can be demonstrated (e.g., presence of significant concrete rubble), which results in a site preparation cost significantly higher (20% or more) than would typically be anticipated; and 2) the Board determines that the proposed project will result in a significant impact on the City (meets three of the seven Authority goals for brownfield redevelopment projects).

Although an activity may qualify as eligible, which and how many eligible activities may be included in a Brownfield TIF Plan shall be based on negotiations among the developer/property

owner, the Authority Executive Director and the City, and will be based on such factors as the term of the plan, the anticipated tax capture and its impact on the overall financial viability of the project. Final determination of included eligible activities shall rest with the Board.

Tax Capture Term: The standard maximum duration for tax capture is 10 years, including payments into the Authority’s Remediation Fund. The Authority may extend the term up to a maximum of an additional five (5) years based on a demonstrated financial need for the extension by the applicant. The tax capture rate for any extension beyond ten (10) years shall be limited to 50% of the tax increment. This limitation shall not apply to the Authority’s Remediation Fund.

Interest Rate: If included in a Brownfield Plan, interest shall be limited to 2.5% of the unpaid balance calculated annually as of April 1 of each year. Interest from local tax capture shall be applied only to those eligible activities (expenses) reimbursed by local tax capture. ***No local tax capture will be used to pay interest on the state tax share of an eligible activity.***

Plan Fee: A fee per the following approved fee schedule is required upon submittal of the brownfield plan to the Authority. The applicant will also be required to pay for the cost of State review of the Act 381 work plan, typically \$1,000 each for MDEQ and MEGA.

Plan without TIF	- \$250.00	7-01-06	Council Resolution
Plan including TIF w/o School Tax Capture	- \$500.00		
Plan including TIF with School Tax capture	- \$750.00		

Property Tax Payment Status: An applicant applying for Brownfield Plan approval must be current on the payment of all real and personal property taxes for all properties owned, in whole or in part, by the applicant (including subsidiaries) located within the City of Alpena. Upon final approval of the Brownfield Plan and throughout its duration, the applicant shall remain current on all property taxes. Failure to remain so shall result in the following:

- ***No payment of received and approved invoices shall be made if at the time of invoice submittal the applicant is not current on all property taxes due on the TIF property(s).***
- ***Interest shall not accrue or be paid if at the time of payment or accrual the applicant is not current on the payment of all real and personal property taxes for the TIF property(s). Once interest accrual or payment is lost due to failure to remain current, the lost interest will not be re-instated retroactively upon payment of all arrear property taxes.***

Appeal of Property Tax Assessment: The ability of an approved Brownfield Plan to meet its obligations is dependent on the accuracy and reliability of the established base taxable value and future incremental increases in the taxable value of the TIF property resulting from the new development. Therefore, significant adjustments to these figures due to the appeal of any tax assessment or reassessment may negatively impact scheduled reimbursements both for a given year and over the term of the TIF. At the same time, the City recognizes the right of a property owner to appeal an assessment or reassessment that it considers incorrect or unfair. Consequently, the following property tax appeal limitations shall be required of all Brownfield Plan applicants at the time of application, during the term of the Brownfield TIF and the immediate three (3) years following the termination of the TIF:

- Any appeal and resulting reassessment of the base year assessment shall be made prior to the approval of the Brownfield Plan by the Authority and Alpena City Council.
- Once the Brownfield Plan is approved and in effect, assessment appeals shall be limited to the current year and shall be made prior to the distribution of any captured incremental tax revenues for that year.
- No appeals shall be permitted for prior year(s) assessments.

In the event an appeal reduces the total revenue generated by the TIF below the level necessary to meet all the obligations included in the Brownfield TIF Plan, the Authority shall not be obligated to make any payments beyond the maximum term of the TIF as established in the TIF Plan. The Authority may also proportionally reduce payments for all eligible activities, including interest and the Authority's Remediation Fund, based on the impact of the new assessment(s) on future TIF revenues.

Changes in State Law: In the event the State legislature enacts laws which negatively impact the tax capture values of an approved and implemented Brownfield TIF Plan, the developer/property owner, Authority Executive Director and Authority Financial Officer shall review the Plan and proportionally reduce the value of the eligible activity reimbursements based on the percentage of lost tax capture resulting from the State law. Such modifications shall be approved by the Authority Board. Any such changes shall not result in an increase in the duration of any previously approved Brownfield Plan unless approved by the Authority Board and City Council. Any extension beyond a total of ten (10) years shall be subject to the limitations in the "Tax Capture Term" section above.

Approval Process

Act 381 requires certain steps for the approval of a Brownfield Plan by the Authority and the City Council, as well as the approval of an Act 381 Work Plan by the Authority and the State. The Authority has established the following process to facilitate the approval and implementation of Brownfield Plans and Act 381 Work Plans. A flow chart of the process is attached.

Pre-Meeting and Negotiations: A property owner, developer, or his/her agent shall meet with the Executive Director to outline the proposed project and the brownfield incentives being sought. The Executive Director along with the City Manager, if necessary, shall negotiate a proposed brownfield plan including agreed upon eligible and reimbursable activities, length of TIF, administrative fee and remediation fund reimbursement in accordance with the adopted Board policies.

Authority Review and Approval of Brownfield Plan: A final draft brownfield plan, including all elements agreed upon by the negotiating parties, will be provided to the Director of the Authority 15 days prior to the regular meeting of the Authority for final review and comment, and any subsequent revision at least 5 days before the Authority meeting for inclusion in the Board packet. The draft Brownfield Plan will be reviewed at the meeting and the Authority may approve, deny, or request modifications for subsequent consideration. The Authority may recommend at this time that the City Council hold a public hearing on the Brownfield Plan. If a plan is denied, the review and approval process ends. The plan is not forwarded to City Council for its consideration. The rejected plan may be modified and resubmitted as a new application.

Notice for Public Hearing and to Taxing Jurisdictions: A notice of public hearing convened by the City Council on the Brownfield Plan shall be sent to a newspaper of general circulation and a notice of the public hearing and information on the fiscal and economic implications of the project is sent to all affected taxing jurisdictions. The notices shall be filed not less than 10 days and not more than 40 days before the public hearing.

Public Hearing: The City Council will hold a public hearing on the proposed Brownfield Plan and may approve, deny, or request modifications for subsequent consideration. Significant modifications would need to be re-submitted to the ABR Board for concurrence prior to the Plan going into effect. Such modifications would include:

- Significant changes to the boundaries of the eligible property
- Significant changes to eligible activities and/or expenses
- Significant changes to the Plan's duration

If the Authority Board does not approve the changes, a meeting of staff, Authority Board and Council representatives and the applicant shall be conducted to reach a consensus. If an agreement cannot be reached, the application shall be considered denied.

Act 381 Work Plan: In order to capture State taxes, an Act 381 work plan, consistent with Act 381 and State guidelines, must be submitted to and approved by the Authority and submitted by the Authority to and approved by the MDEQ for environmental eligible activities and MEGA for non-environmental eligible activities.

Reimbursement Agreement: A reimbursement agreement must be executed between the developer and the AABR which outlines the responsibilities of each party and the terms and conditions under which the project must proceed and reimbursement for eligible expenses must be made.

Project Implementation

Once all the incentives are approved and the reimbursement agreement is executed, eligible activities can begin. There are specific items to be addressed in project implementation.

Work Plans: Prior to initiating eligible activities, a work plan, which details the scope of work to be conducted under the Brownfield Plan and Act 381 work plan, must be submitted to the Director of the Authority. Any questions or issues with the work plan and reimbursement eligibility will be addressed within five (5) working days of submittal.

Invoice Approval: Once eligible activities are conducted, the developer must submit invoices and other documentation, including full waivers of lien from all subcontractors, to verify the eligible expenses within 60 days of the date of payment and at least 10 days prior to the Authority meeting. The documentation will be submitted to the Authority for consideration. All expenditure invoices must be approved by the Authority Board, which will be considered reimbursement obligations under the development agreement and Act 381.

Procedures for Tax Capture and Reimbursement: Once the Brownfield Plan is approved, a letter will be sent from the Authority to the City and County Treasurers. The letter shall include the date of approval for the Brownfield Plan, the initial taxable value and year, and the total approved obligation.

Disbursement: As tax increment revenues are captured, disbursements will be made in accordance with the reimbursement agreement. The allocation for administrative and operating costs will be paid first, with the balance of the funds allocated for payment for approved invoiced eligible activities and the Local Site Remediation Fund, if applicable.

Local Site Remediation Fund: Act 381 allows for the capture of taxes for deposit into a local site remediation fund during the time of capture or five years after the eligible activity costs are paid off, or both. The Authority, at its discretion, may allocate a portion of the annual tax capture throughout the life of the project to the local site remediation fund or delay such allocation until after all other eligible activities are fully reimbursed. Such capture shall be limited to local taxes only, unless otherwise approved by the Board. This capture would be in addition to administrative and operating costs and eligible activity reimbursement.

Administrative and Operating Costs: Act 381 provides for reasonable and necessary administrative and operating costs for the brownfield authority, within limits established by the Act, as an eligible activity from *local taxes only*. The Brownfield Plan shall include the total amount of administrative and operating costs anticipated. The annual capture amount can be a fixed amount (the total divided by a set number of years) or a percentage of the annual local tax capture. The allocation of administrative and operating costs related to eligible activity reimbursement will be addressed in the reimbursement agreement.