MICHIGAN BROWNFIELD REDEVELOPMENT PROGRAM

EGLE MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

ELIGIBLE ACTIVITY RESOURCE

In general, eligible activities associated with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Brownfield Program must be included in a work plan and approved by EGLE prior to implementation. This document summarizes EGLE Brownfield eligible activities and provides direction on the documentation and information that should be included in a work plan seeking EGLE review and approval. Requirements, considerations, and eligible activities described in this resource apply to EGLE brownfield grants, loans, and Act 381 tax increment financing (TIF).

Requirements of All Work Plans

- ☐ Communicate the known brownfield conditions including the nature and extent of contamination. Adequate characterization will be necessary for EGLE to determine the appropriateness of eligible activities, consider long-term outcomes, and ensure best use of taxpayer dollars.
- ☐ Demonstrate that the proposed activities and costs are associated with the brownfield conditions at the property and are above and beyond the standard cost of development.
- ☐ Describe how the activities will be protective of public health, safety, and welfare, and the environment.
- ☐ Provide a summary of how the activities will be accomplished including methods, drawings, disposal locations, etc.
- ☐ Detail how the activities are cost effective and how the cost estimates were determined including volume calculations, unit costs, etc.
- ☐ A schedule for implementation of the proposed activities.

General Considerations

- This is not a comprehensive list of eligible activities or considerations but rather a tool to help communicate the typical information EGLE will be looking for in a work plan.
- Proposed eligible activities should be discussed with your brownfield coordinator in advance of work plan submittal to ensure eligibility. This is particularly important in the following situations:
    - Activities that may be seen as overlapping with standard development costs including dewatering, excavation, soft costs, etc.
    - Uncommon activities such as on-site soil management, specialized foundations, abatement when lead, mold, or asbestos pose an imminent threat, etc.

- EGLE considers site-specific brownfield conditions, applicable laws, regulations, guidelines, policy, and reasonableness of costs when evaluating proposed activities. EGLE staff may request additional information before determining eligibility.
- Projects receiving EGLE brownfield funding must follow all applicable federal, state, and local laws.
- EGLE encourages consideration of other alternatives and response activities prior to proposing engineering controls with long term operation, monitoring, and maintenance (OM&M) obligations.
- Soft and/or temporary costs should not be broken out but rather included as part of the scope and cost for the eligible activity.
    - Typical soft costs include contractor procurement, engineering, oversight, project management, reporting, etc.
    - Typical temporary costs include staking, land control, soil erosion and sedimentation control (SESC), construction access roads, truck washes, traffic control, temporary facilities, and/or utilities.
- For grant and loan work plans "Tasks" are the broad categories of work listed in Appendix A of the grant and/or loan agreement. "Activities" are the specific work items completed under each Task.
- For grants and loans, work with your brownfield coordinator regarding how costs will be billed (itemized activities, detailed time and materials, lump sum, etc.) It is important to confirm the proposed cost and units correspond to the way the contractor intends to bill the items. The budget table in the work plan should reflect the proposed billing format for ease of reference during the reimbursement process.
- Housing Projects:
    - EGLE support of 100% residential projects will depend on a number of factors, including:
        - Type and level of contamination.
        - How contamination is being addressed.
        - Type of residential development (rental or leased vs. owner occupied, etc.)
        - Reliable control of site activities (planting, digging, structural or utility modifications, etc.)
        - Proper ongoing OM&M of engineering controls, if applicable.
    - EGLE does not support the use of engineering controls (i.e., direct contact exposure barriers or vapor mitigation systems) for owner occupied residential development.
    - EGLE does not support residential development over areas considered to be methane generating or where methane is found to be present at levels exceeding generic residential criteria. This may include former landfills, other properties known to be methane generating, or properties adjacent or nearby methane generating properties.

- Common laws associated with EGLE Brownfield Funding:
  - **Part 201**: Part 201, Environmental Remediation, of public act (PA) 451, the Natural Resources and Environmental Protection Act, as amended (NREPA)
  - **Part 213**: Part 213, Leaking Underground Storage Tanks (LUSTs), of the NREPA
  - **Part 196**: Part 196, Clean Michigan Initiative (CMI) Implementation, of the NREPA
  - **Part 215**: Part 215, Underground Storage Tank (UST) Corrective Action (CA) Funding, of the NREPA
  - **Act 381:** PA 381, the Brownfield Redevelopment Financing Act

Eligible Activities

A general list of eligible activities is provided in the following summary table and described in detail below:

Assessment, Investigation, and Planning Activities

- Phase I Environmental Site Assessment (ESA)
- Phase II ESA, Subsurface Investigation, Due Care Investigation
- Baseline Environmental Assessment (BEA)

Lead, Asbestos, and Hazardous Materials Survey

Plans for Compliance with Due Care, Response Activity Plans, etc.

Lead, Asbestos, Mold Abatement and Demolition

Transportation and Disposal of Contaminated Material

Contaminated Source Soil Removal

On-Site Soil Management

Container Removal

Treatment and Disposal of Contaminated Water

Dewatering for Contaminated Source Removal

Vapor Mitigation System (VMS)

Direct Contact Exposure Barriers

Infiltration Prevention and Diversion Barriers

UST Removal and/or Closure

Specialized Foundations (Loan and Act 381 only)

Dust Control

Industrial Cleaning

Sheeting and Shoring Necessary to Protect Adjacent Water Bodies

Disposal of Solid Waste

Removal and Disposal of Lake or River Sediments

Land or Resource Use Restrictions (LRURs)

Compliance and Closure Reporting

Environmental Insurance (Act 381 only)

Third-Party Environmental Oversight Professional

Grant and/or Loan Administration

Contingency

Unanticipated Response Activities (Act 381 only)

Assessment, Investigation, and Planning Activities

Under Act 381, pre-development assessment and planning activities are exempt from EGLE approval. For grants and loans, these activities cannot occur prior to the submittal and approval of a detailed grant/loan work plan as indicated below.

Phase I ESA

The following should be provided for evaluation of eligibility:

- ☐ Reason for performing the Phase I ESA (due diligence for purchase, etc.)
- ☐ Brief narrative of the scope of work
- ☐ Standards to be followed
- ☐ Expected cost of the activity in the budget table

Phase II ESA, Subsurface Investigation, Due Care Investigation

This section should read like a sampling and analysis plan (SAP). The following should be provided for evaluation of eligibility:

- ☐ Purpose for conducting the subsurface investigation (due diligence, characterization, due care investigation, etc.)
- ☐ The standards, guidance, or methodologies, if any, the investigation will follow.
- ☐ A detailed scope of work (ground penetrating radar, test pits, hand auger borings, geo-probe borings, wells to be installed, soil vapor points to be installed, waste characterization, etc.)
- ☐ Proposed sample information including estimated number of samples, media, field measurements, analytical methods, and locations on an attached figure.
- ☐ Field and laboratory quality assurance quality control (QA QC).
- ☐ If incremental sampling is proposed provide data quality objectives (DQOs), decision units, methodology, etc.
- ☐ Reports to be prepared and what they will include.
- ☐ A breakdown of costs in the budget table.

BEA

The following should be provided for evaluation of eligibility:

- ☐ Brief narrative of the scope of work.
- ☐ Parties seeking liability protection.
- ☐ Expected cost of the activity in the budget table.

Lead, Asbestos, and Hazardous Materials Survey

This section should read like a sampling and analysis plan (SAP). The following should be provided for evaluation of eligibility:

- ☐ Purpose for conducting the survey (due diligence, demolition, renovation, etc.)
- ☐ The standards, regulations, or methodologies that the survey will follow.
- ☐ A scope of work for the survey.
- ☐ Proposed sample information including estimated number and type of samples, field documentation, and analytical methods.
- ☐ Reports to be prepared and what they will include.
- ☐ A breakdown of costs in the budget table.

Plans for Compliance with Due Care, Response Activity Plans, etc.

Plans may include Plans for Compliance with Part 201, Section 20107a and Part 213, Section 21304c (commonly referred to as Due Care), Response Activity Plans (commonly referred to as ResAPs), Corrective Action Plans (commonly referred to as CAPs), Remedial Action Plans (commonly referred to as RAPs), etc. The following should be provided for evaluation of eligibility:

- ☐ Narrative scope of work and rationale for the proposed item.
- ☐ The specific documents and reports that will be produced.
- ☐ Specify if the documents will be formally submitted to EGLE for review and approval.
- ☐ Specify if the documents are required as part of project financing, Identify the funding source and contacts.
- ☐ Expected cost of the activity in the budget table.

Lead, Asbestos, Mold Abatement and Demolition

Costs of these abatement and demolition activities (combined with disposal of solid waste and sediment removal), that are not specifically associated with the implementation of due care activities or to access contamination, cannot exceed the total cost of eligible environmental activities (assessment, due care, response activities, etc.) The following should be provided for evaluation of eligibility:

- ☐ Describe the reason for the demolition and abatement (to remove blight and support the redevelopment, to implement due care activities, to access contamination, imminent threat, etc.)
- ☐ A detailed scope of work for each activity (removal, abatement, or encapsulation, site demolition, building demolition, interior and/or partial demolition, clean backfill and compaction to bring back to grade, soft costs, etc.)
- ☐ Locations of activities provided on attached figures.
- ☐ A breakdown of costs in the budget table.

Notes for Act 381:

- These activities may be reimbursed with state tax increment revenue (TIR) without an approved Act 381 Work Plan so long as the total amount of these activities combined does not exceed $250K.
- If the total amount of these activities combined does exceed $250K and reimbursement with state TIR is being sought, you'll need to work with your brownfield coordinator or the appropriate state agency to determine level of support and eligibility.

Transportation and Disposal of Contaminated Material

Transportation and disposal of contaminated material typically occurs when excess soils are generated during construction. When soils are generated as a result of typical construction related activities (earthwork for building foundations, utilities, parking lots, grading, etc.) the cost for excavation and earthwork is not eligible, as this work would need to occur regardless of the brownfield condition. However, the proper transportation and disposal of the contaminated material would be considered eligible, as this would not be considered a normal cost of development. The same is true for the removal of non-indigenous fill or soil that is unstable for construction purposes, only the costs for the transportation and disposal of the contaminated material are eligible. The following should be provided for evaluation of eligibility:

- ☐ Justification that the material being transported and disposed of is contaminated.
- ☐ Justification of why the transport and disposal activity is not a normal cost of development.
- ☐ A detailed scope of work and cost for each activity (transportation, disposal, waste characterization, soft costs, oversight, reporting, etc.)
- ☐ Locations of activities shown on figures (removal area, temporary staging areas, etc.)
- ☐ Estimated dimensions and quantities of material to be removed.
- ☐ A table that corresponds with the proposed material to be removed showing how the quantities and costs were calculated including dimensions, rough volume calculations, conversion factors, and unit costs.
- ☐ A breakdown of costs in the budget table including unit costs per ton or yard, etc.

Contaminated Source Soil Removal

If contaminated soils are being removed for due care or response activity purposes then excavation, transportation, disposal, and backfill costs may be eligible. Removal of the contamination must be the driving force behind the need to excavate the soils rather than construction purposes or their instability as a building material. The following should be provided for evaluation of eligibility:

- ☐ Justification that the material is a source area of contamination.
- ☐ Justification of why the proposed work is a response activity and not a normal cost of development.
- ☐ A detailed scope of work and cost for each activity (waste characterization, temporary shoring, excavation, transportation, disposal, dewatering, clean backfill and compaction, soft costs, oversight, reporting, etc.)
- ☐ Locations of activities shown on figures (removal area, temporary cost areas, etc.)
- ☐ Estimated dimensions and quantities of material to be removed.
- ☐ A table that corresponds with the proposed excavation areas showing how the quantities and costs were calculated including rough volume calculations, conversion factors, and unit costs.
- ☐ A breakdown of costs in the budget table including unit costs per ton, yard, gallon, etc.

On-Site Soil Management

On-site soil management includes relocation, berming, fill, cover, etc. This is rarely an eligible activity because the relocation of soil on a property is a normal cost of development. The following should be provided for evaluation of eligibility:

- ☐ Justification of why the activity is not a normal cost of development (land balancing, etc.) or a demonstration that only the additional incremental cost associated with brownfield conditions is requested.
- ☐ Justification that the soil being managed is contaminated.
- ☐ A detailed scope of work, including a description of how the relocation will be protective of human health and the environment, and the use of qualified personnel.
- ☐ If applicable, demonstration that activities are in compliance with Part 201, Section 20120c.
- ☐ Locations of the proposed activities (e.g., removal, staging, and deposition areas) shown on figures.
- ☐ A breakdown of costs in the budget table.

Container Removal

Container removal includes hazardous materials, drums, hoists, hoist tanks, above ground storage tanks (ASTs), etc. The following should be provided for evaluation of eligibility:

- ☐ A detailed scope of work including, but not limited to, containers to be removed, quantities, waste characterization, methodologies, reporting, etc.
- ☐ Locations of activities provided on attached figures.
- ☐ A breakdown of costs in the budget table.

Treatment and Disposal of Contaminated Water

Treatment and disposal of contaminated water typically occurs when dewatering is necessary during construction. The presence of a high groundwater table or accumulated stormwater and the need for dewatering is not a brownfield condition. The act of pumping the water is considered a typical cost of construction and therefore, only the added costs for treatment and disposal of contaminated water is eligible. The following should be provided for evaluation of eligibility:

- ☐ Justification that the water being treated and/or disposed of is contaminated.
- ☐ Justification of why the treatment and disposal work is an eligible activity and not a normal cost of development.
- ☐ A detailed scope of work (treatment, transportation, and/or disposal of contaminated groundwater, waste characterization, soft costs, oversight, reporting, etc.)
- ☐ Locations of activities provided on attached figures.
- ☐ A statement or cost-benefit analysis demonstrating how the proposed activity was selected or is the least cost alternative.
- ☐ Estimated quantities of media to be treated and/or disposed of.

- ☐ A table that corresponds with the proposed media to be treated and/or disposed of showing how the quantities and costs were calculated including rough volume calculations and unit costs.
- ☐ A breakdown of costs in the budget table.

Dewatering for Contaminated Source Removal

As discussed above, dewatering and pumping are generally normal costs of development and are rarely eligible activities. If the pumping and dewatering is solely associated with due care or response activities, such as a source removal excavation, the costs for dewatering, treatment, and disposal may be eligible. Removal of the contamination must be the driving force behind the need to dewater rather than for construction purposes. The following should be provided for evaluation of eligibility:

- ☐ Justification that the water is contaminated.
- ☐ Justification of why the activity is a due care or response activity and not a normal cost of development.
- ☐ A detailed scope of work (pumping, treatment, transportation, and/or disposal of contaminated groundwater, waste characterization, soft costs, oversight, reporting, etc.)
- ☐ Locations of activities provided on attached figures.
- ☐ A statement or cost-benefit analysis demonstrating how the proposed activity was selected or is the least cost alternative.
- ☐ Estimated quantities to be dewatered.
- ☐ A table in the text that corresponds with the proposed dewatering showing how the quantities and costs were calculated including rough volume calculations and unit costs.
- ☐ A breakdown of costs in the budget table including unit rates and cost per gallon.

Vapor Mitigation System

Consult with your brownfield coordinator early when a VMS is proposed. The scope of work for a VMS will typically include the design, installation, commissioning, and an OM&M plan which may be proposed in the same or separate work plans. Refer to EGLE's latest vapor intrusion resources. Prior to resulting to this engineering control there must be discussion and support by EGLE. The following should be provided for evaluation of eligibility:

- ☐ Criteria used to evaluate vapor risk at the property.
- ☐ Data sufficient to support that a volatilization to indoor air risk is present at the property, mitigation is necessary (preferably soil gas exceedances), and the selected mitigation method is appropriate for the site conditions.
- ☐ Discussion of other alternatives that have been considered (source removal, further assessment, etc.) and vapor mitigation is necessary.
- ☐ Provide an engineered VMS design with technical specifications and figures showing building layout, cross-sections, and locations of VMS components including, but not limited to, the barrier, ventilation configuration, performance monitoring components, as well as installation verification and testing procedures.

- ☐ Supporting documentation associated with flow, radius of influence, air quality exemptions, etc.
- ☐ Documentation that the selected barrier or system is protective of the contaminants on the property.
- ☐ Description of performance metrics and schedule for system commissioning (prove out and verification testing). Note that submittal of system commissioning documentation is required when using grant or loan funds.
- ☐ Written description of each activity associated with the VMS.
- ☐ A breakdown of costs in the budget table.

Direct Contact Exposure Barriers

The scope of work for a direct contact exposure barrier will typically include the design, installation, and OM&M plan, which may be included in the same or separate work plans. Refer to EGLE's latest exposure barrier resource on EGLE's Resource Materials for the Part 201 and Part 213 Programs. The following should be provided for evaluation of eligibility:

- ☐ Data sufficient to support that the exposure barrier is warranted (soil near the surface is contaminated above direct contact criteria over the entire area of the proposed barrier, etc.)
- ☐ Discussion of the other alternatives that have been considered (source removal, further assessment, development of site-specific criteria, etc.) and an exposure barrier is necessary.
- ☐ A detailed design and scope of work (thickness, materials, specifications, soft costs, oversight, reporting, etc.)
- ☐ Description of the documentation that will be produced to demonstrate the installation, performance, and effectiveness of the exposure barrier. The documentation will need to demonstrate proper construction, thickness of the exposure barrier, materials used, etc. Refer to EGLE's latest exposure barrier resource on EGLE's Resource Materials for the Part 201 and Part 213 Programs for additional guidance on documentation.
- ☐ Figures and cross sections illustrating the location and design of the exposure barrier.
- ☐ A breakdown of costs in the budget table.

Infiltration Prevention and Diversion Barriers

Infiltration and diversion barriers are typically necessary to prevent contaminated groundwater from entering into utilities and storm water ponds. The following should be provided for evaluation of eligibility:

- ☐ Justification that contamination is present on the property, at the appropriate depth, and locations to reasonably warrant this engineering control.
- ☐ Justification that the proposed materials are protective for the known contaminants on property.
- ☐ Detailed specifications and description of the scope of work (locations, thickness, material, specifications, soft costs, etc.)
- ☐ Locations of activity provided on attached figures.
- ☐ A breakdown of costs in the budget table.

UST Removal and/or Closure

A UST site may never be more accessible than during the brownfield redevelopment process. Whenever possible, EGLE strongly encourages removal of out of use USTs and the assessment and "closure" of a release associated with a UST. The following should be provided for evaluation of eligibility:

- ☐ The history and ownership of the UST.
- ☐ A detailed scope of work for each proposed activity (investigation, ground penetrating radar, UST removal, cleaning, and disposal or recycling, contaminated soil removal, dewatering, waste characterization, backfill and compaction, verification sampling, oversight, reporting, soft costs, etc.)
- ☐ Locations of activities provided on attached figures.
- ☐ A breakdown of costs in the budget table.

Specialized Foundations (Loan and Act 381 only)

This is rarely an eligible activity because specialized foundations do not have any environmental benefit and can be a normal cost of construction at certain sites. The mere presence of unstable soil or need for specialized foundations is not an EGLE eligible activity. However, if the unstable soils are contaminated a cost-benefit analysis could demonstrate that the added costs of a specialized foundation are less expensive than transportation and disposal of the soil that would need to be excavated to install a typical foundation. The following should be provided for evaluation of eligibility:

- ☐ Justification that the unstable soils are contaminated.
- ☐ Justification that the specialized foundations are warranted (geotechnical report and written recommendation by a geotechnical engineer).
- ☐ Description, figures, cross section, and boring logs demonstrating the extent of contaminated unstable soil.
- ☐ A cost-benefit analysis by a licensed professional engineer (P.E.) that demonstrates that the additional incremental cost of the specialized foundation is less expensive than the ***transportation and disposal*** costs of the soil that would be excavated for a typical foundation. Only the additional incremental cost of the specialized foundation beyond the cost of the standard foundation can be included. The cost for excavation of the unstable soil is not included in the transportation and disposal costs.
- ☐ The cost-benefit analysis and/or text of the work plan should include a table demonstrating how the costs were calculated including cost to transport and dispose of contaminated soil, cost of standard foundations, delta for specialized foundations, etc.)
- ☐ A detailed scope of work for the proposed activity (rammed aggregate piers, spread foundations, soft costs, etc.)
- ☐ Location of proposed foundations shown on figures preferably overlain with the extent of contaminated unstable soil.
- ☐ A breakdown of costs in the budget table.

Notes:

- Specialized foundations are only eligible for brownfield loan and Act 381 funding.
- Following the cost-benefit analysis, if the local unit of government or developer requesting EGLE funding prefers the higher cost option, EGLE funding may be approved equivalent to the lowest cost option at EGLE's discretion.

Dust Control

This is rarely an eligible activity because dust control is necessary during construction on all properties including those that are not contaminated. Dust control is only eligible if the actions are necessary to prevent or reduce the surface and air transport of contaminated dust during other eligible activities listed herein or would be above and beyond those dust control activities required at non-contaminated construction sites. The following should be provided for evaluation of eligibility:

- ☐ A detailed scope of work (spraying, misting, or hosing down a demolition or construction area with water to minimize on- and off-site dust that may impact air quality, minimizing soil disturbance, applying cover materials, surface roughening, etc.)
- ☐ Locations of activities provided on attached figures.
- ☐ A breakdown of costs in the budget table.

Industrial Cleaning

The following should be provided for evaluation of eligibility:

- ☐ Justification that the industrial cleaning is warranted (e.g., the presence of oil, grease, or other materials on floors, pits, or drains that need to be cleaned to allow new tenants to reuse an existing structure, install equipment, or complete interior renovations).
- ☐ A detailed scope of work and methods for the proposed activity.
- ☐ Locations of proposed activities shown on attached figures.
- ☐ A breakdown of costs in the budget table.

Sheeting and Shoring Necessary to Protect Adjacent Water Bodies

This activity involves the use of sheeting or shoring necessary to protect life, the land, or the integrity of the excavation at contaminated material removal projects near surface water bodies requiring a permit under Part 301, 303, or 325 of NREPA. This is rarely an eligible activity because this situation is uncommon. The following should be provided for evaluation of eligibility:

- ☐ Justification that the sheeting and shoring is warranted (demonstration that media to be removed is contaminated and evidence of permit requirements).
- ☐ A detailed description of the scope of work. Including the sheeting and shoring design and copy of the permit(s) if available.
- ☐ Locations of proposed activities shown on attached figures preferable overlain with the extent of contaminated soil and proposed excavation.
- ☐ A breakdown of costs in the budget table.

Disposal of Solid Waste

Disposal of soil waste includes the removal, transportation, and disposal of waste such as building debris, tires, and other materials illegally dumped or located on a property. Further, costs of solid waste removal and disposal (combined with abatement, demolition, and sediment removal) cannot exceed the total cost of eligible environmental activities (assessment, due care, response activities, etc.) The following should be provided for evaluation of eligibility:

- ☐ A detailed scope of work for associated with the disposal of solid waste.
- ☐ General description and locations of waste provided on figures.
- ☐ A breakdown of costs in the budget table.

Removal and Disposal of Lake or River Sediments

Waterfront brownfield projects may encounter the need for removal and disposal of lake or river sediments, also commonly referred to as "dredging." This is an uncommon eligible activity. Further, costs of removal and disposal of sediments (combined with abatement, demolition, and solid waste removal), that do not pose an unacceptable risk to human health and the environment, cannot exceed the total cost of eligible environmental activities (assessment, due care, response activities, etc.) The following should be provided for evaluation of eligibility:

- ☐ Purpose of the proposed removal and disposal of sediments.
- ☐ Data sufficient to support that sediments to be removed are contaminated.
- ☐ Describe if the activity is proposed for site development purposes or because the sediments pose an unacceptable risk to human health and the environment.
- ☐ Evidence of permitting from appropriate state and federal agencies.
- ☐ A detailed scope of work for the proposed activity (dredging, testing, transportation, disposal, upland disposal location provided that on-site disposal does not result in contaminated land, oversight, soft costs, reporting, etc.)
- ☐ Depict locations of the proposed activities and known contamination on attached figures (location of both sediment and upland contamination, area to be dredged, stockpiling and deposition areas).
- ☐ A breakdown of costs in the budget table including unit costs per ton or yard, etc.

Note: If the removal is proposed for site development purposes and the sediments do not pose an unacceptable risk to human health and the environment the following conditions must be met:

- Dredging activities must be tied to a specific economic development project with a committed developer. Evidence of the commitment may include a development agreement, long-term lease, purchase agreement, and/or site plan approval by the local unit of government.
- The sediments must exceed Part 201 criteria.
- The upland property is a "facility" under Part 201 or a "property" under Part 213 or would become a "facility" or "property" if contaminated sediments were dredged and deposited onto the upland site.

Land or Resource Use Restrictions

LRURs and other institutional controls are legal or administrative tools to impose activity or use limitations at a property that reduce or restrict exposure to environmental contamination left in-place and can be used to meet obligations under Part 201 and Part 213. Refer to EGLE's latest LRUR resources. The following should be provided for evaluation of eligibility:

- ☐ A detailed scope of work (developing a LRUR or other institutional control, filing restrictions with the county register of deeds, placing permanent markers to describe restricted contaminated areas, etc.)
- ☐ Locations of activities provided on attached figures.
- ☐ A breakdown of costs in the budget table.

Compliance and Closure Reporting

Compliance and closure reporting may include but is not limited to preparing a Documentation of Due Care Compliance (DDCC), No Further Action (NFA) report, Closure Report, etc. The following should be provided for evaluation of eligibility:

- ☐ Narrative scope of work and rationale for the proposed item.
- ☐ The specific documents and reports that will be produced.
- ☐ Specify if the documents will formally be submitted to EGLE for review and approval.
- ☐ Specify if the documents are required as part of project financing. Identify the funding source and contacts.
- ☐ Expected cost of the activity in the budget table.

Environmental Insurance (Act 381 only)

Environmental insurance is liability insurance for environmental contamination and cleanup that is beyond the standard cost of development and is not required by state or federal law. These policies are typically purchased by the developer or investor. Contractor pollution liability and errors and omissions policies are not eligible environmental insurance. Provide the following for evaluation of eligibility:

- ☐ A copy of the draft insurance policy to ensure reasonableness of costs and applicability of the coverage.
- ☐ Narrative scope of work and rationale for the proposed insurance.
- ☐ Specify whether the insurance is required as part of project financing. Identify the funding source and contacts.
- ☐ Expected cost of the policy in the budget table.

Third-Party Environmental Oversight Professional

Third-party oversight may be requested by the local unit of government or required by EGLE to assist Grantees and Borrowers with the proper implementation of grant and loans. Third-party oversight is only allowed if approved by EGLE. If allowed, third-party oversight is approved upon signature of the grant and/or loan agreement and therefore is not required to be included in a grant or loan work plan. Refer to EGLE's Grant and Loan Management Roles Resource for additional information.

Note for Act 381: If brownfield TIF is being used to repay a loan and this activity is included, the following should be provided in the Act 381 Work Plan for evaluation of eligibility:

- ☐ Identify the specific third-party environmental professional. Third-party oversight professionals must be experienced with the EGLE brownfield program, have a history of successful grant and loan management, and approved by EGLE.
- ☐ A brief narrative of the third-party scope of work.
- ☐ Expected cost of the activity in the budget table.

Grant and/or Loan Administration

Grant and/or loan administration is approved upon signature of the grant and/or loan agreement and therefore is not required to be included in a grant or loan work plan. Refer to EGLE's Grant and Loan Management Roles Resource for additional information.

Note for Act 381: If brownfield TIF is being used to repay a loan and this activity is included, the following should be provided in the Act 381 Work Plan for evaluation of eligibility:

- ☐ Identify if this work will be conducted by the borrower or environmental professional or combination thereof. Environmental professionals must be experienced with the EGLE brownfield program, have a history of successful grant and loan management, and approved by EGLE.
- ☐ A brief narrative of the scope of work.
- ☐ Expected cost of the activity in the budget table.

Contingency

Grant and/or Loan:

- Contingency is allowed to be included up to 15% of the grant or loan award amount. Contingency included in the grant or loan can be used on an as-needed basis for eligible activities previously approved or for new eligible activities that are identified over the course of the project. Use of contingency funds needs to be discussed and approved by EGLE in advance. Approved use of contingency funds must ultimately be documented in writing. Work with your brownfield coordinator to determine proper use of contingency.

Act 381

- Contingency under Act 381 is allowed up to 15% of the activity costs that have yet to occur. Contingency included in the Act 381 Work Plan can be used on an as-needed basis to cover extra costs of the Work Plan approved activities and does not need to be documented in writing to EGLE. Contingency shall not be used for activities not identified and approved in an Act 381 Work Plan.

Unanticipated Response Activities (Act 381 only)

Additional costs and/or response activities to address unexpected conditions encountered during development that were not originally included in a Brownfield Plan or Act 381 Work Plan may be reimbursed with state TIR if:

- ☐ The eligible property is already included in the Brownfield Plan;
- ☐ The eligible activities are discussed with and supported by EGLE in writing before the activities are conducted and costs are incurred. For the best outcomes, the written consultation should include itemized eligible activities and associated costs; and
- ☐ The activities are then included in an amended or subsequent Act 381 Work Plan.

Note: The Brownfield Redevelopment Authority must submit an approved brownfield plan and amended or subsequent Act 381 Work Plan to EGLE for review and approval of the unanticipated activities. EGLE must reply to the amended or subsequent Act 381 Work Plan in writing before unanticipated response activities are approved for state TIR capture.

Useful Links

The following Act 381 related resources can be found at miplace.org/programs/brownfield-tax-increment-financing:

- Act 381 Work Plan Guidance
- Act 381 Work Plan Templates, Instructions, and Tables

The following grant and loan related resources can be found at Michigan.gov/EGLEBrownfields:

- Deliverables Resource
- Markup Resource
- Grant and Loan Management Roles Resource
- Brownfield Grant and Loan Work Plan Template and Table