

# Brownfield Revitalization

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MICHIGAN'S BROWNFIELD INCENTIVES program began with the 1995 adoption of sweeping liability reform. The brownfield program was expanded in 1996 to establish significant financial incentives and was enhanced again by the 2000 adoption of amendments to the financial incentives program. Michigan's brownfield incentives program provides opportunities matched by few other states. These incentives, whether in the form of grants, loans, tax increment financing, or tax credits, can be structured by skilled advisors to level the financial playing field between development on brownfield and unimpacted (greenfield) sites.

How to maximize  
financial incentives  
when acquiring  
brownfields

## 1995 Liability Reform

While much has been written about the sweeping effects of the 1995 overhaul of Michigan's "polluter pays" law, the impact of the law can be summarized briefly. First, the adoption of the baseline environmental assessment tool in Section 26 of Part 201 of the Michigan Natural Resources and Environmental Protection Act of 1994, as amended (NREPA), MCL 324.20126, has allowed parties to buy or lease thousands of properties since 1995 without assuming strict liability for existing contamination. Second, the enactment of land use based cleanup criteria has greatly reduced the cost of occupying and cleaning up contaminated property. Together, the 1995 statutory changes laid the groundwork for the financial incentives discussed in this article.

## FAST FACTS

- ◆ Parties may buy or lease properties without assuming strict liability for existing contamination.
- ◆ Costs incurred after a brownfield plan has been approved may be eligible for reimbursement with tax increment revenues.
- ◆ Prior state approval is required for a taxpayer to obtain the Single Business Tax Credit.

## Financial Incentives

Following the 1995 liability reform, Michigan created several important financial incentives to encourage brownfield redevelopment. Property owners have been permitted since 1996 to seek tax increment financing and single business tax credits for brownfield projects.

The Brownfield Redevelopment Financing Act, 1996 PA 381, as amended, permits local units of government and counties to establish Brownfield Redevelopment Authorities (brownfield authorities) to facilitate local brownfield development. To date, the primary purpose of brownfield authorities has been to approve and facilitate local governing body adoption of brownfield plans to qualify individual brownfield projects for tax increment financing (TIF) and single business tax (SBT) credits. The SBT credits are available pursuant to 1996 PA 382 and 2000 PA 143. As described below, other financial incentives are available as well, including brownfield redevelopment grants and brownfield revitalization loans.

## Tax Increment Financing

A brownfield authority is authorized to implement a brownfield plan that identifies eligible properties within the governmental unit that will be entitled to use TIF to pay or reimburse the costs of eligible activities. Eligible activities include baseline environmental assessment activities (including engineering controls), due care activities, environmental investigation and remediation, and additional response activities (terms defined under Part 201). In addition, in the 88 qualified local governmental units defined in Act 381 (core communities), eligible activities also include non-environmental redevelopment activities such as demolition, infrastructure improvements (such as roads, utilities, and parking lots), and lead or asbestos abatement.

Brownfield authorities are allowed to capture increased property tax revenues (tax increment revenues) generated from a development on eligible property and use that revenue to pay (or repay a developer) the cost of eligible activities at the eligible property. Portions of the tax increment revenues may be used for other purposes, such as funding a local remediation revolving fund and paying

local administrative and operating costs. These costs can be significant (ranging from tens of thousands to more than a million dollars), and a developer often can negotiate an interest rate with the local unit of government for repayment of the costs with the tax increment revenues. It is very important to establish a brownfield authority and develop a brownfield plan (or amendment) for the project at its inception. Only costs incurred after a brownfield plan has been approved by the brownfield authority and local unit of government will be eligible for reimbursement with tax increment revenues.

## Single Business Tax Credit

In 1996, the Michigan Single Business Tax Act (SBT) was amended by 1996 PA 382 to allow owners and operators of contaminated facilities who conduct redevelopment activities on eligible property (subject to a brownfield plan adopted by a brownfield authority) to claim an SBT credit in the amount of 10 percent of their investment, subject to a \$1,000,000 limitation on the credit per taxpayer. This credit could be carried forward into subsequent tax years for up to 10 years, but the investment eligible for the credit had to be made or accrued before the end of the taxpayer's 2000 tax year.

Act 143 of 2000 extended the SBT credit through December 31, 2002, but modified the credit in several significant ways. The maximum available credit is now \$30,000,000, although only a limited number of credits are available each year for more than \$1,000,000 per project. A taxpayer can qualify for credits for more than one project (the credits are project specific) and the credit may be assigned to a tenant or the members of a limited liability company, partnership, or subchapter S corporation. Prior state approval is

now required for a taxpayer to obtain the credit, however, and approval is at the state's discretion based upon several statutory criteria.

The Treasury Department processes applications for credits up to \$1 million. The department has 45 days to approve or deny the application, which is deemed approved if the department does not reach a decision within the 45 days. Applications for credits over \$1 million are processed by the board of the Michigan Economic Growth Authority (MEGA), which has 60 days to approve or deny the application. The MEGA board has discretion to negotiate a tax credit percentage lower than 10 percent of the eligible investment costs. In practice, credits over \$1 million are subject to less certainty and are more difficult to obtain than credits at or below \$1 million.

The credit is based upon the amount of eligible investment activities, which include demolition, construction, restoration, alteration, renovation, or improvement of buildings on eligible property, and the addition of machinery, equipment, and fixtures to eligible property pursuant to an approved brownfield plan. The importance of developing a brownfield plan for the project early in the development process cannot be overstated. The credit is available for investment activities that occur only after the brownfield plan is approved and the applicant has received a preapproval letter from the state treasurer or MEGA. The brownfield plan must be approved before the SBT credit application is filed. This timing must be considered in a project.

While the state releases only limited information on SBT credit approvals for projects receiving credits of up to \$1,000,000, the authors are aware of approximately 25 projects that have been approved for a total of approximately \$14 million of SBT tax credits (of not more than \$1,000,000 each) as of early September 2001. An additional \$112,000,000 has been approved by the MEGA Board for credits between \$1,000,000 and \$30,000,000 (consisting of three credits approved in 2000 for \$30,000,000 each and four credits approved in 2001, through August, for between





\$1,000,000 and \$10,000,000 each). The combined incentive effect of the SBT tax credits and future tax increments has gone a long way toward encouraging development on brownfield sites.

### Brownfield Redevelopment Grants

Brownfield redevelopment grants also are available to help redevelop contaminated property. These grants are issued by the state to a local unit of government or brownfield authority pursuant to Part 196 of NREPA, MCL 324.19601. The local unit of government or brownfield authority typically enters into a development agreement with the proposed developer and uses grant funds to reimburse the developer for eligible expenses. The grant can be used for a variety of environmental related expenses, including investigative activities, BEAs, remediation (interim response activities), and due care activities. These grants are funded by the Clean Michigan Initiative and are patterned after the site reclamation grants formerly available under Part 195 of NREPA.

To qualify for the grant, the proposed development must show economic benefit for the community through job creation, private investment, or property tax increase. Of course, the property must be a "facility" as defined in Part 201. Only one project may be awarded to an applicant during any fiscal year. The maximum amount of a grant is now \$1 million per project. The MDEQ accepts applications throughout the year and generally issues a decision on grant applications within 90 days of receipt.

It should be noted that a liable party may not benefit from the issuance of a grant. In practice, this means that a grant normally will not be issued for a project if the selling party is liable for the existing contamination at the property being developed.

These brownfield redevelopment grants have been of great benefit to many redevelopment projects throughout the state. The application process is described in the MDEQ's Internet home page ([www.deq.state.mi.us/erd/brownfields/index.html](http://www.deq.state.mi.us/erd/brownfields/index.html)), where a copy of the application form is available. It is not necessary to establish a brownfield plan for the project to qualify for a grant. In some instances, parties have pursued a grant and

have not pursued the other incentives described above. By contrast, the authors have been involved in transactions in which a combination of two or more of these tools was used for a single project.

### Brownfield Revitalization Loans

Another financial incentive used with less frequency than those described above is a brownfield revitalization loan. Like brownfield grants, these loans are issued to local units of government and brownfield authorities. The authorization for the brownfield revitalization loan program is Section 8 of Part 201 of NREPA (MCLA 324.20108). The loan carries very favorable terms: There are no principal or interest payments for the first five years, and the balance of the loan (principal and interest) is payable over the next 10 years at a very low interest rate (currently 2.25 percent). Notably, the loan can be reimbursed with tax increment financing proceeds.

Loan proceeds can be used to conduct environmental investigations, demolition, and interim response activities required to facilitate evaluation and demolition conducted prior to redevelopment of a property. As with the other incentives described in this article, the property being redeveloped must be a "facility" as defined in Part 201.

All eligible activities must be consistent with an MDEQ-approved work plan. Once the MDEQ has approved a work plan (which must include a budget for the eligible activities), the loan proceeds are provided to the local unit of government, which disburses the proceeds to the developer as costs are incurred.

In practice, the use of brownfield revitalization loans in conjunction with TIF can alleviate cash flow concerns a developer may have concerning payment for the environmental activities that can be covered by the loan. The inclusion of demolition activities is particularly helpful at old sites that are being redeveloped.

Local units of government may apply for loans at any time. There is no limit to the amount that may be requested. It should be noted, however, that loan amounts are limited to available funding. Until recently, funding of these loans was suspended because of a lawsuit pending in the Michigan Supreme Court. As a result of a ruling issued on April 18, 2001,

by the Michigan Supreme Court (*MUCC v Michigan Department of Treasury*, 463 Mich 994), loan funding is again available. Currently, approximately \$30 million is expected to be available for this loan program.

### Conclusion

Developers (and those who represent them) should look for financial assistance when acquiring contaminated property. The state of Michigan has made it much more desirable to acquire and redevelop such parcels; indeed, there may be certain financial advantages to acquiring a contaminated parcel. As one might expect, a developer must consider the time frame involved in applying for and obtaining the various incentives noted above, as that timing may influence the incentives selected. In the end, it would be a mistake to automatically reject a purchase of contaminated property because of the perceived burdens associated with its environmental condition. Significant financial benefits are available to those clients who decide to redevelop brownfields. One simply needs to know how to get them. ◆



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