



Community Development Committee

Meeting date: February 19, 2008

ADVISORY INFORMATION

Date:	February 13, 2008
Subject:	Tax Base Revitalization Account (TBRA) Criteria and Selection Process Update
District(s), Member(s):	All
Policy/Legal Reference:	Livable Communities Act, Minnesota Statutes § 473.25
Staff Prepared/Presented:	Marcus Martin, Senior Planner, 651/602-1054 Paul Burns, Manager, 651/602-1106 Guy D. Peterson, Director, Housing & Livable Communities, 651/602-1418
Division/Department:	Housing & Livable Communities/Community Development

Proposed Action

None.

Background

Some Tax Base Revitalization Account (TBRA) applicants have expressed confusion about issues regarding eligibility of applications and costs incurred prior to the application date. Additional clarification of the funding criteria and eligibility parameters will help improve the TBRA selection process.

Rationale

Funding criteria for the TBRA is reviewed annually by the Council as part of the *Livable Communities Fund Distribution Plan*. The plan establishes the amount of funding that will be available for grant awards for each of the LCA fund accounts, sets the calendar for the grants making process, and sets forth the criteria upon which grants will be based. The proposed changes to the funding criteria are intended to clarify and support the eligible use of funds and encourage applicants to submit proposals more strongly aligned with the purpose of the TBRA fund – cleaning up contaminated land and buildings for subsequent development in order to provide the highest return in public benefit for public costs incurred, restore tax base, and create and retain jobs and/or affordable housing.

Funding

Changes to the funding criteria will impact the more than \$5 million in TBRA funds awarded annually to prepare contaminated sites for redevelopment in the region.

Known Support / Opposition

No documents of support or opposition have been received from LCA participant communities or brownfield funding partners regarding the proposed changes to the funding criteria.

Proposed Changes and Clarifications to TBRA Funding Criteria and Selection Process

Three significant issues became apparent during the two TBRA funding rounds conducted in 2007:

- 1) For the first time in the history of the program, the amount of funding requested was below the amount of funding available. This situation could occur again—perhaps in 2008—suggesting that adjustments to program administration are necessary in order to ensure that the program continues to fund projects that best fit the program purposes described in legislation.
- 2) It became clear that some applicants did not understand the needs analysis process used to ensure that TBRA funding is essential to the successful completion of a proposed project.
- 3) A number of questions were raised about the circumstances under which costs incurred prior to submission of an application for funding could be eligible for funding.

Staff are recommending the following changes to the TBRA funding criteria included in the 2008 LCA Fund Distribution Plan to address these issues:

1) Establish a Minimum Score for Funding

Typically, grants that are eligible for TBRA funding but provide only minimal returns in public benefits (e.g., no increase to the local tax base, small numbers of new or retained jobs) are not awarded funding because all available funding goes to projects offering higher public benefits. An example could be grant applications from not-for-profit organizations. Such applications don't compete well when scoring is based on criteria developed in accordance with Minnesota Statutes § 473.25, which states that TBRA shall award grants for development proposals that *“provide the highest return in public benefits for the public costs incurred, that encourage development that will lead to the preservation or growth of living-wage jobs or the production of affordable housing, and that enhance the tax base of the recipient municipality.”*

In the fall 2007 TBRA application cycle, for the first time in the history of the program, the amount of funding requested was below the amount of funding available to be awarded. If the current economic downturn and poor real estate development market conditions continue into 2008, it is possible that a similar situation could occur. It is important to ensure that even during rounds where competition is more limited, TBRA funding continues to be allocated to projects that produce a high return in public benefit. To that end, **staff proposes that funding criteria include a provision that each applicant must meet a minimum score of at least 40% (54 points) of the overall points available (135 points) during the application review process to be eligible for funding.** This proposed change is very consistent with the typical cut off point for awarding TBRA funds in competitive funding cycles where there are more requests for funding than dollars available.

2) Clarify the Demonstrated Need Criteria

Applicants have expressed uncertainty regarding how the determination is made that redevelopment project proposals are ineligible for funding based on demonstrated need criteria. Most of the confusion appears to be related to the needs analysis commonly referred to as a “but for” test. Eligible requests must demonstrate that TBRA funding is essential for the project to be completed as proposed. This determination is made by reviewing the applications, verifying the data presented in the application and gaining input from the various partners. Two primary factors are considered to determine whether a project as proposed will proceed “but for” Council funding. First, the amount of the eligible cleanup funding requested is compared to the overall project costs. Second, the amount of funding available from other public and private sources to conduct the cleanup is considered.

This analysis of the need for funding has been an eligibility requirement in TBRA funding recommendations since 1999, with the final judgment being based on an assessment that if eligible clean up costs are one percent or less of the total project costs, the clean up costs more likely than not could be covered by other funding sources without requiring TBRA assistance. However, previous funding criteria and selection process information provided to applicants has not included a description of the one percent guideline, stating only that “an analysis of the proposal determines the funding is not needed in order for the project to proceed.” To

increase the visibility of this baseline expectation, **staff proposes to add the following sentence to the funding criteria to clarify this aspect of the demonstrated needs assessment: *Where the eligible clean up costs are one-percent or less of the total project costs, it is expected that the clean up cost can be reasonably absorbed in the project costs without Council assistance.***

3) Clarify Which Costs Incurred Prior to Application Are Eligible for TBRA Funding

Some applicants have expressed confusion over the eligibility of costs incurred prior to the award of grant funds. Current application materials state that costs incurred prior to submission of a TBRA grant application may be eligible for funding if the activities are required as part of an environmental investigation for cleanup and as part of the implementation of an MPCA-approved response action plan (RAP) for safe reuse of the site, and if the work was done no earlier than 180 days before the TBRA application deadline.

In practice, TBRA has reimbursed applicants for pre-application investigation and cleanup costs in two situations:

- 1) when costs related to environmental investigation (e.g., Phase I and Phase II environmental investigations, response action plan (RAP) development) were incurred within 180 days prior to the application due date, and the costs were related to the cleanup for the development project proposed in the application, and
- 2) when the costs were related to an application for additional funding to “supplement” TBRA grant funds already granted to a city for a project where additional amounts or types of contamination not in the RAP submitted with the prior application were discovered after TBRA funding was awarded. These additional funds are referred to as supplemental grants.

Since 2006, the procedures for consideration of funding for previously incurred cleanup costs have been included in the frequently asked questions documentation available to applicants on the Council website. However, those procedures have not limited eligibility for clean up work conducted prior to the application deadline to supplemental grants, even though that has been the practice. Rather, the current “may be eligible” statement could leave applicants uncertain as to whether or not they should apply.

In order to help applicants more clearly determine which pre-application costs could be eligible for funding, **staff proposes that costs for environmental investigation incurred within 180 days of the application date continue to be eligible for reimbursement, but that the following language—clearly stating that costs for cleanup work conducted within 180 days prior to the application date may be eligible for funding only if the application is for a supplemental grant—be added to the funding criteria and replace the current information in the frequently asked questions:**

Contamination cleanup activities incurred prior to the TBRA application date may be considered eligible for funding only if the application is for a supplemental grant, and only if the applicant meets the following conditions:

- A. The cleanup work for which funding is being requested must have been done no earlier than 180 days before the TBRA application deadline (November 1st or May 1st)
- B. For soil and ground water remediation work the MPCA must have approved a RAP for the project prior to commencing work; for asbestos abatement a Minnesota Department of Health (MDH) licensed inspector/contractor must have completed an asbestos evaluation and plan according to Asbestos Hazard Emergency Response Act (AHERA) standards; for lead-based paint abatement an MDH licensed inspector/contractor must have completed a lead-based paint evaluation according to MDH standards
- C. The applicant must have contacted the Metropolitan Council TBRA staff prior to commencing any cleanup work. A site visit with the applicant and TBRA staff is recommend so that there is clear understanding of the project and the proposed remediation.

- D. Before starting the cleanup work the applicant must provide a letter to the Council TBRA staff that explains why the applicant needs to commence the cleanup work prior to the TBRA application deadline and states:
- (1) The applicant is going to start project cleanup work before the next TBRA application deadline; and the applicant has the appropriate approvals (see B above)
 - (2) The applicant understands that while this notification process makes the work done after the Council receives the letter eligible for consideration in the next TBRA grant round, it DOES NOT commit the Council to funding the project.

The three proposed changes would be modifications to the existing TBRA funding criteria (Attachment 1). The revised criteria will be presented to the CDC and the Council as part of the approval of the Livable Communities Fund Distribution Plan for 2008.

Attachment 1 – 2007 TBRA Distribution Fund Criteria

Tax Base Revitalization Account Funding Criteria and Selection Process

(The Council's **Policy Restricting Metropolitan Council LCA Grants for Projects Using Eminent Domain for Economic Development** applies to all TBRA applications submitted in 2007.)

Section 1: BACKGROUND AND PURPOSE

The Metropolitan Livable Communities Act (MN Statutes Chapter 473.252) creates the **Tax Base Revitalization Account** (TBRA). The Tax Base Revitalization Account provides funds to clean up contaminated land in areas that have lost commercial/industrial activity to make it available for economic redevelopment, job retention or job growth, or the production of affordable housing to enhance the tax base of the recipient municipality. TBRA funds, raised by a legislatively authorized levy capped at \$5 million, will be available annually with applications accepted twice each year (the first regular business day on or after May 1 and November 1). The Account is coordinated with complementary programs at the MN Pollution Control Agency (MPCA), MN Department of Employment and Economic Development (DEED), Hennepin County and Ramsey County.

Section 2: ELIGIBLE APPLICANTS

The following are eligible to apply: statutory or home rule charter cities or towns that are *participating in the Metropolitan Livable Communities Housing Incentives Program*; metropolitan counties and development authorities (e.g., Housing and Redevelopment Authority, Economic Development Authority or Port Authority).

Section 3: ELIGIBLE USE OF FUNDS

Eligible expenditures include Phase I and Phase II investigations, and preparation and implementation of approved Response Action Plans (RAPs) developed in conjunction with the MPCA for hazardous waste, or abatement programs that meet the requirements for the PBP/LUST program at MPCA (for petroleum), or AHERA standards (for asbestos). The funds may be used, consistent with DEED guidelines, to provide up to 13% the investigation/clean up cost as a local match required for a grant from DEED's Contamination Cleanup Grant Program. Costs for investigating the extent and/or nature of contamination are only eligible if a cleanup or abatement is required and if incurred within 180 days of the deadline of the TBRA grant funding cycle. Costs not related to clean up are not eligible expenditures under this program except when they meet DEED eligibility requirements and are used to match up to 13% of the DEED approved funding. Costs incurred to prepare or submit applications are ineligible.

If the proposed redevelopment activities include a residential component, a portion of this housing is required to be affordable. For purposes of this application cycle, ownership units are considered affordable if they can be purchased by buyers earning 80% of the area median income (AMI). Affordable rental units are those renting at the Low-Income Housing Tax Credit rent limits based on 50% of the AMI.

No applicant for a Metropolitan Council LCA grant shall be eligible for LCA grant funds from the Metropolitan Council if the project for which an LCA grant is requested requires the exercise of eminent domain authority over private property for purposes of *economic development* as defined by Council policy. (www.metrocouncil.org/services/livcomm/EminentDomainPolicy.html) The policy states that the prohibition regarding the use of eminent domain does not include “acquiring private property to remediate or clean up pollution or contamination that threatens or may threaten public health or safety or the environment, if the Applicant certifies: (i) the property owner is unable or unwilling to pay for appropriate remediation or clean up; (ii) remediation or clean up must occur expeditiously to eliminate or mitigate the threat to public health or safety or the environment; and (iii) no Responsible Party has been identified or is financially capable or carrying out the remediation or clean up.” “[A]cquiring abandoned property or

acquiring “blighted” property as that term “blighted” is defined and used in Minnesota Statutes chapter 469” also is an exception to the eminent domain policy.

Section 4: AWARDING GRANTS/COMPETITIVE PROCESS

The Metropolitan Council is required to consider certain factors in order to ensure the highest return in public benefits for the public costs incurred. In order to compare and evaluate applications, the following criteria will be assigned point values to rank each applicant’s proposal against the others in the grant cycle. Consultation with Council staff and external partners, including DEED, MPCA, the MN Department of Commerce, and—when applicable—others, informs the process of evaluating applications. Applications may be submitted for more money than is expected to be available in a grant cycle. Such applications will be considered for their maximum eligibility in successive grant cycles upon re-application based on the cumulative amount of funding awarded or recommended, and provided there is a commitment for each applicable grant cycle to complete the clean-up and proceed with redevelopment. Such commitments to proceed must not be contingent on subsequent awards of clean-up funding. Applications will be ranked according to the extent to which they address the following:

Tax Base (25 points)

- Increase the tax base of the recipient municipality—up to 20 points.
- Projects not in a TIF (Tax increment Finance) district earn 5 points because all the affected tax jurisdictions benefit immediately.

Jobs and/or affordable housing (25 points)

- Increase the number of jobs for the region—up to 10 points.
- Retain existing jobs—up to 5 points.
- Preserve and/or increase living wage jobs (\$12.50/hour for purpose of this application)—up to 5 points.
- Increase living wage jobs in/near areas of concentrated poverty and demonstrate linkages between jobs and housing for local residents—5 points.
- Projects with a residential component are eligible to receive points based on the number of affordable housing units provided. Affordable housing is defined as ownership housing at 80% or less of area median income (AMI) or rental housing units at 50% or less of AMI, with rent limits dependent on the size of the units. 0 to 25 points.

Brownfield clean up/environmental health improvements (25 points)

- Clean up the most contaminated sites to provide the greatest improvement in the environment and the greatest reduction in human health risk—0 to 20 points.
- Clean up sources of contamination that affect groundwater quality—0 to 5 points.

Framework 2030 Implementation/Regional System support (25 points)

Show how the project supports Framework 2030 goals to:

- Accommodate growth—0 to 10 points. Promote multi-modal transportation options—0 to 2 points. Provide housing choices—0 to 2 points. Conserve vital natural resources—0 to 2 points.

Show how the project is integrated with Regional Systems:

- Environmental Services—0 to 3 points. Transportation—0 to 3 points. Regional Parks—0 to 3 points.

Readiness/Market demand (10 points)

- Demonstrate readiness to proceed with project site clean up—0 to 5 points.
- Demonstrate market demand for proposed redevelop elements in the project area and demonstrate readiness to promptly implement proposed project if /when TBRA funding is provided, including identifying an end stage developer and any non-residential tenants—0 to 5 points.

Partnership (5 points)

- Represent innovative partnerships among various levels of government, private for-profit and non-profit sectors—0 to 5 points.

Efficiency - Life cycle cost/benefits (5 points)

Demonstrate efficiencies in the project including reduced life cycle costs. The State of Minnesota's B-3 (Buildings, Benchmarks and Beyond) guidelines provide information on evaluating and implementing efficiency and conservation efforts:

- For buildings, demonstrate the use of efficient and non-toxic materials and construction methods; reuse/ recycle/renovate existing buildings, including historic components—0 to 2 points.
- For project operations, show how the project conserves energy, water and other natural resources, reduces waste and provides cleaner air—0 to 2 points.
- For the project site, show the use conservation-oriented site design—0 or 1 point.

Supplemental Funding (5 points)

- Only for projects for which the grantee: has an active TBRA grant that has not expired; has encountered unanticipated contamination as a result of implementing a PCA approved RAP; or, when implementing the PCA approved RAP, encounters significantly higher quantities of contamination than estimated in the investigation—0 to 5 points.

All previous TBRA grant funds awarded for the project are included with the supplemental request in evaluating the cost effectiveness of the application.

Community's annual housing performance score (10 points)

- The host community's annual community housing performance score, as determined by the Metropolitan Council, is part of the project evaluation.

Applications may be determined ineligible for funding if:

- clean-up funding is available from other public and private sources;
- an analysis of the proposal determines the funding is not needed in order for the project to proceed;
- the project requires extensive new regional infrastructure beyond that which is already planned;
- the proposal is not consistent with the municipality's comprehensive plan (Minn. Stat. section 473.859, Subd. 5)

If applications for grants exceed the available funds for an application cycle no more than one-half of the funds may be granted to projects in a single city, and no more than three-quarters of the funds may be granted to projects located in cities of the first class (Minneapolis and St. Paul.)

Section 5: LOCAL SUPPORT

Any proposal for funds under this program must include a resolution of support from the local unit of government within which the project is proposed.

Section 6: REPORTING REQUIREMENTS

Recipients of Tax Base Revitalization Account grants must submit a report to the Metropolitan Council at the closure of the grant and for up to five years annually thereafter, stating: (1) the site redevelopment activities completed the previous calendar year, (2) the net tax capacity and the total property taxes paid on this parcel (land and buildings) for the preceding year, and (3) the percentage of full-time equivalent jobs on the site at the end of the previous year that are at or above a living wage. For purposes of this application, a living wage is \$12.50 per hour /\$26,000 per year.

Section 7: PROCEDURES

Applicants may write or call to request application packets from the Metropolitan Council, 390 North Robert Street, St. Paul, MN 55101. Application materials are also available on-line in the Community Assistance section under the Services and Programs heading (see "Livable Communities") at www.metrocouncil.org. Any questions should be directed to Marcus Martin at 651-602-1054. This Notice of Funding Availability is subject to applicable federal, state, and municipal laws, rules and regulations.

The Metropolitan Council reserves the right to modify or withdraw this Notice of Funding Availability at any time. **Applicants required to have a Response Action Plan (RAP) approved by the MPCA should submit the required reports to the Voluntary Investigation Cleanup Program or the Voluntary Petroleum Investigation Cleanup Program a minimum of 45 days prior to the Metropolitan Council application deadline.** The MPCA requires this much lead-time to assure a review of the RAP.

Section 8: APPLICATION FORMAT

An original and two copies of the application information must be submitted by the grant application deadline. If funds are requested as part of the match to a DEED request, follow the Alternate Process for Joint Applications with the Department of Employment and Economic Development found at the end of the TBRA application information.

Section 9: MODEL EXAMPLES

A sample clean-up budget showing eligible expenditures and a sample resolution authorizing submission of the grant application are provided with the application form. These examples may be modified to fit applicant needs and project goals.

ALTERNATE PROCESS FOR JOINT APPLICATIONS WITH THE DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

The Metropolitan Council application form is not necessary for joint applications where the Council is asked to match Department of Employment and Economic Development (DEED) funding. Instead, submit two copies of the DEED application and the MPCA response action plan and a cover letter indicating the amount of matching funds being requested from the Metropolitan Council. The DEED attachments documenting appraisals need not be included.

Also provide two copies of the following additional information:

1. Names and titles of the authorized official(s) who would execute a contract to expend the funds.
2. Resolution authorizing the submission of the application to the Metropolitan Council.
3. Statement indicating whether or not the site is in a tax increment finance district. (The property tax information provided in the DEED application replaces the “net tax capacity” information requested in previous Metropolitan Council applications)
4. List of mechanisms/programs in place to ensure that local residents will have appropriate access to new jobs created.
5. Statement indicating whether or not the proposed project is consistent with sections of the municipality’s comprehensive plan addressing the site.
6. Clear statement of the amount requested from the Metropolitan Council if this is not explicit in the DEED application.
7. List of the anticipated sources of private and public investment in the entire redevelopment including items like building construction that are not included in the “project budget” indicated in the DEED application.