



Updates to the Michigan Brownfield Act and Phase I Environmental Site Assessment ASTM E1527 Standard

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CHANGES TO BROWNFIELD INCENTIVES

Building on a brownfield site typically incurs additional costs (assessment, remediation, demolition, unstable soils, unanticipated conditions, delays for approvals, etc.) that can be off-set to some extent by local, state, and federal incentives. These incentives have been essential to successful redevelopment, and have been used by communities to attract redevelopment to challenging and urban sites. Although there are a number of tax, grant, and loan incentives, one of the most common is tax increment financing, which uses incremental real estate tax capture to reimburse the developer for eligible costs. Recent changes to the tax increment financing incentive in Michigan will make portions of this program more accessible for transformational projects.

The Michigan Brownfield Act (Act 381) has recently been amended to make it easier to apply for a Transformational Brownfield Plan (TBP). Developers will typically use a Brownfield Plan and 381 Work Plan to capture incremental real estate taxes, but a TBP can provide access to additional incremental tax revenue (such as income tax) and permit reimbursement of additional eligible costs when a project meets minimum investment thresholds based on municipal population. The five main updates are: (1) TBPs no longer require developments to be mixed use, (2) the demonstration of substantial benefit to the state has been removed, (3) the threshold requiring third party underwriting has been increased from \$1.5 million to \$10 million in tax capture per year, (4) other in-

centives, such as the Community Revitalization Program, can now be combined with a TBP, and (5) the legislation has been extended to 2027 (it was set to expire the end of this year).

Removal of the requirement that a TBD demonstrate an overall positive fiscal impact to the state based on third party underwriting is perhaps the most substantial change. For smaller projects, this was a difficult and costly demonstration to prepare, requiring two independent reviews. With this change, more developers, especially in smaller communities should now be able to effectively prepare an application for the TBP.

If you are interested in determining if your project qualifies for the TBP, or are interesting in preparing a TBP application, please contact Tom Wackerman at twacker@asti-env.com.

CHANGES TO PHASE I ESAS – THE NEW ASTM STANDARD

The American Society for Testing and Materials (ASTM) Committee on Environmental Assessment, Risk Management, and Corrective Action (Committee E-50) approved a new standard for conducting Phase I Environmental Site Assessments (ESAs) on November 1, 2021. This new standard is known as “E1527-21 – Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” ASTM E1527-21 provides significant updates to the

current ASTM E1527-13, the standard that has been in place for the past eight years.

The updated standard, ASTM E1527-21, includes a new definition of “Recognized Environmental Condition” (REC). This updated definition is important because identifying RECs associated with a property is not only the goal of an E1527 compliant Phase I ESA, but RECs establish the scope of work for additional investigation, if needed. Under the previous E1527-13 Standard, an REC was defined as, “the presence or likely presence of any hazardous substances or petroleum products in, on or at a property: (1) due to a release to the environment; (2) under conditions indicative of a release to the environmental; or (3) under conditions that pose a material threat of a future release to the environment.”

The ASTM Committee updated the definition to add clarity due to the use of the word “likely” within all three conditions of the definition. In ASTM 1527-21 “likely” only appears in the second condition in the definition. The new definition of an REC is, “(1) the presence of hazardous substances or petroleum products in, on or at the subject property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on or at the subject property due to a release or likely release to the environment; or (3) the presence of hazardous substances or petroleum products in, on or at the subject property under conditions that pose a material threat of a future release to the environment”. In addition, the new E1527-21 Standard contains an Appendix (Appendix X4) that further clarifies the new definition and contains a flow chart to help in making a determination.

Another significant update to the E1527-21 Phase I ESA Standard is a requirement to use Standard Historical Sources. E1527-21 requires that, at a minimum, historical aerial photographs, historical city directories, historical topographic maps, and historical fire insurance (Sanborn) maps be reviewed in association with the subject property and adjoining properties. Prior to this update, the E1527-13 Standard required that as many standard historical sources be reviewed as was deemed necessary by the Environmental Professional, which could mean only one source was reviewed. The Standard also prescribes that if one or more of these sources cannot be reviewed, there

must be a statement included in the Phase I ESA report detailing why the source could not be reviewed. Additional Standard Historical Sources should also continue to be reviewed, as needed.

Guidance on emerging contaminants of concern, such as per- and polyfluoroalkyl substances (PFAS), is also included in ASTM E1527-21. The EPA continues to consider possible regulation for these contaminants, but has not yet listed them as federally regulated hazardous substances under CERCLA. Because they are not listed under CERCLA, emerging contaminants like PFAS have not been required to be included as a scope item in performing ASTM Phase I ESAs. The new guidance states that inclusion of such substances can be added to the Phase I ESA as a “Non-Scope Consideration.” This will allow the Environmental Professional to address them in the report, as they can still be a substantial issue for the redevelopment or operation of the subject property.

The American Society for Testing and Materials has submitted this new Standard, E1527-21, to the EPA for review, which could take up to a year. Until EPA approval is granted, environmental consultants can continue to use ASTM E1527-13, start using ASTI E1527-21, or cite ASTM E1527-13 but indicate that the Phase I ESA is also incorporating some guidance from the new ASTM E1527-21 Standard. This should be clearly stated in the Phase I ESA report. ASTI Environmental has been incorporating ASTM E1527-21 requirements for over a year, but will now specifically state that all reports are compliant with ASTM E1527-21.



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