

Brownfields Redevelopment Incentive Program Listening Session

September 2022



About the NJ Economic Recovery Act

Governor Phil Murphy signed the **New Jersey Economic Recovery Act of 2020 (ERA)** into law on January 7, 2021.

The ERA creates a package of **tax incentive, financing, and grant programs** that will build a stronger, fairer New Jersey economy.

The ERA is both a broad-based **recovery bill and reform bill** that will better position New Jersey to recover from economic crisis caused by the COVID-19 pandemic, while remaining true to the NJEDA's commitments to transparency and accountability.

Visit the NJEDA's website at www.njeda.com/economicrecoveryact to learn more about each of the programs within the ERA, or to provide general ERA feedback.

Executive Order No. 63

Pursuant to Governor Murphy's Executive Order No. 63, the NJEDA is providing opportunities for groups and stakeholders to engage with the NJEDA in crafting rules around the New Jersey Brownfields Redevelopment Incentive Program.

We welcome constructive input on how to ensure new programs created through the ERA are structured and administered in a manner that drives opportunities for all residents and communities.

The NJEDA will begin the session with a presentation to summarize the information – opportunity for public feedback will be available following the NJEDA's presentation. It is expected that the entirety of the session will take up to 90 minutes.

Recording of Public Feedback Sessions

Members of the public can submit written feedback on the New Jersey Brownfields Redevelopment Incentive Program via www.njeda.com/program-specific-feedback through September 15th

Both New Jersey Brownfields Redevelopment Incentive Program (“BRI”) public feedback sessions will be recorded and posted on www.njeda.com/program-specific-feedback so that members of the public unable to participate in a virtual session have the opportunity to review.

Public Feedback Policy

- ▶ **Feedback may be submitted verbally by using the “raise hand” function in Zoom, or in writing through the Q&A feature.** Input will not be accepted verbally until the NJEDA has concluded its presentation.
- ▶ **Each member of the public who wishes to speak during the public feedback period should use the “raise hand” function in Zoom.** The host will acknowledge each speaker in the order in which they raised their hand and will open the speaker’s microphone to make their statement.
- ▶ To ensure everyone that chooses to has an opportunity to speak, **each speaker will have a maximum of three (3) minutes to speak and should limit input to matters pertaining to the Economic Recovery Act of 2020 and the New Jersey Brownfields Redevelopment Incentive Program.**
- ▶ **Each member of the public will have one opportunity to provide remarks.** If time remains at the end of the session, we will reopen the opportunity for additional remarks.
- ▶ **Speakers should not expect to engage in a dialogue. NJEDA staff may respond to basic questions or clarify a speaker’s input.** However, NJEDA staff are not obligated to answer impromptu questions or address remarks from members of the public.
- ▶ **Speakers and members of the public should at all times maintain proper decorum and shall provide their remarks in a civil manner.**

Please Note

NJEDA staff will summarize the information and provide context.

To access a copy of the slide presentation please visit www.njeda.com/program-specific-feedback.

For this presentation, please note the following:

Text highlighted in light green indicates areas where the NJEDA has exercised discretion to add clarity to the legislation.

Non-highlighted text is written into law which NJEDA does not have discretion to change.

What is the Brownfields Redevelopment Incentive Program?



Established under the **Economic Recovery Act of 2020 (ERA)**



Can work in conjunction with **other ERA programs.**



Provides tax credits to incentivize **brownfields redevelopment** in New Jersey



Applications are due by a preestablished **deadline** and awards are based on **competitive scoring**



Focuses on **brownfields remediation as a component of community development**



Bolster **smart growth investments focused on the remediation of contaminated sites**, by helping to bring often underutilized properties back to productive use



Encourage **long-term investment into the State, while remediating and redeveloping underutilized properties**



Includes fiscal protections

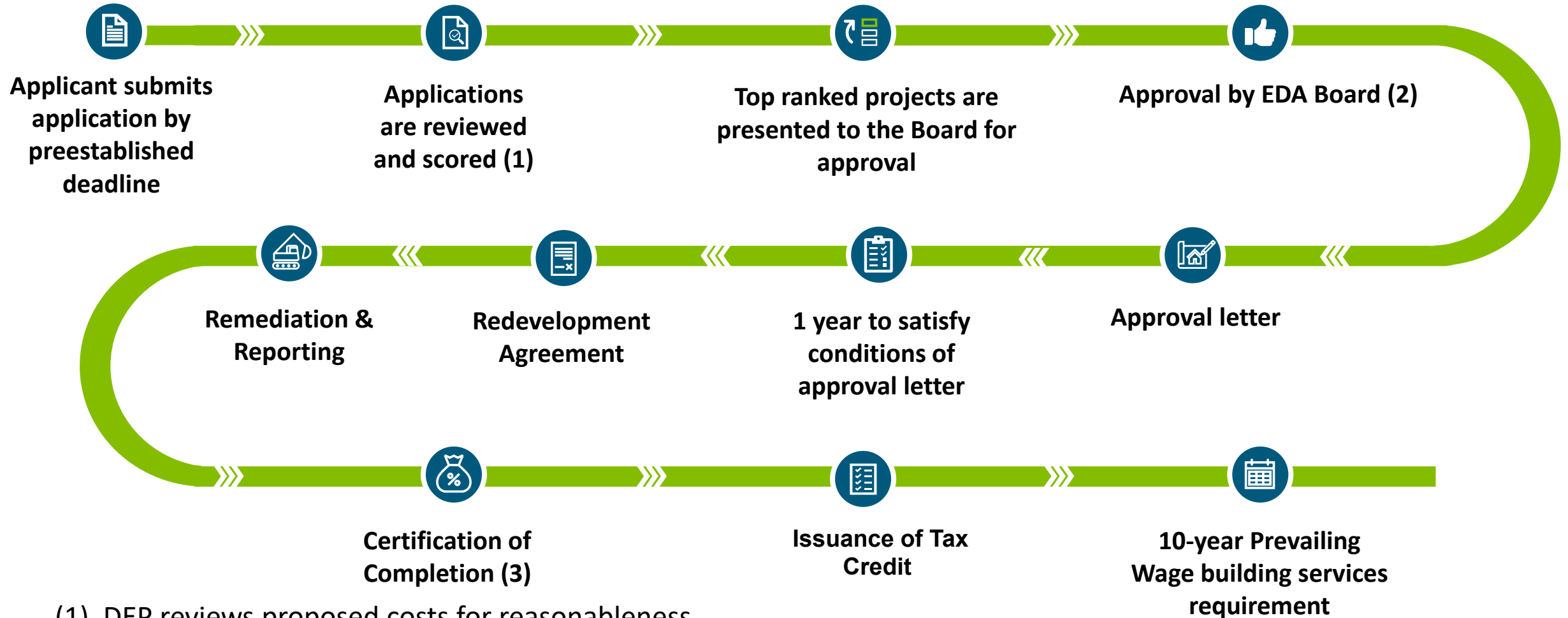


Program **is funded to accept applications through 2027**

Key Features

- ▶ **Capped at \$300 million over 6 years**
 - Option to roll over unused program tax credits yearly as needed
 - Option to use funds from succeeding year if required
- ▶ Awards **50 - 60 percent of remediation costs**
 - Up to 50 percent of remediation costs for eligible properties, up to a maximum of \$4 Million
 - Up to 60 percent of remediation costs for qualified properties located in a Government Restricted Municipality or a Qualified Incentive Tract, up to a maximum of \$8 Million
- ▶ Tax credits awarded via **competitive** application process
 - ▶ EDA can not discuss specific projects once application window is open
- ▶ **Prevailing wage for building services** 10 years following project completion

Generic Program Project Timetable



(1) DEP reviews proposed costs for reasonableness.

(2) Six years from Board Approval to complete remediation project.

(3) Submit documents to DEP for certification within 1 year of completing remediation project.

Program Attributes

- 1** | **ELIGIBILITY**
- 2** | **REDEVELOPMENT PROJECT**
- 3** | **AWARD SIZE**
- 4** | **REVIEW OF APPLICATIONS**
- 5** | **ADDITIONAL PROGRAM INFORMATION**
- 6** | **PROGRAM FEES**

Eligibility

ELIGIBILITY CRITERIA

- ▶ Project site is a **brownfield**
- ▶ Letter of support from the **governing body**
- ▶ Without the tax credit award, the project is **not economically feasible**
- ▶ **Project financing gap** exists, and the tax credit being considered for the project is equal or less than the project financing gap
- ▶ Prevailing wage required
- ▶ Remediation has **NOT** commenced, unless the full extent of contamination is not known
- ▶ **NOT** in any way responsible or liable for the contamination
- ▶ Remediation costs are reasonable and appropriate
 - ▶ This will be reviewed by DEP prior to Board Approval

Eligibility

Brownfield Site

“Brownfield site” or “contaminated site” means any **former or current commercial or industrial site** that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is contaminated building material.

Local Support

Letter of support from the governing body.

ECONOMIC FEASIBILITY

Applicant must demonstrate at time of application that without the tax credit, the proposed project is not economically feasible.

Eligibility

PROJECT FINANCING GAP

Applicant must prove that a project financing gap exists, and the tax credit award being considered for the project is equal to or less than the project financing gap.

PREVAILING WAGE

Prevailing Wage is required for all remediation and construction work

EDA's prevailing wage requirements applies to construction contracts for work performed for the redevelopment project and subsequent redevelopment project, if applicable. The prevailing wage requirements shall apply until two years after the tax credit is issued. Prevailing wage shall apply to all work done by tenants at the redevelopment project.

Building Services Prevailing Wage for 10 years following the completion of the redevelopment project:

For building services at the site of the redevelopment project, the 10-year timeframe begins at the end of the redevelopment project as defined in the redevelopment agreement.

Eligibility

COMMENCEMENT OF REMEDIATION

- ▶ If an applicant has started clean up activities prior to application, the applicant must certify that they could not reasonably have known the full extent of the site contamination before starting the remediation. Assessment and Investigation activities are exempt from this requirement.
- ▶ Prior Environmental Assessment and Investigation up to 24 months prior to application may be eligible for inclusion in the program.

NOT IN ANY WAY RESPONSIBLE OR LIABLE FOR THE DISCHARGE

- ▶ The applicant shall certify that they are not in any way responsible or liable for the discharge and are not a corporate successor to the discharger.
- ▶ Current property owners, with limited exceptions, will likely not be eligible for the program due to the NJ Spill Act.

Eligibility

REMEDIATION COSTS ARE REASONABLE AND APPROPRIATE

- ▶ The applicant will provide a remediation cost estimate for the project including a breakdown of total cost of remediation.
- ▶ DEP will review proposed costs to determine if costs are eligible to the program and complete a cost reasonableness determination prior to NJEDA board approval.
- ▶ This may result in a decrease in eligible costs which may result in an increased financing gap that the applicant will need to resolve to move forward.

Eligibility

REDEVELOPMENT PROJECT

The proposed project is a redevelopment project, defined as:

- ▶ “Redevelopment project” means a specific construction project or improvement undertaken, pursuant to the terms of a redevelopment agreement, by an applicant within an area of land whereon a brownfield site is located. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved. Redevelopment projects shall include a project that consists solely or primarily of remediation costs.

The redevelopment project can be a remediation-only project.

SUBSEQUENT REDEVELOPMENT

“Subsequent Redevelopment Project” means a construction project or improvement that is undertaken after application to this program at the brownfield site that is not included within the redevelopment activities set forth in the “redevelopment agreement.”

Additional Program Details

ELIGIBLE REMEDIATION COSTS

“Remediation costs” means all reasonable costs associated with the remediation of a contaminated site except: cost of acquisition of the property any costs incurred in financing the remediation, legal fees, incentive consultant fees and Authority fees. Remediation costs may include required DEP site remediation program fees and other DEP permit fees. Remediation costs shall not include payment for penalties or violations.

Only remediation costs are eligible for the tax credit under this program. Vertical construction costs (which are not part of the remediation) are not eligible.

Brownfields Redevelopment Incentive Program

Eligible Activities

- ▶ Soil and groundwater investigation
- ▶ Site remediation
- ▶ Hazardous materials assessment and survey
- ▶ Hazardous materials or waste disposal
- ▶ Building and structural issues, including:
 - Demolition
 - Asbestos abatement
 - PCB removal
 - Contaminated wood or paint removal
 - Other infrastructure remedial activities

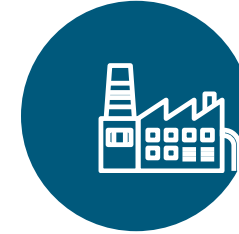


Award Size

TAX CREDITS



50 percent of the cost of remediation up to a maximum of **\$4 million**, for redevelopment projects NOT located within a qualified incentive tract or a government-restricted municipality. Equity shall be **20%** of remediation costs.



60 percent of the cost of remediation up to a maximum of **\$8 million**, for redevelopment projects located within a **qualified incentive tract** or a **government-restricted municipality**. Equity shall be **10%** of remediation costs.

* Award size is based on cost of remediation (eligible cost)



Brownfields Redevelopment Incentive Program

Checks After Administrative Review and Application Completeness Check

Sister Agency Check for Good Standing

Scoring

DEP (review of cost reasonableness)

Legal Review/Underwriting

EDA Board



Brownfields Redevelopment Incentive Program

Administrative Review and Application Completeness Check

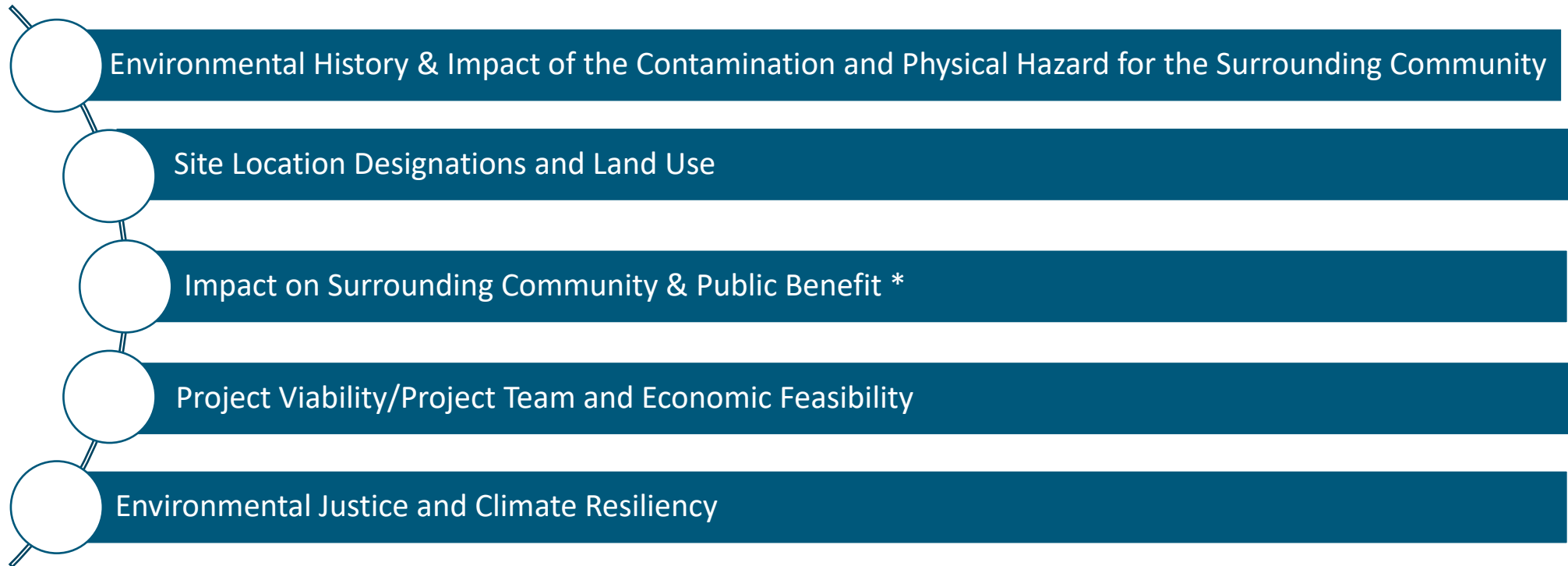


- ▶ On-line application is **complete** and all forms are **signed**
 - ▶ Licensed or certified professional, if applicable and LSRP named in the application
 - ▶ Most recent draft or final Preliminary Assessment Report (or Phase 1 Environmental Site Assessment) and/or the most recent Asbestos Containing Materials Survey, Universal Waste Survey, Lead Based Paint Survey, Pre-Demolition Survey and/or any other documentation required by the NJEDA.
- ▶ Project site is a brownfield
- ▶ Letter of support from governing body
- ▶ Provide project costs and financial information
- ▶ Program specific certifications include:
 - ▶ Applicant did not cause or contribute to contamination
 - ▶ Applicant has not commenced site cleanup except where full extent of contamination was not previously known



Brownfields Redevelopment Incentive Program

Scoring Matrix



***Diversity factor to include a diverse board which is representative of the community.**

Additional Program Details

RESPONSE ACTION OUTCOME (RAO)

The program will accept both RAO-E (entire site/all media/total remediation) and RAO-A (area of concern/partial remediation with deed notice) as an outcome for completion of remediation of the brownfield. A definition for RAO is now included in the rules based on the DEP AARCS rules definition.

DEED NOTICE REQUIREMENTS

A deed notice will be required for all sites at the completion of the program (to account for possible sale or transfer of ownership of the property) so that the conditions of the redevelopment agreement (e.g. Building Services) are followed by new owners.

Additional Program Details

APPROVAL CONDITIONS

Within in one year after Board Approval, several conditions will need to be met (aka Approval Letter Conditions), these conditions include but are not limited to:

- Documentation of site control (site access, lease, etc.)
- Executed financial commitments
- Plan for satisfying minimum environmental sustainability standards
- Site plan approval, if applicable

Additional Program Details

STATUS UPDATES/PROGRESS /ANNUAL REPORTS

Status update reports will be required every six months from Board Approval through execution of redevelopment agreement to track the progress of the project and the conditions of approval.

Progress reports shall be submitted to the NJEDA and DEP every 6 months during the project, starting from 6 months from board approval through certification of completion. The progress report will include updates, % of work completed, paid invoices, key personnel changes, and other information that may be required by NJEDA or DEP for project management.

Annual reports shall be submitted beginning at board approval until the tax credit award is issued. Certifications will be required to indicate continued compliance with the redevelopment agreement, prevailing wage, affirmative action, and good standing with sister state agencies.

Additional Program Details

SUBMITTALS FOR COMPLETION

- ▶ Total remediation costs
- ▶ Evidence of completion of remediation (RAO)
- ▶ Completion certified by an appropriate professional
- ▶ Information on occupancy rate of buildings
- ▶ Compliance with minimum environmental and sustainability standards
- ▶ Compliance with redevelopment agreement
- ▶ Certified that the information is accurate
- ▶ Labor harmony agreement, if applicable
- ▶ Any other information that may be required by NJEDA and DEP

Submittals for DEP certification due within 1 year of completing remediation.

AFFIRMATIVE ACTION

The NJEDA's affirmative action requirements and N.J.A.C. 19:30-3 shall apply to the redevelopment project.

- ▶ Shall apply until the latter of the completion of the redevelopment project, OR
- ▶ Two years after the tax credit is issued.

Additional Program Details

REASONABLE AND APPROPRIATE RATE OF RETURN

Proposed Rules:

If within **four years** of completion of the redevelopment project the applicant sells the brownfield site, the Authority shall determine if the applicant's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the applicant to pay up to 20 percent of the amount of the excess, and such funds shall be deposited in the State General Fund.

This means: This provision only applies if there is a sale of the property within 4 years of completion. The applicant will pay 20% of the **excess** profit to NJEDA if they sell the property within 4 years of completion.

Additional Program Details

FORFEITURE OF TAX CREDIT

Statutory Requirement: The applicant may forfeit all tax credits in that year if they fail to meet the deadline for annual reporting however NJEDA may extend the deadline in individual cases.

Statutory Requirement: The credit shall be forfeited in the case of material misrepresentation.

Proposed Rules:

- Failure to timely submit annual report or progress report absent extenuating circumstances and the written approval of the Authority, may result in forfeiture of some or all of the tax credit award.
- In any year in which the applicant is not in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury, the applicant may forfeit all tax credits awarded in that year subject to the determination in the sole discretion of the Authority to extend, in individual cases, the deadline for any annual reporting requirement.

This Means:

The applicant will forfeit the tax credit if they make a material misrepresentation and may forfeit the tax credit if they don't submit reports on-time or are not in good standing with the state (DEP, DOL, Taxation).

Additional Program Details

RECAPTURE OF THE TAX CREDIT

Statutory Requirement: The redevelopment agreement shall include a provision allowing the NJEDA to recapture for any year when the applicant is not in substantial good standing with sister agencies, and/or when the applicant fails to confirm contractor(s)/subcontractor(s) are 1) registered with public works, 2) not debarred, and 3) possess tax clearance certificate.

Proposed Rules:

- If any worker employed to perform building services work at the redevelopment project and/ or subsequent redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) during the relevant tax period, then the Authority shall recapture a proportional amount of the tax credit.
- If, based on new information, the Authority determines that recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits as if the Authority had been timely informed.
- If all or part of a tax credit sold or assigned pursuant to section 5 of P.L. 2020, c. 156 is subject to recapture, then the Authority shall pursue recapture from the applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

This Means: NJEDA will recapture the tax credit if the applicant has made a material misrepresentation. EDA may recapture the tax credit if the applicant fails to submit reports on time, fails to meet building services and prevailing wage requirements, fails to meet sister agency review, fails to maintain compliance with contractor/subcontractor registration requirements, and fails to meet other requirements such as maintain the deed notice. The buyer of the tax credit certificate will be held harmless upon recapture.

Additional Program Information

CLAIMING TAX CREDIT

- ▶ This tax credit may be applied to Insurance Premium Tax and Corporate Business Tax
- ▶ The tax credit may be transferred one time (only)
 - ▶ Can be transferred increments as low as \$25,000
 - ▶ Floor for tax credit transfer:
 - ▶ 85 cents on the dollar
 - ▶ Except certain projects which also include Federal Low Income Housing tax credits may qualify for a reduction to 75 cents on the dollar
- ▶ The tax credit can not be carried forward
- ▶ The tax credit is not refundable

Program Fees

BRI PROJECTS

Type of Fee	Small Projects <\$5MM	Large Projects >\$5MM		
Application Fee	\$2,000	\$7,000		
Agreement Fee	\$5,000	\$15,000		
Certification Fee	\$5,000	\$15,000		
Transfer Fee	\$5,000	\$7,500		
Minor Mod/Ext	\$2,500	\$5,000		
Major Mod	\$5,000	\$10,000		
	\$12,000	\$37,000	Potential project fees (without modifications, extensions, or transfer)	

Additional Program Information

Information Only Slides

Additional Slides are available at the end of this presentation that provide additional details.

Public Feedback Policy Reminder

- ▶ **Feedback may be submitted verbally by using the “raise hand” function in Zoom, or in writing through the Q&A feature.** Input will not be accepted verbally until the NJEDA has concluded its presentation.
- ▶ **Each member of the public who wishes to speak during the public feedback period should use the “raise hand” function in Zoom.** The host will acknowledge each speaker in the order in which they raised their hand and will open the speaker’s microphone to make their statement.
- ▶ To ensure everyone that chooses to has an opportunity to speak, **each speaker will have a maximum of three (3) minutes to speak and should limit input to matters pertaining to the Economic Recovery Act of 2020 and the New Jersey Brownfields Redevelopment Incentive Program.**
- ▶ **Each member of the public will have one opportunity to provide remarks.** If time remains at the end of the session, we will reopen the opportunity for additional remarks.
- ▶ **Speakers should not expect to engage in a dialogue. NJEDA staff may respond to basic questions or clarify a speaker’s input.** However, NJEDA staff are not obligated to answer impromptu questions or address remarks from members of the public.
- ▶ **Speakers and members of the public should at all times maintain proper decorum and shall provide their remarks in a civil manner.**

Recording of Public Feedback Sessions

Members of the public can submit written feedback on the New Jersey Brownfields Redevelopment Incentive Program via www.njeda.com/program-specific-feedback through September 15th

Both New Jersey Brownfields Redevelopment Incentive Program (“BRI”) public feedback sessions will be recorded and posted on www.njeda.com/program-specific-feedback so that members of the public unable to participate in a virtual session have the opportunity to review.



Visit NJEDA.com/EconomicRecoveryAct for more information.



@NewJerseyEDA | njeda.com | 609.858.6767

LICENSED OR CERTIFIED PROFESSIONAL

“Licensed or certified professional” means an individual who is licensed or certified in remediation activities that are not the result of a discharge of a hazardous substance, and that may include but are not limited to contaminated building material abatement or removal; hazardous materials or waste disposal; building and structural remedial activities, or other infrastructure remedial activities. Such individuals may include but are not limited to a New Jersey licensed professional engineer, an Asbestos Hazard Emergency Response Act (AHERA) Inspector, a New Jersey certified lead inspector, an industrial hygienist, or other appropriately qualified and licensed /certified professional which is acceptable to the Department.

MINIMUM ENVIRONMENTAL AND SUSTAINABILITY STANDARDS

“Minimum environmental and sustainability standards” means standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

EDA is developing Green Remediation Standards (Demolition Recycling / Soil Reuse) for this program.

Ownership Change

Proposed Rules:

The applicant shall obtain consent from the Authority prior to any ownership change of the applicant.

Information Only

TRANSFER OF CREDIT

Business entity may apply for a tax credit transfer certificate:

- ▶ Business entity may sell or assign, in full or part, the tax credit transfer certificate to another taxpayer in exchange for private financial assistance. The minimum amount is \$25,000
- ▶ Business entity shall not sell a tax credit transfer certificate for less than **85 percent** of the transferred credit amount
- ▶ Residential project consisting of newly-constructed residential units that has received federal low-income housing tax credits can sell credits for no less than **75 percent** of the transferred credit amount
- ▶ A purchaser or assignee of a tax credit transfer certificate shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate

LABOR HARMONY AGREEMENT

A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project.

EXTENSIONS

Applicants, who exceed the project schedule agreed to in the Redevelopment Agreement, will be able to request a 6-month extension. At EDA's discretion whether this request will be granted.

MODIFICATIONS

Modifications must be due to unforeseeable conditions related to the redevelopment project beyond the applicant's control and without its fault or negligence and the applicant has made all reasonable efforts to prevent, avoid, mitigate, and overcome the modification.

CERTIFICATION OF COMPLETION

Within one year of the completion of the remediation (e.g. when RAO is issued):

- 1) The applicant shall seek a certificate of completion from DEP by submitting required documents that include, but are not limited to:
 - a) Evidence that the applicant complied with DEP requirements.
 - b) For sites where the remediation is subject to the “Site Remediation Reform Act” (SRRA), an RAO issued by LSRP.
 - c) If any portion of the remediation is not subject to SRRA, a certification by LSRP and appropriate licensed or certified professional that the remediation is complete .
 - d) Total Remediation costs, including certification by a CPA.

CERTIFICATION OF COMPLETION

Within one year of receiving the Certification of Completion by DEP, the applicant shall submit documents and evidence to EDA, which includes, but is not limited to

1. Evidence that: the remediation project is complete, the applicant has complied with the terms of the remediation agreement, the applicant has received RAO (or other certification by appropriate certified or licensed profession demonstrating the remediation is complete), the applicant has not defaulted, a tax clearance certificate, certification of compliance with minimum environmental standards.
2. Certification that information is true, correct, and accurate.