

# SPECIAL ADOPTION

## OTHER AGENCIES

### (a)

#### NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

#### Authority Assistance Programs Brownfields Redevelopment Incentive Program Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 19:31-27

Specially Adopted and Concurrently Proposed New Rules  
Authorized: October 28, 2022, by the New Jersey Economic  
Development Authority, Timothy Sullivan, Chief Executive  
Officer.

Filed: November 2, 2022, as R.2022 d.144.

Authority: P.L. 2020, c. 156 and P.L. 2021, c. 160.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Concurrent Proposal Number: PRN 2022-157.

Effective Date: November 2, 2022.

Expiration Date: April 25, 2024.

Submit written comments by February 4, 2023, to:

Alyson Jones, Director of Legislative and Regulatory Affairs  
New Jersey Economic Development Authority  
PO Box 990  
Trenton, NJ 08625-0990  
[ajones@njeda.com](mailto:ajones@njeda.com)

**Take notice** that, in accordance with P.L. 2020, c. 156 and P.L. 2021, c. 160, the New Jersey Economic Development Authority ("EDA" or "Authority") has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020 (the Act), establishing the Brownsfields Redevelopment Incentive Program. The new rules became effective on November 2, 2022, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 360 days from the date of filing, that is, until October 28, 2023, pursuant to the Act. Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the EDA has filed this notice of concurrent proposal prior to October 28, 2023, the expiration date is extended 180 days to April 25, 2024, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)), if filed on or before April 25, 2024.

The EDA has provided a 60-day comment period on this notice of concurrent proposal, therefore, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

The specially adopted and concurrently proposed new rules follow.

#### Summary

As set forth at proposed N.J.A.C. 19:31-27, the Brownfields Redevelopment Incentive Program (Program) is established as a program under the jurisdiction of the EDA. The purpose of the Program is to provide tax credits to developers of redevelopment projects located on brownfield sites for a percentage of remediation costs. The total value of tax credits approved by the Authority shall not exceed the limitations set forth in section 98 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

The Program focuses on remediating brownfield sites as a component of community development, encouraging long-term private investment into the State, while cleaning up properties that are former or current commercial or industrial sites that are vacant or under-utilized 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. The amount of tax credits a redevelopment project receives is a percentage of the project's eligible costs, subject to a statutory cap determined by the location of the property.

To be eligible for the Program, a project must meet various eligibility criteria at the time of application, including:

- Demonstrate and certify that the project site is a brownfield;
- Provide a letter of support from the governing body;
- Demonstrate, at the time of application, that without the tax credit, the redevelopment project is not economically feasible;
- 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;
- Certify that the applicant is not in any way responsible for the contamination and is not a corporate successor to the discharger;
- Not have commenced any remediation, unless the full extent of contamination could not reasonably have been known prior to commencing remediation;
- Contribute equity that equals at least 20 percent of the remediation costs or, if located in a government-restricted municipality or qualified incentive tract, at least 10 percent of the remediation costs; and
- Provide estimates for remediation costs that are reasonable and appropriate, as determined by the New Jersey Department of Environmental Protection ("Department" or "DEP").

In addition to meeting Program eligibility, the developer must be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Division of Taxation within the Department of the Treasury, or have a practical corrective action plan.

This is a competitive Program, under which projects must apply within a defined application window, with all applications to be considered following the closure of the application period. The Authority, on an annual basis, will establish a date for the availability of the application and a date by which applications must be submitted. The Program awards will be calculated based on a percentage of the cost of remediation.

The Program rules also require that the redevelopment project pay prevailing wages for the duration of the project, as well as for building services, for a period of 10 years following the completion of the redevelopment project.

The following summarizes the contents of each section of the new rules implementing the Brownfields Redevelopment Incentive Program:

N.J.A.C. 19:31-27.1 sets forth the scope and applicability of the Program.

N.J.A.C. 19:31-27.2 sets forth the definitions used throughout the Program rules.

N.J.A.C. 19:31-27.3 sets forth the eligibility criteria for participation in the Program, including how the Authority shall review the proposed total cost of remediation, evaluate, and validate the project financing gap estimated by each developer applying for a tax credit award; and that the Authority shall not approve a developer or enter into a redevelopment agreement with a developer unless the developer demonstrates to the satisfaction of the DEP that neither the developer, nor any affiliate, discharged a hazardous substance at the brownfield site, is in any way responsible for the hazardous substance, is a corporate successor to the discharger, or to any person in any way responsible for the hazardous substance, or to anyone liable for cleanup and removal costs. Further, a redevelopment project that received a reimbursement pursuant to the Hazardous Discharge Site Remediation Program, sections 34 through 39 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-26 through 31), shall not be eligible to apply for a tax credit pursuant to the Program.

N.J.A.C. 19:31-27.4 sets forth the Program application requirements.

N.J.A.C. 19:31-27.5 sets forth the fees for the Program.

N.J.A.C. 19:31-27.6 sets forth the process for reviewing applications, allocating tax credits to eligible projects, the EDA approval process, and collaboration with the Department.

N.J.A.C. 19:31-27.7 sets forth the tax credit award amounts and limits. If the Authority approves less than the total amount of tax credits authorized pursuant to this section in a fiscal year, the remaining amount plus any amounts remaining from previous fiscal years shall be added to the limit of subsequent fiscal years. The Authority shall award tax credits to redevelopment projects until either the available tax credits are exhausted or all redevelopment projects that are eligible receive a tax credit, whichever occurs first.

N.J.A.C. 19:31-27.8 sets forth the contents and requirements of the approval letter issued to awardees of the Program. The Board shall determine whether or not to approve the application. If approved, the Board shall determine the maximum amount of the tax credit award and the maximum percentage of remediation costs that will be used to calculate the tax credit award.

N.J.A.C. 19:31-27.9 sets forth the contents and requirements of the redevelopment agreement. With limited exceptions, neither the developer, nor any affiliate, shall start any remediation or clean up at the site, other than the activities disclosed and approved at the time of approval, except for work required due to an order or other written requirement from an official with jurisdiction over the site or the redevelopment project to correct an immediate environmental concern or a health, safety, or other hazard that requires the developer or an affiliate to undertake remediation.

N.J.A.C. 19:31-27.10 sets forth the process and requirements related to redevelopment project modifications and extensions. Modifications and extensions shall not increase the amount of the tax credits awarded.

N.J.A.C. 19:31-27.11 sets forth the reporting requirements of the Program, including progress reports and annual reports.

N.J.A.C. 19:31-27.12 sets forth the requirements for a developer to obtain a certification of completion of remediation from the Department and compliance with the Program to the Authority in order to apply the tax credit awarded against the developer's tax liability for the privilege period.

N.J.A.C. 19:31-27.13 sets forth the requirements for application for tax credit transfer certificate and assignment of a tax credit transfer certificate.

N.J.A.C. 19:31-27.14 sets forth the affirmative action and prevailing wage requirements of the Program.

N.J.A.C. 19:31-27.15 sets forth the process and basis for any reduction, forfeiture, and recapture of tax credits issued pursuant to the Program.

N.J.A.C. 19:31-27.16 sets forth the appeal process for the Program.

N.J.A.C. 19:31-27.17 sets forth the requirement for reports on implementation of the Program.

N.J.A.C. 19:31-27.18 sets forth the severability of any section, subsection, provision, clause, or portion of the Program rules if adjudged to be unconstitutional or invalid by a court of competent jurisdiction.

#### **Social Impact**

The remediation and redevelopment of contaminated sites in communities is a critical component of smart development that provides multiple social benefits, including cleaning up the environment, which protects human health, removing blight, eliminating health and safety hazards, and alleviating concerns from residents. This remediation leads to redevelopment that fosters safer, stronger, and more vibrant communities.

#### **Economic Impact**

The Brownfields Redevelopment Initiative Program will help transform under-utilized and contaminated sites into environmentally sound, productive properties. Eligible projects may receive tax credits worth up to 50 percent of eligible costs, up to a project cap of \$4 million. Eligible projects located within a Qualified Incentive Tract or in Government-Restricted Municipalities can receive tax credits worth up to 60 percent of eligible project costs, up to a project cap of \$8 million. There is an annual program cap of \$50 million for a total of \$300 million for a period of six years. This is particularly important in the redevelopment of areas, including New Jersey's most distressed communities, and is vital to achieving a stronger, fairer, greener, and more equitable New Jersey.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the new rules are not subject to any Federal requirements or standards.

#### **Jobs Impact**

The EDA anticipates that the new rules will incentivize an indeterminate amount of increased job creation throughout New Jersey immediately, and continuing, both in remediation and the subsequent and future use of remediated brownfield sites.

#### **Agriculture Industry Impact**

The proposed new rules will have minimal impact on the agriculture industry in New Jersey. The impacts to the agricultural industry would be concentrated on former agriculture land that will be remediated and may be redeveloped for agriculture uses. Additionally, remediating land so that it can be repurposed for other uses will take development pressure off of farmland.

#### **Regulatory Flexibility Statement**

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small business, such as consulting companies, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, any costs will be minimal and offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for the EDA to more fully cover the costs of the Program.

#### **Housing Affordability Impact Analysis**

The proposed new rules will have indirect effects on the affordability of housing in New Jersey and may evoke a change in the average costs associated with housing units, including multi-family rental housing and for-sale housing in the State. Remediating land so that it can be repurposed for other uses, such as housing, will increase the availability and affordability of housing throughout the State, with a larger impact in urban areas.

#### **Smart Growth Development Impact Analysis**

The proposed new rules may have a positive smart growth impact and may increase the number of housing units and may result in a decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed new rules will prioritize applications for sites that have added additional factors for prioritization that are consistent with smart growth principles.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

**Full text** of the specially adopted and concurrently proposed new rules follows:

### **SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM**

#### **19:31-27.1 Applicability and scope**

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the Brownfields Redevelopment Incentive Program Act (Act), sections 9 through 19 at P.L. 2020, c. 156, as amended by sections 5 through 10 at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287). The Act creates the Brownfields Redevelopment Incentive Program (Program) pursuant to the jurisdiction of the New Jersey Economic Development Authority. The purpose of the Program is to provide tax credits to developers of redevelopment projects located on brownfield sites for a percentage of remediation costs. The total value of tax credits approved by the Authority shall not exceed the limitations set forth in section 98 at P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

#### **19:31-27.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the "New Jersey Brownfields Redevelopment Incentive Program Act" sections 9 through 19 at P.L. 2020, c. 156, as amended by

sections 9 through 19 at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to the Internal Revenue Code of 1986 (26 U.S.C. § 414(c)).

“Authority” means the New Jersey Economic Development Authority established by N.J.S.A. 34:1B-4.

“Authorized agent of the developer” means the chief executive officer, or equivalent officer, for the North American operations of the developer.

“Board” means the Board of the New Jersey Economic Development Authority, established pursuant to N.J.S.A. 34:1B-4.

“Brownfield site” means any former or current commercial or industrial site that is currently vacant or under-utilized 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.

“Building services” means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage,” as defined in section 2 at P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

“Contaminated building material” means components of a structure where abatement or removal of asbestos, or remediation of materials containing hazardous substances defined pursuant to section 3 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), is required by applicable Federal, State, or local rules or regulations.

“Contamination” or “contaminant” means any discharged hazardous substances, as defined pursuant to section 3 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), hazardous waste as defined pursuant to section 1 at P.L. 1976, c. 99 (N.J.S.A. 13:1E-38), pollutant as defined pursuant to section 3 at P.L. 1977, c. 74 (N.J.S.A. 58:10A-3), or contaminated building materials.

“Department” means the New Jersey Department of Environmental Protection.

“Developer” or “applicant” means any person that enters or proposes to enter into a redevelopment agreement with the Authority pursuant to the provisions at N.J.A.C. 19:31-27.9 and section 13 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-281), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

“Director” means the Director of the Division of Taxation in the New Jersey Department of the Treasury.

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Diverse” means being a historically under-served or under-represented identity within the following categories: race, ethnicity, gender, sexual orientation, disability status, educational attainment, veteran status, nation of origin, and language use.

“Equity” means developer-contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the site of the redevelopment project, and any other investment by the developer in the project, as deemed acceptable by the Authority. Property value shall be the lesser of either: the purchase price, provided the property was purchased pursuant to an arm’s length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and tax credits. Equity shall not include State grants or tax credits.

“Government-restricted municipality” means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the

2019 State fiscal year, and that on January 7, 2021, the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality, or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires for the duration of the agreement that: any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating their preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and which the Commissioner of the Department of Labor and Workforce Development has determined represents substantial numbers of retail or distribution center employees in the State.

“Licensed or certified professional” means an individual who is licensed or certified in remediation or other activities that are not subject to the jurisdiction of the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), including, but 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 or certified professional.

“Licensed site remediation professional” or “LSRP” means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-7) or the Department pursuant to section 12 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-12).

“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 at 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.

“Program” means the Brownfields Redevelopment Incentive Program established by section 11 at P.L. 2020, c. 156, as amended by sections 5 through 10 at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277).

“Project financing gap” means the part of the total cost of remediation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total cost of remediation, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total cost of remediation.

“Qualified incentive tract” means either a population census tract having a poverty rate of 20 percent or more, or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Reasonable and appropriate return on investment” means the discount rate at which the present value of the future cash flows of an investment is equal to the cost of the investment. For the purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits.

“Redevelopment agreement” means an agreement between the Authority and a developer in accordance with N.J.A.C. 19:31-27.9 pursuant to which the developer agrees to perform any work or undertaking necessary for a redevelopment project, comprising of the remediation of a brownfield site, which is the site of the redevelopment project, and may involve the clearance, development or redevelopment, construction, reconstruction, or rehabilitation of any structure or improvement of commercial, industrial, or public structures or improvements within an area of land whereon a brownfield site is located.

“Redevelopment project” means a specific construction project or improvement undertaken, pursuant to the terms of a redevelopment agreement, by a developer 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 improvements that are solely or primarily remediation related to the remediation of the site of the redevelopment project.

“Remediation” or “remediate” means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, as those terms are defined in section 23 at P.L. 1993, c. 139 (N.J.S.A. 58:10B-1); hazardous materials abatement; hazardous materials or waste disposal; building and structural remedial activities, including, but not limited to, demolition, asbestos abatement, polychlorinated biphenyl removal, contaminated wood or paint removal, or other infrastructure remedial activities. However, “remediation” or “remediate” shall not include the payment of compensation for damage to or loss of natural resources.

“Remediation costs” means all reasonable costs by the developer and any affiliate that are associated with the remediation of a contaminated site or other brownfield site, except: the cost of acquisition of the site at which the redevelopment project will be conducted; any costs incurred in financing the remediation, legal fees, incentive consultant fees; and Authority fees. Remediation costs may include required Department site remediation program fees and other Department permit fees. Remediation costs shall not include payment for penalties or violations. Remediation costs shall not include costs prior to application, except that remediation costs shall include costs for studies and surveys including, but not limited to, preliminary environmental assessments, environmental site investigations, and workplans incurred within the 24 months prior to date of application.

“Representative of the community” means being a heterogeneous group that includes individuals sharing diverse identities with those found within the diverse population of a defined community no larger than the municipality(s) in which the redevelopment project is located.

“Response Action Outcome” or “RAO” has the meaning as defined by the Department in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

“Site of the redevelopment project” means the brownfield site at which the redevelopment project is located.

“Total cost of remediation” means any and all costs incurred for, and in connection with, the redevelopment project by the developer and any affiliate, until submission of the documents necessary for the issuance of certification of completion of remediation by the Department or upon such other event evidencing project completion as set forth in the

redevelopment agreement. These costs may also include fees incurred for financing, penalties, and violations of the redevelopment project.

#### 19:31-27.3 Eligibility criteria

(a) The developer of a redevelopment project shall be eligible to receive a tax credit award only if the developer demonstrates to the Authority at the time of application that:

1. The redevelopment project is located on a brownfield site;
2. Without the tax credit award, the redevelopment project is not economically feasible;
3. 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;
4. The developer, including all affiliates:
  - i. Has not commenced any remediation activity at the site of the redevelopment project prior to submitting an application and will not commence any such remediation activity prior to execution of the redevelopment agreement, other than preliminary environmental assessments and environmental site investigations. The developer shall demonstrate and certify, under penalty of perjury, to the Authority that: it intends to remediate and redevelop the site immediately upon approval of the tax credit, satisfy all of the conditions in the approval letter, and execute a redevelopment agreement pursuant to N.J.A.C. 19:31-27.9; or
  - ii. Could not have reasonably known the full extent of the site contamination prior to commencing the remediation, if the developer or an affiliate has commenced remediation or clean up at the site for which the developer is applying for a tax credit. The developer shall demonstrate and certify, under penalty of perjury, to the Authority that the developer, including all affiliates, cannot reasonably finish the remediation and commence a construction project absent the tax credit;

5. The developer has obtained and submitted to the Authority a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located; and

6. The developer and all affiliates shall comply with the prevailing wage requirements at N.J.A.C. 19:31-27.14.

(b) The Authority shall review the proposed total cost of remediation, evaluate, and validate the project financing gap estimated by each developer applying for a tax credit award, as follows:

1. The developer shall demonstrate that the redevelopment project has equity of at least 20 percent of the total cost of remediation, except that if a redevelopment project is located in a government-restricted municipality or a qualified incentive tract, the equity shall be at least 10 percent of the total cost of remediation;
2. The project financing gap analysis shall include, but not be limited to: an evaluation of the total cost of the remediation, the amount of capital sufficient to complete the remediation, and reasonable and appropriate return on investment; and
3. As determined by the Department, the remediation costs are reasonable and appropriate.

(c) The Authority shall not approve a developer or enter into a redevelopment agreement with a developer, unless the developer demonstrates, to the satisfaction of the Department, that the developer, including all affiliates: did not discharge a hazardous substance at the brownfield site proposed to be in the redevelopment agreement; is not in any way responsible for the hazardous substance; and is not a corporate successor to the discharger, or to any person in any way responsible for the hazardous substance, or to anyone liable for cleanup and removal costs pursuant to section 8 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11g).

(d) A redevelopment project that received a reimbursement pursuant to sections 34 through 39 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-26 through 31) shall not be eligible to apply for a tax credit pursuant to the Program.

#### 19:31-27.4 Program application requirements

(a) In each State fiscal year for which there are tax credits available for the Program, the Authority shall establish the date for the availability of the application and the date by when applications must be submitted. The Authority shall provide prior public notice of these dates through its website.

(b) Each application to the Authority, made by a developer, shall include the following information:

1. The name of the developer and the names of any affiliates;

2. The name of the redevelopment project, as used in all applicable documents, and the address of the brownfield site, including multiple addresses, if applicable;

3. The contact information of the person identified as the primary contact for the developer;

4. The address of the developer and prospective future address of the developer, if different;

5. Organizational structure of the developer, including all affiliates;

6. The developer's New Jersey tax identification number;

7. The developer's Federal tax identification number;

8. The name and organizational structure of the owner of the site of the redevelopment project;

9. The name and contact information of the Licensed Site Remediation Professional for the redevelopment project;

10. If applicable, the name and contact information of the appropriately licensed or certified professional(s) for the redevelopment project, the basis for qualification of the licensed or certified professional(s) for the relevant remediation activities, and a copy of the corresponding license(s) or certification(s);

11. The total projected number of construction employees and permanent employees at the redevelopment project;

12. The location and description of the brownfield site, including, but not limited to: a narrative description of the brownfield site, a map or aerial photograph clearly indicating the boundaries and location of the brownfield site, and the lot and block number, or other description of the property, as required by the Authority;

13. An appraisal of as-is value of the brownfield site, if remediated;

14. A narrative explaining the level of experience and qualifications of the developer and project team, which shall demonstrate sufficient expertise to complete the redevelopment project, including, but not limited to, examples of successful completion of projects of similar size and scope;

15. A narrative description of the redevelopment project, including, but not limited to: the approach to the redevelopment project, proposed remediation methods for addressing known contamination and hazards, and contingency plans for addressing additional contamination or hazards that may be discovered during implementation of the redevelopment project;

16. An estimate and breakdown of the remediation costs, and the total cost of remediation;

17. Remediation plans, including drawings. All plans shall be prepared by a Licensed Site Remediation Professional or, in the case of remediation that is not subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), by an appropriately licensed or certified professional;

18. An anticipated redevelopment project schedule showing project milestones;

19. The financial information of the redevelopment project, including, but not limited to: any Federal, State, or local financial assistance for the redevelopment project; proposed terms of financing; purchase contract agreement for the brownfield site; and projected reasonable and appropriate return on investment;

20. A list of all of the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury permits and approvals or obligations and responsibilities with which the developer is associated or in which the developer has an interest. The list shall identify the entity that applied for, or received, such permits and approvals, or has such obligations and responsibilities, by identifying program interest numbers, licensing numbers, or the equivalent. The developer shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, of the developer stating that the developer applying for the Program satisfies the criteria at N.J.A.C. 19:31-27.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

21. A certification by the chief executive officer, or equivalent officer for North American operations, of the developer that the officer has reviewed the application information submitted and that the

representations contained therein are true, correct, and accurate under the penalty of perjury;

22. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority's debarment and disqualification rules at N.J.A.C. 19:30-2;

23. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

24. A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A. 52:39-1), that the developer is requesting or receiving; the name of the granting body; the value of each development subsidy; and the aggregate value of all development subsidies requested or received;

25. The status of control of the brownfield site and any agreements that provide a right of access to the developer or an affiliate to perform and complete the redevelopment project. If the developer has not secured access to the site at the time of application, an agreement with the current owner of the site evidencing an intent or obligation to provide the necessary right of access to complete the redevelopment project, including, but not limited to, a letter of intent;

26. A description of the zoning applicable to the brownfield site and a list and status of all required Federal, State, and local government permits and local planning and zoning board approvals that have been issued for the redevelopment project or will be required to be issued pending resolution of financing;

27. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

28. As applicable, the most recent draft or final Site Investigation Report, and/or the most recent Asbestos Containing Materials Survey, Universal Waste Survey, Lead Based Paint Survey, Pre-Demolition Survey, or other similar report, study, or document describing the documentation required by the Authority or the Department;

29. To be scored on the factor at N.J.A.C. 19:31-27.6(b)3, for the entity or entities in the developer's ownership structure that will have direct or indirect control over the actions by the developer to undertake the redevelopment project, information on the diversity of the owners and board of directors (or partners or members if no board of directors exist), which shall include certification as to the membership in a diverse group for all applicable owners and directors (or partners or members, as appropriate); the percentage of ownership held by each diverse owner; and an explanation on how the current board of directors (or partners or members, as appropriate) and owners are diverse and representative of the community in which the redevelopment project is located based on governmental data, including, but not limited to, the most recently available census data; and

30. Any other necessary and relevant information as determined by the Authority or the Department for a specific application, including, but not limited to, information needed to: complete project financial review, to assess developer capacity, and to demonstrate that the developer or an affiliate is not responsible for the contamination at the site of the redevelopment project.

(c) The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to: the location of the redevelopment project(s), the types of uses proposed, and the developer's financing and operational plans.

(d) If circumstances require a developer to amend its application to the Authority, the developer, or chief executive officer, or equivalent officer for the North American operations of the developer, shall certify to the Authority that the information provided in its amended application is true, correct, and accurate under the penalty of perjury.

#### 19:31-27.5 Fees

(a) An applicant for tax credits pursuant to the Program shall submit a one-time non-refundable application fee. The application fee shall be, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$2,000; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$7,000.

(b) A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

(c) The developer shall pay to the Authority a fee prior to the approval of the tax credit by the Authority, as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$15,000.

(d) For all redevelopment projects, a developer shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate. The fee shall be, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$15,000.

(e) A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-27.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral, shall pay to the Authority a fee, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000, and \$2,500 for each additional request; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$7,500, and \$2,500 for each additional request.

(f) Upon application to pledge or assign any or all of its right, title, and interest in, and to, a redevelopment agreement and in the tax credits payable thereunder, a developer shall pay to the Authority a fee, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000, and \$2,500 for each additional request; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$7,500, and \$2,500 for each additional request.

(g) A developer shall pay to the Authority a non-refundable fee for each request for a change, addition, or modification to the award, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, a non-refundable fee of \$2,500 shall be paid for each minor change, addition, or modification; and a non-refundable fee of \$5,000 shall be paid for each major change, addition, or modification to the award, such as those requiring extensive staff time and Board approval; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, a non-refundable fee of \$5,000 shall be paid for each minor change, addition, or modification; and a non-refundable fee of \$10,000 shall be paid for each major change, addition, or modification to the award, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by when: the redevelopment project must be completed as set forth at N.J.A.C. 19:31-27.9(e), the annual report and the progress report must be submitted as required at N.J.A.C. 19:31-27.11, and documentation required at N.J.A.C. 19:31-27.12 shall be submitted, a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$2,500, except that for any extension that requires Board approval, the fee shall be \$7,500; and

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$5,000, except that for any extension that requires Board approval, the fee shall be \$15,000.

19:31-27.6 Approval of completed application

(a) For redevelopment projects eligible pursuant to section 12 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-280) and N.J.A.C. 19:31-27.3, the Authority shall review applications submitted by the corresponding application deadline. The review shall determine if the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Provides adequate information to make an eligibility determination for the subject application.

(b) The Authority shall allocate tax credits to eligible redevelopment projects in ranked order based on the factors set forth below. To receive a tax credit award, a developer's application shall meet a minimum score. The Authority shall establish weights for the factors and the minimum score before applications are submitted for the State fiscal year and shall provide public notice of the weights through its website. These factors may include:

1. The environmental history of the brownfield site and the impact of the contamination, hazard, or other environmental concern on the surrounding community;

2. The degree to which the redevelopment project enhances and promotes job creation and economic development, such as the land use and other designations of the site of the redevelopment project related to uses and purposes of the site, including, but not limited to, if it is an area in need of redevelopment;

3. Positive impact of the redevelopment project on the surrounding community. For the entity or entities in the applicant's ownership structure that will have direct or indirect control over the actions by the applicant to undertake the redevelopment project, the extent to which such entity or entities have owners or board of directors (or members or partners if no board of directors) who are diverse and representative of the community in which the redevelopment project is located;

4. Economic feasibility of the redevelopment project and project viability, including level of experience and qualifications of the applicant's key personnel and strategic partners; and

5. The extent to which the remediation will reduce environmental or public health stressors in an overburdened community, as those terms are defined by section 2 at P.L. 2020, c. 92 (N.J.S.A. 13:1D-158), and how the remediation will address climate resiliency.

(c) Before the Board may consider for approval a developer's application for tax credits:

1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the developer has entered into a corrective action plan or other agreement with the respective department in order to regain good standing with the above mentioned departments, as applicable.

2. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer:

i. As to the Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury:

(1) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective departments that apply to the developer; and

(2) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto;

ii. As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department; and

iii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgate or issue, their own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

3. The Authority may contract with an independent third party to perform a background check on the developer.

4. The Authority will confirm with the Department of Environmental Protection that the developer has:

i. Entered into a memorandum of agreement or other oversight document with the Commissioner of the Department of Environmental Protection in accordance with the provisions of section 37 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-29); or

ii. Complied with the requirements set forth in subsection b. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3) for the remediation of the site of the redevelopment project.

(d) The developer shall certify that any contractors or subcontractors that will perform work at the site of the redevelopment project are registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

#### 19:31-27.7 Tax credit award amounts

(a) A developer who is eligible pursuant to, and complies with, the Act and this subchapter, shall be allowed a tax credit for an approved redevelopment project that shall not exceed the following limits:

1. For a redevelopment project located in a qualified incentive tract or government-restricted municipality, 60 percent of the actual remediation costs, 60 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$8 million, whichever is lower.

2. For all other redevelopment projects, 50 percent of the actual remediation costs, 50 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$4 million, whichever is lower.

(b) The total value of tax credits approved by the Authority shall not exceed the limitations set forth at N.J.S.A. 34:1B-277 through 287. For the purpose of determining the aggregate value of tax credits approved in a fiscal year, a tax credit shall be deemed to have been approved at the time the Authority approves an application for an award of a tax credit. If the Authority approves less than the total amount of tax credits authorized pursuant to this section in a fiscal year, the remaining amount plus any amounts remaining from previous fiscal years shall be added to the limit of subsequent fiscal years until that amount of tax credits are claimed or allowed. Any unapproved, uncertified, or recaptured portion of tax credits during any fiscal year may be carried over and reallocated in succeeding years.

(c) The Authority shall award tax credits to redevelopment projects until either the available tax credits are exhausted or all redevelopment projects that are eligible for a tax credit pursuant to the provisions of the Act and this subchapter receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a developer in accordance with the provisions of subsection a. of section 16 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and (a) above, the Authority may offer the developer a value of the tax credit below the amount provided for in subsection a. of section 16 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and (a) above, provided that the developer's application is eligible for a tax credit award with the lower amount.

#### 19:31-27.8 Approval letter

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application. If approved, the Board shall determine the maximum amount of the tax credit award and the maximum percentage of remediation costs that will be used to calculate the tax credit award. The Board shall promptly notify the applicant and the Director of the Division of Taxation in the Department of the Treasury of the determination.

(b) The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the tax credit award. An approval letter setting forth the conditions subsequent will be sent to the developer. Such conditions shall include, but not be limited to: the requirement that the redevelopment project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4);

and that the redevelopment project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the redevelopment agreement, which shall include satisfaction of all conditions of approval.

(c) The approval letter shall require documentation evidencing project financing, including the submittal of executed financing commitments; documents that evidence site control or access by the developer or an affiliate; and a copy of the site plan approval, if applicable.

(d) Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer does not satisfy the conditions in the approval letter within one year after approval of the application.

(e) The approval letter shall provide an estimated date of completion of the redevelopment project and include a requirement for submitting project status reports every six months, beginning at approval of the application and ending upon execution of the redevelopment agreement. If the Authority does not receive a project status report when required or the project status report demonstrates unsatisfactory progress, the Authority may rescind the incentive award.

#### 19:31-27.9 Redevelopment agreement

(a) Following satisfaction of the requirements for the execution of a redevelopment agreement in the approval letter, the Authority shall enter into a redevelopment agreement with the developer. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the redevelopment agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's compliance with the Act, this subchapter, and the requirements of the redevelopment agreement.

(b) The developer, including all affiliates, shall not start any remediation or clean up at the site other than the activities disclosed and approved at the time of approval, except for work required due to an order or other written requirement from an official with jurisdiction over the site or the redevelopment project to correct an immediate environmental concern or a health, safety, or other hazard that requires the developer or an affiliate to undertake remediation activities, if:

1. The developer provides a copy of the order or written requirement to the Authority; and

2. The developer documents to the Authority's satisfaction that the proposed remediation activity is limited to resolve the hazard.

(c) The redevelopment agreement shall specify and include:

1. A detailed description of the proposed redevelopment project, including details, quantities, and extent of all redevelopment activities, remediation costs, total cost of remediation, and a schedule for the redevelopment project by redevelopment work items;

2. The maximum amount of the tax credit award, the maximum amount of total cost of remediation, and the maximum percentage of the remediation costs that will be used to calculate the amount of the tax credit award;

3. A description of the evidence that will be submitted as proof of completion of remediation as required for the redevelopment project:

i. Where the remediation is subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated in accordance with the statute by a Response Action Outcome issued by a Licensed Site Remediation Professional; and

ii. For any portion of the remediation that is not subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by a certification from a Licensed Site Remediation Professional and an appropriate licensed or certified professional, as applicable;

4. A requirement that the developer will certify that all information provided by the developer or any affiliate to the Authority and the Department, including information contained in the application, the redevelopment agreement, and any amendment to the redevelopment agreement, is true, correct, and accurate under the penalty of perjury;

5. An ongoing requirement to provide the Authority and the Department with current personnel information that will enable the Authority and the Department to administer the program;

6. Representations that the developer and any affiliate will comply with the minimum environmental and sustainability standards pursuant to N.J.S.A. 34:1B-281c(1);

7. Representations that the developer is in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to: prevailing wage requirements pursuant to P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:31-27.14(b) and (c); affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:31-27.14(a); and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, to the extent that it is applicable;

8. A provision permitting an audit of the developer's and any affiliate's evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-27.4 and 27.11 and this section, and the reports pursuant to N.J.A.C. 19:31-27.11, as the Authority deems necessary;

9. Reporting requirements pursuant to N.J.A.C. 19:31-27.11;

10. A provision permitting the Authority to amend the agreement;

11. A provision establishing the conditions pursuant to which the Authority, the developer, or both parties may terminate the agreement;

12. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31-27.6(d), that the developer is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

13. A provision providing that if the developer is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, or the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-27.6(d), and has been given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer shall be subject to N.J.A.C. 19:31-27.15(b);

14. A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

15. A requirement for the developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health;

16. The right of the Authority and the Department to conduct site inspections at the site of the redevelopment project at any time during the course of the redevelopment project;

17. Indemnification and insurance requirements from the developer;

18. A description of events that would trigger forfeiture, reduction, or recapture of the tax credits;

19. Conditions of default and remedies, including, but not limited to, a default if a developer made a material misrepresentation on its application or supporting documentation;

20. A provision stating that if the developer or any affiliate sells, leases, or subleases the site of the redevelopment project, or any portion thereof, within four years of completion of the redevelopment project, the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. The developer shall provide to the Authority any information that the Authority determines is necessary to re-evaluate the developer's rate of return, including, but not limited to, the purchase price. If the developer's final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval by more than 15 percent, the developer shall pay 20 percent of the amount of the excess to the Authority, and the Authority shall deposit such funds in the State General Fund;

21. A provision that the issuance of a tax credit pursuant to the Program shall be conditioned upon the subrogation to the Department of all rights of the developer or any affiliate to recover remediation costs from any other person who discharges a hazardous substance or is in any way responsible, pursuant to section 8 at P.L. 1976, c. 141 (N.J.S.A. 58:10-

23.11g), for a hazardous substance that was discharged at the brownfield site;

22. A provision requiring that the developer obtain consent from the Authority prior to any ownership change of the developer; and

23. A provision that the developer must either comply with their agreement with the Commissioner of the Department of Environmental Protection in accordance with the provisions of section 37 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-29); or comply with the requirements set forth in subsection b. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3) to the satisfaction of both the Authority and the Department for the remediation of the site of the redevelopment project.

(d) The Authority shall not enter into a redevelopment agreement for a redevelopment project that includes at least one retail establishment that will have more than 10 employees, or at least one distribution center that will have more than 20 employees, unless the redevelopment agreement includes a precondition that any business that serves as the owner or operator of the retail establishment or distribution center enters into a labor harmony agreement with a labor organization or cooperating labor organizations which represent retail or distribution center employees in the State. 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. The Authority may enter into a redevelopment agreement with a developer without the labor harmony agreement only if the Authority determines that the redevelopment project would not be feasible if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

(e) The redevelopment project shall be completed and the evidence required to obtain a certification of completion of remediation shall be provided to the Authority and the Department within six years from the time of Board approval of the application. The Authority may extend, in its sole discretion, the time of completion, provided that the developer submits evidence satisfactory to the Authority that the redevelopment project is continuing to progress to completion.

(f) The Authority may rescind an award of tax credits pursuant to the Program if a redevelopment project fails to advance in accordance with the redevelopment agreement.

#### 19:31-27.10 Redevelopment project modifications and extensions

(a) On or before the date of completion of the redevelopment project, any modification to the redevelopment project as approved by the Board, including, but not limited to, a change in ownership of the developer, a change in the key personnel responsible for the remediation, an increase or reduction in the amount of the remediation cost, a change in redevelopment project scope, or an extension to the date by when the redevelopment project must be completed, shall require review and approval by the Authority to determine that the redevelopment project, as modified, does not undermine the basis for the tax credit award approved.

(b) In considering whether to approve the modification request, the Authority shall:

1. Determine that the revised redevelopment project continues to meet the requirements for the redevelopment, as defined pursuant to the Program;

2. Confirm that the proposed change to the redevelopment project will not undermine the basis for the tax credit award approved; and

3. Determine that the revised redevelopment project continues to meet the minimum score and would have been eligible based on the order of applications pursuant to N.J.A.C. 19:31-27.6(b), unless the developer demonstrates to the Authority that:

i. The modification is due to unforeseeable conditions related to the redevelopment project beyond the developer's or any affiliate's control and without its fault or negligence;

ii. The developer and any applicable affiliate is using best efforts, with all due diligence, to proceed with the completion of the redevelopment project; and

iii. The developer and any applicable affiliate has made all reasonable efforts to prevent, avoid, mitigate, and overcome the modification.

(c) Modifications and extensions shall not increase the amount of the tax credits awarded.

19:31-27.11 Reporting requirements: progress reports and annual reports

(a) The developer shall submit progress reports to the Authority and Department every six months starting at six months from Board approval and ending upon issuance of a certification of completion of remediation by the Department and, unless otherwise determined by the Authority and Department, shall consist of:

1. A remediation schedule, including any updates;
2. A summary of remediation completed during the reporting period, remediation in progress, and remediation to be completed for the next reporting period;
3. The status of permits, if applicable;
4. Photos documenting progress of the redevelopment project;
5. Identification of the percentage of the redevelopment project that is completed, including a narrative that speaks to the redevelopment project progress for all aspects of the redevelopment project;
6. Changes to key personnel, developer ownership, and the identity and ownership of any affiliates involved with the redevelopment project;
7. Remediation costs incurred as evidenced by a paid invoice as proof of payment with any change orders; and
8. Additional information, as required by the Authority or the Department.

(b) A developer approved for a tax credit award shall submit an annual report, beginning on the date of approval by the Board until the submission of documents evidencing the completion of the redevelopment project. The Authority may provide any information in the annual report to the Department.

1. The annual report shall consist of:
  - i. A certification indicating whether or not the developer is aware of any condition, event, or act, which would cause the developer not to be in compliance with the approval, the redevelopment agreement, this Act, or this subchapter;
  - ii. A certification indicating that the redevelopment project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
  - iii. A tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer;
  - iv. A certification from the developer that it has not modified the redevelopment project, so that it ceases to meet the requirements of the redevelopment agreement;
  - v. A certification from the developer that any contractors or subcontractors performing work at the redevelopment project: are registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in New Jersey; and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;
  - vi. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-27.9(d);
  - vii. For a redevelopment project that includes redevelopment after completion of the remediation required for the redevelopment project, a narrative of the progress of the construction and other activities of the redevelopment project; and changes to key personnel, developer ownership, and the identity and ownership of any affiliates involved with the redevelopment project; and
  - viii. Any information determined by the Authority to be necessary and relevant to its review.

2. The Authority's review of the annual reports required from a developer shall include confirmation with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in substantial good standing with the respective department or has entered into an agreement with the respective department that includes a practical corrective action plan.

3. Upon receipt, review, and acceptance of each annual report submitted, the Authority shall provide to the developer a letter indicating acceptance.

(c) The developer, or an authorized agent of the developer, shall certify that the information in any annual reporting requirement established pursuant to this section is true, correct, and accurate under the penalty of perjury.

(d) The Authority and the Department reserve the right to audit any of the representations made and documents submitted in any annual reporting requirement established pursuant to this section.

(e) The Authority may extend, in individual cases, the deadline for any annual reporting requirement established pursuant to this section.

19:31-27.12 Certification of completion of remediation; completion of redevelopment project

(a) No later than 12 months following completion of the remediation required for the redevelopment project, the developer shall seek certification from the Department that:

1. The remediation required for the redevelopment project is complete. Where the remediation is subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by the issuance of a Response Action Outcome for the site of the redevelopment project by a Licensed Site Remediation Professional. For any portion of the remediation that is not subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by a certification from the Licensed Site Remediation Professional and from an appropriate licensed or certified professional;

2. The developer complied with the requirements of section 15 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-283) and N.J.A.C. 19:31-27.11(a) regarding progress reports to the Department, and section 14 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-282) and this section, including the requirements of any agreement or other oversight document that the developer may have executed with the Commissioner of the Department of Environmental Protection pursuant to P.L. 2020, c. 156, section 14 (N.J.S.A. 34:1B-282); and

3. The remediation costs were actually and reasonably incurred.

(b) When filing an application for certification pursuant to (a) above, the developer shall submit the following information to the Authority and the Department as of the date of completion of the remediation required for the redevelopment project:

1. The total remediation costs incurred by the developer or an affiliate for the redevelopment project, as provided in the redevelopment agreement, and certified by a certified public accountant and a Licensed Site Remediation Professional for costs pursuant to the jurisdiction of the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), and, as applicable, other appropriate licensed or certified professional(s) for costs that are not pursuant to the jurisdiction of the Site Remediation Reform Act, and the total costs of remediation. The Authority shall qualify certified public accountants and provide to the developer, the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any affiliate and not on the Authority's list of qualified certified public accountants for purposes of the remediation cost certification if the developer demonstrates an extenuating circumstance prohibiting the developer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to: the unavailability of any of the qualified certified public accountants to timely complete the certification or a lack of independence of the qualified certified public accountants from the developer;

2. Evidence of completion of the remediation, as demonstrated by the issuance of a Response Action Outcome for the site of the redevelopment project by a Licensed Site Remediation Professional where the remediation is subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), and by a certification from the Licensed Site Remediation Professional and appropriate licensed or certified professional for completion of other remedial activities, if applicable;

3. Information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, if applicable;

4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer not to be in compliance with the approval, the redevelopment agreement, this Act, or this subchapter;

5. A certification by the Licensed Site Remediation Professional of record for the redevelopment project confirming that all remediation work was completed in accordance with the redevelopment agreement; and

6. Such other information as the Department or Authority deems necessary in order to make the certifications and findings pursuant to (a) above.

(c) To demonstrate compliance with the Program, in addition to the submission required pursuant to (b) above, the developer shall submit the following to the Authority, as of the date of completion of the remediation required for the redevelopment project, no later than 12 months following completion of remediation required for the redevelopment project:

1. A certification from a Licensed Site Remediation Professional or licensed professional engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer or an affiliate would satisfy the minimum environmental and sustainability standards;

2. A tax clearance certificate as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer;

3. Documentary evidence that a deed restriction has been recorded requiring construction and building services' prevailing wage pursuant to N.J.A.C. 19:31-27.14(b) and (c); and

4. Such other information as the Authority deems necessary in order to determine compliance by the developer with the Program.

(d) Within 90 days of the Department issuing the certificate of completion of remediation, the Authority accepting as satisfactory the documentation required at (c) above, and the Authority determining that other required conditions of the Act, this subchapter, and the redevelopment agreement have been met, the Authority shall notify the developer and the Director. Thereafter, the developer shall receive its tax credit certificates.

(e) A developer shall apply the tax credit awarded against the developer's liability for the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5 for the privilege period in which the developer provides evidence required in this section to the satisfaction of the Department and the Authority. A developer shall not carry forward any unused credit.

(f) Credits granted to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director and accompanied by any additional information as the Director may prescribe, consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(g) The Director shall prescribe the order of priority of the application of the credit awarded pursuant to this section and any other credits allowed by law against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

(h) For a redevelopment project that includes redevelopment after completion of the remediation required for the redevelopment project, a developer shall submit, no later than six months following the completion of the redevelopment project, the following documents to the Authority:

1. Evidence of a temporary certificate of occupancy or other event evidencing completion of the redevelopment project;

2. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the redevelopment agreement, the Act, or this subchapter;

3. A certification from a licensed professional engineer that the redevelopment project undertaken after completion of remediation has adhered in all material respects to the plan submitted by the developer describing how the developer or an affiliate would satisfy the minimum environmental and sustainability standards; and

4. Any information determined by the Authority to be necessary and relevant to its review.

(i) An authorized agent of the developer shall certify that the information provided to the Department and the Authority pursuant to this section is true, correct, and accurate under the penalty of perjury.

19:31-27.13 Application for tax credit transfer certificate; assignment

(a) A developer may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, during the privilege period in which the Director issues the developer a tax credit pursuant to section 16 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and N.J.A.C. 19:31-27.12. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$25,000, in the privilege period during which the developer receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5.

(b) The developer shall not sell a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or less than 85 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted, except a developer of a residential project consisting of newly constructed residential units that have received Federal low income housing tax credits pursuant to 26 U.S.C. § 42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

(c) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

(d) A tax credit transfer certificate issued by the Director and the Authority shall include a statement waiving the rights of the developer to which the tax credit has been granted to claim any amount of remaining credit against any tax liability.

(e) The tax credit transfer certificate issued to a developer by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 9 through 19 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-277 through 287) and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(f) The Authority shall publish on its internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferor;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The state tax against which the transferee may apply the tax credit; and
5. Consideration received by the transferor.

19:31-27.14 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project. The affirmative action requirements shall apply until the later of the completion of the redevelopment project or until two years after the tax credit is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-4 shall apply to construction contracts as defined at N.J.A.C. 19:31-4.1 for work performed for the

redevelopment project. The prevailing wage requirements shall apply until the later of the completion of the redevelopment project or two years after the tax credit is issued. Prevailing wage shall apply to all work done by tenants at the redevelopment project.

(c) Prevailing wage shall apply to building services at the site of the redevelopment project. This prevailing wage requirement shall continue for 10 years following the completion of the redevelopment project. In the event a redevelopment project, or the aggregate of all redevelopment projects approved for an award pursuant to the Program, constitute a lease of more than 35 percent of a facility, the prevailing wage shall apply to the entire facility.

#### 19:31-27.15 Forfeiture and recapture of tax credits

(a) Failure to timely submit the annual report or progress report, pursuant to N.J.A.C. 19:31-27.11, absent extenuating circumstances or the written approval of the Authority, may result in forfeiture or recapture of a proportional amount of the tax credit award.

(b) In any year in which the developer 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 pursuant to N.J.A.C. 19:31-27.9(c)13, the developer may forfeit or recapture some or all of the tax credit award.

(c) If any worker employed to perform building services work at the 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) and N.J.A.C. 19:31-27.14(c) during the relevant tax period, then the developer shall forfeit or the Authority shall recapture, a proportional amount of the tax credit.

(d) If the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-27.9(d) is not satisfied, the developer shall forfeit or recapture some or all of the tax credit award.

(e) For a redevelopment project that includes redevelopment activities after completion of the remediation required for the redevelopment project, if the developer does not complete the redevelopment project after the issuance of the tax credits or if the developer does not comply with a requirement of the Program applicable to the redevelopment project after completion of the remediation, including, but not limited to, prevailing wage or affirmative action requirements pursuant to N.J.A.C. 19:31-27.14(a) and (b), the Authority may recapture some or all of the tax credits awarded.

(f) If, based on new information, the Authority determines that forfeiture or 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.

(g) If, at any time, the Authority determines that the developer made a material misrepresentation on the developer's application, progress report, remediation completion certification, annual report, or any submission to the Authority or the Department, the developer shall forfeit or the Authority shall recapture, some or all of the tax credits of the developer, which shall be in addition to any other remedies in the redevelopment agreement and any criminal or civil penalties to which the developer and the respective officer of the developer may be subject.

(h) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, administrative costs, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation in the Department of the Treasury to determine the recapture amount.

(i) If all or part of a tax credit sold or assigned pursuant to section 17 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-285) and N.J.A.C. 19:31-27.13 is subject to recapture, the Authority shall pursue recapture from the developer, and not from the purchaser or assignee of the tax credit transfer certificate.

(j) The Authority shall notify the Director of any funds recaptured pursuant to this section. Any recaptured funds, including penalties and interest, shall be deposited into the State General Fund.

#### 19:31-27.16 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor a veto has been issued.

(b) An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 21 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority, as follows:

1. The Chief Executive Officer of the Authority shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules of Court of the State of New Jersey.

#### 19:31-27.17 Reports on implementation of Program

Beginning in 2022 and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the Program, and submit the report to the Authority, the Governor, and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit under the Program, a detailed analysis of the consideration given in each redevelopment project to the factors set forth in sections 12 and 13 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-277 through 278) and N.J.A.C. 19:31-27.6(b), the return on investment for incentives awarded, the redevelopment project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

#### 19:31-27.18 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.