

BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM FAQ'S (Updated 5/12/2023)

This Brownfields Redevelopment Incentive Program (BRIP) “Frequently Asked Questions” (FAQ) resource is intended to help anyone interested in the BRIP to better understand how the program works. The FAQ is an effort to help readers understand key information points from the rules and to help clarify terms in the rules that may be challenging to understand without a background in legislative, administrative, and regulatory language use. The BRIP program rules are available [here](#).

This FAQ resource will be updated over time as additional questions emerge. Your contributions will help make this resource more useful. Please send any additional questions or comments to bftaxcredit@njeda.com.

Top 7 Questions

1. [What sites are eligible for the program?](#)
2. [Am I eligible for this program if I own the site?](#)
3. [Is the project eligible if I have already started remediation prior to applying?](#)
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ELIGIBILITY

How do I know if I am eligible for the program? The [eligibility self-assessment tool](#) can walk you through the basic eligibility criteria for the program before you begin the application process. Detailed information on eligibility requirements can be found within the [adopted rules \(N.J.A.C. 19:31-27\)](#).

Who is eligible to apply for this program? The program is open to for-profit and non-profit developers, as well as government entities.

What sites are eligible for the program? Eligible properties must be a brownfield site, and the applicant must not be in any way “liable” or “responsible” for the contamination at the site. Brownfield sites throughout the state are eligible for the program.

How do I know if my property is a brownfield? An applicant will be required to demonstrate and certify that the project is a brownfield site. A brownfield site means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is contaminated building material. The BRIP definition also includes contaminated building material so demolition, asbestos, and contaminated paint and wood will also be eligible for this program.

Do I need to own the site? No, the applicant does not need to own the site. However, if the applicant does not own the site, the applicant is required to provide documentation that they will have site access to perform the remediation.

I own the property, am I eligible? In order to be eligible for this program, the applicant must not in any way be responsible for the hazardous substance; 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 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11g). In some instances, property owners may be deemed liable and responsible for a discharge under the NJ Spill Act (N.J.S.A. 58:10-23.11) and therefore would not be eligible for this program. Applicants who enter into a “pre-purchase administrative consent order” with NJDEP prior to acquiring the site may be eligible for the program. Additionally, an unrelated developer who leases the site, or has an option to purchase the site with a closing to occur after they have executed a redevelopment agreement with the NJEDA, may be eligible for the program.

Can I get more information about what costs are considered reasonable and whether or not I would meet the eligibility criteria related to being in any way liable or responsible for the contamination at the site? NJDEP makes these determinations. You may contact NJDEP at edataxinc@dep.nj.gov to get further clarification for your project.

I am identified as a responsible party for the project site, am I eligible? You may not be eligible for this tax incentive program. Please carefully review all program requirements under the [adopted rules](#) for the program.

Do I have to obtain a letter of support from the governing body? Yes, the applicant is required to obtain a letter of support from the governing body of the municipality(ies) where the brownfield site is located prior to the deadline submission for the application. Generally, this means a municipal council. However, because there are variations in governance structures within NJ municipalities NJEDA uses general language about what is required in terms of a letter of support from a governing body. This may require significant lead time, so applicants are advised to start this process early. A letter from the mayor is not an acceptable substitute.

Will I be required to demonstrate that a project financing gap exists? Yes, the applicant will have to demonstrate that a project financing gap exists, and the tax credit award would be equal or less than the project financing gap. The applicant will also need to provide documentation to verify all sources of funding and/or subsidies to cover the total cost of remediation. Letters of Intent and Term Sheets should be signed by the financial institute that offers them and should include an expiration date. The expiration date

should not expire until after the anticipated board approval date (which is anticipated to be approximately six months after application submission).

Why is NJEDA asking for information about a bridge loan and tax credit syndicator? Because the tax credit is awarded after the completion of the remediation, the applicant will need to demonstrate how they are bridging the gap for funding the remediation work between the time the work is performed and the time the tax credit is awarded and monetized. This is necessary to meet the requirement to demonstrate that a project financing gap exists.

I have already started cleanup activities at the project site (other than assessment and investigation), am I eligible to apply? The project may not be eligible for this program unless the applicant certifies that they could not have reasonably known the full extent of contamination prior to starting cleanup. Under most circumstance, the developer is expected to start cleanup activities after they enter into a Redevelopment Agreement with NJEDA. However, a developer may start work, at their own risk, at board approval if the work is disclosed by the applicant before board approval and approval by the board. For example, if the applicant/developer would like to start site preparation work and removal of USTs then the applicant will identify this work NJEDA before board approval of the entire project. If approved by the board, then the applicant/developer may proceed with this work upon board approval. The developer will need to comply with all requirements of the program, including affirmative action, prevailing wage, and green remediation requirements. Failure to comply may result in the entire project being ineligible.

Does my project have to meet the minimum environmental and sustainability standards? Yes, minimum environmental and sustainability standards from the adopted rules must be met for this program. Developers, who have been selected to the program, will prepare a plan on how to implement the minimum environmental sustainability standards for their redevelopment project. You can view and download the [Green Remediation Requirements: Guidance Document for Brownfields Redevelopment Incentive Program Participants](#).

Do I have to contribute equity to the project? The minimum required equity contribution is 10% for projects in Atlantic City, Paterson, Trenton, and projects located in a qualified incentive tract; and 20% for projects located elsewhere. You will be required to provide documentation to verify sources of equity. The [mapping assistant tool](#) can help with determining if your project is in a qualified incentive tract. Equity contributed by a developer can include 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 project site, and any other investment by the developer in the project deemed acceptable by NJEDA. Property values will be valued at 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. Note that all non-arm's length transactions will require a full appraisal. Equity can also comprise Federal or local grants and proceeds from the sale of Federal or local tax credits, as described above. Equity does not include State grants or tax credits.

Can I apply with multiple parcels of land for my project? Yes, multiple parcels of land may apply as one redevelopment project. There is an application field for multiple lot information (in the project location section) and a site map upload (in the project approach section of the application) to show the boundary of the redevelopment project.

Can I apply if it is a demolition only project? Demolition is an eligible cost in this program; however, the applicant will have to demonstrate and certify that the project is a brownfield site.

My project has already been compensated by the State through the Former Brownfield Reimbursement Program, am I eligible for this program? No, former Brownfield Reimbursement projects that received a reimbursement pursuant to sections 34 through 39 of P.L.1997, c.278 (N.J.S.A. 58:10B-26 through -31) are not eligible for this program. However, sites are eligible for this new tax incentive program that were in this former program and did NOT receive a reimbursement. Also, additional work on awarded projects may be eligible for the new program provided there is no duplication of work.

I don't understand the difference between a redevelopment project and a remediation project. The applicant will define what their "redevelopment project" is in the application, which will be supported by their documentation, including the documentation of their funding sources. A "redevelopment project" can be a remediation-only project. This is especially important, as the tax credit only funds remediation, and additional requirements apply to redevelopment projects which are not remediation-only projects. It should be noted that the program will accept both remediation-only projects, and larger redevelopment project which may include more traditional redevelopment w/ vertical construction.

How do I determine if my site is "underutilized"? For this program, a site is considered underutilized if not used continuously for 5 or more years. The applicant will produce evidence such as utility records (water, gas, and electric), condemnation notices, evidence of structural deficiencies which presents a public health or safety hazard as certified by a professional engineer, or documentation of no on-site structures for 5 years.

I have a cannabis business, am I eligible? No. Cannabis-related businesses (or any person who controls the business or owns or

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controls more than one percent of the stock of the business) that have applied for or received a license or certification from the New Jersey Cannabis Regulatory Commission (NJ-CRC) are not eligible.

GENERAL APPLICATION PROCESS

Where can I find the application? The application and sample application will be available at [Brownfields Redevelopment Incentive Program](#). The expected release date for this program is Summer 2023.

What items do I need to apply? Please view [all](#) required documents on the application checklist and gather your documents in advance to ensure you are prepared to upload this information when you apply. An [Application Checklist](#) will be posted.

Who do I reach out to if I have questions before I apply? You may email bftaxcredit@njeda.com. Because this is a competitive program, once the competition window is open, all questions and answers will be posted publicly on NJEDA's website.

What happens if I miss information in my application after I submit my application? BRIP is a competitive program, with applications due during a preestablished application window. All required documentation must be submitted at time of application to prevent an unfair advantage to one applicant over the other. NJEDA reviewers may, in some cases, ask for clarifying information (for Interagency Review, Legal Review and Underwriting Review related items), but NJEDA is unable to accept late submission of missing required information. However, if an application round is not oversubscribed, and sufficient funding is available to satisfy tax credit requests of all applications submitted, the NJEDA may request and allow submission of clarifying or additional information needed (including missing required information) to complete review of an application which was submitted by the preestablished application deadline.

How long is the approval process from start to finish? NJEDA does not have a specific timeframe to review the applications. The review process under the program can be extensive and requires NJEDA Board approval. As a result, from the date the application window is closed, an applicant can expect that it can take six months and up to a year to receive an approval. All approvals and denials under the program require NJEDA Board approval and are subject to a Governor's veto period (approximately 2 weeks pass the Board meeting date). Therefore, no approval will be final until Board approval and expiration of the Governor's veto period. Following conclusion of the meeting, and once the Governor's veto period has expired, you will receive an approval letter that outlines all requirements and conditions to your approval.

Can someone else complete my application? While a consultant can assist with the application, the applicant is solely responsible for its contents and will need to certify the application for submission.

ADDITIONAL APPLICATION INFORMATION

What is the maximum amount that an eligible entity can apply for? 60 percent of eligible remediation costs up to a maximum of \$8 million for projects located in Qualified Incentive Tracts (QIT) or Government-Restricted Municipalities. 50% of costs up to a maximum of \$4 Million in other areas of the state. The [mapping assistant tool](#) can help with determining if your project is in a QIT.

Can I layer this incentive with other programs? Yes. Applicants may leverage funding and incentives from other federal, state, and local programs however eligible costs must not be duplicated between programs.

Do I need to provide a tax clearance certificate? Yes. A current tax clearance certificate must be provided at time of application to demonstrate that the applicant is in substantial good standing with the NJ Division of Taxation. A tax clearance certificate can be printed directly through the [Premier Business Services portal](#). The tax clearance must include the NJEDA as the referenced agency. For troubleshooting and questions regarding your tax clearance, call 609-292-9292 or email businessassistancetc.taxation@treas.nj.gov.

Are there application fees for this program? Yes. Application fees are \$2,000 for projects with total cost of remediation of \$5 Million or less and \$7,000 for projects with total cost of remediation greater than \$5 Million. The application fee is due at the time of application submission via credit card or check and is non-refundable. Checks must be postmarked, or hand delivered by the application due date. Details will be provided in the sample application.

What are examples of community supported local organizations/entities? A non-profit community group will be active in the neighborhood where the site is located including but not limited to local environmental or grassroots organizations who may or may not be a registered not-for-profit with state of New Jersey or the Federal government. Examples include neighborhood watch groups, organized stakeholders, and community centers.

I will also be applying with an affiliate, what is role of the affiliate role in the program? An affiliate can perform work, access the site, and contribute financial resources to the project. However, an affiliate cannot be awarded a tax credit. A definition for affiliate is provided in the adopted rules.

Will I be required to retain licensed and certified professionals to be eligible for the program? Yes, a Licensed Site Remediation

Professional will be required to certify the remediation work. In addition, an appropriate licensed or certified professional will also be required to certify the remediation activity not under the jurisdiction of the "Site Remediation Reform Act" such as but not limited to asbestos, demolition, waste disposal, etc.

Is site access needed at the time of application? Yes. For site access, the applicant will provide a signed agreement that provides right of access to the developer or affiliate to perform and complete the redevelopment project. If a site access agreement is not available, then the applicant will need to provide a signed Letter of Intent or obligation between the applicant and the owner to provide necessary right of access to complete the redevelopment project if the developer has not secured a site access agreement to this site at the time of application.

Do I need a purchase and sale agreement for the project? No. The applicant does not need to have a purchase sales agreement for the program. However, the applicant will need to show evidence of site access or evidence of intention for site access in order to complete the redevelopment project. If the applicant does choose to provide a purchase sales agreement for the brownfield site, then the agreement should include the applicant's name on the document and be signed and dated by an owner with 10% or more ownership of the property.

What are the roles of NJEDA and NJDEP in this program? NJEDA will administer the program and NJDEP will provide technical support, including but not limited to: a review of the application for cost reasonableness and eligibility related to liability for the discharge, progress and modification checks during the implementation phase, and certification of completion of remediation activities and final costs at the end of the project. The developer will enter into a redevelopment agreement with the NJEDA. It is recommended that the applicant enter into an oversight document with the NJDEP to complete the requirements of this program and receive certification of completion.

Am I allowed to include a cost contingency in my project cost estimate? Yes. With an understanding of the numerous unknowns of remedial cleanup projects, the program application process allows for an applicant's cost estimate for eligible remediation costs to include a cost contingency. All cost estimates submitted, including the proposed contingency, are thoroughly reviewed and validated by the NJDEP as part of the cost reasonableness review process. While the contingency associated with eligible remediation costs is added to the overall eligible costs for the purpose of calculating maximum tax credit awards, this "eligible cost contingency" will only be utilized for final tax credit award calculations when a modification request, meeting all applicable requirements pursuant to N.J.A.C. 19:31-27.10, has been reviewed and approved by the NJEDA prior to any modification of work.

What if my actual costs exceed the amount approved by the NJEDA Board? The tax credit cannot be increased after NJEDA Board approval. The applicant may include a contingency in their project cost estimate.

Do I need to supply a property appraisal with the application? Yes, the applicant needs to provide an appraised "as is" value of the brownfield site as remediated by a licensed third-party NJ appraiser. The appraisal will be dated within 12 months of the application submission date.

What types of project cost forms will be required in the application? The following three Excel spreadsheets will be required in the application: redevelopment project cost estimate, pro forma, and sources and uses.

Will I be required to supply a market/feasibility study for my project? Maybe. Market/feasibility studies are not required for remediation-only projects. Market/feasibility studies will be required for projects with proposed construction beyond remediation. Information on market/feasibility study requirements will be included in the sample application.

How will applications be scored? All applications will be reviewed and scored based on pre-established factors. The review of applications will be conducted by a multidisciplinary team of professionals from the NJEDA. At a minimum, the committee will include at least one staff member with experience in brownfields and site remediation, and one with construction and/or project management experience. All applications will be evaluated according to five categories/factors:

1. Economic feasibility
2. Benefit to the community
3. Job creation and economic development
4. Reduction of environmental or public health stressors in an overburdened community
5. If the board of directors (or partners or members, as applicable) is diverse and representative of the community

To receive tax credits, an application for the initial round must meet a minimum score of 25 out of a possible maximum 100 points. Should the program be oversubscribed on any particular year, applications will be ranked based on score. Additional information on scoring criteria can be found in the Brownfields Redevelopment Incentive [Program Scoring Criteria document](#).

Applicants may choose to opt out of the diversity scoring by not providing information related to diversity, in which case the project would not receive any points for the diversity category.

Can decisions be appealed? At the conclusion of each application round, recommendations for approval of projects will be made to NJEDA's Board of Directors. The Board will approve projects based on presented recommendations. An applicant may appeal the Board's action by submitting in writing to NJEDA, 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. Detailed appeal process can be found within the rules for the program, under N.J.A.C. 19:31-27.16.

Will I need to update the CEO certification form if the CEO changes? Yes, the applicant will be responsible for notifying the NJEDA and updating the CEO certification form if the CEO changes during the application process.

USE OF INCENTIVE

What costs are eligible for this program? Only remediation costs are eligible for this program. Vertical construction costs (which are not part of the remediation) are not eligible. Eligible remediation costs include: soil and groundwater investigation and remediation, site remediation, hazardous materials assessment and survey, hazardous materials or waste disposal, building and structural remediation issues such as demolition, asbestos abatement, PCB removal, and contaminated wood or paint removal, and other infrastructure remedial activities as approved by NJEDA. Eligible costs also include the required NJDEP site remediation program fees and other NJDEP permit fees. Preliminary environmental assessments, environmental site investigations, and workplans incurred within the 24 months prior to date of application are eligible. Soft costs, except for those noted below as "not eligible" are allowed.

What costs are not eligible for the program? The following uses are not eligible: 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, payments for penalties or violations, and NJEDA fees. Incentive consultant fees, which are not covered under this program, are for consulting services to assist clients with understanding governmental tax incentive programs including structuring of the financial deal. Costs incurred prior to application, other than preliminary environmental assessments, environmental site investigations, and workplans incurred within the 24 months prior to date of application.

Are planning activities eligible for the program? Yes. Eligible planning activities include conceptual reuse designs, remedial action workplans (RAWs), and other planning activities that are brownfield related, proposed in the application, and approved by NJEDA and NJDEP.

Other Information on the Program

When will I receive the tax credit? The tax credit is awarded after the remediation completed and certified by NJDEP and all required submittals are received.

Can I sell the tax credit? Yes, the applicant may transfer the tax credit, one time only. The tax credit can be transferred in increments as low as \$25,000. The tax credit transfer certificate may not be sold or transferred for less than 85 percent of the transferred credit amount, except that for residential project consisting of newly constructed residential units that has received federal low-income housing tax credits and have a plan approved by HMFA and NJEDA can sell credits for no less than 75 percent of their nominal value.

Is this program subject to NJEDA's Affirmative Action and Prevailing Wage requirements? Yes. Prevailing wage and affirmative action requirements apply to the redevelopment project including subcontractors. EDA's prevailing wage requirements applies to construction contracts for work performed for the redevelopment project and subsequent redevelopment project, if applicable. The [construction prevailing wage](#) requirements apply until two years after the tax credit is issued. Prevailing wage also applies to work done by tenants at the redevelopment project. In addition, prevailing wage is also required for [building services](#) at the redevelopment project for 10 years following completion of the redevelopment project.

Why is a deed notice required for certification of completion? A deed notice is required for all sites at the completion of the program (to account for possible sale or transfer of ownership of the property) so that the conditions of the redevelopment agreement (e.g., Building Services Prevailing Wage) are followed by new owners.

Do I need to complete the remediation? Yes. The remediation must be completed prior to issuance of the tax credit. For remediation projects subject to the Site Remediation Reform Act (SRRA), a Response Action Outcome is required. For remediation that is not subject to SRRA, evidence of completion of the remediation by a certification from an LSRP and appropriate licensed or certified professional, as applicable, is also required.

How long do I have to complete the redevelopment project? Applicants have 6 years after NJEDA Board Approval to complete their redevelopment projects. Applicants have 1 year after completion of the remediation to seek certification of the completion of the remediation from NJDEP.

What fees are associated with this program? The program includes fees for application, agreement, certification, modifications, and transfers.