CAFE Policy Clarifications

This document provides policy clarifications for the Cultural Arts Facilities Expansion (CAFE) program. Nothing within this document shall be construed to apply to other Authority programs.

Policy Clarification: Defining Cultural Arts

The underlying statute and CAFE Rules define a "cultural arts institution facility" in terms of "cultural arts" and provide a list of examples - an aquarium, botanical society, historical society, library, museum, gallery, performing arts center, arts-based community centers - and some exclusions – facilities predominantly used for athletics, recreation, and non-arts-based community centers. However, neither defines "cultural arts." N.J.S.A. 34:1B-385, N.J.A.C. 19:31BB-1.2. Accordingly, in the November 12, 2025 Board Memo, the Board established a clear interpretation within this context: creative and cultural activities that includes, but is not limited to, performing, visual, and fine arts, music, dance, graphic design, film, digital media and video, architecture and urban design, humanities, literature, arts and culture education, historic preservation, museum curation, crafts, and folk arts, as well as providing enrichment through the public presentation of science in creative, accessible formats (such as interactive exhibits) that engage the community on a cultural level. The term cultural arts does not include culinary arts.

As a further clarification regarding digital content: the underlying statute notes that the program is intended to attract visitors to the State. N.J.S.A. 34:1B-384. Therefore, digital art, such as animations, interactive installations, and photography displayed at the cultural arts institution where an audience visits in person (for example, a planetarium) may qualify as cultural arts. However, distributing content through digital media and radio, such as traditional broadcasting channels (like radio and television) or through audio podcasts, does not qualify as cultural arts.

Policy Clarification for the definition of a Cultural Arts Institution

To be eligible for CAFE, the facility must satisfy the definition of a Cultural Arts Institution Facility. N.J.A.C. 19:31BB-1.3. This policy clarification provides details regarding how the Authority determines if a Cultural Arts Institution Facility meets the requirement in the definition that it is "principally for the support and benefit" of cultural arts.

It is the Authority's practice that the Applicant must demonstrate following to qualify as a **Cultural Arts Institution Facility**:

- At least 50% of the interior square footage is intended for cultural arts uses (if the project includes multiple locations, each location must pass this test independently), and
- Any included support spaces (office, storage, etc.) are principally for the support and benefit of the cultural arts facility.

The 50% test is determined using interior gross square footage only, unless the Cultural Arts Institution Facility includes unique outdoor cultural exhibits (e.g., outdoor museum exhibit), in which case those

spaces may be included when calculating the percentage of space which is principally for the support and benefit of the cultural arts facility.

Not all spaces within a building automatically qualify as Cultural Arts (CA) space. Eligibility depends on whether the space is principally for the support and benefit of the cultural arts facility and whether the project meets the statutory definition of a Cultural Arts Institution Facility, meaning at least 50% of the interior square footage must be cultural arts space.

Spaces that support the core cultural arts mission of the cultural arts institution facility may be counted as CA. Examples include:

- **Back-of-house operational spaces** such as office space, green rooms, storage, and backstage areas, if they are *principally for the support and benefit* of the cultural arts facility.
- **Building-wide systems and infrastructure** that directly support cultural programming (e.g., building-wide technology systems, circulation, performance- support- infrastructure).
- **Auditoriums, performance spaces, and other core cultural programming areas** used for cultural arts performances, cultural art exhibitions, or other cultural arts activities.

Certain space types do not qualify as Cultural Arts, including:

- Program areas unrelated to core cultural arts activities, such as podcast studios, teaching kitchens, or other uses that do not directly support cultural arts programming.
- Spaces used for distributing content through traditional broadcasting channels (like radio and television) or through audio podcasts.
- Other spaces which are non-cultural arts (NCA) and are not principally for the support and benefit of the cultural arts institution facility.

<u>Policy Clarification for Definition of Project Costs (Eligible Expenses)</u>

Building Leases: Building leases may be eligible project costs for CAFE, as described below. N.J.S.A. 34:1B-385, N.J.A.C. 19:31BB-1.2. In all cases, under the CAFE Program, building lease payments only qualify as an eligible expense (aka "project cost"). Subject to the requirements above, this means the following may be deemed eligible project costs:

1. The Actual lease payments paid after application and prior to project completion (the earlier of the CO other event evidencing completion or the submission of the project completion certification), or

2. The Net Present Value (NPV) of future lease payment obligations actually paid after application and prior to project completion (the earlier of the CO other event evidencing completion or the submission of the project completion certification)

In all instances, a lease along satisfactory evidence of payment amount and date shall be required.

Parking: Under the CAFE Program, only the number of parking spaces required by the minimum local zoning ordinance may be counted as eligible project costs. N.J.S.A. 34:1B-385, N.J.A.C. 19:31BB-1.2. If a parking garage includes more spaces than required by the applicable zoning ordinance, the additional spaces are not eligible. For example, if zoning requires 50 spaces for the cultural arts facility and the garage has 200 spaces total then only 25% of the garage costs would be considered eligible project costs. The entire cost of the parking garage would be included in the total project costs, but only 25% of the costs would be eligible project costs.

Ineligible Costs: While the Program rules define eligible project costs, they do not enumerate every expense that falls outside that scope. N.J.S.A. 34:1B-385, N.J.A.C. 19:31BB-1.2. It is not practicable to catalog every ineligible cost; however, the Authority has identified certain expenditures that, consistent with the Program's definition of eligible costs, are ineligible:

- Fundraising expenses (including but not limited to fundraising campaigns, events, and donor recognition items)
- Lease or rental costs associated with a temporary swing space
- Moving and storage expenses (except those directly necessary to relocate items from the CAFE project location to facilitate construction, and return those items upon completion)
- Utilities during construction (although costs for physical utility connections are allowed)
- Marketing (including Photography for marketing)
- Capital advisor fees
- Investment fees
- Lobbyist Fees
- Developer fees paid to the applicant themselves (developer fees paid to independent third parties overseeing the project may be eligible)
- NJEDA fees
- CPA fees to prepare the Cost Certification

Note that soft costs may also be deemed ineligible if they reflect greater than 20% of the project costs.

Sources of Funding and Award Size

Policy Clarification: Stacking with Funding Sources from Entities Other than NJEDA: Public sector subsidies from other governmental or quasi-governmental entities (federal, state, county, municipal, or other authorities that are not NJEDA) are not deducted from the CAFE eligible cost when determining the award size. However, applicants must still disclose all current and pending public subsidies, as required by the Program rules. N.J.A.C. 19:31BB-1.4. This information is needed to provide a complete picture of the project's overall financing and capital structure.

Policy Clarification: Stacking and Other NJEDA Subsidies: The Authority's practice is to not subsidize more than 100% of eligible project costs. Therefore, when a project receives or applies simultaneously to receive financial support from another NJEDA program, including, but not limited

to: Aspire, Historic Tax Credits, other NJEDA financial assistance, those NJEDA subsidies are deducted from the CAFE eligible costs prior to sizing the CAFE award.

Policy Clarification: Reasonable and Appropriate Return on Investment: The Authority is required to conduct a **project financing gap** evaluation than considers the project's reasonable and appropriate return on investment. N.J.A.C. 19:31BB-1.3(a)12. When projects "stack" multiple NJEDA programs, the Authority uses most conservative maximum rate of return between EDA programs when determining the project financing gap and sizing the award.

Policy Clarification: Fundraising: Documentation for each funding source for the cultural arts institution project is required. For projects that anticipate fundraising, a credible fundraising plan, which is dated no more than 90 days prior to application, is required at application. N.J.A.C. 19:31BB-1.4.

In addition, the CAFE Program includes a post-approval requirement that within one year of Board Approval, Applicants submit documentation of executed financing commitments and capital raised. The Authority will accept documentation of fundraising pledges to satisfy this requirement. N.J.S.A. 34:1B-390, N.J.A.C. 19:31BB-1.8. Satisfaction of all post approval conditions, including financing commitments, must be provided within one year. If this documentation is not provided, per N.J.A.C. 19:31BB-1.8(a)2, the Authority's approval of the tax credits shall expire, unless extenuating circumstances exist, or the Authority determines otherwise in its sole discretion.

Policy Clarification: Supporting documentation is required for the Authority to validate the **project cost assumptions** including detailed project budgets, invoices for soft costs previously incurred, cost estimates provided by prospective general contractors, and any other available 3rd party cost estimates.

Policy Clarification: Requirements for Projects which include federal historic preservation tax credits and/or NJ Historic Property Reinvestment Program (HPRP) (state historic tax credits) as a funding source. If federal historic preservation tax credits and/or state New Jersey state historic tax credits (Historic Property Reinvestment Program) are included as a funding source in the CAFE application, the Applicant must provide proof that they have applied and have a reasonable expectation to receive the tax credit.

- For HPRP, Applicants must provide the NJEDA" CAPP number" for the submitted application, or an Approval letter from NJEDA.
- For Federal Historic Preservation Tax Credits, Applicant must provide: Page 1 of the National Park Service (NPS) Form 10-16a, and the required Part 1 or Part 2 approval (as described below)
    - The determination of whether a Part 1 approval or Part 2 approval is required for the CAFE application is dependent on the content of Part 1 approval. When a project is applying for Federal Historic Tax Credits, they must submit a Part 1 unless the building is already listed in the National Register and the listing is for an individual (single) building. For CAFE, buildings that are listed individually would need an approved Part

2, but buildings that are either not yet listed, or listed as part of a district or a multi structure/building nomination would meet the requirement with an approved Part 1.

Monetizing the CAFE Tax Credit

Policy Clarification: Documentation for Monetization: The Authority's practice is to require the Applicant to provide documentation demonstrating how the Applicant will monetize the tax credits (i.e. use or sell the tax credits). If the project financing plan involves selling tax credits to bring cash into the project to cover development costs, the applicant must provide letters of interest and/or term sheets that are signed, dated, and contain specific terms of the transaction (e.g., the quantity of tax credits the buyer intends to purchase and the price, the valuation of the tax credits, and/or terms for loans (dollar amount, loan terms, interest/discount rates and fees), etc.) and an explanation of the proposed transaction.

While legislation (P.L.2025, c.113 and P.L.2025, c.81 amend N.J.S.A. 52:18A-263) provides for the Division of Taxation to purchase CAFE tax credits, the funding to purchase the tax credits is subject to appropriation. Therefore, Applicants must present their own plans in the event an appropriation is not made. Taxation's purchase is not a present value lump sum payment; Applicants need to provide details on how they will manage bridge financing until, subject to appropriation, any Taxation purchase is completed.

N.J.A.C. 19:31BB-1.3(a)2, N.J.A.C. 19:31BB-1.4(a)13, and N.J.A.C. 19:31BB-1.4(a)26.

Charitable Registration

Policy Clarification: Documentation of Non-Profit Status: It is the Authority's practice to require all non-profit applicants to submit proof of their nonprofit status to verity that the applicant satisfies the definition of "cultural arts institution". For non-profit applications that include fundraising as a source of funding for the CAFE project, it is the Authority's practice to require the Applicant to submit a verification letter documenting the applicant is compliant with the New Jersey Charitable Registration requirements. The New Jersey Charitable Registration verification letter also satisfies the requirement for proof of nonprofit status. If an Applicant that includes fundraising as a source of funding for the CAFE project is exempt from the requirement to register under the Charitable Registration and Investigation Act, the Applicant must provide a written explanation and proof of the exemption.

For Applicants subject to the requirement to provide the NJ Charitable Registration verification letter, if the Applicant is unable to provide the charitable registration verification letter due to no fault of their own, such as a delay from the Division of Consumer Affairs then the applicant must confirm that they have requested the letter from Division of Consumer Affairs, Office of Consumer Protection, Charities Registration and provide a screenshot verifying their status as compliant until the letter can be obtained. The charitable registration verification letter must be submitted prior to Board Approval.

For nonprofit Applicants that are exempt from the New Jersey Charitable Registration requirement, in lieu of providing their New Jersey Charitable Registration verification letter, the Applicant may provide

an IRS letter confirming the applicant's non-profit status https://www.irs.gov/charities-non-profits/exempt-organizations-affirmation-letters, or other documentation acceptable to the Authority.

If an Applicant is unable to provide the IRS letter due to no fault of their own, such as a delay from the IRS, then the Applicant must confirm that they have requested the letter from the IRS and provide a screenshot verifying their status until the letter can be obtained. The IRS letter must be submitted prior to Board approval.