

SPECIAL ADOPTION

OTHER AGENCIES

(a)

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY
TREASURY - GENERAL
OFFICE OF THE TREASURER
Authority Assistance Programs
Economic Redevelopment and Growth Program
Special Adopted and Concurrent Proposed New
Rules: N.J.A.C. 19:31-4**

Special New Rules Adopted and Concurrent Proposed New Rules

Authorized: May 3, 2011 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer, and Andrew P. Sidamon-Eristoff, State Treasurer.

Filed: May 3, 2011 as R.2011 d.152.

Authority: P.L. 2009, c. 90.

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

Concurrent Proposal Number: PRN 2011-131.

Effective Date: May 3, 2011.

Expiration Date: May 3, 2012.

Submit written comments by August 5, 2011 to:

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In accordance with P.L. 2009, c. 90 (N.J.S.A. 52:27D-489a through o), as amended by P.L. 2010, c. 10, the New Jersey Economic Development Authority, along with the Department of the Treasury, has adopted the following new rules for applicants seeking State incentive grants under the Economic Redevelopment and Growth (ERG) Program, established pursuant to the New Jersey Economic Stimulus Act of 2009, P.L. 2009, c. 90 (N.J.S.A. 52:27D-489a through o), which became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4).

Concurrently, the provisions of these 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. The adopted new rules will become effective 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 the 12-month expiration date, in accordance with P.L. 2009, c. 90.

The agency special adoption and concurrent proposal follows:

Summary

The New Jersey Economic Development Authority (“EDA” or “Authority”) and Department of Treasury (“Treasury”) adopted guidelines as authorized by the statute and are now promulgating rules to implement the Economic Redevelopment and Growth (ERG) Program, established pursuant to the New Jersey Economic Stimulus Act of 2009, P.L. 2009, c. 90 (Act) and amended by P.L. 2010, c. 10, to provide State incentive reimbursement grants to developers to address project financing gaps by reimbursing a portion of new State incremental taxes derived from a project’s development. As provided for in the Act, local incentive grants are administered by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs and, as such, are not the subject of this special adoption. The following summarizes the contents of each section of the adopted new rules:

N.J.A.C. 19:31-4.1 Applicability and scope

This section addresses the statutory authority for the Economic Redevelopment and Growth (ERG) Program and summarizes the scope and purpose of the program pursuant to P.L. 2009, c. 90, as amended.

N.J.A.C. 19:31-4.2 Definitions

This section defines certain terms used in this subchapter, incorporates terms defined in the Act pertaining to the program, clarifies statutory terms and provides additional terms included in the implementation of the program. The rules clarify the definition of the term “retained job” which is understood in the industry to mean a job that is at-risk of being lost to another state or country. While the agencies do not believe the term is confusing or unclear in its general understanding and application by the agencies, this definition is being added to the rules to further clarify its meaning. This meaning is consistent with the administrative practice of the agencies since the initial implementation of the ERG program.

N.J.A.C. 19:31-4.3 Eligibility criteria

This section outlines the criteria for eligibility for any State incentive grant. The section specifies the limited circumstances under which projects where construction has begun will be eligible.

N.J.A.C. 19:31-4.4 Application submission requirements for State incentive grants

This section establishes the required information and procedures for submitting an application to the Authority for a State incentive grant.

N.J.A.C. 19:31-4.5 Financing gap and fiscal impact analysis

This section outlines the reviews which the Authority, in consultation with the Treasurer, shall conduct to evaluate and validate the project financing gap and net economic benefits for each proposed State incentive grant. The section specifies how costs will be determined for projects that involve acquisition and rehabilitation and for projects for which construction has begun. In order to ensure that the award of a grant will spur economic development, the calculation of project costs will include certain previously made expenditures only if a significant amount of investment will be undertaken in the future.

N.J.A.C. 19:31-4.6 Approval of application for State incentive grant

This section establishes the factors by which the Authority and Treasurer shall approve applications for State incentive grants.

N.J.A.C. 19:31-4.7 State incentive grant agreement

This section establishes the requirements for the Authority and the Treasurer to enter into a State redevelopment incentive grant agreement with a developer and the allowable amount and terms and conditions of State redevelopment incentive grant agreements, as determined by the Authority.

N.J.A.C. 19:31-4.8 Incremental revenue sources

This section lists the taxes which may be reimbursed to the developer as part of a State redevelopment incentive grant agreement pursuant to P.L. 2009, c. 90.

N.J.A.C. 19:31-4.9 Pledge and assignment of grant amount

This section authorizes a developer, upon notice to and consent by the Authority and Treasurer in the case of a State incentive grant, to assign and pledge its incentive grants, upon filing with the Authority or the municipality, as appropriate.

N.J.A.C. 19:31-4.10 Affirmative action and prevailing wage

This section addresses the application of the Authority’s affirmative action and prevailing wage requirements.

N.J.A.C. 19:31-4.11 Severability

This section states that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the

remaining portions of the subchapter are severable and shall not be affected by that determination.

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

Social Impact

The new rules implement the Economic Redevelopment and Growth (ERG) Program, a powerful incentive that was established to help municipalities targeted for growth improve their main street, business district or downtown area through comprehensive redevelopment. In providing reimbursement incentive grants so developers can utilize new State and local incremental taxes generated from a project to fund the gap in the total project costs for which they cannot find other financing, the ERG Program may provide the difference to advance major redevelopment projects in critical areas in New Jersey, including Planning Area 1 (Metropolitan), Planning Area 2 (Suburban) or center designated under the State Development and Redevelopment Plan; a transit village; or, Federally owned land approved for closure by the Federal Base Realignment Closing Commission. As a result, the proposed new rules are intended to have a positive social impact throughout the State.

Economic Impact

The ERG Program provides State incentive reimbursement grants to developers to address project financing gaps by reimbursement of a portion of new State incremental taxes derived from a project's development. Under the program, the EDA, in conjunction with the Department of the Treasury, is required to undertake rigorous due diligence to determine the redevelopment project costs, evaluate and validate the project financing gap estimated by the developer, and ascertain whether the overall public assistance provided to the project will result in net positive economic benefits to the State. Since inception of the ERG Program, 11 projects have been approved for over \$354 million based on total project costs of \$1.8 million, which is expected to lead to the creation of 9,180 new jobs and 7,245 construction jobs. The EDA has previously adopted application, commitment, and closing fees, as to pledge and assign a State incentive grant amount under the ERG Grant Program pursuant to N.J.A.C. 19:30-6.1 through 6.4. In addition, the proposed new rules establish a fee of \$5,000 annually to be paid to the Division of Taxation, along with all other administrative costs assessed, pursuant to N.J.A.C. 19:31-4.7(c). The EDA and Treasury believe the fees are commensurate with the considerable level of State incentive reimbursement grants and necessary to cover the extensive administrative costs for the review of proposed redevelopment projects, fiscal impact analyses, and pledge and assignment of grants. In addition, the fees have been benchmarked against other State programs of similar purpose and structure which, in many instances, are higher and without caps. Finally, the proposed new rules will impose additional reporting, recordkeeping or compliance requirements, mainly through the submittal of satisfactory evidence of actual project costs, as certified by a certified public accountant pursuant to N.J.A.C. 19:31-4.7(b)7 and annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the projects financial performance against established milestones pursuant to N.J.A.C. 19:31-4.7(b)1, both of which may require a professional services contract, the cost of which will vary Statewide and be based on complexity of the submission.

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 new rules will result in retaining existing private sector jobs and stimulating the creation of new private sector jobs, as well as supporting job growth in the construction industry. Of the projects approved to date under the ERG Program, estimated construction jobs total 7,245 jobs and estimated permanent jobs total 9,180.

Agriculture Industry Impact

The new rules will have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The new rules do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the Economic Redevelopment and Growth Program provides State incentive reimbursement grants to developers of major redevelopment projects, which are invariably large and medium sized businesses. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The new rules may achieve smart growth and implement the State Development and Redevelopment Plan where assistance is provided to developers in urban and older suburban areas.

Housing Affordability Impact Analysis

The new rules may increase an indeterminate amount of housing units, including multi-family rental housing and for sale housing in the State, in mixed-use projects including residential space. For projects consisting of newly-constructed residential units, the developer shall be required pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9) to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, with affordability controls as required by the Council on Affordable Housing. The number of housing units, as well as any increase or decrease in the average cost of housing affected by the new rules may not be estimated, because the actual development which may be eligible is not known.

Smart Growth Development Impact Analysis

The new rules are intended to advance redevelopment projects including commercial, retail and residential components, which may be located in Planning Areas 1 or 2 or designated centers of the State Development and Redevelopment Plan. The number of housing units, as well as any increase or decrease in the average cost of housing affected by the new rules, may not be estimated, because the actual development which may be eligible is not known.

Full text of the special adopted and concurrent new rules follows:

SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

19:31-4.1 Applicability and scope

(a) The EDA and the State Treasurer may enter into a redevelopment incentive grant agreement with a developer for any qualifying redevelopment project located in an economic redevelopment and growth grant incentive area, except an area that qualifies solely by virtue of being a transit village. Up to 75 percent of the incremental increase in approved State revenues that are directly realized from businesses operating on the redevelopment project premises may be paid to the developer in the form of a grant derived from the realized revenues. The term of each approved State redevelopment incentive grant agreement may extend for up to 20 years; however, except for a redevelopment incentive grant agreement with a municipal redeveloper, the combined amount of reimbursements from State and local grants cannot exceed 20 percent of the eligible cost of the project; and, a developer seeking an incentive grant is required to make an equity participation for at least 20 percent of the project's eligible cost.

(b) The Authority will conduct a fiscal analysis to determine redevelopment project costs, evaluate and validate the project financing gap estimated by the developer and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net positive economic benefit to the State where each proposed project is located. The State Treasurer will approve or disapprove such analysis.

(c) In order to ensure compliance with the "Appropriations clause" of the New Jersey State Constitution (N.J. Const. Art. VIII, Sect. II, para.2), this subchapter provides that payments under State incentive grant agreements are subject to annual appropriations and availability of funds.

(d) Upon notice to and consent by the EDA and the State Treasurer, a redevelopment incentive grant agreement may be pledged and assigned by a developer.

19:31-4.2 Definitions

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

“Ancillary infrastructure project” means public structures or improvements that are located in the public right-of-way outside the project area of a redevelopment project, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable without such improvements.

“Applicant” means a developer proposing to enter into a redevelopment incentive grant agreement.

“Authority” means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Cash on cash yield” means total revenues less operating expenses divided by eligible project costs.

“Developer” means any person who enters or proposes to enter into a redevelopment incentive grant agreement pursuant to the provisions of section 9 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489i and k).

“Developer contributed capital” means equity.

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

“Eligible project costs” means total costs incurred until the issuance of a permanent certificate of occupancy for a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including leaseholds discounted to present value, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, and any environmental remediation costs, plus soft costs and capitalized interest paid to third parties, ancillary infrastructure projects and infrastructure improvements in the public right-of-way unless funded by the municipality, and excluding any costs for which the project has received State grant funding.

“Eligible revenue” means any of the incremental revenues set forth in section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f).

“Equity” means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall equal 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.

“Fiscal impact analysis” means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project’s net positive economic benefit equals at least 110 percent of the amount of grant assistance. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: new and retained jobs, amount of capital investment, type of project, occupancy characteristics and location; and by using this information, shall generate an estimate of direct and indirect economic output, as deemed reasonable by the Authority, and projected eligible revenues. This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

“Incentive grant” means reimbursement of all or a portion of the project financing gap of a redevelopment project.

“Infrastructure improvements in the public right-of-way” mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bicycle-oriented and mass transit improvements; and public utilities such as water, sewer, electric and gas.

“Internal rate of return” means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

“Local incentive grant” means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

“Municipal redeveloper” means a municipal government or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3) that is an applicant for a redevelopment incentive grant agreement.

“Net profit margin” means net income as a percentage of project sales value.

“Project area” or “redevelopment project area” means land or lands under common ownership or control which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq. or as otherwise established by a municipality.

“Project financing gap” means the part of the eligible project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity which shall not be less than 20 percent of the eligible project cost, 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. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.5(a)4, including, but not limited to, return on investment, net profit margin and cash on cash yield will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years.

“Qualifying economic redevelopment and growth grant incentive area” or “incentive area” means Planning Area I (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the State Planning Commission; a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.); a transit village; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission action.

“Redevelopment incentive grant agreement” means an agreement between the State Treasurer, the Authority and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area.

“Redevelopment project” or “project” means a specific work or improvement, including lands, buildings, improvements, 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, undertaken by a developer within a project area and any ancillary infrastructure project associated therewith.

“Retained job” means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business’s chief executive officer, is at risk of being lost to another state or country.

“Revenue increment base” means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

“Soft costs” means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment

with a useful life of less than five years, provided they do not exceed 20 percent of eligible project costs.

“Transit village” means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and designated by the New Jersey Department of Transportation as a transit village.

19:31-4.3 Eligibility criteria

(a) The Authority, in consultation with the Treasurer for a State grant, shall conduct a review to determine eligibility for any State or local incentive grant, wherein the following must apply:

1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;

2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.

i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or

ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.5(a)2;

3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;

4. A project financing gap exists; and

5. Pursuant to a fiscal impact analysis, for a State grant, the overall public assistance provided to the project will result in net benefits to the State.

19:31-4.4 Application submission requirements for State incentive grants

(a) A developer that submits an application to the Authority for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

(b) A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1. The name of the business;
2. The contact information of the business;
3. Prospective future address of the business (if different);
4. The type of the business;
5. Principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. An anticipated construction schedule;
9. Estimated eligible project costs, including any State or local grant funding to the project, and proposed terms of financing, including

projected internal rate of return, net margin, return on investment and cash on cash yield;

10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;

11. For certain projects consisting of newly-constructed residential units, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(c);

12. Estimated costs to the municipality resulting from the project;

13. Certification that the business applying for the program is not in default with any other program administered by the State of New Jersey;

14. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

15. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;

16. A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), that the applicant 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. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

17. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated upon the local tax map;

18. A list and status of all required State and Federal government permits that have been issued for the redevelopment project, or will be required to be issued pending resolution of financing issues, as well as of all local planning and zoning board approvals, that are required for the redevelopment project;

19. A description of how the project addresses the factors contained in N.J.A.C. 19:31-4.6(b);

20. A description of how the green building standards set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), are to be incorporated into the proposed 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, as listed on the EDA website at www.njeda.com;

21. A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project is located; and

22. Any other necessary and relevant information as determined by the applicant or the Authority for a specific application.

19:31-4.5 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed redevelopment project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at www.njeda.com for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances;

2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 50 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a redevelopment project pursuant to the requirements of N.J.A.C. 19:31-4.3(a)2i, a developer's future expenditures will have to be at least 50 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the eligible project costs;

3. For large, multi-phased projects that are built sequentially over time, the EDA shall only evaluate and validate the project financing gap on phases of the project with funding commitments; and

4. The financing gap analysis shall include, but not be limited to, an evaluation of the eligible project costs, proposed rental rates, vacancy rates, internal rate of return, net profit margin, return on investment and cash on cash yield in comparison to market ranges for such items, as noticed on the EDA website at www.njeda.com or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(b) The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed redevelopment project will result in net positive economic benefits to the State for a period equal to 75 percent of the useful life of the project not to exceed 20 years.

(c) In determining whether the project meets the net positive economic benefits analysis, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the developer, taxes paid directly or generated indirectly by new or retained jobs, and peripheral economic growth caused by the project, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) For the calculation of new revenues in predominantly retail projects in the net positive economic benefits analysis, the following weighting criteria shall be used:

1. When a project is proximate to a neighboring state jurisdiction (that is, Pennsylvania, Delaware, New York) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

2. When a project is a destination entertainment and retail facility (that is, a project which contains unique retail establishments, entertainment and/or sports venues) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

3. For projects which are significantly retail in nature, but do not meet either (d)1 or 2 above:

i. Ongoing State sales tax revenue will be calculated at 0 percent value;

ii. One-time construction related taxes will be calculated at 100 percent value; and

iii. Ongoing other tax revenues, for example, corporation business taxes and gross income taxes, will be calculated at 66 percent value.

(e) The State Treasurer will approve or disapprove the redevelopment project costs, the financing gap, and the net positive economic benefits.

19:31-4.6 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may approve an application only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

(b) In deciding whether or not to recommend entering into a redevelopment incentive agreement, the Chief Executive Officer shall consider the following factors prior to approval:

1. The economic feasibility of the redevelopment project;

2. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;

3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies;

4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project

costs incurred as provided in the redevelopment incentive grant agreement;

5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project; and

7. The degree to which the redevelopment project enhances and promotes job creation and economic development.

(c) The decision whether or not to approve an application and enter into a redevelopment incentive grant is solely within the discretion of the Authority and the State Treasurer, provided they both agree to enter into an agreement.

(d) Except for a local redevelopment incentive grant agreement with a municipal redeveloper, in no event shall the combined amount of the reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the eligible cost of the project.

19:31-4.7 State incentive grant agreement

(a) Upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

(b) The Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. The maximum percentage reimbursement amount, the maximum aggregate dollar amount of the incentive grant to be awarded the developer, the maximum annual percentage of reimbursement, the particular tax or taxes to be utilized from those listed in N.J.A.C. 19:31-4.8(a), the order in which multiple taxes will be applied to determine the incentive grant amount, and, for a project receiving an incentive grant in excess of \$50 million, the amount of the negotiated repayment to the State which shall be up to the amount of the maximum aggregate dollar amount of the reimbursement. If the actual project costs are less than the project costs set forth in the application, the percentage reimbursement amount will be based on the actual project costs. For the purposes of determining the amount and timing of any repayment due for projects receiving an incentive grant in excess of \$50 million, the Authority shall consider such factors as the financial structure of the project, risk of the project, developer returns, magnitude of State support, as well as the returns of various types of revenue generating projects, that is, retail, commercial and/or hotel. If the project does not produce the anticipated amount of incremental taxes in a given year, the developer shall only receive the approved percentage of actual tax revenue created;

2. All payments shall be made annually and subject to annual appropriation and availability of funds;

3. The annual percentage amount of reimbursement which shall not exceed 75 percent of the annual incremental State revenues;

4. Representations that the developer is in good standing, that the project complies with all applicable law, and specifically, that the project will comply 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 the project does not and will not violate any environmental law;

5. The frequency of payments and length of time, which shall not exceed 20 years, during which that reimbursement shall be granted;

6. The requirement that the developer submit, prior to the first disbursement of funds under the agreement, satisfactory evidence of

actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, and, if applicable, evidence that the municipality is in substantial compliance with the requirements under N.J.A.C. 19:31-4.3(a)3;

7. Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance against established milestones for calculating any necessary repayments pursuant to (b)1 above;

8. Representations that the developer will comply with the green building standards pursuant to N.J.A.C. 19:31-4.4(b)20;

9. To the extent the taxes of such businesses are to be reimbursed, covenant that the developer will notify all businesses operating on the redevelopment project premises that certain incremental taxes are to be reimbursed under the agreement. The developer shall also covenant that the developer shall obtain information about such businesses as is necessary for the State to ascertain the incremental tax revenue. Such information may include, but not be limited to, name, address, taxpayer identification number, change in business ownership and any other information that may be required by the State. The developer shall also acknowledge that the State will not provide to the developer information about individual taxes paid by businesses located at the redevelopment project;

10. Acknowledgement that if the developer has entered into a Brownfield Reimbursement Agreement for the redevelopment project premises, to the extent that the same eligible revenues are identified in both the Brownfields Reimbursement Agreement and the incentive grant, then the incentive grant will not commence until the reimbursement has terminated or otherwise as subject to review of the Division of Taxation;

11. Indemnification and insurance requirements;

12. Events, if any, that would trigger forfeiture of the grant;

13. Default and remedies; and

14. Reporting requirements, as required pursuant to section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f), and other reporting requirements that may be required by law or agreement, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.).

(c) Agreement that a fee of \$5,000 annually will be paid to the Division of Taxation and all other administrative costs associated with the incentive grant shall be assessed to the developer and retained by the State Treasurer from the annual incentive grant payments.

19:31-4.8 Incremental revenue sources

(a) In accordance with a State redevelopment incentive grant agreement, up to 75 percent of the projected annual incremental revenues directly realized from businesses operating on the redevelopment project premises may be paid to the developer from the following taxes:

1. The Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.);

2. The tax imposed on marine insurance companies pursuant to N.J.S.A. 54:16-1 et seq.;

3. The tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (N.J.S.A. 54:18A-1 et seq.);

4. The public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L. 1940, c. 5 (N.J.S.A. 54:30A-49 et seq.);

5. The tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;

6. The tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.);

7. The tax imposed pursuant to P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project. For the purpose of computing the

sales and use tax on the purchase of materials used for remediation, construction of new structures or the construction of new residences at the site of the project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors and other parties connected with the project, that the tax equals one percent of the developer's contract price for such remediation or construction or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation or construction;

8. The hotel and motel occupancy fee imposed pursuant to section 1 of P.L. 2003, c. 114 (N.J.S.A. 54:32D-1); or

9. The portion of the fee imposed pursuant to section 3 of P.L. 1968, c. 49 (N.J.S.A. 46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" ("New Jersey Affordable Housing Trust Fund") pursuant to section 4 of P.L. 1968, c. 49 (N.J.S.A. 46:15-8).

(b) The Director of the Division of Taxation may retain up to 20 percent of certain State incremental tax revenues, such as the corporate business tax and sales and use tax, for adjustment as necessary which shall be returned to the developer after such time as the statute of limitations has expired for the specific tax withheld.

(c) Incremental revenue shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the State incentive grant agreement, less the revenue increment base for that eligible revenue.

19:31-4.9 Pledge and assignment of grant amount

A developer may, upon notice to and consent of the Authority and the State Treasurer, which consent shall not be unreasonably withheld, pledge and assign as security for any loan or bond, any or all of its right, title and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the records of the Authority. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the Authority.

19:31-4.10 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply only to State incentive grant projects undertaken in connection with financial assistance received under the Economic Redevelopment and Growth Program.

19:31-4.11 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.