September 20, 2022

NJ Economic Development Authority to Offer $300 Million in Tax Credits for Brownfields Redevelopment

Developers and property owners with redevelopment or site remediation experience or challenges should consider the opportunities afforded by the New Jersey Economic Development Authority's (EDA) new Brownfields Redevelopment Incentive Program, created under the NJ Economic Recovery Act of 2020 (the Act). The program will award $300 million in tax credits over the next six years. Developers selected following a competitive application process will receive tax credits worth up to 50 percent of the cost of remediating a brownfield site, up to a maximum of $4 million. The award could rise to 60 percent of the remediation costs, up to a maximum of $8 million, if the brownfield site is located in a "qualified incentive tract" or a "government-restricted municipality" as those terms are defined in the Act.

Selected developers will enter into a redevelopment agreement with EDA and receive tax credits following the remediation of a brownfield site. For this program, "brownfield site" means any former or current industrial or commercial 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 redevelopment agreement may specify that the project is only for remediation activities at the site or for redevelopment on the site post-remediation. In any event, tax credits are only awarded if the project concludes with the NJ Department of Environmental Protection (DEP) issuing an RAO-E or RAO-A for the site.

To apply, developers must show they are not responsible for the site contamination and are not successor entities of the responsible party. Importantly, remediation must *not* have commenced at the time of application (unless the applicant can show that they could not have reasonably known the extent of the contamination). Applicants must obtain a letter of support from the municipal governing body and demonstrate that without the tax credits, the project is not economically viable. The application must include a detailed breakdown of proposed remediation costs, which the DEP will review for reasonableness. Eligible remediation costs for which the tax credits may apply include required DEP site remediation program fees and other permit fees (except payments for any penalties or violations) but will not include the cost of site acquisition, financing, legal fees and EDA fees.

EDA staff will review and score applications. DEP staff will participate in this review. The scoring criteria will include consideration of the environmental history and impact of the contamination, the gravity of the physical threat posed by the site in its current condition, the positive impact that the proposed redevelopment would have on the surrounding community, developer credentials and economic feasibility, and environmental justice and climate resiliency.

The EDA Board will review the top-scoring applications and select the award recipients. Developers must complete the remediation within six years of the Board's approval. The Board will provide a letter of approval with conditions that must be satisfied within one year. The conditions will require the developer to provide documentation of site control (site access or lease agreement will suffice), executed financial commitments for the redevelopment, plans for satisfying environmental sustainability standards and site plan approval, if applicable.

The redevelopment agreement will require the developer to submit reports to EDA every six months following Board approval. The agreement will also impose prevailing wage requirements on construction work performed as part of the remediation and redevelopment, and on construction work at the site for two years following issuance of the tax credits, regardless of whether the work is done as part of the remediation or redevelopment. Finally, all "building services" at the site will be subject to prevailing wage requirements for 10 years following the conclusion of the redevelopment project.

Day Pitney offers clients extensive knowledge and experience in New Jersey redevelopment and environmental restoration. If you or someone you know could benefit from this new program, contact a member of Day Pitney's real estate and land use department today.

Authors



Katharine A. Coffey
Partner

Parsippany, NJ | (973) 966-8323

kcoffey@daypitney.com



Craig M. Gianetti
Partner

Parsippany, NJ | (973) 966-8053

cgianetti@daypitney.com



Thomas J. Malman
Partner

Parsippany, NJ | (973) 966-8179

tmalman@daypitney.com



Jennifer L. Solberg
Partner

Parsippany, NJ | (973) 966-8056

jsolberg@daypitney.com



Todd W. Terhune
Partner

Parsippany, NJ | (973) 966-8040

tterhune@daypitney.com



Peter J. Wolfson
Partner

Parsippany, NJ | (973) 966-8298

pwolfson@daypitney.com



Nicole M. Magdziak
Partner

Parsippany, NJ | (973) 966-8027

nmagdziak@daypitney.com