

SUMMARY OF THE REVISED “NJ ASPIRE” REDEVELOPMENT INCENTIVE PROGRAM

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Since its launch more than two years ago, the New Jersey Aspire tax credit incentive program (“NJ Aspire”) has not been the deal-closing fund that redevelopers have so desperately needed. Thus far, NJ Aspire, like the “ERG” program which preceded it, has been unable to close, or even substantially narrow, projected financing gaps on most potential redevelopment projects across the state’s urban centers.¹

This isn’t a new challenge; redevelopers have always struggled to make the numbers work on mixed-use and multifamily projects due to the unique added expenses of redevelopment that aren’t typically encountered on “greenfield” new construction projects—namely, land assemblage, environmental remediation, and structured parking costs. Adding to the challenge, incentives at the local level—specifically, long-term property tax exemptions (PILOTs), even when coupled with redevelopment area bond (RAB) sale proceeds—are not usually generous enough to make the numbers work. And now, with the rising cost of labor and materials and the rapid increase in interest rates, even proposed redevelopment projects in tested, primary NJ cities, such as Hoboken and Jersey City, are not penciling-out.

So, with redevelopers and their investors and lenders rarely willing to accept a subpar rate of return, many potential projects are sitting on drawing boards. Pencils-down, shovels-down.

Fortunately, legislation aimed at correcting significant flaws in the NJ Aspire program was approved by the State Legislature last week and signed into law by Gov. Murphy earlier today. The revisions include significant increases in the percentage of “project

¹ The notable exceptions under ERGG and NJ Aspire have been some high-rise projects, given the routine use of union labor for steel and concrete work on such towers (thereby, partially negating the significant added-cost of the prevailing wage requirements noted below), and projects that have been able to “stack” another public financial incentive program, such as Low Income Housing Tax Credits, and thereby spread-out the cost of prevailing wage and other incentive requirements over more tax credit dollars.

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costs” that may be eligible for tax credits as well as increases in the caps on tax credit awards to individual projects under the program, with the largest of these increases going to projects located in the three “government-restricted municipalities” (Paterson, Trenton, and Atlantic City).

Here’s our early take on the “new and improved” NJ Aspire program:

WHAT IS NJ ASPIRE? – “NJ Aspire” is a developer incentive program that is administered by the New Jersey Economic Development Authority (“NJEDA”). The program awards transferable, pledgeable state tax credits to the “developer” of a proposed “redevelopment project” having a financing gap that renders the project economically infeasible. The incentive is not meant to be a substitute for conventional debt financing or equity investments. In fact, developers typically must have their primary sources of funds in place before applying. Applications undergo a rigorous analysis by NJEDA of the sources and uses of funds, construction costs and projected revenues.

WHAT PROJECTS ARE ELIGIBLE? – A redevelopment project is eligible to apply for the award of NJ Aspire tax credits if:

- The project “is not economically feasible” without the incentive award;
- A “project financing gap” exists or NJEDA determines that the project “will generate a below market rate of return”;
- The project is located in a qualifying “incentive area” (except film studios, which can be located anywhere in the state); and
- Construction has not commenced at the project, except for demolition and site remediation activities. An already-begun, but stalled project may also be eligible if NJEDA determines that such project “would not be completed otherwise.”

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WHAT IS THE MAXIMUM AMOUNT OF TAX CREDITS PER PROJECT?

The maximum tax credit amount for a qualifying redevelopment project is:

- \$400,000,000 per redevelopment project or phase of a project for a “transformative project” ; or
- \$120,000,000 per redevelopment project or phase of a project that is located in a “government-restricted municipalities”; or
- \$90,000,000 per redevelopment project or phase of a project that is located in an “enhanced area”, a “qualified incentive tract”, or a municipality with a Municipal Revitalization Index distress score of at least 50; or for a residential project that is utilizing Low Income Housing Tax Credits (“LIHTC”); or
- \$60,000,000 for any other redevelopment project or phase of a project.

The tax credit amount is based on the documented project financing gap, not to exceed the applicable cap below:

- Up to 80% of eligible “total project costs” for a redevelopment project that is located in a “government-restricted municipality”; or
- Up to 60% of eligible total project costs for a redevelopment project that is located in an “enhanced area”, a “qualified incentive tract”, or a municipality with a Municipal Revitalization Index distress score of at least 50; or for a residential project that is also utilizing LIHTC; or
- Up to 50% of eligible total project costs for any other redevelopment project.

Tax credits are paid out over a number of years, not to exceed 15 years in the case of commercial projects or 10 years in the case of residential projects.

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WHAT ARE THE KEY PROGRAM REQUIREMENTS?

➤ Additional program details/requirements for all projects:

- All Aspire applications must be submitted prior to March 1, 2029;
- Applications will be considered based on the order in which they are deemed complete (available funds are limited in each year of the program);
- The developer must contribute equity (“**developer contributed capital**”) equal to at least 20 percent of the total project cost (at least 10% of the total project cost for a project located in a government-restricted municipality);
- The developer must comply in most cases with “**minimum environmental and sustainability standards**”, and affirmative action/prevaling wage requirements regarding construction work and “**building services**”. Certain projects may also be subject to a “**labor harmony agreement**”;
- The developer of any project having a total project cost equal to or in excess of \$10 Million must enter into a community benefits agreement (except for certain residential projects in government-restricted municipalities);
- Project must be completed, and certificate of occupancy must be issued, within 4 years after incentive grant agreement is executed (or longer in the case of certain larger projects permitted to be constructed in phases);
- At the end of the 7th year after the project has been placed in service, NJEDA will determine whether the *actual* project financing gap is smaller than the *projected* gap determined at NJEDA board approval; NJEDA will also evaluate the developer's *actual* cash flow and compare that cash flow to the *projected* cash flow at the time of board approval:
 - If the actual project financing gap is smaller than the projected gap, NJEDA will **reduce** the amount of the tax credit amount on a pro rata basis.
 - If no actual project financing gap is found, the entire tax credit amount must be **forfeited**.

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- If the actual cash flow on a “[commercial project](#)” exceeds the projected cash flow at the time of board approval by more than 15%, the NJEDA will require the developer to **reimburse** the State for up to 20% of the amount of the excess.
 - If the actual cash flow on a “[residential project](#)” exceeds the projected cash flow at the time of board approval, the developer's return on investment will be **subject to any restrictions on rates of return** set by the New Jersey Housing & Mortgage Finance Agency (“NJHMFA”) from time to time for housing projects assisted with a loan from NJHMFA.

- **Additional program details/requirements for residential projects and commercial projects comprised solely of a “[health care or health services center](#)”**:

- Project must have a total project cost of at least:
 - \$17,500,000 if located in a municipality with a population *greater* than 200,000 (including Newark or Jersey City).
 - \$10,000,000 if located in a municipality with a population *less* than 200,000.
 - \$5,000,000 if located in a qualified incentive tract or government-restricted municipality (regardless of population).

- Residential projects and health care or health services centers are exempt from calculation of the net benefit test described below.

- **Additional program details/requirements for residential projects only**:

- If project consists of newly-constructed residential units, developer must reserve at least 20% of the units for low- and moderate-income households with affordability controls as adopted by NJEDA and in consultation with HMFA (with relaxed standards for projects also receiving federal or state historic rehabilitation tax credits).

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➤ **Additional program details/requirements for commercial projects only:**

- Developer must obtain a letter “evidencing support” for the project from the governing body of the host municipality;
- Net benefit test: NJEDA will “conduct a fiscal impact analysis to ensure that the overall public assistance provided to the project will result in a net positive benefit to the State...equaling an amount determined by the authority through regulation that exceeds the requested tax credit amount”. (NOTE: Such excess amount may be up to 35% lower than the net benefit requirement set by NJEDA for all other commercial projects for: a commercial project in a “government-restricted municipality”; certain “incubator” facilities devoted to research or technology; certain conferencing facilities for institutions of higher education or non-profit organizations; a predominantly commercial project receiving federal or state historic rehabilitation tax credits; a commercial project that is located on land owned by the federal government on or before December 31, 2005; certain projects that are undertaken by a major cultural institution.)

➤ **Additional program requirements for transformative projects only:**

- Eligibility requirements:
 - project cost of at least \$150M
 - square footage of at least:
 - 200,000 SF if in a “government-restricted municipality”;
 - 250,000 SF if a film studio project (regardless of location);
 - 300,000 SF if in an “enhanced area”; or
 - 500,000 SF if in any other location.
- Minimum number of units requirement:
 - 200 units - if in a “government-restricted municipality”;
 - 300 units - if in an “enhanced area”;
 - 400 units - if a mixed-use project; or
 - 700 units - all other residential projects;
 - a mixed-use project must also include (in addition to the above required residential units) at least 50,000 SF of commercial space.

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- Not more than 50% of the project may be used for final point-of-sale retail;
- Criteria to be developed by NJEDA for this type of project will include consideration of “the extent to which the proposed transformative project would create modern facilities that enhance the State’s competitiveness in attracting targeted industries”;
- For a *commercial* transformative project, NJEDA must determine that the project is “of special economic importance”, and
- NJEDA will conduct a fiscal impact analysis to ensure that the overall public assistance provided to the project will result in a positive net benefit to the State as detailed above; however, a “predominantly residential” transformative project will be excluded from the calculation of the net benefit test.

KEY STATUTORY DEFINITIONS USED IN THIS SUMMARY:

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

"Commercial project" means a redevelopment project, which is predominantly commercial and, if located in a government-restricted municipality, contains 25,000 or more square feet, or if located in any other municipality, contains 50,000 or more square feet of office and retail space, industrial space, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, and may include a parking component. The term “commercial project” includes a redevelopment project comprised solely of a health care or health services center, which contains not less than 10,000 square feet devoted to health care or health services, and which may include a parking component.

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"Developer" means a person who enters or proposes to enter into an incentive award agreement pursuant to the provisions of section 60 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project. [EDITORIAL NOTE: Developer may include a lender that completes a project.]

"Developer contributed capital" See definition of "project financing gap" below.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, a SDA municipality, or a municipality in which a major rail station is located.

"Enhanced area" means (1) a municipality that contains an urban transit hub, as defined in section 2 of P.L.2007, c.346 (C.34:1B-208); (2) the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and (3) the three municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Health care or health services center" means an establishment that consists of not less than 10,000 square feet devoted to health care or health services, where patients are admitted for or seek examination and treatment by one or more physicians, dentists,

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psychologists, or other medical practitioners, and which is located in a municipality with a Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract.

"Incentive area" means an aviation district; a port district; an area designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation; an area designated as a brownfield site pursuant to the "Brownfield and Contaminated Site Remediation Act," sections 23 through 43 and section 45 of P.L.1993, c.139 (C.58:10B-1 et seq.); and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs, as defined in this section and in accordance with the "Site Remediation Reform Act," sections 1 through 29 of P.L.2009, c.60 (C:58:10C-1 et seq.), in an amount not less than \$10,000,000, provided that any portion of the brownfield site is located in an area that otherwise qualifies as an incentive area.

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

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list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail establishment, hospitality establishment, or distribution center employees in the State.

"Low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Project cost" means the costs incurred in connection with a redevelopment project by a developer until the issuance of a permanent certificate of occupancy, or until such other time specified by the authority, for a specific investment or improvement, including the costs relating to lands, except the cost of acquiring such lands, buildings, improvements, real or personal property, or any interest therein, including leases 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, any environmental remediation costs, plus costs not directly related to construction, including capitalized interest paid to third parties, of an amount not to exceed 20 percent of the total costs and the cost of infrastructure improvements, including ancillary infrastructure projects. When 100 percent of the residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the term "project cost" shall also include the developer fees paid

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before acquiring permanent financing, as well as the deferred developer fees approved pursuant to the rules established by the agency. The fees associated with the application or administration of a grant under sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335) shall not constitute a project cost.

"Project financing gap" means the part of the total project cost, including **“reasonable and appropriate return on investment”**, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total 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 on a non-recourse basis; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer contributed capital shall not be less than 10 percent of the total project cost. Developer contributed capital may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the authority, as provided by regulations promulgated by the authority. Property value shall be valued at the lesser of: (i) the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or (ii) the value as determined by a current appraisal.”

"Qualified incentive tract" means (i) a population census tract having a poverty rate of 20 percent or more; or (ii) a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Reasonable and appropriate return on investment” means the discount rate at which the present value of the future cash flows of an investment equals the cost of the investment. In determining the “reasonable and appropriate return on investment,” an investment shall not include any federal, State, or local tax credits. For a residential project that utilizes federal low-income housing tax credits awarded by the agency, the “reasonable and appropriate return on investment” shall be based on the approval of deferred developer fees pursuant to the rules established by the agency. In the event that a residential project, which utilizes federal low-income housing tax credits awarded by the agency, generates returns on equity other than federal or local grants or proceeds from the sale of federal or local tax credits, the “reasonable and appropriate return on

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investment” shall be based on both the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment for the entire project, and when evaluating only the units financed with federal low-income housing tax credits awarded by the agency, the approval of deferred developer fees pursuant to the rules established by the agency.

"Redevelopment project" means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

"Residential project" means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component.

"Total project cost" means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement.

“Transformative project” means a redevelopment project: that has a project financing gap; that has a total project cost of at least \$150,000,000; that includes 200,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality, that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, that includes 300,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area, or that includes 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for any other project; and, for a commercial project, that is of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry, or other state priorities as determined by the authority pursuant to rules and regulations promulgated to implement this section. If the redevelopment project is located entirely on land designated by the Department of Environmental Protection as a brownfield development area pursuant to section 7 of P.L.2005, c.223 (C.58:10B-25.1), and the project cost of the redevelopment

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project includes at least \$15,000,000 in environmental remediation costs, the redevelopment project shall constitute a project of special economic importance. A transformative project may be completed in phases, which phases may be determined by the authority based on factors such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans. A "transformative project" shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail.

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