Sills Cummis & Gross P.C.

NJ Aspire 3.0: Third Time's the Charm

By Ted Zangari and Cecilia Lassiter | December 19, 2024

Redevelopers have always struggled to make the numbers work on their proposed projects due to the unique added expenses of redevelopment not typically encountered on "greenfield" new construction projects—costs of land assemblage, environmental remediation, and structured parking, to name a few. Project financing-gaps only widened during and following COVID, as inflation drove up the cost of labor and materials and the Federal Reserve launched a rapid series of interest rate hikes. Adding to the challenge, local incentives—specifically, long-term tax exemptions (PILOTs), even when coupled with redevelopment area bond (RAB) sale proceeds—have generally not been generous enough to make the numbers work. As a result, even proposed redevelopment projects in tested, primary New Jersey cities have not always penciled-out.

Enter the "NJ Aspire" ("Aspire"), a financial incentive program administered by the New Jersey Economic Development Authority ("NJEDA") that was designed to address project financing gaps through the awarding of transferable, pledgeable state tax credits to eligible proposed redevelopment projects. Unfortunately, since its launch in 2021, Aspire has not been the deal-closing fund that redevelopers have so desperately needed. The program has been inadequate for closing, or even meaningfully narrowing, financing gaps on most proposed redevelopment projects. Legislation enacted last year improved the program and slightly increased award amounts, but virtually none of the stuck projects were able to move forward.

Perhaps the third time is the charm…

Earlier today, both houses of the State Legislature gave final approval to a bill (S1323/A2076) that now awaits Governor Phil Murphy's signature. As we detail below, the revisions to Aspire contained in this legislation are likely to provide the deal-closing incentive necessary to spur equity investments and debt financings that have been hanging in the balance for months and years (as carrying costs and nonrefundable deposits have piled-up).

What's New with Aspire

Most importantly, the per project award amounts will be increased for certain municipalities known as "government-restricted municipalities" ("GRMs"). Three new GRMs – Camden, East Orange and New Brunswick – will join Atlantic City, Paterson, and Trenton.

The tax credit award for a qualifying redevelopment project is based on a percentage of eligible total project costs, not to exceed the documented project financing gap (including a reasonable and appropriate rate of

This Alert has been prepared by Sills Cummis & Gross P.C. for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice. Those seeking legal advice should contact a member of the Firm or legal counsel licensed in their state. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Confidential information should not be sent to Sills Cummis & Gross without first communicating directly with a member of the Firm about establishing an attorney-client relationship.

ATTORNEY ADVERTISING

Copyright © 2024 Sills Cummis & Gross P.C. All rights reserved.

return) or the caps referenced below, whichever is less. The new increased award amount per project will be as follows:

1. Up to 85% of eligible total project costs for a project located in an original GRM (i.e., Atlantic City, Paterson, or Trenton), or a "special mission non-profit project" (defined below);
2. Up to 80% of eligible total project costs for a project located in a new GRM (i.e., Camden, East Orange, or New Brunswick);
3. Up to 60% of eligible total project costs for a project located in an "enhanced area", "qualified incentive tract", municipality with a Municipal Revitalization Index ("MRI") distress score of at least 50, or for a residential project utilizing Low Income Housing Tax Credits (LIHTC); and
4. Up to 50% for any other qualifying redevelopment project.

The maximum tax credit award amount per qualifying redevelopment project remains unchanged:

1. $400,000,000 per project (irrespective of phases) for a "transformative project";
2. $120,000,000 per project, or per phase of a project, located in a GRM; or per "special mission non-profit project";
3. $90,000,000 per project, or per phase of a project, located in an "enhanced area", "qualified incentive tract", municipality with a MRI distress score of at least 50; or for a residential project utilizing LIHTC; and
4. $60,000,000 per project for any other qualifying redevelopment project or phase thereof.

The tax credits awarded to a project will continue to be paid out over 10 years. However, the pending legislation will shorten the pay-out period to 5 years for projects located in a GRM or "special mission non-profit project".

Other Key Changes to Aspire:

The legislation awaiting Governor Murphy's enactment also addresses:

- **Carry-Forward of Tax Credits:** Tax credit purchasers will now be able to carry forward their tax credits for up to 5 years.
- **Land Costs:** GRMs will now be permitted to include land costs in eligible project costs, up to 20% of eligible project costs.
- **Occupancy Requirements:** Residential projects will now be exempt from the 60% occupancy requirement. In the case of commercial projects, the 60% occupancy requirement will now start in year 4 of the eligibility period.
- **Proration of Tax Credits:** Tax credit awards will no longer be required to be prorated (note: this change will be retroactive to the beginning of the Aspire program).
- **"Special Mission Non-Profit Project":** This new project type is one that is located in a GRM or in an "enhanced area" that: "serves a special mission, as determined by the authority, to accomplish the public purpose of a non-profit that is a developer of or is affiliated with the project; and includes no more than 100 units of 100 percent supportive housing units for tenants requiring special needs or social services, which social services may include licensed social workers, and no more than 25,000 square feet of commercial space for the provision of on-site social service programs that require a license

from the Department of Children and Families as a licensed child care center. Special mission non- profit projects are exempt from the net benefit test, affordable housing requirements, the requirement to provide a market study as part of its application to the NJEDA and having to enter into a community benefit agreement with the municipality."

- **State Buyback of Tax Credits:** The Aspire tax credits are only usable against the Corporate Business Tax and insurance premium taxes. Should a project redeveloper be unable to use directly or sell its credits, the State Treasury will have the discretion to purchase such credits at a floor of 0.85 cents per dollar. (Note that many of the bills' sponsors will be introducing legislation early in the new year that would obligate the State Treasury to be the "buyer of last resort" for unutilized credits—a step that would provide the certainty and predictability that many equity investors and debt financiers give considerable weight (if not require) in the course of the underwriting process.)
- **Vintage Year Tax Credits:** Taxpayers applying a vintage year tax credit to that vintage year's return will no longer need to amend their tax return for that year.

What Projects Are Eligible?

Eligibility requirements for Aspire remained unchanged. A proposed redevelopment project qualifies if it meets the following criteria:

1. The project is not economically feasible without the incentive award;
2. The project either has a demonstrated financing gap or NJEDA determines that the project will generate a below market rate of return;
3. The project is located in a qualifying incentive area; and
4. The project is not yet under construction (excluding demolition and site remediation) or is a faltering or "stuck" project if NJEDA determines that it would not be completed otherwise.

What Are the Key Program Requirements?

Except as noted below in **bold**, the key program requirements remain unchanged:

1. All Aspire applications must be submitted prior to March 1, 2029 and will be considered by NJEDA based on the order in which they are deemed complete (note: there is a limited allocation per year).
2. The developer must contribute equity equal to at least 20% of the total project cost (10% if located in a GRM).
3. The project must have a total project cost of at least:
    a. $17,500,000 if located in Newark or Jersey City;
    b. $10,000,000 if located in a municipality with a population of less than 200,000;
    c. $5,000,000 if located in a qualified incentive tract or GRM; and
    d. Transformative projects – see point nine below.
4. If the project consists of newly-constructed residential units, the developer must reserve at least 20% of the units for low- and moderate-income households with affordability controls as required under the Fair Housing Act.

5. The developer must comply with minimum environmental and sustainability standards as well as affirmative action and prevailing wage requirements regarding construction work and building services. Certain projects may also be subject to a labor harmony agreement.
6. Developers of a project having total project costs at or above $10,000,000 must enter into a community benefits agreement (except for a 100% affordable housing project located in a GRM or a special mission non-profit project).
7. The project must be completed within four years after signing a commitment agreement with the NJEDA (eight years for a phased project).
8. Profit sharing with the state:
    a. **At project completion** and year 7 of the eligibility period, NJEDA will evaluate the developer's rate of return on investment. If the actual rate of return exceeds the reasonable and appropriate rate of return at the time of award approval by more than 15%, the developer must pay in escrow 20% of the amount in excess of reasonable and appropriate rate of return. **If the developer uses the State buyback then the 15% safe harbor is reduced to 10%.**
    b. After all tax credits have been paid out, if the actual rate of return exceeds the reasonable and appropriate rate of return at award approval by more than 15%, the developer must pay 20% of excess to the state (otherwise, the escrow will be released to the developer). **If the developer uses the State buyback, then the 15% safe harbor is reduced to 10%.**
9. Additional program requirements for "Transformative Projects" only:
    a. Total project costs of at least $150,000,000;
    b. Minimum square footages of 200,000 square feet if in a GRM; 300,000 square feet if in an "enhanced area"; or 500,000 square feet if in any other location.
    c. Minimum, number of new units:
        1. for a residential project, the construction of 700 or more new residential units;
        2. for a mixed-use residential project containing fewer than 700 new residential units:
            a. the construction of 200 or more new residential units if the project is located in a GRM, 300 or more new residential units if the project is located in an "enhanced area", or 400 or more new residential units for all other mixed-use projects; and
            b. **the construction of 30,000 square feet or more of commercial space, which commercial space may include retail space.**