# The NJ Aspire Act and Its Impact on Your Redevelopment Projects

Developers of multifamily and mixed-use redevelopment projects continue to struggle with unique added construction costs that are not commonplace in new or greenfield development. Long term tax exemptions and bond financing proceeds help but don't always close project financing gaps or result in a reasonable rate of return. This has been especially true in emerging municipalities where rental income does not match typical rental prices in established towns like Hoboken and Montclair, yet construction costs remain comparable.

Enter the newly enacted NJ Aspire Act (Aspire), a transferable/pledgeable state tax credit. This incentive is not meant to be a substitute for conventional debt financing or equity investments. In fact, developers should generally have their primary sources of funds in place before applying. Applications will undergo a rigorous analysis 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 tax credits from the NJ Economic Development Authority (NJEDA) if the project "is not economically feasible" without the incentive award; the 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; and construction has not commenced at the project, except for demolition and site remediation activities. (Note: A faltering project is exempt from this requirement if NJEDA determines that it "would not be completed otherwise.")

## What Is the Maximum Amount of Tax Credits Per Project?

According to the NJ Aspire Act, the maximum tax credit amount for a qualifying "predominantly residential" redevelopment project "intended for multi-family residency" and which "may include a parking component" is $32,000,000 (or $50,000,000 if located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50).

**Ted Zangari**

**Cecilia Lassiter**

**Ted Zangari** *is Chair of the Real Estate Department and Redevelopment Law Practice Group and* **Cecilia Lassiter** *is Co-Chair of the State & Local Incentive Practice Group at Sills Cummis & Gross, P.C., a full-service commercial law firm headquartered in Newark.*

The tax credit amount is based on the documented project financing gap, not to exceed 45 percent of the total project cost. For select "transformative" projects (described below), the maximum amount is the lesser of: (i) 30 percent of total project cost, (ii) the total value of the project financing gap, or (iii) $250,000,000. Tax credits are paid out over a number of years, not to exceed 10 years for predominantly residential projects.

## What Are the Key Program Requirements?

All Aspire applications must be submitted prior to March 1, 2027. 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 equal to at least 20 percent of the total project cost. The project must have a total project cost of at least $17,500,000 if located in Newark or Jersey City; $10,000,000 if located in a municipality with a population less than 200,000; and $5,000,000 if located in a qualified incentive tract or government-restricted municipality.

If the project consists of newly-constructed residential units, the developer must reserve at least 25 percent of the units for affordable housing in either of these combinations (i) 20 percent set-aside for low-income housing & moderate-income housing and five percent set-aside for workforce housing or (ii) if the host municipality has received substantive certification or a judgment of repose and such reservation of units is not required under the approved affordable housing plan, then 10 percent set-aside for low-income housing & moderate-income housing and 15 percent set-aside for workforce housing.

Additionally, the developer must comply with minimum environmental and sustainability standards, affirmative action and prevailing wage requirements regarding construction work and building services; and certain projects may be required to enter into a community benefits agreement or may be subject to a labor harmony agreement. The project must be completed, and certificate of occupancy must be issued, within four years after incentive grant agreement is executed.

Once the project is up and operating, NJEDA will determine whether the project financing gap is smaller than the gap determined at NJEDA board approval. It will evaluate the developer's cash flow and compare that cash flow to the projected cash flow at the time of board approval. If there is a smaller gap, NJEDA will reduce the amount of the tax credit amount on a pro rata basis. If no gap is found, the entire tax credit amount must be forfeited. If the actual cash flow exceeds the projected cash flow at the time of board approval, the developer's return on investment shall be subject to any restrictions on rates of return set by the NJ Housing & Mortgage Finance Agency (NJHMFA) from time to time for housing projects assisted with a loan from NJHMFA.

There are also additional program requirements for transformative projects only. If the project is a transformative project, it must be located in a "distressed municipality," government- restricted municipality, or "transit hub municipality." Not more than two transformative projects will be approved in each eligible municipality. Only 10 transformative projects will be approved over the life of the Aspire Program. The developer must obtain a letter evidencing support for the project from the governing body of the host municipality. Not more than 50 percent of the project may be used for point-of- sale retail. If the project consists of 1,000 or more new residential units, the developer must reserve at least 25 percent of the units for affordable housing in either of the combinations set forth above. The NJEDA will also 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; however, a predominantly residential project is excluded from the calculation of the net benefit test.

The NJ Aspire Act and other tax credit programs are highly fact-specific. It's recommended you consult the statute and regulations and retain experienced professionals to assist you in assembling an incentive capital stack to close your project financing gap and obtain a reasonable rate of return.