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## Real Estate Title Insurance & Construction Law

### State Government Funding Opportunities

An invaluable resource in fiscally challenging times

By Vince Mangini

For individuals or private businesses interested in redeveloping contaminated, dilapidated or outdated New Jersey properties, there is a multitude of funding available through state government. A good place to start is the New Jersey Economic Development Authority (EDA). The EDA, which is currently located in the New Jersey Department of the Treasury, was created by the New Jersey Economic Development Authority Act in 1974, in part, to “facilitate the commencement of new construction projects of all types for, among other purposes, the creation of opportunity for employment in manufacturing, industrial, commercial, recreational, retail and services enterprises in the State.” N.J.S.A. 34:1B-2; N.J.S.A. 34:1B-4. In accordance with this mission, the EDA administers, among other programs, the Smart Growth Pre-development Guarantee, the Smart Growth Pre-development Loan and the Downtown Beautification Program.

Under the Smart Growth Pre-

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development Guarantee program, the EDA is empowered to guarantee private conventional financing or EDA-issued bonds in an amount up to \$1,000,000 over a maximum term of three years for projects that (1) have received municipal support, (2) are part of a local redevelopment plan and (3) are located either in Planning Area 1, Planning Area 2 or a designated center under the New Jersey State Development and Redevelopment Plan (State Plan) or a municipality whose master plan has been endorsed by the State Planning Commission. N.J.A.C. 19:31-2.1(c) 5 and -2.1(d). “Generally, preference for guarantees is given to projects which . . . [a]re job intensive; [w]ill create or maintain tax ratables; [a]re located in an economically distressed area; and/or [r]epresent an important economic sector of the State.” N.J.A.C. 19:31-2.2. Proceeds from guaranteed loans must be used to finance expenses related to pre-development site preparation, such as land assemblage, demolition, removal of materials and debris and engineering costs. N.J.A.C. 19:31-2.1(c) 5.iii.

The EDA dispenses the Smart Growth Pre-development Loan through the Direct Loan Program. N.J.A.C. 19:31-3.1, et seq. The EDA is authorized to grant this loan directly to applicants provided that the

person making the application is unable to obtain conventional financing. N.J.A.C. 19:31-3.1(a). “For the Smart Growth Pre-development Loan Program, the maximum loan amount will be \$1 million dollars.” N.J.A.C. 19:31-3.1(b) 3. As with the Smart Growth Pre-development Guarantee, an applicant must use funds secured by a Smart Growth Pre-development Loan for pre-development site preparation costs on projects that have received municipal support, are part of a local redevelopment plan and are located either in certain areas designated for growth under the State Plan or in a municipality whose master plan has been endorsed by the State Planning Commission. N.J.A.C. 19:31-3.2. The EDA will “provide public notice of the loan terms and interest rates, including rate floors, to be charged” to the loan applicant and all such matters will be considered and finally determined at a public meeting of the members of the EDA’s governing body. N.J.A.C. 19:31-3.1(h). The applicant shall choose a fixed or variable interest rate at or before the time of closing.

Another noteworthy financial assistance program managed by the EDA is the Downtown Beautification Program. N.J.A.C. 19:31-4.1, et seq. Under this initiative, owners and operators of retail and commercial businesses in targeted urban areas may receive loans directly

from the EDA to upgrade their properties provided they are unable to obtain funding from conventional sources. N.J.A.C. 19:31-4.1(a). The standards for determining the “targeted” downtown areas to which the Downtown Beautification Program applies are set forth in the EDA’s regulations at N.J.S.A. 19:31-4.2. Loan amounts range from \$5,000 to \$100,000 and “are to be used primarily to renovate, remodel or expand the interior and/or exterior of the facility, but a limited amount of funds can be used for working capital.” N.J.A.C. 19:31-4.1(b) and -4.1(c).

The EDA also has the authority to issue grants. For example, under the Brownfield and Contaminated Site Remediation Act, which established in the EDA “a special, revolving fund known as the Hazardous Discharge Site Remediation Fund,” N.J.S.A. 58:10B-4, the EDA in cooperation with the Department of Environmental Protection (DEP) may award an innocent party conducting remediation activities at an eligible project site as much as \$1,000,000 in grant money to cover up to 50 percent of remediation costs. N.J.A.C. 19:31-8.3(d) 1 and -8.6(e). The terms “innocent party” and “eligible project” are defined in the EDA regulations. N.J.A.C. 19:31-8.2).

An applicant for an innocent party grant under the Hazardous Discharge Site Remediation Fund must first file all necessary application forms and other materials with the DEP pursuant to its regulations. N.J.S.A. 7:26C-6.1, et seq. Upon receipt of the applicant’s documentation, the DEP

“shall review the applicant’s request for . . . a grant, or amendment thereto, based on the information provided by the applicant . . . and will notify the applicant in writing within 30 calendar days after receipt of the application.” N.J.S.A. 7:26C-6.3(d). After the DEP has completed its evaluation of the grant application, it “[w]ill notify the [EDA] of the eligibility of the applicant, and the total amount of remediation costs” and shall forward to the EDA any approved application for further processing. N.J.S.A. 19:31-8.9(a) and -8.9(b). “Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the [m]embers [of the EDA] or deny the application.” N.J.S.A. 19:31-8.9(h). “As a condition for receiving . . . a grant, the applicant must be under the oversight of the [DEP] pursuant to the Industrial Site Recovery Act or the Underground Storage Tank program or an oversight document.” N.J.S.A. 7:26C-6.1(b).

As a general rule, applications filed with the EDA for any of the above-cited financial assistance are subject to review by the Attorney General’s Office, must be approved by the members of the governing body to the EDA at a meeting of the EDA and shall not become effective until 10 working days after the Governor of the State of New Jersey has received the minutes from the meeting at which the guarantee, loan or grant was approved, “provided no gubernatorial veto of this action has occurred.” N.J.A.C. 19:31-2.5;

N.J.A.C. 19:31-3.5; N.J.A.C. 19:31-4.5; N.J.A.C. 19:31-8.11. Additional details on application fees, procedures, credit evaluation and the approval process for the Smart Growth Pre-development Guarantee, the Smart Growth Pre-development Loan, the Downtown Beautification Program and grants under the Hazardous Discharge Site Remediation Fund are contained in the New Jersey Administrative Code. Persons interested in making application under any of these programs should note that on October 20, 2008, the EDA submitted a rule amendment proposal which, if adopted, will increase the required fees for these programs. See 40 N.J.R. 5954. Applicants should also be mindful of the affirmative action hiring guidelines and prevailing wage requirements related to EDA financing.

The foregoing is a summary of but a few of the myriad programs and incentives intended to provide opportunity and spur economic growth, which state law authorizes the EDA to provide individuals and private businesses. Indeed, EDA funding initiatives have real potential to contribute to the viability of construction projects involving the revitalization or adaptive reuse of old, outdated or contaminated properties into productive sites. The availability of this state-sponsored financial assistance may prove itself to be especially useful now in light of the economic downturn and could be essential to revitalization efforts and real estate development for the foreseeable future. ■