

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Preconstruction Activities

Proposed Readoption with Amendments: N.J.A.C. 19:34

Authorized By: New Jersey Schools Development Authority, Charles B. McKenna, Chief Executive Officer.

Authority: P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238.k; 52:18A-240) (rulemaking authority), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), and P.L. 2007, c.137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-021.

Submit written comments via mail, e-mail, or facsimile by April 1, 2016, to:

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The agency proposal follows:

Summary

The New Jersey Schools Development Authority (SDA) proposes to readopt with amendments N.J.A.C. 19:34, Preconstruction Activities.

Chapter 34, which implements Section 5 of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), (the “Act”), governs the SDA’s funding and undertaking of preconstruction activities including land acquisition, was previously readopted by the SDA with amendments and repeals on December 8, 2008, and is scheduled to expire on June 5, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Chapter 34 rules proposed for readoption with amendments outline the standards and procedures for the Authority's undertaking and funding of preconstruction activities on behalf of SDA school districts. Pursuant to N.J.S.A. 18A:7G-5, preconstruction activities are those activities required to prepare an application for commissioner approval of a school facilities project and include, site identification, investigation and acquisition, feasibility studies, land-related design work, design work, site remediation, demolition, and acquisition of temporary facilities. This chapter details the roles and responsibilities of SDA school districts and the Development Authority and standards and procedures with respect to site identification, feasibility analysis, investigation, and acquisition. Also provided for are standards governing the relocation of residential and commercial parties displaced by SDA site acquisitions, as well as the procedures for the Authority's procurement of temporary facilities to support a school facilities project.

The SDA has reviewed Chapter 34 and has determined that, with the addition of the proposed amendments described herein, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated: to provide standards and procedures for the Authority's undertaking and funding of preconstruction activities on behalf of SDA school districts.

As the SDA has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the proposed substantive amendments follows.

Chapter 34. Preconstruction Activities

N.J.A.C. 19:34-1.1 Purpose and applicability of rules

This section is proposed for re Adoption with an amendment to delete the superfluous term “Development Authority” used with reference to SDA. This section states that the purpose of the rules is to provide guidance on the undertaking of preconstruction activities by the Authority for and on behalf of SDA school districts, and, further, sets forth a non-exclusive list of the types of preconstruction activities that are expressly provided for in N.J.S.A. 18A:7G-5. Another stated purpose of the rules is to provide opportunities for input from SDA school district officials, members of the public, and stakeholders during the preconstruction phase of school facilities projects, in accordance with N.J.S.A. 52:18A-235h.

This section specifies that the rules shall apply only to SDA school districts, which are those districts required to use the Authority to construct their school facilities projects. This section further specifies that Department of Education’s determination of the educational priority ranking of the projects in that school district and the Authority’s determination of the sequencing

of the subject facilities project, pursuant to a Statewide strategic plan, are both preconditions for the Authority's undertaking of preconstruction activities on behalf of an SDA school district.

N.J.A.C. 19:34-1.2 Definitions

This section sets forth the meaning of the words and terms used throughout this chapter. Amendments to the section include changes to previously defined terms and the deletion of terms and definitions rendered obsolete by statutory changes reflected in the proposed amendments, as set forth below.

The following term definitions are proposed for modification:

“Authority,” which refers to the Schools Development Authority, is proposed for modification to refer to the SDA’s origination statute as codified. The definition is further amended to include a brief description of the mission of the SDA as an entity “statutorily charged with undertaking and funding schools facilities projects, pursuant to the Act.”

“Boundary survey” is proposed for modification to update to the 2011 version the reference therein to the “Minimum Standard Detail Requirements for American Land Title Association/American Congress on Surveying and Mapping (ALTA/ACSM) Land Title Surveys,” and to replace address information for the ALTA and ACSM entities referenced therein with a web address.

“New Jersey Department of Environmental Protection” is proposed for modification to delete unnecessary reference to that Executive agency’s functions and mission.

“Preliminary project report” is proposed for modification to correct a citation to the Department of Education regulations governing the preliminary project report.

“SDA school district,” meaning a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39, is proposed for modification to include “SDA district” as an alternate term.

“Section 13(a) delegation agreement” meaning the grant agreement between the Authority and an SDA school district by which the Authority funds the State share in connection with a proposed capital maintenance project delegated by the Authority to be undertaken by an SDA school district, pursuant to section 13(a) of the Act and N.J.A.C. 19:34A, is proposed for modification to delete a reference to the formulation of a Section 13(a) delegation agreement prior to August 6, 2007, which was permissible between the Authority and a non-SDA district under certain circumstances no longer recognized pursuant to P.L. 2007, c. 137.

The following term definitions are proposed for deletion:

“Abbott district” is proposed for deletion as obsolete, as that term has been replaced by “SDA school district” in accordance with P.L. 2007, c. 260.

“Corporation,” which referred to the SDA’s predecessor entity, the Schools Construction Corporation, is proposed for deletion as obsolete.

“Estimated school facilities project costs,” which refers to an estimate of the cost of a school facilities project done for purposes of determining the former delegation threshold pursuant to section 13(a) of the Act, is proposed for deletion because the delegation threshold was eliminated by statutory amendment pursuant to P.L. 2007, c. 137.

“Other district required to use the Corporation” which refers to a district other than an SDA school district required to use the Authority’s predecessor, the Schools Construction Corporation, for the construction of school facilities projects, as follows: a district whose district aid percentage is equal to or greater than 55 percent or a district directed by the Commissioner to

enter level II monitoring pursuant to the provisions of section 14 of P.L. 1975, c. 212 (N.J.S.A. 18A:7A-14). The term is proposed for deletion because due to the action of P.L. 2007, c. 137, as of August 6, 2007, such districts are no longer required to use the Authority to undertake their preconstruction projects.

“Section 13(a) delegation limit,” meaning the former eligible cost limit, established by section 13(a) of P.L. 2000, c. 72, for a school facilities project to be eligible for delegation by the Corporation to the district, which applied to section 13(a) grant agreements executed prior to August 6, 2007, is proposed for deletion as the delegation cost limit was abolished by P.L. 2007, c. 137.

N.J.A.C. 19:34-1.3 Disclosure and publicity

This section is proposed for re adoption without amendment. This section provides that the records and accounts pertaining to preconstruction activities which are government records as defined in the Open Public Records Act, P.L. 2001, c. 404, shall be made available to persons who request their release as provided by State law. This section also provides that public dissemination of information by the district concerning preconstruction activities shall acknowledge the Authority's financial support.

N.J.A.C. 19:34-1.4 Access and record retention

This section is proposed for re adoption without amendment. This section provides that the governmental entities with oversight responsibilities concerning the programming and operations of the SDA, specifically the Office of the State Comptroller and the State Auditor, shall have broad access to records pertaining to preconstruction activities retained by the Authority and

SDA school districts. This section further provides that the 10-year retention period runs from the date of substantial completion, instead of completion of the project, thereby aligning the retention period with the Authority's record retention schedule approved by the State Records Committee.

N.J.A.C. 19:34-1.5 Waiver

This section is proposed for readoption without amendment. This section provides that the provisions set forth in N.J.A.C. 19:34A-1.8 shall apply to an SDA school district requesting a waiver or release from the express provisions of any rules in this chapter.

N.J.A.C. 19:34-1.6 Appeals

This section is proposed for readoption without amendment. This section provides that the provisions set forth in N.J.A.C. 19:34A-1.9 shall apply to the appeals by SDA school districts of Authority determinations made pursuant to this chapter.

N.J.A.C. 19:34-1.7 (Reserved)

This section codification, which was listed as “Reserved” after the relevant rule text of the section was repealed in the 2008 readoption of the rules, is proposed for deletion as superfluous.

N.J.A.C. 19:34-1.8 (Reserved)

This section codification, which was listed as “Reserved” after the relevant rule text of the section was repealed in the 2008 readoption of the rules, is proposed for deletion as superfluous.

Subchapter 2. General Guidelines for Undertaking and Funding Preconstruction Activities

N.J.A.C. 19:34-2.1 General guidelines

This section is proposed for readoption without amendment. This section outlines the initial steps that must be taken before the Development Authority will undertake and fund preconstruction activities on behalf of an SDA school district. This section provides that the Authority will undertake preconstruction activities only for SDA school districts. Subsection (b) sets forth that a precondition for the Authority's undertaking and funding of preconstruction activities is the Department's educational priority ranking of the underlying school facilities project and the Authority's sequencing of the facilities project derived from the Statewide strategic plan developed by the Authority, as set forth above in the summary of N.J.A.C. 19:34-1.1 above. Subsection (c) expressly provides for the Authority's undertaking of preconstruction activities, but provides for an exception with respect to the delegation of capital maintenance projects and associated preconstruction activities, pursuant to Chapter 34A.

N.J.A.C. 19:34-2.2 (Reserved)

This section codification, which was listed as “Reserved” after the relevant rule text of the section was repealed in the 2008 readoption of the rules, is proposed for deletion as superfluous.

N.J.A.C. 19:34-2.3 (Reserved)

This section codification, which was listed as “Reserved” after the relevant rule text of the section was repealed in the 2008 readoption of the rules, is proposed for deletion as superfluous.

Subchapter 3. SDA School Districts Site Preconstruction Activities

N.J.A.C. 19:34-3.1 General criteria and procedures

This section is proposed for readoption with an amendment to clarify the optional nature of the Authority's funding and performance of remediation activities on a district-owned site. This section addresses the preconstruction activities to be undertaken for SDA school districts both in situations when a site needs to be acquired for a facilities project and when the project will be undertaken on land already acquired by the school district. An amendment is proposed to conform the language of this section to that of N.J.A.C. 19:34-3.8, to recognize the optional nature of the Authority's funding and undertaking of remediation of district-owned land. Unless the SDA determines that it is necessary to undertake remediation of the parcel, remediation of district-owned land remains the responsibility of the district.

N.J.A.C. 19:34-3.2 Site identification

This section is proposed for readoption with amendments. This section provides that, if a school facilities project includes site acquisition, SDA school districts shall be responsible for identifying from one to three sites for the facilities project. It further provides the criteria for the district to use in identifying such sites and outlines the information and documentation to be provided by the district to the Authority upon the Department's transmittal to the Authority of its approval of site acquisition preconstruction activities. Subsection (a) provides that as a precondition for the Authority's undertaking of preconstruction activities, the SDA school district, together with the municipality in which the district is situated, shall jointly submit to the commissioner and the Authority a complete inventory of all district- and municipal-owned land, and any privately-owned land under consideration by the school district, with a written analysis of the suitability of such sites for facilities projects based on criteria outlined in subsection (b).

Subsection (a) is proposed for amendment to add language clarifying that “[i]f the contemplated school facility project necessitates a property acquisition to augment an already-

selected project site, the inventories of district-owned and municipal-owned land, and the inventory of privately-owned land, shall be confined to parcels adjoining, adjacent or in functional proximity to the already selected project site to be expanded or augmented.”

The subsection (b) criteria fall within the following broad categories: cost and schedule impacts; significant site location, size and improvement considerations; known significant infrastructure considerations; and known environmental considerations. Subsection (b) is proposed for amendment to delete a reference to the “Development Authority” in favor of a reference to the “Authority.”

Subsection (c) provides for the involvement of the community in the site selection process through the school district's implementation of a community advisory committee comprised of various interested parties to receive reports and information concerning proposed school sites and provide input on the suitability of such sites for school facilities projects. This section also provides that the application of the school district to the Department for approval of preconstruction activities shall be accompanied by an endorsement of the sites selected by an authorized member of the community advisory committee, as applicable, if such committee has held a public meeting to solicit public input on the prospective school sites, and a statement signed by school district officials that a special meeting of its school board has been held to inform community residents of the sites that have been prioritized by the district.

Subsection (d) provides that the Authority reviews such submissions and determines, in consultation with the Commissioner, whether any of the publicly-owned land identified, or privately-owned land identified by the school district, would be suitable or clearly unsuitable for inclusion in an application to the Department for approval of preconstruction services. As part of its preliminary planning, this section provides that the Authority may utilize commercial

databases to analyze environmental and historical land use information in order to eliminate consideration of any of the sites that have insurmountable environmental or other issues.

Subsection (e) requires the district, after receiving the Authority's written determination of the suitability of the publicly-owned and privately-owned land identified pursuant to subsection (d), to identify one to three sites in its application to the DOE for site acquisition preconstruction approval. A proposed amendment to this section would alter the hierarchy of priority for acceptable types of property to convert "privately developed industrial or commercial land" to "privately developed light industrial or commercial land," thereby serving to clarify that heavy industrial uses are disfavored, for reasons of avoidance of remediation costs for potential environmental impacts to property typically caused by such heavy industry.

Subsection (f) is proposed for readoption without amendment. That subsection provides that, once the SDA receives a copy of a district's application to the Department for approval of preconstruction activities, the SDA may seek information from a variety of sources, including commercial database reports of environmental and historical land use information, regarding potential school sites. The subsection also provides that, upon SDA's receipt of Department approval of site acquisition activities, the district shall provide to the SDA and any community advisory committee information describing the condition of and potential development impacts for all parcels under consideration by the district for acquisition as proposed school sites.

Subsection (g) currently provides that upon approval of the Department of preconstruction activities, the Authority shall convene a "project team" to undertake, among other tasks, the review of information concerning prospective school sites and determinations regarding the suitability of such sites for school facilities projects. Proposed modifications to this section would rename the "project team" as a "working group," and clarify that the "working group" shall be comprised of required participants from the Authority and DOE, as well as an SDA

school district representative, in addition to other optional participants at the Authority's discretion, including consultants, as necessary, and an authorized member of the community advisory committee, if applicable.

Subsection (h) concludes by providing that if none of the sites initially approved by the Department is determined by the Authority to be suitable, the district shall undertake the task of identifying additional site(s).

N.J.A.C. 19:34-3.3 Feasibility studies and land-related design work

This section is proposed for re adoption with an amendment to change the reference from "project team" to "working group" in accordance with changes to N.J.A.C. 19:34-3.2(g), described above. This section details the process by which the Authority shall undertake increasingly complex feasibility studies with respect to a proposed school site depending on the specific characteristics of that site, until the site is acquired or is deemed by the Authority to be unsuitable for a school facilities project. This section also provides for the early involvement of the community in the site selection process through a public meeting of the board of education of the school district to review comments of the NJDEP concerning an environmental screening report for a prospective school site.

N.J.A.C. 19:34-3.4 Site investigation

This section is proposed for re adoption without amendment. The section outlines the scope of investigatory tasks that will be undertaken by the Authority during the site investigation of a prospective school site, in accordance with the rules of the NJDEP in its Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as amended. This section provides for the communication of the findings from a site investigation to a school district's chief school administrator, and

provides for the termination of a site investigation when the Authority determines that a site is not suitable or available for school use.

N.J.A.C. 19:34-3.5 Site acquisition approvals

This section is proposed for re adoption with amendment. This section defines the criteria for the Authority's decision-making with respect to site acquisitions. This section provides for local planning board submission relating to the site, and an amendment is proposed to specify that, for design-build projects under N.J.A.C. 19:36, the Authority's submission to a local planning board for review and recommendation under N.J.S.A. 40:55D-31 will consist of a conceptual design. This proposed modification is in acknowledgment that property acquisition for a design-build project will generally occur well in advance of the design-build contract award and, thus, developed construction documents, detailed site plans, and other predesign documents for the eventual project will not be available at the time site acquisition is contemplated. This section also addresses submissions to the Department for purposes of site acquisition approval under N.J.A.C. 6A:26-7.1 and further addresses other site acquisition tasks that the Authority shall undertake (for example, Executive Order No. 215 submissions to the New Jersey Department of Environmental Protection).

N.J.A.C. 19:34-3.6 Ownership of land

This section is proposed for re adoption without amendment. This section addresses the Authority's taking or conveying of title, the conveyance of ownership to the SDA school district with a reverter, and conditions under which ownership would revert back to the Authority. This section also provides that school districts shall have certain associated responsibilities when the NJDEP approves site engineering controls and/or requires the recording of a deed notice.

N.J.A.C. 19:34-3.7 Relocation Assistance

This section is proposed for re adoption without amendment. This section provides that the Authority shall undertake relocation assistance in connection with the acquisition of a site by purchase or eminent domain in accordance with applicable law.

N.J.A.C. 19:34-3.8 Remediation and site development

This section is proposed for re adoption with an amendment. Subsection (a) provides that upon acquisition of a site by the Authority, the Authority shall perform any necessary remediation and/or site development work to prepare the site for construction. Subsection (b) provides that for land already owned by an SDA school district on which the district is proposing to locate a school facilities project, the Authority “may undertake” necessary remediation to prepare the land for construction, and an amendment is proposed to clarify that while the Authority “may” undertake such remediation of SDA school district-owned land, the Authority is “not obligated” to do so.

Subchapter 4. Abbott Districts: Other Predevelopment Activities

N.J.A.C. 19:34-4.1 (Reserved)

The reservation of this section codification is continued to preserve the codification of the rules in this subchapter.

N.J.A.C. 19:34-4.2 Temporary facilities

This section is proposed for re adoption without amendment. This section provides for the procurement and funding of temporary facilities to be used in educating students on a temporary basis while awaiting the completion of a school facilities project that will permanently house such students.

Social Impact

The rules proposed for re adoption with amendments will apply to SDA school districts that seek to have the Authority fund and administer preconstruction activities under N.J.S.A. 18A:7G-5. The SDA believes that the rules proposed for re adoption with amendments will have a positive social impact and that no negative impact will result. The re adoption of these rules can be expected to positively impact the students, teachers, and parents served by SDA school districts because they provide guidance on the districts' and the Authority's roles and responsibilities for undertaking and funding those activities which precede the submission of a school facilities project application to the Department. The opportunities created by these rules for community input in the identification and selection of prospective school sites by the school districts integrates greater transparency, accountability, and environmental equity into the development of school facilities projects. These rules are also intended to incorporate the most up-to-date scientific knowledge and expertise in the site development process, coordinating complete and effective due diligence of prospective school sites with the efficient use of the Authority's limited resources.

Economic Impact

The rules proposed for readoption with amendments address the preconstruction activities undertaken by the Authority on behalf of SDA school districts. The preconstruction activities undertaken by the Authority are to be funded with the State share of the eligible costs of a school facilities project. The State share for preconstruction activities is funded with State contract bonds issued by the New Jersey Economic Development Authority pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. The rules proposed for readoption with amendments will have a positive economic impact on the long-term economic growth of the State of New Jersey because significant activity in the planning, construction, architecture, and engineering professions will directly result from these rules, providing obvious Statewide economic benefits in the short term. The emphasis on use of publicly-owned land and the more efficient use of State resources in identifying and investigating the feasibility of prospective school sites will maximize the available funding for the Authority's schools construction program.

Federal Standards Statement

The rules proposed for readoption with amendments implement State statutes, namely P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) and P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.), and specifically N.J.S.A. 18A:7G-5. There are no Federal standards or requirements governing the subject matter of these rules in as much as the rules proposed for readoption with amendments apply only to SDA school districts that seek to have the Authority fund and perform preconstruction activities in anticipation of construction of a school facilities project pursuant to

N.J.S.A. 18A:7G-5 . There are no Federal standards or requirements applicable to these rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The rules proposed for re adoption with amendments will support the creation of a number of new jobs in New Jersey as a result of facilitating the performance of preconstruction activities pursuant to N.J.S.A. 18A:7G-5 in support of school facilities projects in SDA school districts. Jobs will primarily be created in the construction, professional consulting and design sectors.

Agriculture Industry Impact

The rules proposed for re adoption with amendments will have no direct impact on the agriculture industry. However, implementation of the rules will be coordinated with the Farmland Preservation Program for the acquisition of sites for new schools.

Regulatory Flexibility Analysis

The rules proposed for re adoption with amendments primarily impact New Jersey SDA school districts, but through implication, impose compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that may be engaged by districts to assist or support site selection activities for site acquisition, or that may be ultimately engaged by the Authority to perform preconstruction activities for a school facilities project. The types of small businesses that may be affected by the rules include consultants (for example, design consultants such as architects and engineers), contractors, and their subconsultants and subcontractors providing materials or services to the Authority in connection with preconstruction activities, or to a school district in connection with site selection activities in

support of a school facilities project. Because of the scale of preconstruction activities to be undertaken by the Authority, it is anticipated that the number of small businesses to which the rules will apply will be substantial. These rules, specifically N.J.A.C. 19:34-1.4, impose records access and retention of records obligations that may affect contractors and consultants that are small businesses.

The majority of the aforementioned requirements are imposed by other laws and rules, in that the rules impose virtually no change to the way school districts procure goods and services. One exception is the record access and retention provisions (access to additional governmental entities, retention period of 10 years to correlate with the statute of limitations for architectural services claims). The costs entailed in the records provisions are not anticipated to be substantially more than the costs otherwise incurred for record retention. It is unlikely that a small business would have to employ professional services to comply with this requirement. The rules are designed to minimize any adverse economic impact on small businesses by making few changes in the ways school districts procure goods and services.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will impact the availability and affordability of residential housing in the State of New Jersey, either directly or indirectly, when the Authority must acquire residential real estate for school construction in any of the 31 SDA school districts. The precise number and type of such residential units that will be so affected is dependent on the future school sites that have yet to be identified by school districts and acquired under the school construction program. The New Jersey Department of Community Affairs has jurisdiction over issues of displacement and relocation in the State. These rules incorporate numerous provisions to lessen the impact of school construction on affordable housing through

(1) prioritization of school district and municipally-owned land for prospective school sites, N.J.A.C. 19:34-3.2(a); (2) an analysis of community impacts, and specifically relocation and displacement impacts on a community, in the early stages of identification of prospective school sites, N.J.A.C. 19:34-3.2(b)2; (3) site identification criteria which require school districts to prioritize the use of all other types of property prior to consideration of privately owned residential land, N.J.A.C. 19:34-3.2(e)2; (4) a requirement that school districts hold a public meeting to inform their public of the sites that the school district has selected to submit to the Department of Education for preconstruction approval, N.J.A.C. 19:34-3.2(e)3ii; (5) the Authority's initial assessment of a prospective school site's feasibility based, in part, on the need for residential relocations, N.J.A.C. 19:34-3.3(d)2; and (6) the Authority's final decision whether to acquire a site based on criteria concerning relocation and displacement impacts to a community, N.J.A.C. 19:34-3.5(a). Conversely, the development of schools within the SDA school districts will have a positive impact on housing values because of the availability of new neighborhood public school facilities within close proximity to residential housing.

Smart Growth Development Impact Analysis

With respect to a description of the types and an estimate of the number of housing units to which the rules proposed for readoption with amendments will apply, and a description of the estimated increase or decrease in the availability of affordable housing which will be affected by the rules proposed for readoption with amendments, as well as the likelihood that the readoption of the rules will effect a change in the average price or availability of housing in the State of New Jersey, please see the Housing Affordability Impact Analysis above. It is unlikely that the rules proposed for readoption with amendments will cause a change in new housing production or new construction in Planning Areas 1 or 2, or within designated centers under the State

Development and Redevelopment Plan, because the communities in which the SDA is building schools are generally already significantly built out. The development of a new school, however, will make that school site unavailable for housing developers.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:34.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

19:34-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Schools Development Authority (the [Development Authority,] Authority[,] or SDA), to provide guidance for school districts on the Authority's undertaking and funding of preconstruction activities. Section 5 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended by P.L. 2007, c. 137, §20 (the "Act") identifies "preconstruction" activities as including, but not limited to, site identification, investigation and acquisition, feasibility studies, land-related design work, design work, site remediation, demolition, and acquisition of temporary facilities. With Commissioner authorization, the SDA may undertake preconstruction activities required to prepare an application for commissioner approval of a school facilities project.

(b)-(e) (No change.)

19:34-1.2 Definitions

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

["Abbott district" means a school district as defined in section 3 of P.L. 1996, c. 138 (N.J.S.A. 18A:7F-3). P.L. 2007, c. 260 deleted the term "Abbott district" from the Act, and replaced it with "SDA district."]

...

"Authority" [or "Development Authority"] or "SDA" means the New Jersey Schools Development Authority, [an entity which undertakes and funds school facilities projects under the Act and which is the entity formed pursuant to] **established pursuant to Section 3 of P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.)**, [as] **the successor entity** to the New Jersey Schools Construction Corporation. **The Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.**

"Boundary survey" means the research of deeds, easement, utility records, title reports, fieldwork, including precision survey measurements, and preparation of maps and plans which accurately measure the boundaries of a parcel of land proposed for a school facilities project, in accordance with the "Minimum Standard Detail Requirements for American Land Title Association/American Congress on Surveying and Mapping (ALTA/ACSM) Land Title Surveys," [1999, as jointly adopted by the ALTA, 1828 L Street, N.W., Suite 705, Washington, D.C. 20036, the ACSM, 5410 Grosvenor Lane, Bethesda, MD 20814, and the National Society of Professional Surveyors, Inc. 5410 Grosvenor Lane, Bethesda, MD 20814] **(2011), available**

at www.alt.org/forms/download.cfm?formID=338&type=word, which requirements are incorporated herein by reference, as amended and supplemented.

...

["Corporation" or "SCC" means the New Jersey Schools Construction Corporation, the predecessor to the Authority, abolished by P.L. 2007, c. 137, which was the entity formed by the New Jersey Economic Development Authority pursuant to N.J.S.A. 34:1B-159 to carry out the New Jersey Economic Development Authority's responsibilities under the Act, except the power to incur indebtedness.]

...

["Estimated school facilities project costs" means an estimate prepared by the Corporation of the cost of a school facilities project done prior to submission of a school facilities project application for purposes of determining the delegation threshold pursuant to section 13(a) of the Act, prior to August 6, 2007, when P.L. 2007, c. 137 eliminated the threshold.]

...

["New Jersey Department of Environmental Protection" or] "NJDEP" means the **New Jersey Department of Environmental Protection**. [department established within the Executive Branch of State government charged with the following responsibilities, among others, for the public good:

1. To formulate comprehensive policies for the conservation of the natural resources of the State;
2. To promote environmental protection;

3. To apply its regulatory authority in a manner that is consistent with the intent and findings of all applicable statutes; and

4. To prevent adverse impacts to natural, cultural, historical and scenic resources of the State.]

...

["Other district required to use the Corporation" means a district other than an SDA school district required to use the Corporation for the construction of school facilities projects, as follows: a district whose district aid percentage is equal to or greater than 55 percent or a district directed by the Commissioner to enter level II monitoring pursuant to the provisions of section 14 of P.L. 1975, c. 212 (N.J.S.A. 18A:7A-14). As of August 6, 2007, such districts are no longer required to use the Authority to undertake their school facilities projects.]

...

"Preliminary project report" means the report that the Department prepares for the Authority after approving a school facilities project application containing the preliminary eligible costs and other project information, pursuant to N.J.A.C. 6A:26-3.5[(c)](b).

...

"SDA school district" or "**SDA district**" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, §39.

"Section 13(a) delegation agreement" means the grant agreement between the Authority and an SDA school district by which the Authority funds the State share in connection with a proposed capital maintenance project delegated by the Authority to be undertaken by an SDA

school district, pursuant to section 13(a) of the Act and N.J.A.C. 19:34A. [Prior to August 6, 2007, “section 13(a) delegation agreement” means the grant agreement between the Corporation (or its successor) and an Abbott district, or other district required to use the Corporation, by which the Corporation funds the State share of school facilities project delegated to be undertaken by the school district with estimated costs under the section 13(a) delegation limit.

“Section 13(a) delegation limit” means the eligible cost limit, established by section 13(a) of P.L. 2000, c. 72, for a school facilities project to be eligible for delegation by the Corporation to the district, which applied to section 13(a) grant agreements executed prior to August 6, 2007, and which delegation cost limit was abolished by P.L. 2007, c. 137.]

...

(b) (No change.)

[19:34-1.7 (Reserved)]

[19:34-1.8 (Reserved)]

[19:34-2.2 (Reserved)]

[19:34-2.3 (Reserved)]

SUBCHAPTER 3. SDA SCHOOL DISTRICTS SITE PRECONSTRUCTION ACTIVITIES

19:34-3.1 General criteria and procedures

If an SDA school district wishes to acquire a site in connection with a school facilities project in its approved long-range facilities plan, the Authority shall fund and undertake the following approved preconstruction activities: site identification, investigation, and acquisition, feasibility studies, land related design work, design work, site remediation, demolition, and acquisition of temporary facilities. If an SDA school district has already acquired land on which it proposes to construct a school facilities project, the Authority shall fund and undertake the aforementioned approved preconstruction activities with the exception of the activities associated with site acquisition **and, at the Authority's option, activities associated with remediation of district-owned land.**

19:34-3.2 Site identification

(a) If the preconstruction activities to be undertaken by the SDA include site acquisition, prior to the submission by an SDA school district of an application to the Department for approval of preconstruction activities, the board of education of the district and the governing body of the municipality in which the district is situated shall jointly submit to the Commissioner and the Authority a complete inventory of all [district-and] **district- and** municipal-owned land located in the municipality. The school district shall separately identify and provide to the Authority an inventory of any privately-owned sites that it is considering as potential school sites. The inventory shall include a map of the district showing the location of each of the identified parcels of land. **If the contemplated school facilities project necessitates a property acquisition to augment an already-selected project site, the inventories of district-owned and municipal-owned land, and the inventory of privately-owned land shall be confined to parcels adjoining, adjacent, or in functional proximity to the already-selected project site to be expanded or augmented.**

(b) The board of education and the governing body of the municipality shall together provide a written analysis to the [Development] Authority concerning each district- or municipal-owned site, or privately-owned site, identified pursuant to (a) above explaining whether it is suitable for a school facilities project identified in the district's long range facilities plan. The written analysis of the publicly- and privately-owned sites identified shall include the information in (b)1 through 4 below, if applicable, as follows:

1.-4. (No change.)

(c)-(d) (No change.)

(e) After the SDA school district's receipt of the Authority's written determination concerning the suitability of publicly-owned and privately-owned land identified pursuant to (d) above, the district shall be responsible for identifying from one to three sites in its application to the Department for site acquisition preconstruction approval.

1. (No change.)

2. Districts shall identify prospective school sites within the attendance area of a school facilities project from the following types of properties, in order of priority, as follows:

i.-iv. (No change.)

v. Privately developed **light** industrial or commercial land; and

vi. (No change.)

3. (No change.)

(f) (No change.)

(g) After the Authority receives a copy of the Department approval of site acquisition preconstruction activities for a school facilities project, the Authority shall convene a [project team] **working group** to undertake, among other tasks, preliminary evaluation of the suitability of a proposed site(s) based on the information provided by the SDA school district, pursuant to (b) and (f) above, any additional information, including commercial database searches undertaken with respect to the approved sites, and an initial site review undertaken pursuant to N.J.A.C. 19:34-3.3(c). The [project team] **working group** shall consist of [project management, program management and real estate] **appropriate** staff of the SDA and DOE and an SDA **school district official, and may include** an SDA environmental consultant, [an SDA school district official,] an authorized member of the SDA school district's community advisory committee, if applicable, and other experts and/or specialists, as determined by the Authority.

(h) (No change.)

19:34-3.3 Feasibility studies and land-related design work

(a)-(c) (No change.)

(d) Based on the information provided by the SDA school district, pursuant to N.J.A.C. 19:34-3.2(b) and (f), the initial site review undertaken pursuant to (c) above, and any other relevant information, the Authority, in consultation with the members of the [project team] **working group**, shall determine whether to continue site feasibility services with respect to a proposed site and, if so, the scope of such feasibility services.

1.-3. (No change.)

(e)-(g) (No change.)

19:34-3.5 Site acquisition approvals

(a) (No change.)

(b) If the Authority determines to acquire the site, the Authority shall submit the architectural pre-design and programming, **or, in the case of a contemplated design-build school facilities project pursuant to N.J.A.C. 19:36, a conceptual design,** to the local planning board, pursuant to N.J.S.A. 40:55D-31, and obtain the approvals, reports and statements required by the Department prior to the submission of an application for approval of the acquisition of the site to the Department.

(c)-(d) (No change.)

19:34-3.8 Remediation and site development

(a) (No change.)

(b) For land already owned by the SDA school district on which the district is proposing to locate a school facilities project, the Authority may, **but is not obligated to,** perform any necessary remediation and/or site development to prepare the land for construction, pursuant to the district's provision of access to the land by way of ground lease or other form of right of entry.