

**CHAPTER 36**  
**DEVELOPMENT AND REDEVELOPMENT**  
**ACTIVITIES**

**Authority**

N.J.S.A. 40:55D-53a and 52:27BB-10.

**Source and Effective Date**

R.2005 d.81, effective February 22, 2005.  
See: 36 N.J.R. 4571(a), 37 N.J.R. 667(a).

**Chapter Expiration Date**

Subchapter 1, Revenue Allocation Districts and Financing Plans, expires on February 22, 2010.

In accordance with N.J.S.A. 52:14B-5.1c, Subchapter 3, New Residential Construction Off-Site Conditions Disclosure, and Subchapter 4, Standardized Forms for Performance Guarantees, expire on August 21, 2010. See: 41 N.J.R. 4148(a).

**Chapter Historical Note**

Chapter 36, Management Assistance Program, was adopted by R.1978 d.365, effective October 16, 1978. See: 10 N.J.R. 470(b).

Pursuant to Executive Order No. 66(1978), Chapter 36, Management Assistance Program, was readopted and recodified as Chapter 51, Management Assistance Program, by R.1983 d.443, effective September 27, 1983. See: 15 N.J.R. 1305(a), 15 N.J.R. 1759(a).

Chapter 36, Development and Redevelopment Activities, was adopted as a new rules by R.2005 d.81, February 22, 2005. As a part of R.2005 d.81, Subchapter 3, New Residential Construction Off-Site Conditions Disclosure, was recodified from Chapter 38, effective February 22, 2005, and was scheduled to expire on September 18, 2008; and Subchapter 4, Standardized Forms for Performance Guarantees, was recodified from Chapter 39, effective February 22, 2005 and was scheduled to expire on July 16, 2006. See: Source and Effective Date.

Subchapter 4, Standardized Forms for Performance Guarantees, was readopted as R.2006 d.236, effective May 26, 2006. See: 38 N.J.R. 1367(a), 38 N.J.R. 2795(b).

Subchapter 3, New Residential Construction Off-Site Conditions Disclosure, was readopted as R.2008 d.193, effective June 18, 2008. See: 40 N.J.R. 1731(a), 40 N.J.R. 4315(a).

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**SUBCHAPTER 1. REVENUE ALLOCATION DISTRICTS AND FINANCING PLANS**

**5:36-1.1 Purpose; fees**

(a) This subchapter sets forth rules for local government units to follow when applying to the Local Finance Board for approval of a Revenue Allocation District and Financing Plan. The rules are established to:

1. Ensure that the creation of the district complies with the State's smart growth planning requirements and is not in conflict with State development rules; and
2. Ensure that projects are economically and fiscally responsible and would not otherwise be feasible without creation of the Revenue Allocation District.

(b) The Board shall charge the applicant fees sufficient to provide for all reasonable professional and related expenses the Board expects to incur for the review, analysis and determination of all elements of the application process.

(c) An application under this section is not subject to the provisions of N.J.S.A. 52:27D-10.5 et seq.

(d) Circumstances or conditions not addressed by these rules shall be subject to review and determination by the Chair of the Local Finance Board.

**5:36-1.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Applicant" means the municipal governing body or an entity acting on behalf of the municipality if permitted by the Federal Internal Revenue Code of 1986, or, if a redevelopment agency or redevelopment entity is established in the municipality pursuant to N.J.S.A. 40A:12A-1 et seq. and the municipality so provides, the redevelopment agency or entity so established, or any duly appointed district agent acting on behalf of a municipality or redevelopment agency.

“Application process” means the three step process required for approval of a Revenue Allocation District. The three steps include:

1. Application for approval to create a Revenue Allocation District and Preliminary Revenue Allocation Plan;
2. Approval of a Final Revenue Allocation Plan; and
3. Approval of financial instrument.

The process also includes an optional initial step in which an applicant may request a RAD Plan assessment.

“Assessment” means the process by which the applicant provides information about the project to the Board and other State agencies and receives feedback concerning the application including its consistency with smart growth principles.

“Board” means the Local Finance Board in the Division of Local Government Services and the staff of the Board acting on the Board’s behalf.

“Office of Smart Growth” or “OSG” means the Office of State Planning established pursuant to section 6 of P.L. 1985, c.398 (N.J.S.A. 52:18A-201).

“Revenue Allocation District” or “RAD” means the area or areas within a municipality designated pursuant to the Revenue Allocation District Financing Act, N.J.S.A. 52:27D-459 et seq.

“Smart growth” means well-planned, well-managed growth that adds new homes, creates new jobs, and promotes redevelopment and urban revitalization, while preserving open space, farmland, and environmental resources as set forth in the State Development and Redevelopment Plan adopted by the State Planning Commission pursuant to the State Planning Act, N.J.S.A. 52:18A-196.

### 5:36-1.3 Optional RAD Plan assessment

(a) Any applicant planning a RAD may file for a RAD Plan assessment pursuant to this section.

(b) Notice of Intent: An applicant requesting a RAD Plan assessment shall file a Notice of Intent with the Board no less than 30 days prior to requesting a RAD Plan assessment as follows:

1. The Notice of Intent shall be in the form of a letter advising the Board of the applicant’s intention to file a RAD Plan Assessment. The notice shall designate a single point of contact for the applicant;
2. Following the applicant’s filing of the Notice of Intent, the applicant will be contacted by a Board representative to attend a meeting to review the planned filing; and
3. It is strongly recommended that potential applicants file a Notice of Intent as early in their planning process as possible.

(c) RAD Plan Elements: After 30 days from the date the Notice of Intent was filed with the Board, an applicant shall submit a RAD Plan. A complete RAD Plan shall include the following elements:

1. A detailed description of the district and planned projects, including maps, projected life of the district, plans and other documentation that describes the scope of the effort;
2. An impact assessment including a description of the planned RAD’s impact on land use, transportation, environmental, economic, utility, and quality of life issues;
3. A “Smart Growth Questionnaire.” Applicants will be provided a questionnaire that will enable State agencies with growth and development review responsibilities to assess the RAD Plan. The questionnaire shall require the applicant to describe the project and its conformance with the State Development and Redevelopment Plan, and to relate the project’s impact on transportation systems, local utilities, the environment, agriculture, the labor market, municipal planning and zoning, population growth, and quality of life issues. The agencies will provide the Board with a written report describing the impact of State regulations on the proposal; and
4. Public notice requirements. The Board recommends that applicants bring the details of the potential application to the attention of their county government and planning board, constituent boards of education and authorities, and bordering counties and municipalities to obtain their input and comments.

(d) Agency review and conference: Upon submission of a complete RAD Plan, a review and conference shall be conducted as follows:

1. The Board shall distribute the RAD Plan to relevant State agencies. The agencies shall review the proposal and shall submit a report to the Board with their comments;
2. The Board shall have the reports from the individual agencies consolidated into a single “Smart Growth Report.” The Board shall provide the Report to the applicant within 60 days of the submission of the RAD Plan pursuant to (c) above;
3. The Board shall hold a Smart Growth Report Conference with the applicant and the relevant State agencies within 30 days after the submission of the Smart Growth Report to the applicant;
4. An applicant may consider revisions and may choose to enter into negotiations with agencies to address or resolve issues raised by the Report;
5. If the applicant decides to make substantive changes to the proposal, such as a change to the physical RAD boundaries or changes in the size or scale of the project, the applicant may submit a revised Plan. Revisions made to

comply or fulfill issues raised in the Smart Growth Report will not require submission of a revised plan; and

6. Once the review is completed, a copy of the RAD Plan, the Smart Growth Report, and any amendments to the Plan shall be provided to potential Board consultants to obtain a fee quotation for review of the project when an application is filed. Once a consultant is chosen and fee established, the Board will advise the applicant of the fee for the balance of the review process.

#### **5:36-1.4 Application for approval to create a Revenue Allocation District and Preliminary Revenue Allocation Plan**

(a) An applicant may submit a full application for approval to create a Revenue Allocation District and Preliminary Revenue Allocation Plan to the Board for each project for which financing is required regardless of whether a RAD Plan assessment has been requested. This application may include more than one project. Applicants are encouraged to meet with the Board's staff to review the documentation prior to final submission.

(b) A complete application shall include the following items:

1. The introduced ordinance and all attachments, and the proposed preliminary revenue allocation plan set forth in N.J.S.A. 52:27D-462 and 463 and certification by the municipal clerk that the proposed ordinance passed on first reading;

2. An Executive Summary of the application that highlights the key elements of the application;

3. An explanation, documentation, or a demonstration explaining why the Board should determine that the application meets each of the criteria required for Board approval as set forth in N.J.S.A. 52:27D-464.

4. A financial pro forma and financing plan. The financial pro forma and financing plan must describe:

i. Proposed non-RAD funding sources and their amounts, and other funding sources considered and rejected;

ii. Identification and projection of pledged revenues to be generated by the district;

iii. Project finance projections for the life of any anticipated debt obligations;

iv. Projected income and expenditures over the life of the district; and

v. Terms and conditions of any planned financing;

5. A summary of the hearing on the proposed ordinance and, if substantial changes to the plan were made after the hearing, a description of those changes. If the public hearing has not been held by the time the application

was submitted, the applicant must submit the summary no later than 30 days after the application was submitted;

6. If no RAD Plan assessment has been requested, the Board representative shall advise the applicant of the amount of the fee for the Board's review of the plan within 10 days of the submission of the application. The fee shall be based on the anticipated costs incurred by the Board in performing the RAD Plan review; and

7. An "Explanation of Necessity." An individual familiar with the relevant market and financial conditions that make the proposed RAD necessary for the development to take place shall file a written explanation and certification describing those conditions. The explanation shall include how "the planned developments are likely to be realized and would not likely be accomplished by private enterprise without the creation of the district and the revenue allocation financing of the proposed project or projects" pursuant to N.J.S.A. 52:27D-464(a). The applicant has the burden of proof to demonstrate that the project(s) meet this requirement.

(c) Upon receipt of an application, the Board shall conduct a review for completeness, as well as financial and economic criteria reviews. The application shall also be reviewed by OSG for compliance with smart growth principles.

1. No later than seven days prior to the Board meeting that follows 60 days from day of receipt of the application by the Board, if the Board determines that the application is complete, the Board shall contact the applicant and schedule consideration of the application by the Board at the Board's next regularly scheduled meeting. The 60 day period may be extended by mutual agreement of the Board and the applicant.

2. If the Board determines that the application is incomplete, the applicant shall be advised of the reasons thereof and provided an opportunity to complete and re-submit the application.

(d) The Board shall act on the application for approval of the ordinance pursuant to N.J.S.A. 52:27D-464. The preliminary approval may contain conditions to be met in order to achieve final approval. Upon approval, the applicant municipality may complete the adoption of the ordinance.

(e) Preliminary approval of a RAD Plan pursuant to this subchapter shall remain in effect for a period not to exceed three years. Prior to the expiration of the three years, the applicant may apply to the Board to request an extension not to exceed two additional years. The Board may approve such extension, provided that the RAD Plan has not been changed since the date of preliminary approval.

#### **5:36-1.5 Approval of a Final Revenue Allocation Plan**

(a) Approval of a Final Revenue Allocation Plan in accordance with this section is required for projects to be included in a given debt issuance. The Final Revenue Allocation Plan

shall only be filed when project plans are sufficiently complete and all other financing has been finalized. If necessary and appropriate to the project, an applicant may at the same time file for approval of financing instrument (N.J.A.C. 5:36-1.6).

(b) The applicant shall submit a Notice of Intent to file for approval of a Final Revenue Allocation Plan no less than 30 days prior to filing an application. The Notice of Intent to file for final approval shall include an attachment describing all changes made to the Preliminary Plan and shall document how any conditions required of the applicant as part of the approval of the Preliminary Plan have been fulfilled.

(c) The Board shall review the Notice of Intent to file for final approval and shall determine if there have been changes of a substantial nature. If the Board determines that substantial changes have been made to the Preliminary Revenue Allocation Plan, the applicant shall recommence the RAD Plan assessment process. If necessary, an additional review fee may be charged by the Board.

(d) If there are no substantial changes, the applicant may submit the "Final Revenue Allocation Plan" pursuant to N.J.S.A. 52:27D-470 and an introduced ordinance pursuant to N.J.S.A. 52:27D-471. During the 30 days following submission, the Board shall review the application and ordinance. The Board may extend the review period for a single, additional 30-days.

1. Following the review period, if the Board determines that the Final Revenue Allocation Plan is complete, the Board shall contact the applicant and set a schedule for consideration by the Board.

2. If the Board determines that the Final Revenue Allocation Plan is incomplete, the applicant shall be advised of the reasons thereof and be provided an opportunity to complete and resubmit the Final Plan.

(e) After consideration by the Board pursuant to N.J.S.A. 52:27D-471, a vote shall be taken for approval. The Board's approval may contain conditions to be met before any financial instrument is issued.

### 5:36-1.6 Approval of financial instrument

Pursuant to N.J.S.A. 52:27D-483, the applicant or district agent shall apply to the Board for issuance of any financial instruments. The Board's consideration of such an application shall be limited to the provisions of N.J.S.A. 52:27D-483 and to the costs, terms and conditions of the financing, and its impact on the Final Revenue Allocation Plan.

## SUBCHAPTER 2. (RESERVED)

## SUBCHAPTER 3. NEW RESIDENTIAL CONSTRUCTION OFF-SITE CONDITIONS DISCLOSURE

### 5:36-3.1 Purposes

(a) The purposes of this chapter are as follows:

1. To prescribe the form and manner of submission of off-site conditions lists from their owners;
2. To specify for municipal clerks the form and manner of receiving off-site condition lists and maps, and making them available to the public; and
3. To ensure that off-site conditions information is presented in a readily available and easily understood way so that prospective purchasers of new residential construction will be able to locate off-site conditions in relation to the location of properties in which they are interested.

Recodified from N.J.A.C. 5:38-1.1 by R.2005 d.81, effective February 22, 2005.

See: 36 N.J.R. 4571(a), 37 N.J.R. 667(a).

### 5:36-3.2 Correspondence and inquiries

All correspondence and inquiries concerning this chapter should be addressed to:

Off-Site Conditions Disclosure  
Division of Local Government Services  
N.J. Department of Community Affairs  
PO Box 803  
Trenton, New Jersey 08625-0803  
(609) 292-7842  
Fax Number: (609) 633-6243

Recodified from N.J.A.C. 5:38-1.2 by R.2005 d.81, effective February 22, 2005.

See: 36 N.J.R. 4571(a), 37 N.J.R. 667(a).

Amended by R.2008 d.193, effective July 21, 2008.

See: 40 N.J.R. 1731(a), 40 N.J.R. 4315(a).

Deleted designation (a); and substituted "292-7842" for "984-6628".

### 5:36-3.3 Definitions

(a) As used in this chapter, the following words and phrases shall have the following meanings, except where the context clearly indicates otherwise:

"Act" means P.L. 1995, c.253 (N.J.S.A. 46:3C-1 et seq.), the "New Residential Construction Off-Site Conditions Disclosure Act."

APPENDIX A

New Jersey Residential Construction Off-Site Conditions Disclosure Act
Listing of Off-Site Conditions

This form is filed with the municipal clerk of the municipality by the owner and is used to list the following off-site conditions required by N.J.S.A. 46:3C-2: overhead electric utility transmission lines conducting 240,000 volts or more; electrical transformer substations; underground gas transmission lines as defined in 49 C.F.R. 192.3; sewer pump stations designed for 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter; and public wastewater treatment facilities.

This list identifies \_\_\_\_\_ off-site conditions owned, leased, or maintained
(insert type of conditions)

by \_\_\_\_\_ as defined in the
(insert name and address of provider)

“New Residential Construction Off-Site Conditions Disclosure Act,” P.L.1995, c.253 (C.46:3C-1 et seq.), which as of \_\_\_\_\_
(insert date)

have been identified as existing within \_\_\_\_\_ Date of Filing: \_\_\_\_\_
(insert name of municipality)

Submitted on behalf of the owner: \_\_\_\_\_ (signature) \_\_\_\_\_ (printed name)

Name of person to contact for additional information on the off-site condition(s):

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Check here if the list of off-site conditions reported herein includes maps filed in accordance with the instructions:

List of Conditions in \_\_\_\_\_, County of \_\_\_\_\_ Page \_\_\_ of \_\_\_
(name of municipality) (name of county)

Table with 5 columns: Ref. #, Description of Site, Block and Lot #, Street Address or location reference, DEP ID Number. Rows 1-4.

(Form OSC-1)

APPENDIX B

Continuation of List of Off-Site Conditions Page \_\_\_ of \_\_\_

in \_\_\_\_\_, County of \_\_\_\_\_
(name of municipality) (name of county)

Name of Owner: \_\_\_\_\_

Table with 5 columns: Ref. #, Description of Site, Block and Lot #, Street Address or location reference, DEP ID Number. Multiple rows.

(Form OSC-2)

**SUBCHAPTER 4. STANDARDIZED FORMS FOR PERFORMANCE GUARANTEES**

**5:36-4.1 Performance surety bonds**

The standardized form of performance surety bond required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) \_\_\_\_\_ Lot(s) \_\_\_\_\_

**PERFORMANCE SURETY BOND**

We, \_\_\_\_\_, having offices at \_\_\_\_\_, \_\_\_\_\_, as principal, and \_\_\_\_\_, having offices at \_\_\_\_\_, \_\_\_\_\_, a corporation duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the municipality of \_\_\_\_\_ in the county of \_\_\_\_\_, obligee, in the sum of \$\_\_\_\_\_, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On \_\_\_\_\_ (date), principal was granted approval by the \_\_\_\_\_ (approving authority) of the \_\_\_\_\_ of \_\_\_\_\_ for \_\_\_\_\_ (include reference to specific job and resolution of approval). The estimate by the municipal engineer of the cost of this work and the resolution of approval are attached hereto and made a part hereof.

Pursuant to municipal ordinance, adopted under authority of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the principal hereby furnishes a performance surety bond in the amount of \$\_\_\_\_\_ (not to exceed 120 percent of the cost of the improvements, as certified by the municipal engineer), written by \_\_\_\_\_, a surety licensed in the State of New Jersey, guarantying full and faithful completion of improvements approved by the approving authority, in lieu of completing the required improvements prior to the granting of final approval. This bond shall remain in full force and effect until such time as all improvements covered by the bond have been approved or accepted by resolution of the municipal governing body, except that in those instances where some of the improvements are approved or accepted by resolution of the governing body upon certification by the municipal engineer, partial release from the bond shall be granted in accordance with N.J.S.A. 40:55D-53. The amount of the bond remaining shall be sufficient to secure provision of the improvements not yet approved; provided, however, that the municipality may require that 30 percent of the amount of the bond be retained to ensure completion of all improvements.

This bond shall remain in full force and effect until released by resolution of the municipal governing body.

This bond is issued subject to the following expressed conditions:

1. This bond shall not be subject to cancellation either by the principal or by the surety for any reason until such time as all improvements subject to the bond have been accepted by the municipality, in accordance with the applicable provisions of the Municipal Land Use Law.

2. This bond shall be deemed to be continuous in form and shall remain in full force and effect until the improvements are accepted by the municipality and the bond is released, or until default is declared, or until the bond is replaced by another bond meeting applicable legal requirements. Upon approval or acceptance of all improvements by the municipality, or upon replacement of this bond by another bond, liability under this bond shall cease. Upon approval or acceptance of some, but not all, of the required improvements by the municipality, partial release from the bond shall be granted in accordance with N.J.S.A. 40:55D-53; provided, however, that the portion of the bond amount sufficient to secure completion of the improvements shall continue in effect and the municipality may retain 30 percent of the bond amount posted in order to ensure such completion.

3. The aggregate liability of the surety shall not exceed the sum set forth above.

4. In the event that the improvements subject to this bond are not completed within the time allowed under the conditions of the final approval issued pursuant to the Municipal Land Use Law, including such extensions as may be allowed by the approving authority, the municipal governing body may, at its option, and upon at least 30 days prior written notice to the principal and to the surety by personal delivery or by certified or registered mail or courier, declare the principal to be in default and, in the event that the surety fails or refuses to complete the work in accordance with the terms and conditions of the original approval, claim payment under this bond for the cost of completion of the work. In the event that any action is brought against the principal under this bond, written notice of such action shall be given to the surety by the municipality by personal delivery or by registered or certified mail or courier at the same time.

5. The surety shall have the right to complete the work in accordance with the terms and conditions of the original approval, either with its own employees or in conjunction with the principal or another contractor; provided, however, that the surety, in its sole discretion, may make a monetary settlement with the municipality as an alternative to completing the work.