

**CHAPTER 34**  
**PRE-DEVELOPMENT ACTIVITIES**

**Authority**

P.L. 2000, c.72, §§ 5, 13(a) and 26(b).

**Source and Effective Date**

R.2003 d.299, effective July 21, 2003.  
See: 35 N.J.R. 586(a), 35 N.J.R. 3394(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 34, Pre-Development Activities, expires on January 17, 2009. See: 40 N.J.R. 4735(a).

**Chapter Historical Note**

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**19:34-1.1 Purpose and applicability of rules**

(a) These rules are promulgated by the New Jersey Schools Construction Corporation (the "Corporation"), a subsidiary of the New Jersey Economic Development Authority (the "Authority"), to provide guidance for school districts on the undertaking and funding of pre-development activities. Section 3 of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-1 et seq., (the "Act") defines a "school facilities project." That definition includes several activities which these rules specifically identify as "pre-development activities."

(b) The rules in this chapter shall apply to school districts required to use the Corporation to construct their school facilities projects, as follows: Abbott districts, 55 percent or over districts and level II districts. In the event that such districts seek to have a school facilities project designated as a demonstration project to be constructed by a redevelopment entity pursuant to section 6 of the Act, the following rules apply to the pre-development activities for the prospective demonstration project.

(c) Pursuant to N.J.A.C. 6A:26-3.9, a district required to use the Corporation to construct its school facilities projects and which has an approved long-range facilities plan may undertake pre-development activities provided such activities are consistent with its approved long-range facilities plan and are undertaken under the auspices of the Corporation. The district submits an application for pre-development activities to the Department, which notifies both the district and the Corporation whether the activities are approved. The Corporation is authorized to undertake a variety of pre-development activities for Abbott districts. It is authorized to undertake one type of pre-development activity for all other districts required to use the Corporation for school facilities project construction. These rules, therefore, principally address pre-development activities of the Abbott districts.

(d) Any of the districts listed in (b) above for whom the Corporation undertakes "pre-development" activities either directly or by delegation shall, at minimum, comply with the requirements of this chapter, as applicable.

**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).

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et seq.).

“Approved pre-development activity” means a pre-development activity submitted to the Department for approval and approved by the Department, pursuant to N.J.A.C. 6A:26-3.9.

“Asbestos abatement and demolition services” means the removal of asbestos as well as any other hazardous waste and following that, the razing of existing structures not beneficial to the construction of the proposed school facilities project.

“Asbestos/lead/environmental contaminant investigation” means the investigation to determine the location and concentrations of asbestos containing materials, lead based paint, and environmental contaminant containing materials within existing structures on potential school sites in order to identify the associated removal, abatement, and demolition costs to properly address these materials. The results of this investigation(s) are used to prepare demolition engineering plans and bid documents.

“Authority” means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c.80 (N.J.S.A. 34:1B-1 et seq.).

“Boundary survey” means the research of deeds, easements, 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, in accordance with the “Minimum Standard Detail Requirements for American Land Title Association/American Congress on Surveying & 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, which requirements are incorporated herein by reference, as amended and supplemented.

“Consultant” means a consultant, including a design consultant and a site consultant, engaged by the Corporation or the district for an approved pre-development activity providing professional services associated with research, development, design, engineering and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. There may be one or more consultants

engaged by the Corporation or the district for an approved pre-development activity.

“Corporation” means the New Jersey Schools Construction Corporation, a subsidiary of the Authority created on August 13, 2002 to carry out the Authority’s responsibilities under the Act, except the power to incur indebtedness.

“Demonstration project” means a school facilities project selected by the State Treasurer for construction by a redevelopment entity and/or redeveloper pursuant to section 6 of the Act and N.J.A.C. 19:33, and which may receive preliminary approval by the Corporation and the State Treasurer pursuant to this chapter.

“Department” means the New Jersey Department of Education.

“Design consultant” means an architect or engineer or other consultant that undertakes design work and/or construction administration services in connection with a school facilities project pursuant to a design consultant contract.

“Design work” or “pre-development design work” means design work performed by a design consultant in preparation of a school facilities project, pursuant to N.J.S.A. 18A:7G-5, and may include design work in connection with land acquisition, site analysis, and preparation of the drawings required for submission of a school facilities project application or for temporary facilities educational adequacy approval.

“District” or “school district” means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L. 1987, c.399 (N.J.S.A. 18A:7A-34 et seq.).

“Division” means the Division of Finance in the Department of Education.

“Environmental preliminary assessment” means the information gathering required by N.J.A.C. 7:26E-3, entailing historical record search and review and non-invasive analysis of a site to identify all potentially contaminated areas of concern at the site and to determine an appropriate environmental site investigation scope of work to characterize the soil and groundwater conditions.

“Environmental site investigation” means an invasive analysis of the site, involving soil and/or groundwater sampling as well as laboratory analysis, to determine if any contaminants are present at the site above the applicable unrestricted use remediation criteria or if any remediation or any further remediation is required, and shall comply with the requirements for site investigation set forth in N.J.A.C. 7:26E-3.

"E.O. 215" means the 1989 Executive Order requiring State agencies to assess the environmental impacts of new construction projects that exceed certain cost thresholds and that are either initiated by the State or funded by the State.

"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.

"Feasibility study" means a study undertaken with respect to a school facilities project proposed in a district's approved LRFP to determine if it is achievable in view of possible factors identified that may influence the project's design or construction, including, but not limited to, applicable Federal, State and local laws, physical site conditions, market conditions, costs and benefits. A feasibility study may consist of a pre-land acquisition evaluation to determine whether, because of health and safety, efficiency, environmental factors, physical site conditions or cost it would be more feasible to acquire land for a school facilities project or not. A feasibility study may also consist of a pre-construction evaluation to determine whether, because of health and safety, efficiency, or cost it would be more feasible to replace rather than renovate a school facility.

"55 percent or over district" means a district whose district aid percentage, as defined in N.J.S.A. 18A:7G-3, is equal to or greater than 55 percent.

"Final eligible costs" means for a school facilities project to be constructed by the Corporation, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the Corporation, pursuant to section 5 of the Act.

"Geotechnical investigation" means the investigation of subsurface soil and geologic conditions, such as groundwater conditions and depth to bedrock, to determine the impact of such conditions on construction costs, and adequacy of foundation support for the proposed building, and the suitability of the site for the proposed building.

"Land-related design work" means the preliminary design work required for the acquisition of vacant or improved land, the acquisition of land with existing school or other facilities, or the use of district-owned land for the construction of a school facilities project, such as a site utilization plan and/or a conceptual site plan, existing building evaluations, or the preliminary application of a school facility's programmatic model ("educational programming") to the site.

"Level II district" means a district which is 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).

"Local share" means, in the case of a school facilities project to be constructed by the Corporation, the total costs less the State share as determined pursuant to section 5 of the Act.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2, and an "approved LRFP" is an LRFP approved by the Commissioner pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.

"Other district required to use the Corporation" means a district other than an Abbott district required to use the Corporation for the construction of school facilities projects as follows: a 55 percent or over district or a level II district.

"Pre-development activities" means the activities that must be undertaken prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs. Such activities include site analysis, acquisition of land, remediation and site development, feasibility studies, design work, and acquisition of temporary facilities, as set forth in this chapter and in N.J.A.C. 6A:26-3.9.

"Pre-development grant" means the funds to be provided to the district by the Corporation to pay for the costs of an approved pre-development activity or activities undertaken by the district pursuant to this chapter.

"Pre-development grant agreement" means the grant agreement between the Corporation and a district pursuant to which the Corporation shall provide the pre-development grant to the district.

"Preliminary project report" means the report that the Department prepares for the Corporation 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).

"Redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for purposes of undertaking a demonstration project, and as further defined in the Local Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-3).

"Redevelopment entity" means a redevelopment entity authorized by a municipal governing board to implement plans and carry out redevelopment projects in the municipality pursuant to the Local Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.). For purposes of issuing a preliminary approval of a demonstration project, the redevelopment entity will be evaluated together with the redeveloper(s) identified as undertaking the project.

"School facilities project" means the acquisition, demolition, construction, repair, alteration, modernization, renovation, reconstruction, or maintenance of all or any part

of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall include, but is not limited to, site acquisition, site development, the services of design professionals, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

“School facilities project application” means an application submitted by a district for approval of a school facilities project pursuant to N.J.A.C. 6A:26-3.2.

“Section 13(a) delegation agreement” means the grant agreement between the Corporation and an Abbott district or another district required to use the Corporation by which the Corporation funds pre-development activities in connection with a proposed school facilities project with estimated costs under the section 13(a) delegation limit delegated by the Corporation to be undertaken by an Abbott district, pursuant to section 13(a) of the Act and N.J.A.C. 19:34A.

“Section 13(a) delegation limit” means the eligible cost limit, as set forth in section 13(a) of the Act, for a school facilities project to be eligible for delegation by the Corporation to the district.

“Site analysis” means the due diligence, investigation, permitting, and compliance required prior to acquisition of land for a school facilities project or prior to the construction of a school facilities project on district-owned land, and includes, but is not limited to, boundary and topographical surveys, environmental preliminary assessment, environmental site investigation, and other investigations and evaluations (for example, geotechnical, wetland, utility, asbestos, lead, environmental contaminants).

“Site consultant” means a consultant engaged to undertake site feasibility, site analysis and/or site investigatory work, excluding design work, in connection with a land acquisition for a school facilities project.

“Site utilization plan” means the preliminary drawing of the school facility on a site or proposed site, showing how the facility, including the programmatic model for the facility, will fit on the site with all ancillary and accessory uses (parking, recreation, etc.), which may be submitted to the local planning board, pursuant to N.J.S.A. 40:55D-31.

“State share” means the State’s proportionate share of the final eligible costs of a school facilities project to be constructed by the Corporation as determined pursuant to section 5 of the Act (N.J.S.A. 18A:7G-5).

“Temporary facilities funding agreement” means that the agreement between the Corporation and the district to fund either temporary classroom units or other temporary facilities, which are approved pre-development activities, and procured by the district in accordance with this chapter and other applicable State law.

“Topographic survey” means the detailed mapping or description of the relief features or a surface configuration of a parcel of land, pursuant to the “Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys” (see definition of “boundary survey” above).

“Traffic study” means a study of the existing traffic conditions in the immediate vicinity of the proposed school site and determination of the surrounding area(s) of impact from the proposed school facilities project. The background analysis may include, but is not limited to, traffic counts, intersection movement studies and other site specific traffic engineering tasks. The determination of the impact may include, but is not limited to, trip generation analysis, air quality analysis at intersections, and the study of parking requirements. The traffic study shall be performed by or under the supervision of a licensed engineer with expertise in traffic analysis.

“Utility investigation” means the research and field investigations performed by the consultant to determine whether or not the existing utility infrastructure is adequate to support the proposed school facilities project. The determination of whether or not public water, sanitary sewer, electric or other utilities are reasonably available in sufficient capacity to service the proposed school facilities project is critical to evaluating whether the site is viable for that purpose.

“Wetland investigation” means the evaluation of wetland area to determine the net developable area of a specific proposed school site. A wetland area is a land form, containing soil, groundwater and vegetation, which provides a critical habitat for sustaining wildlife species, and is therefore, a constraint on land use. The wetland area must be identified, delineated and mapped prior to the design of a school facilities project and associated site improvements. This investigation is typically performed by consultants trained in wetlands biology and certified by the New Jersey Department of Environmental Protection and the U.S. Army Corps of Engineers.

(b) Words and terms implementing the Act but not defined in this section shall have the meanings defined in N.J.A.C. 6A:26-1.2 and in 19:32-1.3.

### 19:34-1.3 Disclosure and publicity

(a) Applications and submissions received by the Corporation under this chapter 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.

(b) Press releases and other public dissemination of information by the school district concerning the pre-development activities shall acknowledge Department approval and Corporation financial assistance when such assistance is provided.

**19:34-1.4 Access and record retention**

(a) The Corporation, the Authority, the Department, the New Jersey Department of Community Affairs, the Unit of Fiscal Integrity with the Office of the Attorney General, the New Jersey Department of Labor, and their duly authorized agents may, at their discretion and cost, investigate, audit, examine and inspect the activities, documents, records and accounts, pertaining to the pre-development activities, of the district.

(b) The Corporation shall make available records and accounts pertaining to pre-development activities undertaken by the Corporation upon the request by the Unit of Fiscal Integrity with the Office of the Attorney General. The Corporation shall also cooperate, upon request, in sharing information with other entities.

(c) The school district shall keep those records and accounts and shall require all contracted parties to keep those records and accounts for the pre-development activities as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

(d) The Corporation shall keep those records and accounts and shall require all parties with whom it has contracted to keep those records and accounts for the pre-development activities as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

**19:34-1.5 Contract award and compliance**

The provisions set forth in N.J.A.C. 19:34A-4.2, 4.3, and 4.4 shall apply to the contract award and compliance, fraud and other unlawful or corrupt practices, and debarment relating to pre-development activities delegated to districts under this chapter.

**19:34-1.6 Noncompliance, remedies for events of default and noncompliance, and termination by mutual agreement**

The provisions set forth in N.J.A.C. 19:34A-1.4, 1.5, 1.7, and 1.9 shall apply to the noncompliance, remedies for events of defaults and noncompliance, and termination by mutual agreement relating to pre-development activities delegated to districts under this chapter.

**19:34-1.7 Waiver**

The provisions set forth in N.J.A.C. 19:34A-1.8 shall apply to any district requesting a waiver or release from the express provisions of any of the rules in this chapter.

**19:34-1.8 Appeals**

The provisions set forth in N.J.A.C. \*19:34A-1.9 shall apply to the appeals by districts of Corporation determinations made pursuant to this chapter.

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**SUBCHAPTER 2. GENERAL GUIDELINES FOR UNDERTAKING AND FUNDING PRE-DEVELOPMENT ACTIVITIES**
**19:34-2.1 General guidelines**

(a) A district required to use the Corporation for the construction of a school facilities project may also require pre-development activities to be undertaken in connection with a school facilities project prior to the submission of a school facilities project application. In the case of an Abbott district, the district or in the case of a proposed demonstration project, the district and the municipality, may submit to the Department a pre-development application setting forth a request for Department approval of the undertaking and funding of the requested pre-development activity(ies), pursuant to N.J.A.C. 6A:26-3.9. In the case of another district required to use the Corporation, the request shall be limited to the pre-development design work entailed in submitting a school facilities project application to the Department, as further described in N.J.A.C. 19:34-5.1. In both cases, the pre-development application shall be accompanied by a board resolution authorizing the application, and with regard to a demonstration project, a municipal resolution as well.

(b) The undertaking and funding of pre-development activities shall be determined on the basis of whether the district is an Abbott district, or whether the district is another district required to use the Corporation. The determination shall also depend on the type of pre-development activity requested by the district and approved by the Department.

(c) In the case of an Abbott district, the Corporation shall either itself undertake the approved pre-development activity or activities or delegate such activity or activities to the district pursuant to N.J.A.C. 19:34-3 and 4.

(d) In the case of an Abbott district proposing a demonstration project, the Corporation shall either itself undertake or delegate such activity or activities provided that the land and/or facilities are to be used primarily for school purposes. For land and/or facilities not to be used primarily for school purposes, the redevelopment entity and/or redeveloper shall be responsible for undertaking and funding the pre-development activities. After that project has been approved pursuant to N.J.A.C. 6A:26-3.3, and, further, designated as a demonstration project, those costs determined by the Department to be a part of the final eligible costs of the project shall be deemed eligible for a State share.

(e) In the case of another district required to use the Corporation, the district shall undertake all pre-development activities in connection with a school facilities project, except that the district may apply to the Corporation for certain pre-development design work (educational specifications and schematic plans) pursuant to N.J.A.C. 19:34-5.2.

#### **19:34-2.2 Delegation of pre-development activities to Abbott districts**

(a) Upon receipt of approval from the Department of a pre-development activity for an Abbott district, the Corporation shall undertake the activity unless it is an activity which the Corporation determines to delegate pursuant to this subchapter or unless the Corporation decides that the proposed school facilities project and its approved pre-development design work may be delegated to the district pursuant to N.J.S.A. 18A:7G-13(a). In that case, the Corporation shall determine the estimated school facilities project costs. If the Corporation determines that the estimated school facilities project costs will be not greater than the section 13(a) delegation limit, and the school facilities project does not include land acquisition or special circumstances such as site analysis, site development or site remediation on district-owned land, the Corporation may delegate the undertaking of the entire school facilities project and any related approved pre-development design work to the district and such undertaking shall be done pursuant to N.J.A.C. 19:34A.

(b) If the Corporation determines to delegate one or more pre-development activities to the district, the following steps shall occur before the Corporation funds the activity or activities:

1. If the Corporation determines that the proposed school facilities project may be eligible for a section 13(a) delegation agreement, N.J.A.C. 19:34A shall apply. If the Corporation determines that the pre-development activity is eligible for a pre-development grant, (b)2 through 7 below shall apply.

2. The Corporation, in consultation with the district, will determine the pre-development activity or activities to be delegated, scopes of work, and an initial budget. The district shall provide the Corporation, prior to the determination of an initial budget, a preliminary budget which will assist the district in seeking proposals from consultants and/or contractors to undertake the pre-development activities.

3. The district shall execute the applicable grant agreement within such period of time and pursuant to such terms and conditions as the Corporation may determine in its sole discretion, and return the agreement together with all applicable attachments to the Corporation for execution by the Corporation.

4. Upon determining that all conditions precedent to the execution of the agreement have been satisfied, the Corporation shall execute the agreement.

5. Upon execution of the applicable agreement, the Corporation shall transmit to the district the agreement and, at the Corporation's sole discretion, a sign to the extent permitted by the zoning laws indicating that financing was made available to the district through the Corporation.

6. Disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the district and approved by the Corporation for payments. Total disbursements shall not exceed the grant amount.

7. No disbursement of grant funds for expenses incurred by the district shall be made until the Corporation receives all the documentation required for that disbursement. Such documentation shall include an invoice with a complete description of the costs incurred and a payment voucher signed by an authorized officer of the district and the applicable consultant, with a certification as to the work performed.

#### **19:34-2.3 Delegation of pre-development activities to other districts required to use the Corporation**

Upon receipt of approval of a pre-development activity from the Department for another district required to use the Corporation, the Corporation may decide at this time whether the proposed school facilities project and its approved pre-development design work to develop a school facilities project application may be delegated to the district pursuant to N.J.S.A. 18A:7G-13(a). If the Corporation determines that the estimated school facilities project costs will not exceed the section 13(a) delegation limit, and the school facilities project does not include land acquisition or special circumstances such as site development or site remediation, the Corporation may delegate the school facilities project to the district pursuant to N.J.A.C. 19:34A.

### **SUBCHAPTER 3. ABBOTT DISTRICTS LAND PRE-DEVELOPMENT**

#### **19:34-3.1 General criteria and procedures**

(a) If an Abbott district wishes to acquire land in connection with a school facilities project in its approved long-range facilities plan, the Corporation shall fund and either undertake or delegate to the district the following approved pre-development activities: feasibility studies, land related design work, site analysis, and site acquisition. If an Abbott district has already acquired land on which it proposes to construct a school facilities project, the Corporation shall fund and either undertake or delegate to the district, as applicable, the aforementioned approved pre-development activities with the exception of site acquisition. Additionally, the Corporation shall fund and undertake, as needed, site development and remediation on land acquired by the Corporation pursuant to this chapter.

(b) After Corporation receipt of a Department approval of pre-development activities in connection with land acquisition or with the use of district-owned land for the construction of a school facilities project, the Corporation shall determine whether or not to delegate to the district certain land related pre-development activities. The Corporation shall base its delegation decision generally on the best interest of the school facilities project.

1. If the Corporation determines to delegate certain pre-development activities to the district, the Corporation shall, in consultation with the district, determine the pre-development activities to be delegated and the applicable scopes of work and send to the district the applicable scopes of work for the activities, and a pre-development grant agreement.

2. Once the pre-development grant agreement is fully executed, the district may seek proposals for the agreed upon scope of work from a design consultant, site consultant or other consultant, and shall submit such proposals to the Corporation before undertaking the pre-development activities. In the event that the approved pre-development activities include site acquisition, the district shall structure the procurement of consultants to cover all of the proposed sites identified for the school facilities project, enabling the district to proceed with the first choice of sites, but also, enabling the district to proceed with another or other choices if the first choice is determined by the Corporation to be unavailable or unsuitable or, alternatively, enabling the district to proceed thereafter with proposals for the review of several sites concurrently, if the Corporation so authorizes.

3. Upon receipt by the district of proposals and costs estimates for services, the district shall forward same to the Corporation for approval, for development of the initial budget, and for verification of design consultant pre-qualification.

4. If the Corporation determines to delegate, with district consent, one or more pre-development activities, prior to undertaking such activities, the district and its design consultant and/or other consultant(s) shall provide the Corporation a schedule of pre-development activities with milestone deliverable dates for each pre-development activity. After review of this schedule, in consultation with the district, the Corporation may authorize the initiation of one or more pre-development activities for one or more proposed sites for a school facilities project.

(c) If the Corporation determines not to delegate such pre-development activities to the district, and such activities include land acquisition, the district shall provide to the Corporation the items in (c)1 through 11 below. If the Corporation determines to delegate to the district pre-development activities relating to land acquisition, the district shall be responsible for providing the items in (c)1 through 11 below directly to the Department, pursuant to N.J.A.C. 19:34-3.5.

1. A district board of education resolution authorizing the pre-development activities;
2. Lot and block numbers under consideration for the proposed site;
3. A description of the proposed site, including any existing improvements on the site;
4. A map of the district showing location of the land and the location of existing schools in the district;
5. A map showing the attendance area to be served by the school and the number of students who reside therein;
6. Data regarding the impact of the acquisition upon racial balance within the district's public schools;
7. A description of the approved programmatic model as applied to the proposed school facility, including information on the prospective school facility size and functional capacity;
8. A letter or letters from a local or county water/sewerage agency(ies) on water and sewer infrastructure availability, and addressing service and treatment capacity for the proposed school facilities project;
9. The complete municipal zoning ordinance, zoning map and master plan;
10. To the extent available, any prior engineering, architectural, and environmental reports (for example, environmental preliminary assessment, pursuant to N.J.A.C. 7:26E-3.1); and
11. To the extent available, in the case of acquisition of land with an existing facility, any as-built documents for an existing facility proposed to be rehabilitated.

(d) If the approved pre-development activities are for a project that a district and a municipality are seeking designation as a demonstration project, the district and the municipality shall provide the Corporation with a description of the proposed demonstration project including any community design features, a scope of work for the approved pre-development activities, and a cost estimate sufficiently detailed for the Corporation to make pre-development funding and delegation determinations. For these determinations, the district and the municipality shall provide the Corporation all of the items listed in (c) above, and in addition, the following items:

1. A resolution of the municipality authorizing the pre-development activities;
2. A description of the proposed demonstration project, including community design features and spaces and/or facilities and/or land not intended for school use (for example, residential, commercial, or community uses);
3. A preliminary cost estimate for the pre-development activities; and

4. The information required in this chapter for preliminary approval of the demonstration project and the redevelopment entity and/or redeveloper selected to undertake the project.

(e) If, as a result of the information received by the Corporation pursuant to (d) above, the Corporation determines to delegate some or all of the pre-development activities, it may delegate to the district such activities with its consent, and the district may in turn provide that its contracts with consultants relating to the demonstration project shall be assignable to the redevelopment entity and/or redeveloper on or after the project has received designation as a demonstration project by the State Treasurer.

(f) In the event that the Corporation determines to delegate pre-development activities other than land-related pre-development activities of a project intended to be designated as a demonstration project, the district and the municipality shall provide the Corporation the items listed in (d) above and a resolution of the district authorizing the pre-development activities, to the extent not already provided to the Corporation.

#### 19:34-3.2 Site identification

(a) If an Abbott district wishes to acquire land in connection with a school facilities project in its approved long-range facilities plan, it shall be responsible for identifying from one to three sites, consistent with the district's approved long-range facilities plan, in its application to the Department for approval of land acquisition pre-development activities for a school facilities project. The district is encouraged to provide opportunity for the community at large to have meaningful participation in the site selection process, pursuant to Executive Order No. 24(2002). After the Corporation receives the following documents, the steps described in N.J.A.C. 19:34-3.3 and 3.4, as applicable, for such site or sites will be undertaken:

1. A copy of the Department approval of land acquisition pre-development activities for a school facilities project, indicating from one to three sites identified by the district for a school facility; and

2. A statement signed by the district board of education president and chief school administrator indicating the immediate and ultimate proposed uses of each of the sites identified, in terms of building use, grade organization and potential maximum enrollment, and whether the land is, or will be, part of a school facilities project indicated in the district's long-range facilities plan.

(b) In the event that none of the sites identified by the district and approved by the Department for pre-development activities is determined by the Corporation to be available or suitable for acquisition as a school site, the Corporation may either undertake or delegate to the district the task of identifying an additional site or sites. Such undertaking may involve matching the programmatic model for the school in the district's long-range facilities plan with alternative sites.

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

(a) After a site has been identified, and is approved by the Department for land-related pre-development activities, the Corporation shall either undertake or delegate to the district any feasibility studies or land-related design work necessary to determine whether to acquire the site or construct on the site.

(b) The feasibility studies relevant to land acquisition or to the use of district-owned land for the construction of a school facilities project may consist of a cost comparison of rehabilitation of an existing school facility, conversion of a facility, and the construction of a new school facility on a new site or some other basis for analysis. For example, the feasibility study may include a traffic study, which analyzes the existing traffic conditions in the immediate vicinity of the proposed school site, determines the surrounding area of impact from the proposed school facilities project, and is performed by a consultant who is a licensed engineer with expertise in traffic analysis. Land-related design work may consist of any of the architectural and engineering work required for the acquisition or use of vacant or improved land or land with existing school or other facilities, such as a site utilization plan and/or a conceptual site plan, as further set forth in N.J.A.C. 19:34-3.4.

(c) The Corporation shall define or assist the district in defining the scope of the feasibility study, approve of the scope, and determine how and when the scope has been satisfied. If, in the course of a feasibility study, the Corporation determines that the land is unavailable or unsuitable for acquisition or use as a school site, it may terminate or require the district to terminate the feasibility study for that site, and proceed or permit the district to proceed to undertake approved pre-development activities on another site identified by the district. Alternatively, the Corporation may proceed or permit the district to proceed with feasibility studies on several sites concurrently, and terminate or require the district to terminate the feasibility study for the site that the Corporation determines is unavailable or unsuitable for acquisition or use as a school site.

#### 19:34-3.4 Site analysis

(a) Site analysis means the due diligence and investigation required prior to the acquisition or use of land for a school facilities project, and includes, but is not limited to, boundary and topographic surveys, environmental site investigation, other types of investigation (geotechnical, wetland, utility, asbestos, lead, environmental contaminants, etc.), and services performed by a consultant in connection with site development and/or remediation. It shall also entail the obtaining of data, documentation, statements, reports and other material needed to satisfy any required approvals for the acquisition or use of land. At any point during or after site analysis, if the Corporation determines that a proposed site is not suitable or available for school use, due to environmental or other reasons, it may either terminate or require the district to terminate any further site analysis for that site.

(b) The Corporation shall either undertake or delegate to the district the site analysis needed for purposes of site acquisition or use of a district-owned site for the construction of a school facilities project.

(c) If the Corporation has delegated to the district the undertaking of an environmental preliminary assessment, the district shall be required to provide the Corporation with the environmental preliminary assessment report along with a draft environmental site investigation plan for review and approval before proceeding with the environmental site investigation.

(d) The Corporation, to the extent of pre-development activities it has not delegated to the district, shall communicate its findings of data and information (gathered from site analysis, if performed) with the district's chief school administrator prior to submitting an application for any required approval of the acquisition of land to the Department. Further, the Corporation shall either undertake or delegate any other due diligence required for the land acquisition or the use of district-owned land for a school facilities project. The Corporation may also delegate the submission of the application for land acquisition approval to the district. If more than one site has been evaluated, the Corporation, after consultation with the district, shall notify the Department of what it considers to be the most suitable site.

#### 19:34-3.5 Land acquisition approvals

(a) Following a feasibility study, land-related design work, site analysis, and consultation, as applicable, and depending on whether the site is suitable due to cost, availability and other factors, the Corporation shall determine whether or not to acquire the land. If the Corporation determines to authorize the acquisition of the land, the Corporation may either submit or have the district submit the site utilization plan to the local planning board, pursuant to N.J.S.A. 40:55D-31, and obtain or cause the district to obtain the approvals, reports and statements required by the Department prior to the submission of an application for approval of the acquisition of land to the Department.

(b) The Corporation shall undertake or delegate to the district title review and appraisal of the land.

(c) The Corporation shall undertake any submissions required to the New Jersey Department of Environmental Protection, pursuant to E.O. 215 (1989).

(d) If the district acquires the land, the Corporation shall cause the district to obtain all approvals, reports and statements required for acquisition of the property prior to the Corporation authorizing the district to proceed with the closing of title on the property.

#### 19:34-3.6 Ownership of land

(a) Upon the obtaining of all necessary approvals required for the acquisition of a site, the Corporation shall

take all steps necessary, including condemnation, required to take title to the site.

(b) The Corporation shall, at its option, take title in its own name, or the site shall be conveyed directly to the district.

(c) If the Corporation obtains title in its own name, it may retain title for a period of time no later than the completion and close out of the school facilities project on the land.

(d) If the Corporation conveys title to the district prior to close out of the school facilities project on the land, the district shall agree to permit the Corporation access to the land by way of ground lease or other form of right of entry as appropriate to undertake pre-development activities and school facilities project(s) on the land.

(e) Any site funded by the Corporation pursuant to this chapter shall contain a reverter that if the site is not used for a school facility as defined under the Act, the land together with the school facility on the land funded under the Act, will revert to and the title thereof shall vest in the Corporation. The district shall execute any documents including, but not limited to, a deed of conveyance necessary to accomplish such reversion. If applicable, the district shall also comply with the requirements for Department approval of the disposal of land and/or the closing of a school facility, pursuant to N.J.A.C. 6A:26-7.4 and 7.5.

#### 19:34-3.7 Relocation assistance

(a) When the Corporation acquires land in connection with a school facilities project, by purchase or by eminent domain, and thereby becomes a displacing agency within the meaning of N.J.A.C. 5:40, the Corporation shall provide and fund relocation assistance to displaced persons in accordance with applicable law and regulation. The Corporation may delegate such relocation assistance to a district and fund this assistance when the Corporation decides that delegation is in the best interests of the school facilities project.

(b) When the Abbott district acquires land in connection with a school facilities project, by purchase or by eminent domain, and thereby becomes a displacing agency within the meaning of N.J.A.C. 5:40, the district shall provide and receive funding to provide relocation assistance to displaced persons in accordance with applicable law and regulation. The district may delegate such relocation assistance to the Corporation or contract with another entity to provide such assistance, with the approval of the Corporation.

#### 19:34-3.8 Remediation and site development

(a) Upon acquisition by the Corporation or by the district of the land, the Corporation shall perform any necessary remediation and/or site development work to prepare the land for construction. The Corporation may undertake or

delegate to the district, if in the best interests of the school facilities project and with district consent, any pre-development consultant services relating to remediation and site development.

(b) For land already owned by the district on which the district is proposing to locate a school facilities project, the Corporation may 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.

#### SUBCHAPTER 4. ABBOTT DISTRICTS: OTHER PRE-DEVELOPMENT ACTIVITIES

##### 19:34-4.1 Other feasibility studies and pre-development design work

(a) A feasibility study may consist of a cost comparison of rehabilitation of an existing facility and the construction of a new facility, an analysis focusing on health and safety factors, an analysis focusing on environmental factors, or another basis for analysis. For example, a feasibility study may include a traffic study to analyze the impact on traffic and/or parking that a school facilities project could entail.

(b) Pre-development design work, in addition to land-related design work, may consist of the educational specifications and schematic plans or other design work required for Department approval of a school facilities project or the acquisition of land with an existing facility. For example, such design work could consist of applying the programmatic model to a site or an existing facility.

(c) After receipt of an approval by the Department of a district request for a feasibility study and/or pre-development design work, the Corporation shall either undertake or delegate to the district the feasibility study and/or undertake the pre-development design work, except in the case of such activity or activities being part of a school facilities project that the district intends to be designated a demonstration project, in which case (d) below shall apply. A condition for Corporation undertaking of a feasibility study and/or pre-development design work shall be the prior provision by the district to the Corporation of a right of entry upon the land permitting the Corporation to perform such activity or activities.

(d) In the case of a feasibility study and/or pre-development design work that are part of a school facilities project that the district intends to be designated a demonstration project, the Corporation may either undertake the feasibility study or delegate it to the district and delegate the pre-development design work to the district, provided that the demonstration project and the redevelopment entity/redeveloper have received preliminary approval pursuant to this chapter.

##### 19:34-4.2 Temporary facilities

(a) After receipt of an approval by the Department of a district request for temporary facilities and as part of the process of undertaking a school facilities project, the Corporation shall procure, install and fund, or in the best interests of the school facilities project, fund but delegate to the district, with district consent, the procurement and installation of, temporary facilities to be used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students.

(b) If the temporary facilities are located on land owned by the district, the district shall agree to permit the Corporation a right of entry upon the land to undertake pre-development activities and, if applicable, the school facilities project. If the temporary facilities are located on land not owned by the district, the Corporation shall require the owner of the land to agree to permit the Corporation a right of entry upon the land to undertake pre-development activities and, if applicable, the school facilities project.

(c) The Corporation shall obtain or, if it determines to delegate the procurement of the temporary facility(ies) to the district, require the district to obtain all required approvals prior to district occupancy of temporary facilities, such as Department approval pursuant to N.J.A.C. 6A:26-3.14 and 6A:26-8, which may in turn be conditioned upon local planning board review and Uniform Construction Code compliance.

(d) If the Corporation delegates to the district the procurement of temporary facilities, the Corporation shall condition eligibility for funding under a temporary facilities funding agreement on district showing of compliance with the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., as applicable, and/or upon district execution of a lease in accordance with applicable State law.

(e) If, in the best interests of the school facilities project, the Corporation delegates to the district the procurement of temporary facilities, and the Corporation and the district enter into a temporary facilities funding agreement, the district may then engage a design consultant to the design work required for the approvals in (c) above, and advertise for the temporary facilities by lease or purchase and any related site work in accordance with the Public School Contracts Law. Upon submission by the district to the Corporation acceptable evidence of the suitability of the site for the temporary classroom unit or other temporary facilities, along with any other required documentation (for example, payment voucher, proof of insurance coverage), the Corporation shall authorize the procurement to proceed and contracts may be awarded.

**SUBCHAPTER 5. OTHER DISTRICTS REQUIRED TO USE THE CORPORATION:  
UNDERTAKING AND FUNDING PRE-DEVELOPMENT ACTIVITIES**

**19:34-5.1 General provisions**

(a) For all other districts required to use the Corporation, the costs associated with approved pre-development activities shall be funded locally and the district shall comply with N.J.A.C. 6A:26-3.3.

(b) Once these costs have been approved by the Department pursuant to N.J.A.C. 6A:26-3.3, the district shall receive credit toward the local share of that project, unless the Corporation has reason to doubt whether the pre-development activity was procured in compliance with applicable law, in which case, the Corporation may request additional evidence of such compliance and a certificate of compliance from the district school business administrator or other authorized officer.

(c) All other districts required to use the Corporation shall be responsible for undertaking pre-development activities except for design work pursuant to N.J.A.C. 19:34-5.2.

**19:34-5.2 Design work**

(a) In the case of design work, the district may request that the Corporation procure a design consultant to undertake pre-development design work required in order to develop a school facilities project application (educational specifications and schematic plans). The request may be in the form of a pre-development application submitted to the Department, pursuant to N.J.A.C. 6A:26-3.9, describing the design work, the school facilities project, and estimated costs of the design work.

(b) After the Department forwards a copy of the pre-development approval to the Corporation, the Corporation shall proceed to procure and fund 100 percent of the costs of the design consultant to undertake the pre-development design work required in order to develop the school facilities project application. The costs of the design consultant shall be allocated to the applicable school facilities project when that project is approved pursuant to N.J.A.C. 6A:26-3.3.

(c) If the pre-development request is not approved, the district shall be responsible for undertaking and funding the pre-development design work.

**SUBCHAPTER 6. DEMONSTRATION PROJECTS**

**19:34-6.1 Request for preliminary approval of the demonstration project and redevelopment entity**

(a) In the event that a district and a municipality notify the Department that they request the approval of pre-development activities on a project that they will be requesting to be designated a demonstration project, and the Department approves pre-development activities for such project, a district and a municipality may also request that the demonstration project and redevelopment entity/redeveloper to undertake the project receive preliminary approval from the Corporation. The preliminary approval may serve to assist the redevelopment entity/redeveloper with the undertaking or the securing of funding for any pre-development activities for the proposed demonstration project.

(b) A district and a municipality seeking preliminary approval shall submit an application to the Corporation with the project and redevelopment entity/redeveloper information set forth in N.J.A.C. 19:33-2.1(c).

**19:34-6.2 Preliminary approval determination**

(a) Upon receipt of a completed application for preliminary approval, the Corporation shall evaluate the application pursuant to the criteria set forth in N.J.A.C. 19:33-2.2.

(b) If the Corporation determines to recommend to the State Treasurer that the application receive preliminary approval, and the State Treasurer agrees with the recommendation, the Corporation shall notify the district and the municipality that both the demonstration project and the redevelopment entity/redeveloper have received preliminary approval. The district and the municipality will also be notified if the Corporation determines not to recommend preliminary approval, so that district and municipality may amend and resubmit their application.

(c) The preliminary approval of a demonstration project shall serve to reserve demonstration project designation eligibility.

(d) Eligibility for one of the six of such designations permitted under section 6 of the Act shall be on a first come, first served basis. In the event that six projects have received preliminary approval, the Corporation may grant further preliminary approvals only if one or more of the projects that received preliminary approval fails to obtain designation as a demonstration project.