

CHAPTER 34
PRECONSTRUCTION ACTIVITIES

Authority

P.L. 2000, c. 72, §§5, 13(a) and 26(b), as amended, and P.L. 2007, c.137, specifically, §§20, 24 and 36.

Source and Effective Date

R.2009 d.14, effective December 8, 2008.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 34, Preconstruction Activities, expires on June 5, 2016. See: 48 N.J.R. 192(a).

Chapter Historical Note

(Chapter 34, Pre-Development Activities, was adopted as new rules by R.2003 d.299, effective July 21, 2003. See: 35 N.J.R. 586(a), 35 N.J.R. 3394(a).

Chapter 34, Pre-Development Activities, was readopted as R.2009 d.14, effective December 8, 2008. As a part of 2008 d.14, Chapter 34, Pre-Development Activities, was renamed Preconstruction Activities; Subchapter 2, General Guidelines for Undertaking and Funding Pre-Development Activities, was renamed General Guidelines for Undertaking and Funding Preconstruction Activities; Subchapter 3, Abbott Districts Land Pre-Development, was renamed SDA School Districts Site Preconstruction Activities; and Subchapter 5, Other Districts Required To Use the Corporation: Undertaking and Funding Pre-Development Activities and Subchapter 6, Demonstration Projects, were repealed, effective January 5, 2009. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 34, Preconstruction Activities, was scheduled to expire on December 8, 2015. See: 43 N.J.R. 1203(a).

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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 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) In accordance with P.L. 2007, c. 137, section 1h, these rules provide for the involvement of SDA school districts, the public and stakeholders at critical points throughout the preconstruction phase of a school facilities project, including the identification and selection of proposed sites for school facilities projects. The rules also provide selection criteria to assist school districts in performing their responsibilities to identify prospective school sites.

(c) The rules in this chapter shall apply to SDA school districts, the school districts required to use the Authority to construct their school facilities projects.

(d) Upon the approval of an SDA school district's long range facilities plan, and based upon the educational priority ranking of the school facilities projects in an SDA school district, as determined by the Commissioner pursuant to section 5m(2) of the Act, and the establishment of a Statewide strategic plan to be used by the Authority in the sequencing of school facilities projects, pursuant to section 5m(3) of the Act, an SDA school district may, pursuant to N.J.A.C. 6A:26-3.9, apply to the Department for approval of preconstruction activities, provided such activities are consistent with its approved long-range facilities plan. The SDA school district submits an application for preconstruction activities to the Department, which notifies both the district and the Authority whether the activities are approved.

(e) An SDA school district for which the Authority undertakes preconstruction activities shall, at minimum, comply with the requirements of this chapter, as applicable.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).
Rewrote the section.

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.”

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137.

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

“Architectural pre-design and programming” 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-1 et seq.

“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 P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

“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, which requirements are incorporated herein by reference, as amended and supplemented.

“Capital maintenance project” means a school facilities project intended to extend the useful life of a school facility, including up-grades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems.

“Commissioner” means the Commissioner of Education.

“Consultant” means a consultant, including a design consultant and a site consultant, engaged by the Authority for

an approved preconstruction 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 Authority for an approved preconstruction activity.

“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.

“DCA” means the New Jersey Department of Community Affairs.

“Demolition services” means the removal of asbestos and hazardous building materials, such as lighting fixtures and thermostats containing mercury, air conditioning units containing chlorofluorocarbons (CFCs) and light ballasts containing PCBs, followed by the razing of existing structures and removal of building foundations not beneficial to the construction of the proposed school facilities project, disposal of demolition debris and the backfill of the demolition area with fill suitable for unrestricted residential use and the removal of underground storage tanks and associated remediation of soil impacted by a discharge from the tank.

“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 “preconstruction 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 investigation, demolition services 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

school district under full State intervention pursuant to P.L. 1987, c. 399 (N.J.S.A. 18A:7A-34 et seq.).

“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 screening report” means the report required to be submitted to the NJDEP for assessing the likelihood of obtaining the various environmental, historical and cultural, land use approvals and permits relevant to a proposed school site.

“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, prior to August 6, 2007, when P.L. 2007, c. 137 eliminated the threshold.

“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 include, but is not limited to, boundary and topographical surveys, geotechnical and preliminary architectural design studies, evaluation of land use requirements to meet educational adequacy needs, evaluation of community relocation and displacement requirements of the project, adequacy of utilities such as water supply, sewerage, power and gas, evaluation and quantification of environmental quality issues, development of appropriate specifications for environmental exposure pathway controls and site remediation, evaluation of traffic impacts related to the school, compatibility of neighboring land uses, impacts to the local community and the evaluation and definition of preservation needs for historical buildings and culturally significant resources. It shall also entail the obtaining of data, documentation, statements, re-

ports, permits and other material needed to satisfy any required approvals for the acquisition or use of land. 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.

“Final eligible costs” means for a school facilities project to be constructed by the Authority, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the Authority, 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 architectural pre-design and programming, or existing building evaluations.

“Local share” means the total costs of the school facilities project 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.

“New Jersey Department of Environmental Protection” or “NJDEP” means the 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.

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

“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.

“Preconstruction 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 may include site identification, investigation, and acquisition, demolition services, feasibility studies, design work, land-related design work and acquisition of temporary facilities, as set forth in this chapter and in N.J.S.A. 18A:7G-5d(2) and N.J.A.C. 6A:26-3.9.

“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).

“PSCL” means the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., together with all applicable rules and guidance issued by DCA and the Department in connection with N.J.S.A. 18A:18A-1 et seq.

“Remediation” means all necessary actions to clean up or respond to any known, suspected, or threatened discharge of contaminants at the site that may be required to protect public health, safety, and the environment. Remediation may include the removal, treatment, containment, transportation, securing, or other engineering measures at the site designed to ensure that any contamination at the site is remediated in compliance with the applicable remediation health risks or environmental standards.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital 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, such as engineers and architects, 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.

“SDA school 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.

“Site consultant” means a consultant engaged to undertake site feasibility and/or site investigatory work, plans and specifications for demolition and/or oversight of remediation, but shall exclude design work, in connection with a land acquisition for a school facilities project.

“State Comptroller” means the Office of State Comptroller, created pursuant to P.L. 2007, c. 52, in, but not of, the State Department of the Treasury, which is responsible for financial auditing; performance and management reviews; and reviewing the contract procurement process of the Executive Branch of State government, independent State authorities, public institutions of higher education, units of local government and boards of education.

“State share” means the State’s proportionate share of the final eligible costs of a school facilities project. For the SDA school districts, this equals 100 percent of the final eligible costs of a school facilities project.

“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.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).
Rewrote the section.

19:34-1.3 Disclosure and publicity

(a) Applications and submissions received by the Authority 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 SDA school district concerning the preconstruction activities shall acknowledge Department approval and Authority financing and undertaking of the preconstruction activities.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

In (a), substituted “Authority” for “Corporation”; and in (b), inserted “SDA” and substituted “preconstruction” for “pre-development” and “Authority financing and undertaking of the preconstruction activities” for “Corporation financial assistance when such assistance is provided”.

19:34-1.4 Access and record retention

(a) The Authority shall make available records and accounts pertaining to preconstruction activities undertaken by the Authority to the State Comptroller and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of preconstruction activities.

The Authority shall also cooperate, upon request, in sharing information with other entities.

(b) The school district shall keep those records and accounts for the preconstruction 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 substantial completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

(c) The Authority shall keep those records and accounts and shall require all parties with whom it has contracted to keep those records and accounts for the preconstruction 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 substantial completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Deleted former (a); recodified former (b) through (d) as (a) through (c); rewrote (a); in (b), deleted “and shall require all contracted parties to keep those records and accounts” following “accounts”; substituted “preconstruction” for “pre-development” and inserted “substantial”; and in (c), substituted “Authority” for “Corporation” and “preconstruction” for “pre-development” and inserted “substantial”.

19:34-1.5 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.

Recodified from N.J.A.C. 19:34-1.7 by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Former N.J.A.C. 19:34-1.5, Contract award and compliance, repealed.

19:34-1.6 Appeals

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.

Recodified from N.J.A.C. 19:34-1.8 and amended by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Deleted “*” following “N.J.A.C.”, inserted “SDA school” and substituted “Authority” for “Corporation”. Former N.J.A.C. 19:34-1.6, Noncompliance, remedies for events of default and noncompliance, and termination by mutual agreement, repealed.

19:34-1.7 (Reserved)

Recodified to N.J.A.C. 19:34-1.5 by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was “Waiver”.

19:34-1.8 (Reserved)

Recodified to N.J.A.C. 19:34-1.6 by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).
Section was "Appeals".

SUBCHAPTER 2. GENERAL GUIDELINES FOR UNDERTAKING AND FUNDING PRECONSTRUCTION ACTIVITIES

19:34-2.1 General guidelines

(a) An SDA school district may require preconstruction activities to be undertaken in connection with a school facilities project prior to submission of a school facilities project application to the Department. In such case, the SDA school district may submit an application for Department approval of the undertaking and funding of the requested preconstruction activity(ies), pursuant to N.J.A.C. 6A:26-3.9. The preconstruction application shall be accompanied by a district board resolution authorizing the application. In the event that the application for preconstruction activities entails site acquisition, the SDA school district is encouraged to include an endorsement of the community advisory committee formed under N.J.A.C. 19:34-3.2(c).

(b) The undertaking and funding of preconstruction activities shall depend on the educational priority ranking of the proposed school facilities project and the sequencing of the project in accordance with the Statewide strategic plan, pursuant to section 5 of the Act.

(c) In the case of an SDA school district, the Authority shall undertake the approved preconstruction activity or activities, unless the Authority determines that the proposed school facilities project is a capital maintenance project, which may be delegated to the SDA school district pursuant to N.J.S.A. 18A:7G-13(a). In such a case, the Authority may delegate the entire capital maintenance project and any related preconstruction activities to the district and such undertaking shall be done pursuant to N.J.A.C. 19:34A.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).
Rewrote the section.

19:34-2.2 (Reserved)

Repealed by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Delegation of pre-development activities to Abbott districts".

19:34-2.3 (Reserved)

Repealed by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Delegation of pre-development activities to other districts required to use the Corporation".

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.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).
Rewrote the section.

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 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.

(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. Cost and schedule impacts: adjustments to overall project schedule, complexity of land acquisition or fair market value considerations. This shall include cost estimates based on the assessed valuation multiplied by the current municipal equalization ratio;

2. Significant site location, size and improvement considerations: constructability, community impacts related to construction and time to implement, compatibility of neighboring land uses, overall revitalization and economic development and open space plans, proximity of public transportation and relocation and displacement impacts;

3. Known significant infrastructure considerations: sufficiency of water supply (drinking and fire) and sewerage capacity, traffic impacts, including road widening and partial takings and utility relocation; and

4. Known significant environmental considerations: technical impracticability of remediation, environmental quality impacts (soil and groundwater), historic and cultural resources, compatibility with neighboring land uses, wetlands, stream encroachment, endangered species and Green Acres encumbrances.

(c) In order to promote community participation during the various phases in the development of school facilities projects, the Authority encourages SDA school districts to host a community advisory committee, which may be composed of, but not limited to, a broad range of interested parties, such as parents and teachers, business and community leaders, school administrators and board members, land use planners and engineers and government officials. The SDA school district is encouraged to provide the members of the community advisory committee with the written analysis provided for under (b) above, and subsequent to the Department's approval of site acquisition preconstruction activities, the information provided to the SDA pursuant to (f) below.

(d) The Authority shall review the analysis provided by the district and/or municipality regarding district- and municipal-owned sites, and any privately-owned sites identified by the school district, and determine, in consultation with the Commissioner, whether any of the sites so analyzed should be excluded from further consideration, or if one or more of these sites should be submitted by the district to the Commissioner for his or her consideration of preconstruction activities to determine its suitability as a site for a proposed school facilities project. In making such determinations, the Authority, in accordance with its planning authority under the Act, may obtain information from a wide range of sources including, but not limited to, commercial database reports of environmental and historical land use information concerning potential school sites.

(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. The basis for the site search area is a district's five-year Long Range Facilities Plan approved by the Department, which projects the educational needs by attendance area and future school populations. Using this plan, the site search should be conducted in the appropriate attendance area.

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. District owned land;
- ii. Municipal owned land;
- iii. Other government owned land, such as that owned by a parking authority, housing authority, redevelopment agency or county;
- iv. Undeveloped land;
- v. Privately developed industrial or commercial land; and
- vi. Privately owned residential land.

3. The SDA school district shall submit an application for approval of preconstruction activities to the Department, and a copy to the Authority, which shall be accompanied by:

- i. An endorsement of the sites by an authorized representative of the community advisory committee, if such committee has been created by the SDA school district pursuant to (c) above, provided such committee has held a public hearing to receive input from members of the public regarding the prospective school sites identified by the district, pursuant to (e)2 above; and
- ii. A statement signed by the district board of education president and chief school administrator indicating that a special board of education meeting has been held by the school district concerning the sites that have been selected for submission to the Department for preconstruction approval.

(f) Upon receiving a copy of the SDA school district's application to the Department for approval of preconstruction activities, the Authority may obtain information from a wide range of sources, including commercial database reports of environmental and historical land use information, concerning potential school sites and communicate its findings to the SDA school district and the Department. After the Authority receives a copy of the Department approval of site acquisition preconstruction activities for a school facilities project, indicating from one to three sites identified by the SDA school district for a school facilities project, the SDA school district shall provide to the Authority, and if applicable, to the SDA school district's community advisory committee created pursuant to (c) above, the items in (f)1 through 11 below.

1. A district board of education resolution authorizing the preconstruction activities;
2. Lot and block numbers and addresses of all parcels under consideration for the proposed site;
3. A description and photographs 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. The district and Department-approved school programmatic model;

8. An assessment of water and sewer infrastructure availability and addressing service and treatment capacity for the proposed school facilities project;

9. The current municipal zoning and/or redevelopment plans concerning the properties under consideration, tax map, master plan and applicable redevelopment plan(s);

10. To the extent available, any prior engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment); 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.

(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 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 shall consist of project management, program management and real estate staff of the SDA, 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) In the event that none of the sites identified by the SDA school district and approved by the Department for preconstruction activities is determined by the Authority to be available or suitable for acquisition as a school site, the Authority may require the SDA school district to undertake 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.

Repeal and New Rule, R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Site identification".

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 site-related preconstruction activities, the

Authority shall undertake 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 site 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 architectural pre-design and programming.

(c) The Authority shall undertake an initial site review for each proposed school site approved by the Department for preconstruction services in order to determine whether to proceed with site feasibility services and to determine the scope of the feasibility services to be undertaken. The initial site review shall consist of recent aerial photographs of the proposed site and the surrounding area, a review of the site's historic property uses, surrounding area land uses, wetlands, flood plain information, land title information, as well as a commercially available database search of local, State and Federal environmental records to determine the potential suitability of the proposed site for a school facilities project.

(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, shall determine whether to continue site feasibility services with respect to a proposed site and, if so, the scope of such feasibility services.

1. If the Authority determines that a proposed site is unavailable or unsuitable for acquisition or use as a school site, it shall terminate the feasibility study for that site, summarize in writing the reason(s) for the rejection of the site and proceed to undertake approved preconstruction activities on another site(s) identified by the school district.

2. If based on the initial site review, environmental and other development constraints are minimal; for example, the proposed site is predominantly residential without the need for substantial relocation, has no extraordinary infrastructure improvements, the site has a known historic use, remediation is limited, and the environmental regulatory involvement would have a minimal impact on project schedule and budget and would not impede the development of the property for a school, the Authority may undertake a streamlined process to acquire the site, which

shall, at a minimum, consist of the completion of a preliminary assessment supported by such tasks as boundary surveys, title searches, relocation analysis, site feasibility concept plans, preliminary geotechnical investigations and utility evaluations, as well as additional tasks dependent on the site-specific circumstances of the school facilities project.

3. If, based on the initial site assessment, the Authority determines that significant infrastructure and environmental uncertainty remains and further environmental characterization is necessary to quantify development and remediation liability exposure, additional feasibility studies shall be undertaken in a process of increasingly more stringent investigations. Such feasibility studies shall ascertain a site's environmental quality and remediation requirements, extraordinary site development and infrastructure improvement needs, former property ownership, adequacy of water and sewerage, geotechnical conditions or potential title complications, or some other basis for analysis.

(e) For purposes of involving the community in the site selection process, an SDA school district is obligated, pursuant to its Educational Facilities Construction and Financing Act 13(c) Implementation Agreement executed by the school district and the Authority, to hold a public meeting of its board of education no later than 30 days from the date of its receipt from the Authority of the NJDEP's written comments to the environmental screening report (ESR) regarding a proposed school site. The ESR is a tool for assessing the likelihood of obtaining the various environmental, historical and cultural and land use approvals and permits relevant to the proposed site. The ESR alerts stakeholders that potential insurmountable technical and administrative obstacles may exist on a proposed school facilities project.

1. The district shall serve public notice of such meeting, including notice to the members of its community advisory committee, if created pursuant to N.J.A.C. 19:34-3.2(c), at least 20 days prior to the scheduled date of the public meeting.

2. The SDA shall assist the SDA school district and the community advisory committee on an as-needed basis in communicating the results of the ESR of a proposed school site.

(f) The scope of feasibility studies undertaken with respect to a proposed site will be dictated by the proposed location and the site-specific circumstances of the property under consideration. Recognizing that each proposed site is unique, the Authority shall utilize a process for increasingly detailed feasibility evaluations that provide for the rapid elimination of a proposed site where it is inappropriate for a school, and, conversely, expedited acquisition where a proposed site is suitable for a school facilities project.

(g) The Authority shall define 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 Authority determines that the site is unavailable or unsuitable for acquisition or use as a school site, it may terminate the feasibility study for that site and proceed to have the Authority undertake approved preconstruction activities on another site identified by the school district. Alternatively, the Authority may proceed with feasibility studies on several sites concurrently and terminate the feasibility study for the site that the Authority determines is unavailable or unsuitable for acquisition or use as a school site.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

In (a), substituted "site-related preconstruction" for "land-related predevelopment" and "Authority" for "Corporation" and deleted "either" preceding "undertake" and "or delegate to the district" following "undertake"; in (b), substituted "site" for "land" preceding the first occurrence of "acquisition" and "architectural pre-design and programming" for "site utilization plan and/or a conceptual site plan, as further set forth in N.J.A.C. 19:34-3.4"; rewrote (c); and added (d) through (g).

19:34-3.4 Site investigation

(a) Site investigations entail the planning and implementation of environmental site sampling, detailed utility investigations and other activities that rely on site-specific field data to quantify remediation liability exposure and define the extent of impacts, the development of site-specific remediation action objectives and the development of remedial action alternatives and their corresponding remediation costs estimates.

(b) The Authority shall undertake the site investigation needed for purposes of site acquisition or use of a district-owned site for the construction of a school facilities project, in accordance with the rules of the NJDEP governing the undertaking of environmental investigations in their Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as amended.

(c) The Authority shall communicate its findings of data and information (gathered from a site investigation) 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 Authority shall undertake any other due diligence required for the site acquisition or the use of district-owned land for a school facilities project. The Authority shall also undertake the submission of the application for land acquisition approval to the SDA school district. If more than one site has been evaluated, the Authority, after consultation with the SDA school district, shall notify the Department of what it considers to be the most suitable site.

(d) At any point during or after site investigation, if the Authority 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 investigation for that site.

Amended by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Site analysis". Rewrote (a) and (b); deleted former (c); recodified former (d) as (c); rewrote (c); and added new (d).

19:34-3.5 Site acquisition approvals

(a) Following a feasibility study, land-related design work, site investigation, and consultation, as applicable, the Authority shall determine whether or not to acquire the site. The criteria for the Authority's decision shall include the following considerations:

1. Cost and schedule impacts: adjustments to overall project schedule, complexity of land acquisition or fair market value considerations;

2. Significant site location and improvement considerations: constructability, community impacts related to construction and time to implement, compatibility of neighboring land uses, overall revitalization and economic development and open space plans, proximity of public transportation and relocation and displacement impacts;

3. Significant infrastructure considerations: sufficiency of water supply (drinking and fire) and sewerage capacity, traffic impacts, including road widening and partial takings and utility relocation; and

4. Significant environmental considerations: technical impracticability of remediation, environmental quality impacts (soil and groundwater), historic and cultural resources, compatibility with neighboring land uses, wetlands, stream encroachment, endangered species and Green Acres encumbrances.

(b) If the Authority determines to acquire the site, the Authority shall submit the architectural pre-design and programming 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) The Authority shall undertake title review and appraisal of the site.

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

Amended by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Land acquisition approvals". In (a), substituted "investigation" for "analysis", "the Authority" for "and depending on whether the site is suitable due to cost, availability and other factors, the Corporation" and the second occurrence of "site" for "land" and rewrote the last sentence; added (a)1 through (a)4 and new (b); recodified former (b) and (c) as (c) and (d); deleted former (d); in (c) and (d), substituted "Authority" for "Corporation"; and in (c) deleted "or delegate to the district" following "undertake" and substituted "site" for "land".

19:34-3.6 Ownership of site

(a) Upon the obtaining of all necessary approvals required for the acquisition of a site, the Authority shall take all steps necessary, including condemnation, required to take title to the site.

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

(c) If the Authority conveys title to the SDA school district prior to close out of the school facilities project on the site, the district shall agree to permit the Authority access to the site by way of ground lease or other form of right of entry as appropriate to undertake preconstruction activities and school facilities project(s) on the site.

(d) Any site funded by the Authority pursuant to this chapter shall contain a reverter that if the site is not used for a school facility as defined under the Act, ownership of and title to the land together with the school facility on the site funded under the Act, will revert to and the title thereof shall vest in the Authority. 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.

(e) After such time as the SDA school district becomes the owner of the site, it shall execute any documents required of owners by NJDEP rules. In the event that the NJDEP approved remediation includes an engineering control and/or the recording of a deed notice, then the Authority shall prepare the deed notice, which shall be signed by the district as the ultimate owner of the site. The district shall comply with the conditions of the deed notice which may be imposed by the NJDEP, including, but not limited to, periodic inspection of engineering controls placed on the site and submission of reports to the NJDEP.

Amended by R.2009 d.14, effective January 5, 2009.

See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Ownership of land". Substituted "Authority" for "Corporation" throughout; in (b), substituted "Authority may" for "Corporation shall" and inserted "SDA school"; deleted former (c); recodified former (d) and (e) as (c) and (d); in (c), substituted "site" for "land" three times and "preconstruction" for "pre-development" and inserted "SDA school"; in (d), inserted "ownership of and title to" and substituted "site" for "land" preceding "funded under"; and added new (e).

19:34-3.7 Relocation assistance

When the Authority acquires a site 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 Authority shall provide and fund relocation assistance to displaced persons in accordance with applicable law and regulation.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Deleted designation (a); deleted (b); and substituted "Authority" for "Corporation" twice, substituted "a site" for "land" and deleted the last sentence.

19:34-3.8 Remediation and site development

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

(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 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.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

In (a) and (b), substituted "Authority" for "Corporation"; in (a), substituted the first occurrence of "Authority" for "Corporation or by the district" and deleted the last sentence; and in (b), inserted "SDA school".

SUBCHAPTER 4. ABBOTT DISTRICTS: OTHER PRE-DEVELOPMENT ACTIVITIES

19:34-4.1 (Reserved)

Repealed by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Section was "Other feasibility studies and pre-development design work".

19:34-4.2 Temporary facilities

(a) After receipt of an approval by the Department of an SDA school district request for temporary facilities and as part of the process of undertaking a school facilities project, the Authority shall procure, install and fund, 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 SDA school district, the district shall agree to permit the Authority a right of entry upon the land to undertake preconstruction activities and, if applicable, the school facilities project. If the temporary facilities are located on land not owned by the district, the Authority shall require a right of entry upon the land to undertake preconstruction activities and, if applicable, the school facilities project.

(c) The Authority shall 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.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Substituted "Authority" for "Corporation" throughout; in (a), substituted "an SDA school" for "a" and deleted "or in the best interests of the school facilities project, fund but delegate to the district, with district consent," preceding "the procurement" and deleted a comma preceding "temporary facilities"; in (b), inserted "SDA school", substituted "preconstruction" for "pre-development" twice and deleted "the owner of the land to agree to permit the Corporation" following "require"; in (c), deleted "or, if it determines to delegate the procurement of the temporary facility(ies) to the district, require the district to obtain" following "obtain"; and deleted (d) and (e).