

## Brownfields

### New York Agency Revises Proposed Brownfields Criteria



#### BNA Snapshot

**Development:** The New York DEC proposes to expand the definition of “underutilized” to ease qualifying criteria for brownfields' tax credits.

**What's Next:** Public comments are due in 30 days.

The **definition** of “underutilized” would be broadened in screening properties to qualify for tangible property tax credits set by the New York brownfields law, under a March 9 state Department of Environmental Conservation **proposal**.

The DEC said it's reproposing the definition of underutilized properties in response to public comments that suggested that the definition proposed in June 2015 was too narrow. The earlier proposal was issued to implement changes made to the state brownfields law in April 2015. The comments sought the expansion to help create incentives for “mixed-use” redevelopment for industrial and commercial uses within New York City, the agency said.

New York City officials, the DEC said, “made clear that their primary focus was to promote the redevelopment of underutilized sites for industrial uses.”

The agency said that the revisions meet the city's “stated goal to promote industrial redevelopment, while maintaining a fair and balanced approach to restrict the availability of tangible property tax credits to the sites with the most need.”

The April 2015 legislation required that to qualify for tangible property tax credits, sites in the city must be in an environmental zone, “upside down” or “underutilized,” or constitute an “affordable housing project,” the DEC said. The legislation defined the first two terms but left it to the DEC to define the second two.

#### Followed Consultation

The changes to the “underutilized” definition would remove the requirement for substantial government assistance for development where the proposed industrial uses would be 75 percent or more of the project's use, the agency said.

Also, the DEC said, the changes would cut from five years to three years the time that a property must be underutilized relative to applicable zoning.

The proposal also would expand the eligibility criteria for underutilized properties to include those that are vacant with no structures on the site.

The changes were made after consultation with the business community and New York City, the agency said.

A future rulemaking will address statewide regulatory changes necessitated by the legislative amendments, once the current rulemaking is completed, the DEC said.

The 2015 amendments to the state brownfields law, the agency said, were intended to “reduce the amount of tangible property tax credits available to applicants for brownfield sites in high-value real

estate markets while further incentivizing development on brownfields where certain project criteria are met.”

### **Attorney Says Definition Would Hurt Small Business**

In an e-mail to Bloomberg BNA, attorney Lawrence Schnapf of the New York law firm Schnapf LLC maintained that the DEC’s revised definition is out of sync with real estate development goals and would hurt small businesses.

The agency, he said, “is insisting that properties be at least 50 percent vacant and then jump through additional hoops to qualify for the tangible property tax.” Some of the additional tests, he argued, “would actually incentivize perverse behavior such as not paying taxes or allowing structures to deteriorate while a developer assembles parcels.”

Pointing to “a fundamental disagreement between DEC and the development community,” Schnapf said that the agency wouldn’t consider a site underutilized if most of it is in productive use, even if there may be some contamination present.

That would “undermine the intent of rezoning” and block eligibility of “properties that are by all reasonable measures obsolete,” he told Bloomberg BNA.

Schnapf also faulted the agency for “arbitrarily dismissing” comments that the definition would exclude “large swaths of small commercial properties in the middle-class neighborhoods” of the city’s outer boroughs, which weren’t the high-value real estate targeted by the legislation.

He warned of a “devastating impact on owners and developers of small contaminated properties such as dry cleaners, gas stations, and vehicle repair and maintenance shops.”