



GUIDANCE MEMORANDUM

PROGRAM: Good Life Transformational Projects Act

MEMO: 24-01

DATE: December 20, 2024

SUBJECT: Total New Development Costs and Termination of Districts

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

ISSUES:

- I. How will the Nebraska Department of Economic Development (“DED” or “Department”) count total new development costs when measuring whether a good life district project has met its commitment obligations required by Neb. Rev. Stat. § 77-4406 of the Good Life Transformational Projects Act (the “Act”)?
- II. Who may submit evidence to the Department for the purpose of determining whether a good life district project has met its commitment obligations required by § 77-4406?
- III. When does a good life district terminate?

OVERVIEW:

The expressed purpose of the Act is to “promote and develop the general and economic welfare of this state and its communities by providing support for *unique Nebraska projects* that will attract new industries and employment opportunities and further grow and strengthen Nebraska’s retail, entertainment, and tourism industries.”¹ The Nebraska Legislature approved the Act “to encourage *transformational development projects* . . .”² Under the Act, any person may apply to the Department to create a good life district.³ Applications to create a good life district must contain a wide array of project-specific supporting materials, including “a description of *the proposed project to be undertaken within the good life district* . . . an estimate of *the total new development costs for the project*, and an estimate of the number of new jobs to be created *as a result of the project*.”⁴ Applicants must also provide a “map identifying the good life district to be used *for purposes of the project*,”⁵ a “description of the proposed financing *of the project*,”⁶ documentation of local financial commitment “*to support the project*,”⁷ and numerous documents, plans, and specifications to define the project and its impact on the state.⁸

An application to establish a good life district is not for generalized, amorphous development. Rather, an application to establish a good life district is tightly tethered to a specific and unique development project.

Among other eligibility criteria to establish a good life district, an applicant must demonstrate that the proposed project will exceed specified total new development costs.⁹ The Department approves an application if the numerosity limit¹⁰ is not exceeded and if “*the project described in the application* meets the eligibility requirements”¹¹ The Act states that “[a] *project* is eligible if”, among other requirements, “[t]he applicant demonstrates that “the total new development costs of *the project*” will exceed the specified total new development cost thresholds listed in § 77-4405(2)(a) of the Act.¹² Approval of an application establishes the good life district “as that area depicted in the map accompanying the application”¹³ Thus, the establishment and the contours of the good life district originate from and are specifically tailored to the unique project proposed in the application and supporting materials.

Ordinarily, a good life district is intended to last for thirty years¹⁴ but § 77-4406 of the Act provides an exception if commitments for certain percentages of the project’s total new development costs required under § 77-4405(2)(a) have not been met within the specified temporal benchmarks.¹⁵ The Department has a statutory duty to terminate a good life district prior to thirty years following the establishment of a good life district if § 77-4406 is triggered. To ascertain whether the commitments of total new development costs of the project have been satisfied, the Department may receive evidence submitted by the good life district applicant, the city or village in which all or a portion of the district is located, or any other source determined appropriate by DED.¹⁶

CONCLUSIONS:

I. *How will DED count total new development costs when measuring whether a good life district project has met its commitment obligations required by Neb. Rev. Stat. § 77-4406 of the Act?*

The Act requires DED to only count the costs which are associated with and in furtherance of the applicant’s approved project. The Act creates an inextricable nexus between the applicant’s unique project—as defined, detailed, and delineated in the application and supporting materials—and the § 77-4405(2) eligibility criteria to establish a good life district. To sever this nexus by counting unrelated development costs towards the statutory thresholds required under the Department’s § 77-4406 review would be injurious to the Act’s stated purpose of spurring unique and transformational development projects. Section 77-4406 of the Act explicitly incorporates the development costs thresholds necessitated by § 77-4405(2)(a) in which “[a] *project* is eligible if: (a) the applicant demonstrates that the total new development costs of *the project* will exceed”¹⁷ Thus, only the ordinary, reasonable, and necessary new development costs which are associated with and in furtherance of the applicant’s approved project may be counted under the Department’s § 77-4406 review. Development that is disassociated from the approved project is not prohibited by the Act. However, DED will not count development costs under its § 77-4406 review that are disassociated from or not in furtherance of the approved project or that frustrate the approved project’s successful development.¹⁸

II. *Who may submit evidence to the Department for the purpose of determining whether a good life district project has met its commitment obligations required by § 77-4406?*

The Department shall measure the amount of commitments for such investment from evidence submitted by the good life district applicant, the city or village in which all or a portion of the district is located, or

any other source determined appropriate by DED.¹⁹ It is important to note, however, that although the Department may consider evidence submitted from varied sources, it does not negate the requirement that DED only count those ordinary, reasonable, and necessary costs which are associated with and in furtherance of the applicant's approved project. While all costs do not have to be borne exclusively by the applicant to be counted under § 77-4406, only those new development costs which are associated with and in furtherance of the applicant's approved project—whether borne by the applicant or another party—may be counted under the Department's § 77-4406 review.

III. *When does a good life district terminate?*

Ordinarily, a good life district will self-terminate by operation of law thirty years after its establishment.²⁰ The Department also has a statutory duty to terminate a good life district under § 77-4406 of the Act if commitments for specified percentages of the project's total new development costs required under § 77-4405(2)(a) have not been met within the stated temporal benchmarks.²¹

Additionally, the Department has the authority to terminate a good life district if the approved project is no longer viable or will not be developed in a manner to satisfy the requirements of the Act. The purpose of the Act is to encourage and provide support for unique and transformational development projects.²² To that end, the Nebraska Legislature empowered the Department to carve out good life districts with reduced state sales and use tax rates to encourage and support unique and transformational projects that have been proposed, scrutinized, and approved under § 77-4405 of the Act.²³ The reason for the good life district's existence ceases if the approved project is no longer viable or will not be developed in a manner to satisfy the requirements of the Act. Perpetuating a good life district void of the unique project which provided the basis for the district's creation and existence would be contrary to the expressed legislative purpose of the Act and would be harmful to the general and economic welfare of the State of Nebraska. Consequently, if the Department receives evidence that the approved project is no longer viable or will not be developed in a manner to satisfy the requirements of the Act, DED must determine whether the approved project remains viable under the Act and whether maintaining the good life district is in the best interests and economic welfare of the State of Nebraska.

Prior to making a decision on whether to terminate a good life district, the Department will provide public notice and an opportunity for interested persons to submit evidence to DED addressing whether the approved project remains viable under the Act and whether maintaining the good life district is in the best interest and economic welfare of the State of Nebraska.²⁴ The Department will consider evidence submitted from the applicant, the city or village in which the good life district is located, and any other source determined to be appropriate by DED. The Department may terminate the good life district if DED determines that the approved project is no longer viable under the Act and that termination of the good life district is in the best interests and economic welfare of the State of Nebraska. Upon termination of a good life district, the reduced sales and use tax rate shall cease and revert to the specified rate set forth in Neb. Rev. Stat. § 77-2701.02 at the beginning of the next calendar quarter in accordance with Neb. Rev. Stat. 77-2701.03.

END OF GUIDANCE MEMORANDUM

¹ Neb. Rev. Stat. § 77-4402(1) (emphasis added).

² § 77-4402(2) (emphasis added).

³ § 77-4404(1).

⁴ § 77-4404(1)(a) (emphasis added).

⁵ § 77-4404(1)(b) (emphasis added).

⁶ § 77-4404(1)(c) (emphasis added).

⁷ § 77-4404(1)(d) (emphasis added).

⁸ § 77-4404(1)(e).

⁹ § 77-4405(2)(a).

¹⁰ § 77-4404(4).

¹¹ § 77-4405(1) (emphasis added).

¹² § 77-4405(2)(a) (emphasis added).

¹³ § 77-4405(5).

¹⁴ § 77-4405(5).

¹⁵ Section 77-4406 provides:

(1) The department shall terminate a good life district established pursuant to section 77-4405 if:

(a) Commitments for ten percent of the investment threshold required under subdivision (2)(a) of section 77-4405 have not been made within three years after establishment of such district;

(b) Commitments for fifty percent of the investment threshold required under subdivision (2)(a) of section 77-4405 have not been made within seven years after establishment of such district; or

(c) Commitments for seventy-five percent of the investment threshold required under subdivision (2)(a) of section 77-4405 have not been made within ten years after establishment of such district.

(2) The department shall measure the amount of commitments for such investment from evidence submitted by the good life district applicant, the city or village in which all or a portion of the district is located, or any other source determined appropriate by the department.

¹⁶ § 77-4406(2).

¹⁷ §§ 77-4406 and 77-4405(2)(a) (emphasis added).

¹⁸ The total new development costs should reflect the harmonious development of the unique and transformational project that was approved by DED. Disjointed development that results in redundancy, dilutes the unique and transformational nature of the approved project, or frustrates the development of the approved project are not likely to be counted under the Department's § 77-4406 review. For example, if an approved project includes housing, athletic venues, corporate offices, and retail stores, DED may not count all proffered development costs if they consist solely of housing costs. Similarly, the Department may not count all proffered development costs for athletic venues if the development related to those costs frustrates the successful development of the rest of the approved project.

¹⁹ § 77-4406(2).

²⁰ § 77-4405(5).

²¹ § 77-4406(1).

²² § 77-4402.

²³ § 77-4405(6).

²⁴ Examples of such evidence may include, but not necessarily limited to, building development plans, proof of financing, signed contracts, proper zoning, resolutions, ordinances, meeting minutes, etc. Only evidence that is associated with and in furtherance of the approved project will be regarded as evincing continued viability of the project under the Act. Evidence of development that is unrelated to or not in furtherance of the approved project will fail to show continued viability of the project according to the requirements of the Act. To credibly demonstrate continued viability of the project, evidence submitted must also specifically address and clearly show that the unique and transformational nature of the approved project remains practicable.