

TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

UNIFORM TAX EXEMPTION POLICY

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York (the “Act”), the Town of Colonie Industrial Development Agency (the “Agency”) may provide “financial assistance” to qualified applicants for qualified “project” or “facilities” as defined by the Act in the form of issuance of its tax-exempt or taxable bonds or by granting exemptions from sales and use taxes, mortgage recording taxes and real property taxes. The Agency has adopted this Uniform Tax Exemption Policy (the “Policy”) to provide guidelines for the granting of “financial assistance”.

A. Application No request for financial assistance shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, and whether such financial assistance is consistent with this Policy. All recipients of financial assistance from the Agency shall be required to pay the Agency’s fee, as may be determined from time to time by resolution of the Agency, and the fees and expenses of counsel to the Agency.

B. Real Property Taxes

1. **General.** Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real property taxes (but not exempt from special assessments and special ad valorem levies). However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a “PILOT Agreement”). Such PILOT Agreement shall require payment of payments in lieu of taxes (“PILOT Payments”) in accordance with the provisions set forth below.
2. **PILOT Requirement.** Unless the applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the project documents shall provide that the applicant and/or the project occupant shall be required to make PILOT Payments in such amounts as would result from taxes being levied on the project by the taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT Payments until the expiration or sooner termination of such agreement.

3. Qualifying Projects for the “Grow Colonie Program”. The following projects shall qualify for real property tax exemptions under the Grow Colonie Program as set forth in Appendix A:
 - (a) Types of Qualifying Projects. Technology projects (either office or research and development), manufacturing projects and flex space projects. Other than in accordance with the deviation process set forth below, real property tax exemptions are not available for other types of projects.
 - (b) Job Creation Requirement. Any project requesting a real property tax exemption must meet a minimum 10% job creation goal over impacted employment within three (3) years. In the event of a new business, the project must create a minimum of ten (10) new jobs within three (3) years of commencement of operation.

4. Qualifying Projects for the “Enhanced Grow Colonie Program”. The following projects shall qualify for real property tax exemptions under the Enhanced Grow Colonie program as set forth in Appendix A:
 - (a) Basic Requirements. Any project requesting a real property tax exemption must comply with all of the requirements of the Grow Colonie Program.
 - (b) Additional Requirement. Any project requesting a real property tax exemption must be:
 - (i) Located in the Route 5 Corridor, beginning at the City of Albany line and ending at the City of Schenectady Line, as indicated on the map attached here to as Appendix B; or
 - (ii) Located on a not less than one acre parcel that has been underutilized for a period of not less than ten (10) years; or
 - (iii) Be a “brownfield project” located in a Brownfield Opportunity Area; or
 - (iv) Be a “prevailing wage project”. A prevailing wage project is one where the contractor and subcontractors constructing or reconstructing the project facility pays its workers the prevailing rate of wages within the meaning of Section 220 of the New York State Labor Law.

Although redevelopment of existing buildings that are not currently in use do not automatically qualify for the Enhanced Grow Colonie Program, such projects may be eligible for benefits similar to those provided in the Enhanced Grow Colonie Program as part of the deviation process.

5. PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:
- (a) Amount of Abatement. The general policy of the Agency is to provide the applicant and/or project occupant with the abatement described in Appendix A attached hereto and made a part hereof.
 - (b) Special District Taxes. As indicated above, the Agency, is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of the Agency's leasehold interest in the project. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the applicant and/or project occupant.
 - (c) Payee. Unless otherwise determined by resolution of the Agency, all PILOT Payments payable to an affected tax jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such affected tax jurisdiction. Pursuant to Section 874(3) of the Act, such PILOT Payments shall be remitted to each affected tax jurisdiction within thirty (30) days of receipt of the bill therefor.
 - (d) Enforcement. An affected tax jurisdiction which has not received a PILOT Payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such affected tax jurisdiction may petition the Agency to exercise whatever remedies the Agency may have under the project documents to enforce payment and, if such affected tax jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.
 - (e) Security for PILOT Payments. Except as otherwise provided by resolution of the Agency, each applicant entering into a PILOT Agreement with the Agency must grant to the Agency a first mortgage lien on the subject property to secure its obligation to make PILOT Payments.
6. Form 412-a. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real property tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which such project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurring subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such

Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

7. Real Property Appraisals. Since the policy of the Agency is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the assessor of the applicable Taxing Jurisdiction, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the assessor of any particular Taxing Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes, is based on a value determined by the applicant or by someone acting on behalf of the applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

C. Mortgage Recording Tax Exemptions

The Agency's policy is to permit mortgage recording tax exemptions on the initial financing of a project, to the full extent permitted by New York State Law. In instances where the initial financing commitment provides for a construction financing to be replaced by a permanent financing immediately upon the completion of the project, the Agency's general policy is to grant the mortgage recording tax exemption on both the construction financing and the permanent financing. It is the policy of the Agency not to grant a mortgage recording tax exemption with respect to any additional re-financing of a project.

D. Sales and Use Tax Exemptions

1. The Agency's policy is to permit project applicants, as agent of the Agency, to claim exemption from sales and use taxes to the full extent permitted by New York State Law for the period beginning on the closing date of the straight lease transaction or the date of issuance of Agency bonds (the "Closing Date") and ending on the date of completion of construction of the project. The tax exemption period may, at the discretion of the Agency, commence earlier than the Closing Date, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, (c) the applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the Chairman (or Vice Chairman) of the Agency acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.
2. All project applicants must agree in writing to timely file with the New York State Department of Taxation an annual statement of the value of all sales and use tax exemptions, and other exemptions claimed in connection with the Facility in full compliance with Section 874(8) of the Act, in the form and at the times required thereby.

E. Deviations

In addition to or in lieu of the foregoing the Agency may determine, on case-by-case basis and in accordance with the provisions of the Act, to deviate from the guidelines described above or provide enhanced benefits for a project expected to have significant impact in the Town. The Agency shall consider the following factors in making such determination, no single one of which shall be determinative:

- The nature of the proposed project (e.g., manufacturing, commercial, warehouse).
- The nature of the property before the project begins (e.g., vacant land, vacant buildings).
- The economic condition of the area at the time of the application.
- The extent to which a project will create or retain permanent, private sector jobs.
- The estimated value of tax exemptions to be provided.
- The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located.
- The impact of the project and the proposed tax exemptions on affected tax jurisdictions.
- The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity.
- The amount of private sector investment generated or likely to be generated by the proposed project.
- The likelihood of accomplishing the proposed projects in a timely fashion.
- The effect of the proposed project upon the environment.
- The extent to which the proposed project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services.
- The extent to which the proposed project will follow local input from local planning agencies.
- The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the Town.

- The extent to which the project owner or occupant will enter into apprenticeship agreements within the meaning of Section 816 of the Labor Law of the State of New York with respect to the construction, reconstruction or operation of the project.

F. Repayment Provisions

Project documents for projects receiving real property tax exemptions pursuant to this Policy shall contain benefit recapture provisions including but not limited to the following:

If the minimum number of new jobs is not created by the end of the three (3) year period or is not continuously maintained during the balance of term of the PILOT Agreement, the exemption schedule for the following year will revert automatically to the schedule provided in Section 485-b of the New York Real Property Tax Law (the “485-b Schedule”). In addition, repayment will be required in any year for which job creation requirements are not met (the “Disqualifying Year”), as an additional payment in lieu of taxes. The repayment amount is equal to the difference between benefits received in years one through the Disqualifying Year and the tax benefits which would have been received in years one through the Disqualifying Year under Section 485-b of the New York Real Property Tax Law. Under extenuating circumstances, the Agency may waive the above penalties after reviewing a written request for waiver of penalties.

APPENDIX A

GROW COLONIE PROGRAM

The percentage of exemption for projects that qualify for the Grow Colonie Program shall be as follow:

TAX YEAR	PERCENTAGE OF NORMAL TAX EXEMPTION*
Year 1	75%
Year 2	65%
Year 3	55%
Year 4	45%
Year 5	35%
Year 6	25%
Year 7	15%
Year 8	0

* 100% of Normal Taxes are payable with respect to the assessed value of land and existing improvements.

ENHANCED GROW COLONIE PROGRAM

The percentage of exemption for projects that qualify for the Enhanced Grow Colonie Program shall be as follow:

TAX YEAR	PERCENTAGE OF NORMAL TAX EXEMPTION*
Year 1	90%
Year 2	80
Year 3	70
Year 4	60
Year 5	45
Year 6	30
Year 7	15
Year 8	0

* 100% of Normal Taxes are payable with respect to the assessed value of land and existing improvements.

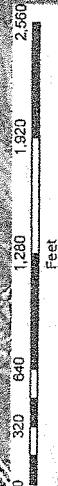
APPENDIX B

Map of Route 5 Corridor

Central Avenue Inventory Study 2010

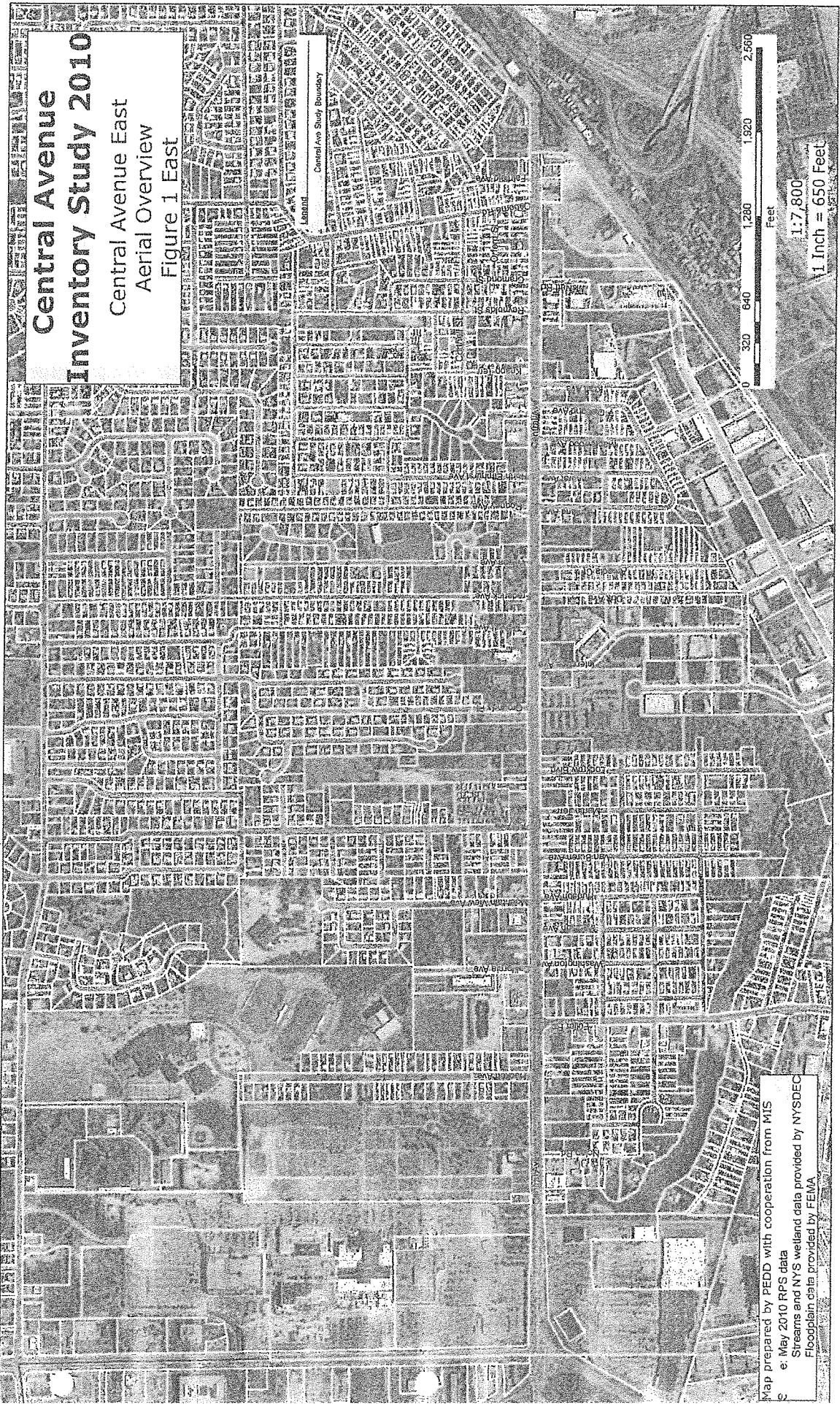
Central Avenue East
Aerial Overview
Figure 1 East

Legend
Central Ave Study Boundary



1:7,800
1 Inch = 650 Feet

Map prepared by PEDD with cooperation from M15
e. May 2010 RPS data
Streams and NYS wetland data provided by NYSDEC
Floodplain data provided by FEMA



TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

RECAPTURE OF BENEFITS POLICY

A. RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX

It is the policy of the Town of Colonie Industrial Development Agency (the “*IDA*”) to recapture New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized sales and use tax exemptions:

- In excess of the amounts authorized by the IDA;
- For property or services not authorized by the IDA; and/or
- For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents (the “*Project Documents*”) between the applicant and the IDA.

All approving resolutions and Project Documents shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) day of the recapture, the recapture amount shall be remitted to the New York State Department of Tax and Finance. Such remittances shall include any penalties and interest imposed by the IDA.

In order to effectuate this recapture policy the IDA shall:

- Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner.
- The IDA shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

B. RECAPTURE OF OTHER FORMS OF FINANCIAL ASSISTANCE

With respect to any financial assistance provided by the IDA other than the State portion of sales and use tax exemptions, the IDA shall include in Project Documents a requirement that the applicant repay all or a portion of the financial assistance granted by the IDA to the applicant to the extent that the applicant, upon completion of the project, fails to reach and maintain at

least 90 percent of its employment requirements or there otherwise occurs any event of defaults under any Project Document (collectively, an “*Event of Default*”).

At the time of any Event of Default, the IDA shall determine whether to exercise its right to recapture all or any portion of the financial assistance, and shall consider the following criteria in determining whether to proceed in the recapture of financial assistance:

- Whether the applicant has proceeded in good faith.
- Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the applicant.
- Whether the enforcement by the IDA of its recapture rights would create a more adverse situation for the applicant, such as the applicant going out of business or declaring bankruptcy, which would not occur if the IDA’s recapture rights were not exercised.
- Whether the enforcement by the IDA of its recapture rights would create an adverse situation for the residents of the Town of Colonie.
- Such other criteria as the IDA shall recognize as a relevant factor in connection with any decision regarding the exercise of its right to recapture financial assistance.

C. RECAPTURE PERIOD

Except as otherwise provided by the General Municipal Law, the recapture period will be (1) the term of the payment in lieu of taxes agreement for projects that receive financial assistance in the form of real property tax exemptions, and (2) five years for all other projects.

D. TERMINATION OF FINANCIAL ASSISTANCE

Nothing herein shall affect the rights of the IDA under any Project Document to exercise, upon the occurrence of an event of default, any and all remedies under any Project Document, including, but not limited to the right to terminate any on-going financial assistance.