Beyond Historic Tax Credits: Treasure Hunting for Historic and Non-Historic Rehab Financial Incentives

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By Gary L. Cole AIA, ALA, Esq.

[Author's Note: The following lecture was presented on October 22, 2010 at the 2010 Traditional Building Exhibition and Conference in Chicago. Fair warning – it's a bit longer than most LawArk posts. I'd originally intended to post it in parts, but instead, have decided to post the whole thing at once and also provide it as a PDF that can be downloaded by clicking here - to be chewed in bite-sized chunks at any reader's leisure.

And, as always: Nothing in the following article should be construed as legal or business advice. Readers should always consult their legal or business professionals for specific advice and information.]

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The following is a bullet-point summary of the lecture's main points:

- A wide range of historic and non-historic incentives benefitting a property owner's federal income taxes, property taxes, project equity requirements – far beyond those typically promoted by government historic preservation entities and preservation not-for-profits - may be available for historic rehabilitation projects.

- Development incentives that are not specifically intended for historic redevelopment may be available to historic rehabilitation projects.

- A comprehensive approach for discovering incentives available for historic rehabilitation projects should include a methodology for researching and analyzing both historic and non-historic incentives.

- The tools for discovering incentives are available to anyone.

- This lecture used the metaphor of "*treasure hunting*" to illustrate how to research and discover development financial incentives for historic rehabilitation as a way to frame the exercise in a more interesting way – hopefully.

Beyond Historic Tax Credits: Treasure Hunting for Historic and Non-Historic Rehab Financial Incentives

By Gary L. Cole AIA, ALA, Esq.

Introduction: I'd like to thank everyone for coming here today. My name is Gary Cole, and I'm an Illinois-licensed architect, and an Illinois and Florida-licensed attorney. I received a Bachelor of Architecture degree from the University of Illinois in Chicago in 1988, and a Master of Architecture degree, in its Historic Preservation option, from the Universe Illinois and Champaign-Urbana in 1992. Following graduation, I

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became an historical architect with the *Illinois Historic Preservation Agency*, during which I helped administer various historic rehab tax benefit programs, supported the *National Register* program, provided technical assistance in connection with state and federal preservation regulatory laws, and also worked with the *National Trust* and FEMA during the 1993 Mississippi floods. Also in 1993, I became adjunct faculty at my alma mater, the University of Illinois' graduate architecture program, and actively taught a course each year in its historic preservation option through 2001, finally cycling off as a Visiting Associate Professor in 2007.

In 1994, I returned to Chicago to attend law school at Loyola University, graduating in 1998, following which I became a construction attorney with a Chicago law firm. Since that time, I've worked for two of Chicago's largest law firms, *Winston & Strawn* and *Seyfarth Shaw*, and was also in-house counsel for one of the Southeast's largest retail developers, *The Sembler Company*, where I worked in its finance and development departments in a wide range of finance and development-related roles on about $750 million in real estate development.

Since 1992, both as an architect and later as an attorney, I've been involved in helping owners maximize development financial incentives for both historic and non-historic properties. Along with finding quality projects, finding ways to finance historic rehab is of high importance to developers. Today I'm going to discuss strategies for finding and combining both the better-known preservation financial incentives, and those incentives that weren't specifically created for historic properties, but can be used to help fund their rehabilitation.

The challenge in talking or writing about the law or historic rehab incentives is to somehow keep your audience's eyeballs from rolling back in their heads sixty seconds after you first utter words like "*tax credits*, "*qualified rehabilitation expenditures*" or "*adjusted basis*." I don't take it personally when it happens – science has proven that these terms are physiological triggers that, for some people, can cause a massive and a near-immediate flushing of blood from the higher brain functions – especially in a warm room just after lunch.

So, after years of trying different ways to keep my audience's attention, I'm going to try an analogy today that captures why I've always been excited by the subject of today's talk. My goal is to change the way you look at what sounds like a fairly dull subject by changing how you think about it. See, we're not really researching tax benefits for historic rehab so much as we're engaged in a real hunt for buried treasure - that's right, *buried treasure*.

But it's not treasure buried on an island somewhere, it's practically beneath our feet and fingertips. I'm going to talk about how to find it using clues, maps, the Internet, common sense, logic and a burning desire to uncover hidden gold to pay for rehabilitating those great historic buildings we all love working on. Indiana Jones – eat your heart out.

A quick story about how I got into this:

When I joined the *Illinois Historic Preservation Agency* in 1992 as an Historical Architect, among my roles was to help promote and administer historic rehab tax benefit programs – the *Historic Preservation Property Tax Assessment Freeze Program* and the *Historic Tax Credit Program*. In those days government jobs didn't pay very well, but in retrospect it was one of the best jobs I ever had because not only did I get a chance to be involved one way or another with literally hundreds of historic projects, but I discovered a curious thing: for those who rehabbed historic properties, the chance of finding buried treasure was good - and my job was helping people do just that.

Now, when I say "*buried treasure*," I don't mean I don't mean *Matthew Lesko*, or *The Riddler*, or whoever that guy is in his bowtie and question mark suit doing his frenetic "*free money*" dance on TV. Local, state and federal governments rarely give money away without conditions, and you can be sure that with any type of government-sponsored rehab incentives – historic or non-historic: *strings will be attached*.

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The trick though to this kind of treasure hunting, is to apply the following calculus: you want the maximum benefits (buried treasure) for the least amount of entanglements (government hooks). So, using our treasure hunting analogy – what are rehab development incentives? Exactly what kind of buried treasure are we hunting?

The title of this lecture is "*Beyond Historic Tax Credits . . .*" because most people who have been around preservation for any length of time are familiar with the National Park Service's "*Historic Preservation Tax Credit Program*." A successful program administered by the Park Service and state historic preservation agencies, like the one I worked for in Illinois. It's also a great example of a government program with many attached conditions and strings, and, here's the part many people don't know: "*What the government gives, it often takes back*" - at least in part.

To recap, the *Historic Tax Credit* ("HTC") program allows a dollar-for-dollar credit of up to 20% of a historic rehabilitation project's *qualified rehabilitation expenses* to be taken against the property owner's federal income taxes. Sounds great, right? Well, it is, but what you rarely hear about are the booby traps guarding that treasure. You don't hear about them because what government historic preservation agencies mostly do when they administer incentive programs is to shepherd applicants through the complex administrative process and ensure that projects meet the *Secretary's of the Interior's Standards*. In the case of the HTC, once the state historic preservation agency and the National Park Service sign off on Part 3 of the HTC's application, they step away. And at no point in the process do they provide detailed tax guidance to applicants – nor should they since it's not their mandate – so actually figuring out how best to use the tax credits becomes a question for each owner and his legal and accounting teams. And in the case of the HTC, a couple of problems can arise that might tarnish our treasure's luster.

One issue is whether the *Internal Revenue Code* will allow a successful applicant to take all the tax credits they qualify for, depending on the type of legal entity they're using and their tax situation. If not, the treasure chest just got a little lighter. The other problem is that the *adjusted basis* – there's that word I said earlier might put you to sleep - of a property is decreased by the amount of tax credits taken, which can cause a greater taxable gain upon the sale of the property. In non-legal English, that essentially means that you end up giving back some of those tax benefits when you pay taxes on the gain you realize from the sale of the property, assuming you sell it at a profit. So, once again, the treasure chest gets a little lighter - government gives and takes back – and not all that glitters is gold. Or some of it's *fool's gold*, I'm not sure – I need to think about my metaphors.

But this is all part of the game, the hunt – so, with that in mind, let's talk about what exactly lays "*Beyond Historic Tax Credits.*"

PART I: Rehab Financial Incentives/Typical Historic and Non-Historic

A. What are typical historic and non-historic rehab financial incentives?

Our buried treasure – both historic and non-historic development incentives - come in a wide variety of forms, but the purpose of any financial incentive is to help fund historic rehabilitation with money not associated with conventional debt and equity. There is sometimes a disconnect among preservationists about the gritty financial realities of historic properties – an unwillingness to understand that with the exception of historic public buildings, almost all of today's historic properties started out as income-producing commercial ventures for their owners – a purpose they must continue to survive.

Development incentives are government subsidies to help historic properties either continue their existences by offsetting the costs of capital improvements needed to remain commercially viable, or, in the case of rehabilitation, to help them transition from one income-producing function to another. But development incentives are not intended to keep historic properties on the dole for the remainder of their existence – they're

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intended to provide them with a boost or a jumpstart. After that, they're on their own to remain commercially viable in a competitive real estate market.

Some call incentives *found money*, but as mentioned above, rarely is it *free money*, since in addition to assessing the actual value of any incentive to any particular rehab project, *transaction costs* are often involved – those costs associated with actually acquiring the benefits, like application fees, legal and other professional service fees – and these should always be considered when deciding which incentives to pursue.

Depending on the project, owners may simultaneously qualify for incentives that offer federal income *tax credits* or *tax deductions*: property tax abatements; block grants from federal or state sources and channeled through local governments; tax-increment financing (TIFs); or below-market loans from either private or public sources. Developers may also realize sales tax exemptions from building materials; impact fee and building permit fee waivers and accelerated permit review (which can decrease a loan's carry time and interest costs).

Though more rare, in some jurisdictions it's possible to fund certain aspects of private development with municipal bonds. In Florida, for example, I handled about $50 million in *Community Development District* public infrastructure bonds for private shopping center developments. That meant cash in the form of bond proceeds to reimburse the developer for the public improvements it constructed in connection with private retail development – roads, storm sewers, etc., and the developer's retail tenants paid the debt service on the bonds. But public financing can take many forms, depending, of course, on a number of factors.

Both historic and non-historic tax credits can sometimes be sold to investors to generate much-needed project equity – in a process known as *syndication*. For a variety of reasons, some having to do with the *Tax Reform Act of 1986*, some having to do with a developer's tax situation or a project's need for equity, it's not always possible or desirable for an owner to take all the tax credits a project might qualify for.

To address this, a vibrant market for buying and selling tax credits for cash exists, which can mean project equity. For example, let's say in our hypothetical development $2 million is spent on qualified expenditures under the HTC. Theoretically, that generates a tax credit of $400,000. If the owner were to sell those credits to investors through a process known as "syndication," instead of taking them himself, he might realize, conservatively, 80 cents on the dollar – depending on a whole world of market factors - or $360,000 as cash. *New Markets Tax Credits* ("NMTC") can also be sold for equity, though not in the same way or the same time during the rehab as the HTC and *Low-Income Housing Tax Credits* ("LIHTC"). And through a type of legal alchemy too complicated for me to discuss today, some of those different tax credits can be combined on the same project, in a process referred to as "*twinning*."

Though not actually an incentive, an accounting strategy that should be investigated for its value is called "*Cost Segregation and Accelerated Depreciation*." It's an accounting method for separating out the different aspects of a building's construction costs and shortening the depreciation schedule of some of those elements, which, of curse means greater tax deductions for depreciation. There's a difference of opinion as to how useful they are on historic projects because of that perceived double-dipping with HTCs, so caution is urged. On the other hand, if a new addition is being added outside the footprint of an historic project, since no HTCs can be taken for that work, Cost Segregation and Accelerated Depreciation may work.

Determining the possible combinations of available historic and non-historic incentives and how best to maximize their benefits is as much art as science and part of the creative challenge in financing historic rehab projects.

It's a common mistake for owners to have too little or the wrong kind of information about what incentives are available. Preservation entities, like local preservation commissions, state historic preservation offices and the National Park Service don't administer non-historic incentive programs, so they won't usually

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know much about them. Not-for-profit preservation organizations may administer the somewhat misnamed "facade easement" programs, but don't really get too hands-on with programs offered by government - though the *National Trust for Historic Places* is an exception.

To find applicable non-historic incentives, owners should cast their nets widely and avail themselves of other resources. I need to stress that the incentives we talk about here today by no means an exclusive list – they vary widely by jurisdiction, and have a tenancy to wink in and out of existence, so constant updating is important. Illinois doesn't have a state tax credit for historic rehab, but some states do. Florida has statewide a property tax benefit program for historic commercial properties, but to my knowledge, only Chicago's Cook County has something similar. Because we're in Illinois, I'm using Illinois-based incentives – but each state, county and city may have their own unique examples which should be thoroughly investigated.

And finally, while these incentives may be included as line items in project proformas, I'd suggest extreme caution when doing so since the benefits of many incentives can't be realized by developers until final governmental approval is provided in writing – often a lengthy and uncertain process.

B. Typical Preservation-Related Incentives

So let's do a quick overview of the typical preservation-related incentives that are available to historic properties, and then I'll cover some incentives that aren't restricted simply to historic properties, but can often be used in conjunction with them to aggregate the benefits. Because this is a one-hour lecture, it's impossible for me to go into detail about these different incentive programs, so I'm covering just the basic requirements and benefits.

1. **Federal Rehabilitation Historic Tax Credits**
   Requirements & Benefits: Historic income-producing properties only/federal income tax credits equal to 20% of the project's *qualified expenditures*.

2. **Historic Preservation Property Tax Assessment Freeze**
   Requirements & Benefits: Historic residential properties only/property tax assessments frozen for up to twelve (12) years at pre-rehab rate.

3. **Class 'L' Tax Benefits**
   Requirements & Benefits: Historic commercial properties only/property tax assessment reduction for up to twelve (12) years.

4. **Historic Preservation Façade Easements**
   Requirements & Benefits: Historic commercial or residential properties only/tax deduction equal to the appraised value of a façade or conservation easement.

5. **Block Grants**
   Requirements & Benefits: Historic commercial or residential properties only/generally cash, might be matching dollar-dollar.

6. **Tax-Increment Financing (TIF) Grants**
   Requirements & Benefits: Historic commercial or residential properties in TIF district/cash – might have matching requirements or time restrictions.

7. **Preservation-Friendly Lenders**
   Requirements & Benefits: Historic properties/favorable lending terms.

8. **City Concessions**

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Requirements & Benefits: Historic properties/impact fee, permit fee, accelerated permit review, etc.

C. Typical Non Preservation-Related Incentives

1. Low-Income Housing Tax Credits ("LIHTC")
Requirements & Benefits: Historic or non-historic, multi-family residential/federal income tax credits/equity

2. New Markets Tax Credits
Requirements & Benefits: Historic or non-historic properties/federal income tax credits/equity.

3. Brownfields Tax Credits
Requirements & Benefits: Historic or non-historic properties /federal income tax credits.

4. Empowerment Zone Benefits
Requirements & Benefits: Historic or non-historic properties/state sales tax exemptions from building materials.

5. Energy-Efficiency Tax Benefits
Requirements & Benefits: Historic or non-historic properties/possible state and federal tax incentives.

6. Grants
Requirements & Benefits: Historic or non-historic properties/bricks and mortar grants.

7. Bonds
Requirements & Benefits: Historic or non-historic properties/cash/ TIF-backed bonds possible occasionally.

8. Cost Segregation and Accelerated Depreciation
Requirements & Benefits: Generally non-historic properties/allows owners to depreciate certain aspects of their buildings faster than others/tax deduction.

9. Syndication
Requirements & Benefits: Historic or non-historic properties /sell HTC, NMTC, LIHTC for cash or equity.

PART II: Researching and combining available development incentives.

We've covered a wide range of historic and non-historic development incentives, but I want to stress that this is by no means an exclusive list. Some incentives, like the HTC, façade easements and LIHTC have been around for years. But in addition to federal incentives, each state, county and even city may have its own historic rehab incentive programs, and new incentives appear and disappear all the time.

Broadly speaking, I'm going to cover three steps for creating a treasure map to locate historic and non-historic incentives:

(A) Property and incentives research.
(B) Incentive analysis and evaluation.
(C) Developing a strategy for implementing incentives.

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A. Property and Incentives Research. How do we find development incentives? Every good treasure hunter knows that the first step is research – you can't just thrash around blindly, so we start by looking to see what's out there. But we're not conducting research for academic reasons. What we need is a treasure map, but unfortunately, we can't just stumble across one – we have to make it ourselves which we can do using tools available to everyone. As with anything, the more organized the plan, the better chance of executing it properly and the better chance of finding the treasure, so let's talk about a method for making our own maps.

Start with the assumption that all the information you need is out there in some form and in the possession of someone else. So how do we find that information? Well, what are our tools for communication? We have the phone, shoe leather, and of course, the Internet to help us on our search. Because so much information is now on the Internet, I suggest starting there. But before we start that we need to establish some parameters by defining exactly what we're looking at. To do that, I'm going to give us a hypothetical property, as follows:

We're aware of an interesting building which we guess to be about 25,000SF. It's in a dodgy part of town, it's vacant, brick with some interesting limestone classical detailing which looks to be in good shape. We can't get inside, but peeking through the windows we see nothing but empty offices and we note that the lobby off the main entrance has some interesting marble details and the ceiling's decorative plaster is intact. There are no "For Sale" or broker's signs, and we can't find anything indicating who manages the property. We have in mind a mixed-use project with some retail and some apartment rental.

The Property – What can we learn about it?

With just a street address and using the communication tools of the phone, personal visits to city or county agencies and the Internet, we should be able to find out at least the following about the property: (1) Property Identification Number (PIN); (2) status of taxes paid (3); possibly ownership; (4) zoning; (5) historic status – is it locally-landmarked or on the National Register – or neither? (6) if we wanted to pay for a title search, we could also find out quite a bit about any liens recorded against it, current owner, easements, and legal matters that might make its acquisition problematic; (7) using Sanborn Fire Insurance Maps we could also learn something about its past uses and adjacent structures formerly located on the site; and, (8) digging deeper, we could also pull its building permit history. So, let's stipulate for the sake of this discussion that we do all of the above.

Let's say our research revealed that it was built in 1914 as a shoe factory, but that during WWII it made uniforms for the Army. After the war, it was converted to light office space, a use that continued until a couple years ago. It's been vacant for two years; the owner hasn't paid the property taxes and the tax liens have been sold to investors. We've also found out that it's listed as a *contributing structure* within the local *National Register* district, which allows us to get the district's nomination documents from the state or the local preservation entities. The property lies in a zoning district called "C1" which allows a broad range of commercial uses, including residential properties above commercial first floor spaces. It also lies in a *Tax-Increment-Financing (TIF) District* and an *Empowerment Zone* and we found out from the local alderman that the City is very interested in economic development, and he'd be more than happy to talk about it in some detail. So far, so good – it's our kind of building.

B. Analysis and evaluation.

From knowing nothing, our treasure map is now starting to come into focus. We know our building is historic and zoned for commercial use and lies in a TIF District and an Empowerment Zone. We've also done some research and compiled a list of incentives and sorted them into historic and non-historic. Now we need

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analyze these incentives for their eligibility to be used on our project and categorize them as *yes, no, or maybe*. This doesn't necessarily mean that we *can* use them, just that there are no obvious non-starters.

Let's first look at the *historic* incentives:

1. **Federal Rehabilitation Historic Tax Credits**. Yes - it's historic and the new use is commercial income-producing.

2. **Property Tax Assessment Freeze**. No – it's historic but this program only applies to single-family residential properties.

3. **Class 'L' Tax Benefits**. Yes - it's historic and the new use is commercial income-producing.

4. **Historic Preservation Façade/Conservation Easements**. Yes – it's historic and this incentive works for residential or commercial properties.

5. **Block Grants**. Maybe – we're going to sniff around for some small grants that might cover some of the bricks and mortar work.

6. **Tax-Increment Financing (TIF) Grants**. Yes/Maybe – It's in a TIF-district, but we'll need to negotiate with the City.

7. **Preservation-Friendly Lenders**. Maybe – we'll need to shop around for lenders interested in financing properties like ours.

8. **City Concessions.** Maybe – we're going to negotiate with the City regarding impact fees, permit fees, accelerated permit review and any other concessions we can negotiate to our favor.

Let's look at the *non-historic incentives* that might be available.

1. **Low-Income Housing Tax Credits**. Maybe, if we decide to rent to low-income tenants.

2. **New Markets Tax Credits**. Maybe, if our project can qualify for an allocation with a Community Development Entity (CDE).

3. **Brownfields Tax Credits**. No, though our building started out making shoes and may have used some nasty chemicals, it's not a Brownfield property.

4. **Empowerment Zone Benefits.** Maybe - but we'll need to do a cost/benefit analysis.

5. **Energy-Efficiency Tax Benefits**. Maybe – it'll depend on our adaptive use program and whether we want to seek a LEED-certification.

6. **Grants**. Maybe – we're going to sniff around for some kind of non-historic community development grants.

7. **Bonds.** Maybe – but the project is probably too small.

8. **Cost Segregation and Accelerated Depreciation.** Maybe - on any non-historic additions.

9. **Syndication.** Maybe - it depends on what federal tax credits we can qualify for.

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We know the possibilities, so now we have to examine the available incentives in light of our project's adaptive use. After much market research and discussion with the alderman and the City planning department, we've come to the conclusion that the most marketable adaptive use for our property is a mixed-use project with retail on the first floor and market-rate rental apartments above.

Our green building consultant has assured us that the building can achieve LEED Silver rating through a variety of strategies, and since the building is in an area that the City is eager to see developed, it's willing to give us a TIF grant and a small preservation block grant for physical repairs to the ornate lobby. It's also waiving impact fees and building permit fee waivers. Unfortunately, our project is too small to be eligible for any bond funds. Typically those projects have to be a certain size – as in many acres – and we're just one building. It's imprudent at this point to state that a property may definitely qualify for any particular incentive – there are still too many unknown variables, not the least of which are government approvals, which is a whole other discussion – but it is possible to lump the incentives that might be available into "Yes/Maybe" and "No."

So we can group our incentives as follows:

In the "Yes/Maybe" category, we have:

(1) Federal Rehabilitation Historic Tax Credits
(2) Class 'L' Tax Benefits
(3) Historic Preservation Façade/Conservation Easements
(4) Block Grants
(5) Tax-Increment Financing (TIF) Grants
(6) New Markets Tax Credits
(7) Energy-Efficiency Tax Benefits; 179(D)
(8) City Concessions
(9) Preservation-Friendly Lenders
(10) Syndication
(11) Cost Segregation and Accelerated Depreciation

And in the "No" category, we have:

(1) Low-Income Housing Tax Credits
(2) Property Tax Assessment Freeze
(3) Brownfields Tax Credits
(4) Public Bonds

But this just tells us what we're eligible for, not whether we can actually qualify for them or how to implement them to maximize their benefits. For that we need a strategy.

C. Developing a Strategy for Implementing Incentives.

Our treasure map is coming into focus – the next step is to organize our short list of the remaining possible incentives by benefit type, e.g., federal income tax, property tax, cash/equity, City concessions and accounting devices. We then evaluate the benefits and burdens of the remaining incentives and carefully measure them against a project's parameters – cost, design and construction schedule, financial, permitting, approvals, etc., and the *possibilities* become *probabilities* and in the case of the incentives actually taken – *actualities*. Or, using today's metaphor – *buried treasure*.

Our analysis groups the remaining possible incentives as follows:

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(1) Federal Income Tax Benefit/Syndication: Federal Rehabilitation Historic Tax Credits; Historic Preservation Façade/Conservation Easements; New Markets Tax Credits; Energy-Efficiency Tax Benefits.

(2) Property Tax Benefits: Class 'L' Tax Benefits.

(3) Direct Grants: Block Grants; Tax-Increment Financing (TIF) Grants.

(4) Lending: Preservation-Friendly Lenders.

(5) City Concessions: Impact Fee Waiver; Permit Fee Waivers; Accelerated Permit Review.

(6) Syndication.

(7) Cost Segregation and Accelerated Depreciation.

By grouping incentives this way, it becomes easier to further assess whether all incentives are available to us, or, if some benefits are weak in the cost/benefit analysis, or are just too difficult to obtain because of administrative entanglements to justify their effort.

This due diligence probably the most crucial part of drawing a treasure map and also the part where involvement with legal and tax professionals is recommended, since much of being able to use these incentives depends on making sure they don't conflict with each other, and also that our tax and legal entity structures are set up to maximize their utility on our project.

After that part of the analysis is complete, the last step to creating the treasure map includes commencing dialogues with the various administering public and private entities, starting the application process for each of the remaining initiatives with the various public and private entities, creating timelines for applications and approvals, schedule that with our conventional financing's equity requirements and sheparding those applications through the various governmental entities, and frankly, a whole world of logistical issues too numerous to discuss here.

A couple general comments about incentives:

As I mentioned before, and want to stress this, there's always a potential problem when taking multiple incentives that affect federal tax incentives – you have to make very sure that the IRS doesn't regard doing so as *double dipping*. For example, taking both the HTC and the NMTC is a common practice – you can aggregate the benefits in accordance with the programs' requirements. However, if you place a façade easement on the portion of your building that you also claim qualified rehab expenditures for under the Historic Tax Credit program, you may have a problem since you're claiming two federal income tax benefits – one in the form of a tax deduction and the other in the form of a tax credit - on the same portion of the building. All of this must be carefully researched in advance and nothing assumed, nor taken for granted.

Another potential problem arises when trying to reap the tax benefits through a façade easement on a property that's already locally-landmarked. Many local landmark ordinances are more restrictive than the National Register in terms of allowable alterations. Since the tax benefit for a façade easement is measured by the development rights that are given up by the easement's encumbrance on the property, a property that is already similarly encumbered by a restrictive landmark ordinance may not be giving that much up, and the value – especially in the IRS's view – is greatly diminished. But, if course, it's really not that simple and it depends on closely comparing what the façade easement encumbers and the landmark ordinance restricts.

Certain energy tax benefits (IRC 179D), if related to improvements in lighting, HVAC and hot water and building envelope, *may or may not* collide with the HTC if qualified rehab expenditures are claimed for those

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same items There has also been some discussion about increasing the HTC by 4-10% to cover energy efficiency improvements.

PART III: Conclusion.

I've covered a lot of ground in a short period of time today – I wish I could cover it all – but we'd need a few days for that. For me, the most interesting part of this exercise is the last part: getting into the weeds with a real project and real incentives and putting it all under the microscope to figure out what works and what doesn't. But even that's just academic until you start the process of contacting governmental and private entities who administer the different incentive programs.

Nothing with incentives can be taken for granted and I always assume that no matter what someone tells me, I'll always need to confirm it myself – and then reconfirm it. I have an advantage with some of these incentives in that I administered them for both a government agency and a not-for-profit so I know their twists and turns better than most, but I always assume that there's still much to learn – and incentives change and come and go all the time.

But I appreciate your coming here today and I hope that you now have a little different way to look at finding and using development incentives – it really is a treasure hunt. After this, all you need is a big shovel and a willingness to start digging.

END OF LECTURE

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