

Past, Present and Future: Evaluating the Massachusetts Historic Rehabilitation Tax Credit  
as a Tool for Promoting Historic Preservation and Economic Development

by

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Submitted to the Department of Urban Studies and Planning  
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Master in City Planning

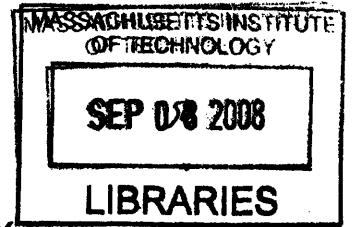
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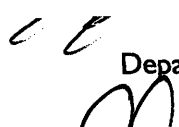
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**ABSTRACT**

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The first half of the 20<sup>th</sup> century saw very little interest in the preservation of historic properties; indeed, much of the nation's historic building stock was at risk of being lost forever, as the pressures of mid-century urban renewal threatened the historic city center, while historic buildings in suburban and rural communities across America were seen as outmoded, expendable, and too expensive to maintain. The creation of the Federal Historic Preservation Tax Incentive in 1976 did much to change this dire situation, breathing new life into our nation's aging built heritage, making preservation an attractive and profitable option for developers and government alike. During the thirty-plus years since it was put into action, the Federal Historic Preservation Tax Credit, along with analogous rehabilitation tax credit programs at the state level, have played a significant role in saving thousands of historic buildings by providing an appealing incentive to do so.

In 2003, the Massachusetts legislature signed into law its own such program, the Massachusetts Historic Rehabilitation Tax Credit (MAHRTC). With its stated goals to promote historic preservation and economic development in the Commonwealth, the MAHRTC provides an income tax credit equal to up to 20% of eligible costs of approved rehabilitation to income-producing properties. Since its introduction four years ago, the program has already received a lot of attention, but has yet to undergo the careful review that it deserves.

This thesis puts the MAHRTC under the proverbial microscope, revealing its plus points as well as its flaws; it provides an in-depth analysis of the MAHRTC as policy, including an examination of its procedural administration, and the decision making processes behind the program's initial development and subsequent evolution; it evaluates the MAHRTC's ability to increase preservation activity in the Commonwealth; and finally, the thesis proposes recommendations to enhance the program's capacity to attain its stated goals.

Thesis Supervisor: Ezra Haber Glenn  
Title: Special Assistant to the Department Head



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First and foremost, I wish to dedicate this thesis to the memory of J. Mark Schuster, whose unshakable enthusiasm, encouragement and support deeply enriched my first few steps on my thesis journey. His genuine interest in each of his students' research was evident, and his desire to help us achieve greatness in our work was thoroughly heartfelt and selfless. To you, J. Mark Schuster: the brilliant light of your inspiration will illuminate my path wherever I go.

Special thanks must next go out to my thesis advisor, Ezra Haber Glenn, for so kindly and adeptly stepping in to fill some big shoes; and to my reader, Sam Bass Warner, whose good humor and great wealth of knowledge always gave me much more to consider. Throughout this process, both of these amazing gentlemen have provided me with a tremendous amount of insight and encouragement, not to mention their virtually limitless patience. Colossal thanks to you both, Ezra and Sam, for sharing in this effort with me and guiding me along the way.

Finally, I must extend my gratitude to the following very important people who have enriched my life during these many months: to my mother and father, for their unending support and encouragement; to my grandmother, for providing countless nuggets of simple wisdom along the way; to Dr. James Garman and Dr. Catherine Zipf, professors of Cultural and Historic Preservation at Salve Regina University, for cultivating my interest in the preservation of our nation's built heritage, and for always pushing me to test my self-imposed limits; to YT, for providing the initial concept for this thesis (even though it ended up moving in a slightly different trajectory); to KJT, for countless hours of late night tea and sympathy (and one heck of a crock pot stew); and finally to MK, for reminding me that the glass is always "half full" if I just look at things the right way – thank you for adjusting my perspective when necessary.

## BIOGRAPHICAL NOTE

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Kathryn C. Emmitt has long held a special interest in the history of the built environment, but it was not until she discovered the Cultural and Historic Preservation program at Salve Regina University that she ever imagined the possibility of making a career out of it. During her undergraduate work at Salve, she held an internship with the Historic District Commission of the City of Newport, Rhode Island, during which time she wrote and designed that city's manual for historic district design review. It was also during this time that she was introduced to the field of city planning as it intersected with historic preservation; for the first time, she realized that historic preservation was not simply about saving old pretty buildings for the sake of it, but that preservation could also contribute to a community's economic development, promote walkability, provide housing options for all income levels, and uphold a sense of "placeness" and "identity" that so many newly-developed (or over-redeveloped) communities seemed to lack. Ms. Emmitt has worked locally in Boston as a private historic preservation consultant, and internationally with the United States National Committee of the International Council on Monuments and Sites. As of the time of this writing, she currently works for a private environmental consulting firm, providing Section 106 compliance services and assistance to clients seeking federal and state historic rehabilitation tax credits.



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# CHAPTER I

## INTRODUCTION

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*“Many forms of incentives...are underexplored in the preservation policy literature. It is almost as if these kinds of incentives have become so much a part of accepted practice that it occurs to no one that they ought to be subjected to analytic scrutiny.”*

J. Mark Schuster, “Inciting Preservation” in Preserving the Built Heritage: Tools for Implementation

Before the Federal Historic Preservation Tax Incentive program was implemented in the mid-1970s, the outlook seemed grim for our nation’s historic building stock. Thirty years later, historic rehabilitation tax credit programs offered at state and federal levels play a significant role in saving historic buildings and making preservation an attractive option for preservationists, developers, and government alike.

In January of 2003, the Preservation Coalition of Massachusetts embarked to create an initiative which would profoundly change the way historic preservation happens in the Commonwealth. After witnessing the successes of preservation tax credit programs in other states, the Coalition worked to draft and lobby for a similar program in Massachusetts. The result was the creation of the Massachusetts Historic Rehabilitation Tax Credit (MAHRTC), intended not only to promote high-quality preservation activity in the Commonwealth, but also to stimulate economic development in cities and towns across the state.

With its stated goals to promote historic preservation and economic development in the Commonwealth, the MAHRTC provides an income tax credit equal to up to 20% of eligible

costs of approved rehabilitation to income-producing properties. Since its introduction four years ago, the program has already undergone some significant changes, but has yet to receive the careful review that it deserves.

This thesis originally set out with three primary goals: First, to provide an in-depth analysis of the MAHRTC as policy, including an examination of the program's initial development and subsequent evolution, in addition to its procedural administration; second, to judge the MAHRTC's actual ability to increase preservation activity in the Commonwealth; and finally, to propose alterations to the legislation to enhance the program's capacity to attain its stated goals.

Shortly after my research commenced, however, it became apparent that this thesis would also have to approach fundamental questions of administrative transparency. When faced with a government office's refusal to share information about the program's function thus far – information that ought to be a matter of public record – the fine-toothed analysis as had been initially proposed appeared to be a difficult (to impossible) endeavor to pursue.

It also became apparent, when looking more closely at the structure of the program, that the incidence of an annual cap – a limit on the total dollar amount in credits available for allocation each year – also holds important significance to the MAHRTC's ability to accomplish its stated goals. But perhaps even more importantly, given the administration's reluctance to reveal information about tax credit allocation, the cap has been found to effectively *enable* the very reticence exhibited by the Massachusetts Historical Commission.

What follows, then, is first an exhaustive narrative the history, development, and basic function of the program, with particular emphasis on the implications of the annual cap, followed by an attempt to unravel the mystery that is a tight-lipped state agency which has all but flatly refused to share the information key to gaining a full understanding of the MAHRTC.

## **INTRODUCTION TO THE PROBLEM**

Without question, the MAHRTC represents an important addition to the State's preservation toolkit. Under the program a qualified rehabilitation project on an income-producing property is eligible to receive up to 20% of the cost of certified rehabilitation expenditures in tax credits which may be applied against state income or excise taxes. The policy language surrounding the initial development of the MAHRTC reveals its targeted purpose as a means to further Massachusetts' economic development and historic preservation goals.

Since the program's inception nearly five years ago, very little serious study of the program's progress has occurred. Broad-stroke accounts describe the MAHRTC's purported success for increasing rehabilitation activity in Massachusetts, and cursory economic impact snapshots point tenuously towards increased investment in preservation projects. However, concrete evidence proving either of these claims has yet to be presented. In the meantime, the legislation itself has been modified twice to increase the annual aggregate cap on available credits; the program began with a \$10 million cap, which was soon increased to \$15 million (2005), and most recently, in 2006, to \$50 million available for allocation each year through the year 2011.

Below-the-radar rumblings also indicate possible abuses of the program, including the allegation that credits have been awarded to projects which do not directly support the goals of the legislation (although this anonymous claim had yet to be in any way substantiated until very recently, as will also be discussed at detail).

Although I am a devoted preservationist at heart, I question the decision-making processes which have informed the program's development and subsequent evolution, particularly in absence of solid evidence indicating the MAHRTC's tangible benefits to the Commonwealth, and in the presence of new information that points an administration using this program as a means to grease palms.

## **THESIS QUESTIONS AND SCOPE**

Given that brief background, this thesis nonetheless addresses the following questions, which fall under three broad headings:

### **1) Program as Policy: Development, Evolution and Administration**

- What guided the development and evolutionary progression of the MAHRTC program; that is, how did arrive at its present form?
- How does the MAHRTC work? What mechanisms, if any, are in place to ensure that the program is efficient, consistent, inclusive, equitable, sustainable and effective?
- How does the imposition of a cap on annually available credits affect the function of the program?

## **2) Effectiveness**

- Has the MAHRTC actually increased the level of preservation activity in Massachusetts?

## **3) Policy Improvement**

- How can the legislation be modified to enhance the program's efficacy in reaching its stated goals of increased preservation activity and economic development?

**Scope. The proposed thesis will not provide a comprehensive economic and fiscal impact study of the MAHRTC.** Although there is significant interest among the Massachusetts preservation community to ascertain a comprehensive examination of the MAHRTC's economic and fiscal impact, the massively complicated nature of such an undertaking lies beyond the scope of my research.

Some states, including Rhode Island and Maryland, have commissioned reports as described above. In most cases, these “no-nonsense” economic impact studies limit themselves to communicating specific hard data, including numbers of jobs created, millions of dollars invested, and similar traditional economic growth markers; such reports generally neglect a substantive discussion of the program's operation, focusing solely on deriving a measure of the program's “efficacy” and perhaps a hint of (fiscal) “sustainability,” but ignore questions of efficiency, consistency, inclusiveness and equitability.

## **CHAPTER ORGANIZATION**

After the present Introduction chapter, a thorough Chapter 2 takes the reader through the history of tax incentive programs for historic preservation, as well as a formation of the criteria for judging the MAHRTC. Chapter 3 provides the complete narrative history of the MAHRTC and describes the program's characteristics. In Chapter 4, the criteria for policy analysis are applied to the MAHRTC to the best of the author's abilities given the "black box" nature of so many aspects of the program. Chapter 5 presents some suggested enhancements to the program that the author feels would improve the program's quality and efficacy. Finally, the thesis concludes with Chapter 6, a recapitulation of lessons learned and a forward-looking perspective listing opportunities for further research.

## **IMPLICATIONS OF RESEARCH**

Because no comprehensive study of the MAHRTC has yet been undertaken, it is hoped that this work will generate interest among both the public and private sectors, providing a key resource to program administrators, policymakers, advocacy groups and developers. It is also hoped that by calling out the program administrator's lack of cooperation, further scrutiny of the program will be undertaken.

Beyond the narrow, local scope, it is also hoped that this undertaking will contribute to the broader literature examining historic rehabilitation tax credit program policy.

## CHAPTER 2 LITERATURE REVIEW AND METHODOLOGY

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### CHAPTER QUESTIONS:

- *What is the history of historic rehabilitative tax credit programs in the United States?*
- *What have authors had to say about the structure and function of historic rehabilitation tax credit programs?*
- *What criteria have been used to judge the goodness of policies and programs?*
- *What is the best approach to take in the analysis of the MAHRTC?*

This chapter explores the history and literature of historic rehabilitation tax credit programs, the literature of policy analysis, and laying out the method chosen to evaluate the MAHRTC. It has thus been divided into four major parts:

1. **Narrative History of Historic Rehabilitation Tax Credit Programs in the United States.** The chapter begins by providing a brief background on the history of tax credit programs for historic preservation in the United States. The discussion includes a narrative of the shift from primarily public investment in preservation to a predominantly private endeavor before briefly exploring the Federal Historic Preservation Tax Credit Program, enacted in 1976, and finally a look at the proliferation of state-level programs in the late 1990s and early 2000s.
2. **Tax Credit Literature Review.** The second portion of the chapter delves into the existing literature surrounding tax credits for historic preservation.

3. **Policy Analysis.** The third part of this chapter briefly explores the policy analysis tradition and its application in this research.
4. **Proposed Approach to Analyzing the MAHRTC.** Finally, the chapter concludes by summarizing the approach taken to analyze the MHRTC program.

### **The Rise of Historic Rehabilitation Tax Credit Programs in the United States**

Various types of government incentives for historic preservation have been in place for a long time in this country. These government incentives take two basic forms: direct incentives (i.e.: cash grants-in-aid) and indirect incentives (tax-based incentives, including reduced taxation rates for historic properties and rehabilitation tax credits) (Schuster 53). Today, there is no denying that incentives have become the government's most important tool for incentivizing private investment in historic preservation.

The introduction of both types of incentive – direct and indirect – arguably contributed to a shift of responsibility in preserving our nation's architectural heritage; what had once been primarily a governmental effort through direct "ownership and operation" (Schuster 49) had become chiefly the private investors' venture. J. Mark Schuster describes this shift in his important chapter, "Inciting Preservation." In earlier years, Schuster says, the American view of what was "historic" was relatively narrow, confined to patriotic landmarks of single importance and directly associated with our nation's forefathers: the White House, the Capitol Building and the Lincoln Memorial all serve as apt examples. With so few properties to maintain, and with such a strong emphasis on the American national spirit, it made most financial and symbolic



sense for the government to take direct stewardship over such properties. However, as the definition of “historically significant” extended to embrace elements of the built environment associated with more ordinary Americans – which also included many properties in private hands – direct government ownership and operation was no longer feasible nor desirable (Schuster 49). The “labor-intensive nature of preservation activity” also translated into steep costs associated with historic rehabilitation projects, another possible motivation for the government to shift its caretaking responsibility onto private investors (49).

The “business of preservation” expanded in the 1970s, when public-private partnerships began to demonstrate that urban revitalization through historic preservation was not only possible, but cost-effective and even profitable; Boston’s Quincy Market “festival marketplace” was one such “flagship” project which demonstrated to developers that adaptive reuse of historic buildings could be a highly lucrative business venture.

However, the introduction of the Federal Historic Rehabilitation Tax Credit Program represents the single most important event in preservation history; its introduction ushered in a new era in historic preservation, causing private investment in old buildings to soar to unprecedented levels, creating many thousands of jobs and many millions of square feet of new and renovated housing, office space, venues for cultural activities and a wide variety of other uses.

### *Federal-Level Historic Preservation Incentives*

While it is certainly not the central focus of this thesis, The Federal Historic Preservation Tax Credit Program is worth briefly touching upon due to its close resemblance to, and interface with, the MAHRTC.

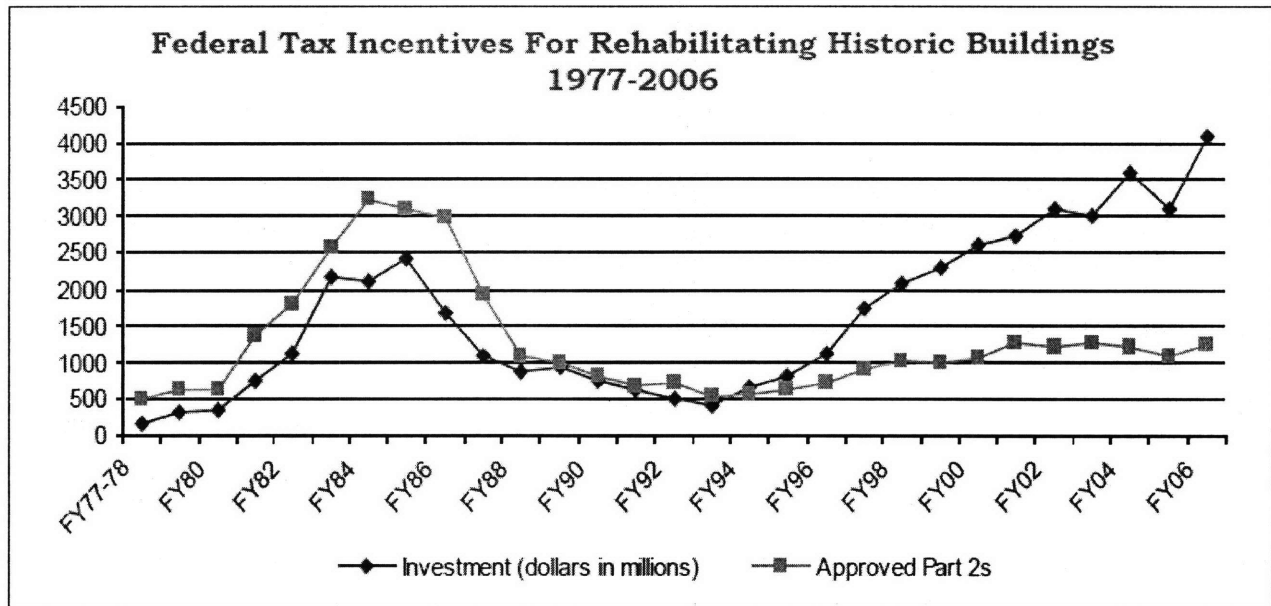
Although direct government incentives have existed at the Federal level since the passage of the National Historic Preservation Act of 1966 (which included a provision for the creation of a grant program), the first tax-credit based incentives for historic preservation were established at the Federal level by the Tax Reform Act of 1976. This law (and its subsequent modifications in 1978, 1980, 1981, 1984 and 1987), makes a Federal tax credit available for rehabilitation activities performed on income-producing properties. To qualify for the credit, the structure must be listed (or eligible for listing) on the National Register of Historic Places (see Appendix D for listing criteria). The credit awarded is calculated as a percentage, either 10% or 20%, depending on the type of project, of the eligible rehabilitation expenditures for either certified historic buildings, or non-historic, non-residential buildings constructed before 1936. To qualify for the dollar-for-dollar credit, rehabilitative efforts must be deemed consistent with the Secretary of the Interior's Standards for Rehabilitation (see Appendix C), and must receive "certified rehabilitation" status. The Secretary of the Interior delegated this responsibility of certifying rehabilitations that are "consistent" with a property's historic character to the National Park Service, which has managed the Federal Historic Rehabilitation Tax Credit Program since it was created. The Federal Historic Rehabilitation Tax Credit Program is administered by the National Park Service (NPS) and the Internal Revenue Service (IRS) in partnership with the State Historic Preservation Officers (SHPOs).

There is currently no cap placed on the dollar amount in credits that may be allocated by the NPS per year. This particular feature of the Federal tax credit sets it apart from the vast majority of state-level programs that impose annual caps or per-project caps. But without a cap in place, all projects that qualify for the Federal credit are essentially guaranteed to receive the maximum allowable credit for that type of project, providing certainty to applicants.

Federal tax credits can then either be used to offset the property owner's own tax liability or, alternatively, sold to a tax credit investor in exchange for additional capital that can be used for the project's long-term financing. Faced with these options, most developers actually elect to syndicate or transfer the tax credits to a corporate investor because, under current federal tax law (such as the Passive Activity Rules and the Alternative Minimum Tax Regulations), corporations are the most efficient tax credit consumers.

The 2006 FHRTC Annual Report describes the program as “the nation’s most effective Federal program to promote urban and rural revitalization and to encourage private investment in rehabilitating historic buildings” (United States 2). Indeed, the program’s statistics demonstrate its success in leveraging substantial private investment in historic buildings and spurring economic growth; since its inception in 1976, the program has generated over \$40 billion dollars in private investment to rehabilitate over 33,900 historic buildings (2). In 2006 alone, the program generated more than \$4 billion in private investment historic buildings, creating 61,397 jobs and 14,695 units of new or renovated housing, 5,622 of which are designated for low- or moderate-income households (2).

The following graph (Figure 1), sourced from the above referenced report, illustrates the annual dollar amounts of private investment and number of “Approved Part 2s” – the number of NPS-approved projects – during each isolated year, from 1977 through 2006.



**Figure 1: Annual FHRTC-induced investment in historic buildings and annual number of approved projects (National Park Service, 2006 FHRTC Annual Report)**

The graph illustrates the amount of private investment leveraged by this Federal tax credit program, but it is interesting to note that the approval of more projects in a given year does not translate into more dollars invested; in fact, it seems that the opposite is true.

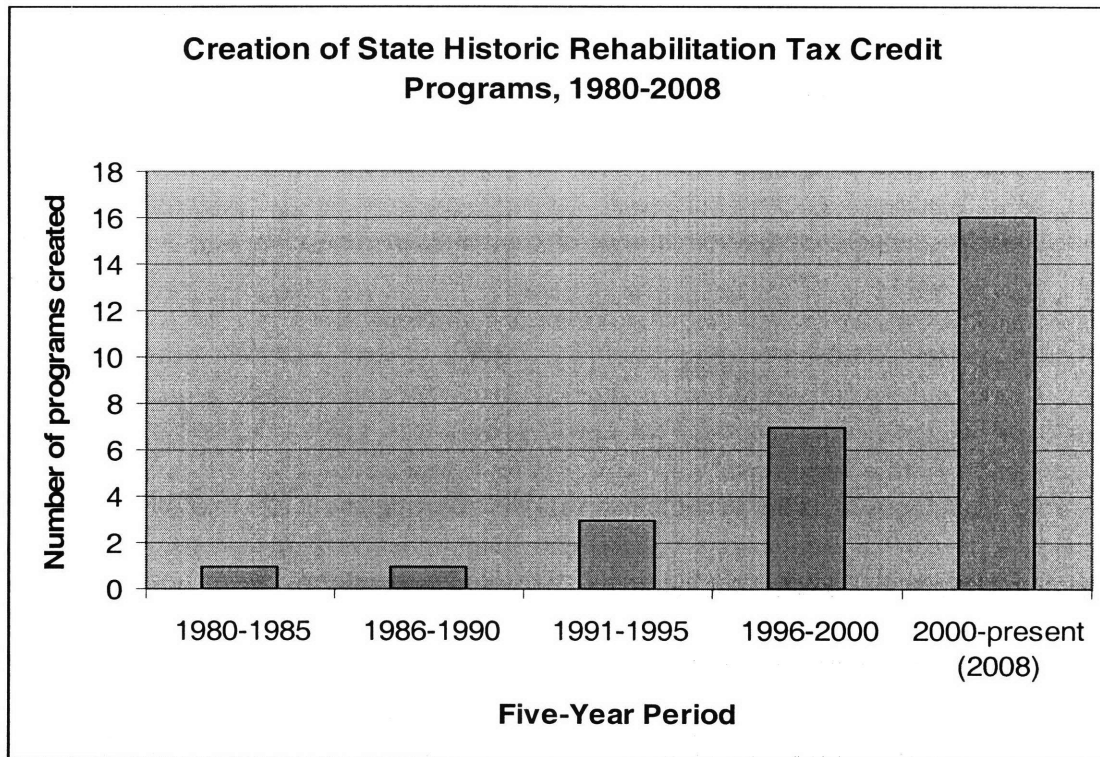
*State Historic Rehabilitation Tax Credit Programs*

Many sources credit New Mexico as being the first state to introduce a historic rehabilitation tax credit program at the state level, as the state did in 1984 (Lohman). However, the first non-Federal historic rehabilitation tax credit program was actually passed in the District of

Columbia in 1975, actually predating the Federal program. Unfortunately, though, it was never fully implemented as originally laid out by the legislation, and later became a grant program (Hein). However, the intention of the program was very clear: to use the lure of waived taxes to entice private investors into putting their money into historic preservation activities

After New Mexico implemented its program in 1984, it took several years for other states to catch on; Rhode Island passed its own state tax credit program in 1989, followed by Colorado in 1991; Wisconsin and Utah in 1993; and Indiana in 1994. During the latter half of the 1990s, states began adopting their own rehabilitative tax credit programs with an increasing momentum, including Virginia in 1997; Missouri, Maryland, and North Carolina in 1998; and Connecticut, Michigan and Vermont in 1999. The momentum has continued to build into the 2000s, during which a substantial wave of state-level tax credit legislation has been witnessed between 2000 and 2008 (see Figure 2 for graphic representation). Massachusetts' program, created in 2003, was created during this wave, which brought the number of states offering preservation tax credits up to 29 in total the end of 2007 (Schwartz).

Unlike the Federal program, which limits project eligibility to income-producing properties only, 23 of the 29 states currently offering historic tax credits also extend eligibility to non-income-producing properties, including owner-occupied homes. This characteristic has been important in some states, where homeowner tax credits have helped revitalize previously neglected residential neighborhoods (Lohman 4).



**Figure 2: The rate of creation of state rehabilitation tax credit programs has increased dramatically since the first of such programs was established in New Mexico (1984).**

As expected, “not all state tax credit programs are created equal” (Schwartz 1). While it lies beyond the scope of this thesis to provide a comprehensive comparison of the 29 state historic rehabilitation tax credit programs in place, suffice it to say that varying features in the regulations can have profound implications for a program’s overall “success.” Colorado’s program, for example, limits the amount that an individual project may receive to a mere \$50,000.

### **The Historic Rehabilitation Tax Credit Literature**

As captured in the opening quote from J. Mark Schuster, serious academic study of tax incentives for historic preservation has largely been ignored. What limited literature exists is predominantly anecdotal in nature, often painting praiseful reports in broad brush strokes. In fact, research turned up no single work holding a state historic tax credit program up to the rigors of a thorough policy analysis. Some states have commissioned reports to assess the economic and financial impacts of their tax credit programs – such as those produced for GrowSmart Rhode Island in 2005 and 2007 – but these reports essentially fail to address the nature of the programs’ development process and administration.

### *Conditional Nature of Incentives*

Unlike government regulations in place to control a property owner’s actions with regard to their historic property – provisions tied to historic district ordinances, for example, including design review – the property owner who utilizes a preservation incentive makes a conscious choice to submit to the conditions placed upon use of that incentive. J. Mark Schuster observes this manifestation, pointing to the “conditional nature of the offer being made:” when an individual or organization chooses to utilize an incentive, the property owner willingly consents to the conditions placed upon the granting of the incentive (51). “A deal [is] struck though an incentive when both [government and property owner] consider it fair and [are] willing to accept it.” (51). In the case of historic rehabilitation tax-credits, a project proponent willingly submits himself to the extensive “certification” process that each project undergo in order to utilize a tax credit; rehabilitation work must be done in a way that conforms with the pre-set normative criteria spelled out in the Secretary of the Interior’s Standards for Rehabilitation.

Proposed or completed work that does not conform with these standards will not receive the certifications necessary to receive the credit.

***“What makes a “good” state historic rehabilitation tax credit program?”***

A handful of authors have suggested criteria for judging the degree of “goodness” or “appropriateness” of a historic rehabilitation tax credit program. Constance Beaumont, Director for State and Local Policy for the National Trust for Historic Preservation, offers a set of criteria against which a state tax credit program might be judged, in Smart States, Better Communities: How State Government Can Help Citizens Preserve Their Communities. The complete list is as below, followed by a discussion of each (111).

**Elements of a Successful State Tax Incentive Program**

Constance Beaumont

- Incentives generous enough to motivate property owners to invest in preservation opportunities, but not to provide unnecessary giveaways.
- Simplicity of administration for both program administrators and property owners.
- Minimal paperwork that is nonetheless adequate to yield information that guards against abuse and gives the state the data it needs.
- Minimum investment requirements appropriate to state’s goals. Lower requirements favor small projects by lower-income people; higher requirements, major projects by large developers.
- Technical assistance to help property owners perform high-quality work, avoid pitfalls, and save money.
- Controls over fiscal impact, whether through caps on incentives, restrictions on types of historic properties eligible, or limitations on rehabilitation activities.
- Good promotion and explanatory materials.



- Outreach and education for tax assessors, whose cooperation and understanding are critical.
- Certainty for property owners.
- Well-defined and appropriate rehabilitation standards.
- Good coordination with other relevant programs – e.g. federal tax credits for rehabilitation, low-income housing tax credits, etc.

**Discussion:**

***“Incentives generous enough to motivate property owners to invest in preservation opportunities, but not to provide unnecessary giveaways.”***

If the goal of the government is to entice developers to invest in historic preservation projects, then the incentive offered must be attractive enough to motivate those property owners into action. An incentive may be inadequate in any of the following three ways: 1) the potential tax benefit is not great enough to attract investors, 2) the demands made on the property owner to participate in the program are too great to make the investment attractive (or even financially feasible), or 3) a combination of both insufficient tax benefit coupled with excessive requirements on the property owner.

Michigan presents itself as an example of a program which offers a potentially insufficient benefit to investors. Although Michigan offers a tax credit equal to 25% of qualified rehabilitation expenditures for income-producing properties, the state government reduces the maximum credit awarded to a mere 5% when the 20% federal credit is also used. Since the federal credit is almost universally used in conjunction with any state program offered, the effective rate in Michigan becomes 5% (Schwartz 2).

Programs that impose individual project caps also provide an example of potentially insufficient benefit to developers. The Colorado program places a \$50,000 cap on the total amount that each single project may receive in tax credits. While this limit might not impair a historic homeowner's utility of the credit, it is far too low an amount to attract developers seeking to rehabilitate multi-million dollar commercial properties.

Potentially excessive demands on property owners may also render a program unattractive. The Kentucky program requires a minimum expenditure of \$20,000 in order to receive consideration for tax credits, potentially making it infeasible for low-income homeowners and small businesses to participate. The multiple issues surrounding minimum expenditure requirements will be explored in greater detail later in this analysis.

The third type of "insufficiently generous" program – one that offers too little tax relief and makes potentially excessive demands on the property owner – is found in the example of Wisconsin's tax credit program. In Wisconsin, income-producing properties not only receive a minimal 5% credit, but the developer's rehabilitation expenses must also equal the *building's entire adjusted basis*.

**"Simplicity of administration for both program administrators and property owners," and "Minimal paperwork that is nonetheless adequate to yield information that guards against abuse and gives the state the data it needs."**

Taken together, these two criteria refer to the importance of an uncomplicated application process, streamlined yet thorough enough to provide sufficient project information for program administrators to make informed allocation decisions. Striking the balance between these two goals can be tricky, however. On the one hand, every detail of a project must comply with the Secretary of the Interior's Standards for Rehabilitation in order to receive proper Certifications as "qualified rehabilitation." On the other hand, documenting every detail of a large, complicated project takes a substantial amount of time and resources, and inevitably results in many pages for administrators to read and review.

**"Minimum investment requirements appropriate to state's goals. Lower requirements favor small projects by lower-income people; higher requirements, major projects by large developers."**

Several issues arise when speaking about minimum investment requirements. The general consensus argument in favor of minimum investment requirements is that they ostensibly guarantee that projects will result "substantial rehabilitation." However, the question of determining what level of minimum expenditure requirement results in "substantial rehabilitation" has been a difficult one, as demonstrated by the considerable spread of minimum requirements from state to state. Several states have approached the minimum investment issue by naming a specific dollar amount that must be spent on qualified rehabilitation expenditures. Kentucky, for example, requires a minimum expenditure of \$20,000 for both commercial and owner-occupied properties. On the

one hand, a homeowner or small storefront business owner may find such a “high” minimum expenditure difficult to float, and even so, the targeted “substantial rehabilitation” result still may or may not be achieved. On the flipside, the developer of a large textile mill will have little difficulty spending this amount on her project, but it is highly unlikely that a “substantial rehabilitation” will result if she spends only the minimum requirement of \$20,000.

Meanwhile, some other states’ minimum expenditure requirements demonstrate a clear bias towards certain types of projects – and perhaps a certain stratum of society. In Louisiana, the minimum expenditure for income-producing properties is only \$10,000, opening the program to projects of relatively modest size, but also possibly allowing for the subsidization of larger projects which, again may or may not represent “substantial” rehabilitation; meanwhile, the minimum expenditure for owner-occupied residential projects in Louisiana is twice that amount -- \$20,000 – revealing a possible inherent barrier to low-income homeowners who may be unable to invest that kind of money upfront.

Other states, including Massachusetts, have approached the minimum expenditure question in a different manner: by calculating the minimum as a percentage of the property’s adjusted base. This approach seems more flexible than the across-the-board fixed requirement, and opens the program to a much wider variety of type and size of projects. This method also levels the playing field in the sense that a consistent

*proportion* of minimum expenditure is invested for all projects; if every project spends 25% of the property's adjusted base on rehabilitation work, the program approaches a more consistent level of rehabilitation for each project. However, if the percentage is set too low, then "substantial rehabilitation" may be less likely to result. If the percentage is set too high, the program may run up against the "insufficient incentive" issue already explored in this set of criteria.

**"Technical assistance to help property owners perform high-quality work, avoid pitfalls, and save money."**

Many project proponents require extensive technical assistance in order to plan their rehabilitation projects and prepare tax credit applications. But should the state itself provide this type of support? Many SHPOs already find themselves understaffed and overburdened; although MHC has a dedicated Technical Services Division, their own website claims that calling their office "...is not advisable. MHC has a small staff and such phone calls take staff time away from project reviews. Therefore telephoning MHC can actually result in a delay in MHC's response time."

If a SHPO itself is unable to provide technical services, it might be able to refer project proponents to consultants or organizations who are capable of providing quality technical assistance. However, if the state takes the "referral agent" approach, what safeguards are put in place to guard against potential preferential treatment or conflicts of interest?

**“Controls over fiscal impact, whether through caps on incentives, restrictions on types of historic properties eligible, or limitations on rehabilitation activities.”**

Whether a tax credit program’s target is to promote historic preservation activity, to incentivize the creation of new affordable housing, or to encourage drivers to purchase hybrid vehicles, all tax credit programs result in the same essential effect: they reduce government income due to forgone taxes – at least in the short term.

Some states have sought to control the amount of lost tax revenue by imposing some type of cap or other restriction. However, limitations of any type, by their very nature, impact the way a program functions.

As has already been discussed, caps present an interesting challenge when aiming to balance the needs of the property owner with the needs of the state. Two basic types of caps are present among state historic tax credit programs: per-project caps and program-wide annual aggregate caps.

The functional implications of per-project caps have already been sufficiently discussed in previous sections, but to briefly summarize, low per-project caps tend to reduce a program’s appeal among those pursuing large, multi-million dollar projects.

Many states, including Massachusetts, have imposed aggregate caps on the total dollar amount of credits available for annual allocation. While this option certainly helps the

state control the amount of “lost” revenue, the very action of creating a finite supply of credits produces a competitive environment, where many projects compete with one another to “win” a portion of the limited resources. A competitive program potentially yields two outcomes:

- Competition in the tax credit “market” might encourage applicants to propose higher-quality projects with the hope that doing so will increase their chances of being selected. The potential cumulative effect: only the best projects receive tax credit allocations.
- A competitive tax credit “market” will likely mean that some projects will not be selected to receive credit allocation, or will not receive the full percent credit; there will be winners and losers.

Given these potential results, the imposition of an annual aggregate cap can be said to have both positive and negative effects. On the one hand, the state – and presumably, the public – benefits from a competitive process where only the best projects are rewarded. Certainly, it seems only fair that the best projects are awarded over less impressive proposals. However, the inherent lack of certainty about whether a project will receive tax credit allocation can pose major problems for projects that depend on receiving the credit in order to proceed.

Furthermore, because some states – Massachusetts included – offer a credit equaling *up to* X% – but not strictly X% – there is the inherent uncertainty that some projects may

not receive the full expected tax credit. Again, this may pose financing problems for certain projects, but two additional secondary effects may result:

- More projects receive allocation in smaller dollar amounts than 20%, or
- Fewer projects receive allocation in amounts equaling 20%.

Restricting the types of properties eligible for historic tax credits may or may not be a sensible approach for controlling a program's financial impact. Some states limit eligibility to properties already listed on the National Register of Historic Places. Other states extend eligibility to properties already listed on the NR or eligible for listing on the National Register of Historic Places, or part of a Historic District. Other states limit property eligibility to buildings within specified target areas. For example, Vermont's historic tax credit program restricts project eligibility to buildings located within the boundary of a "Designated Downtown" or "Designated Village Center," areas which have been pre-selected by the state for intensive historic preservation investment. If the goal of the state is to promote preservation activity in targeted areas, then this approach is a good solution to keeping cost to the state at bay.

**“Good promotion and explanatory materials.” and**

**“Outreach and education for tax assessors, whose cooperation and understanding are critical.”**



These two criteria are linked by virtue of their promotional and educational nature. Naturally, if a program is not widely publicized nor well understood, its participation level and effectiveness will be significantly diminished.

In today's digital age, the fastest and most efficient manner of disseminating information seems to be the Internet. SHPO websites could potentially play an important role in broadcasting information about states' tax credit programs, serving as a repository for information.

**“Certainty for property owners.”**

The issue of compromised “certainty” was previously discussed as an effect of program caps. If receipt of the full credit is not guaranteed (so long as all aspects of the project conforms with the Secretary of the Interior's Standards of Rehabilitation, see Appendix C).

**“Well-defined and appropriate rehabilitation standards.”**

Most states have chosen to follow the Federal program's example by using the Secretary of the Interior's Standards for Rehabilitation as the normative set of criteria for judging the historic appropriateness of the proposed rehabilitation work.

**“Good coordination with other relevant programs – e.g. federal tax credits for rehabilitation, low-income housing tax credits, etc.”**

As previously stated, income-producing properties almost universally utilize the federal tax credit program in combination with state programs. Some states, including Massachusetts, will accept documentation prepared for the federal program provided it gives sufficient documentation to demonstrate that the proposed rehabilitation meets the Secretary of the Interior's Standards for Rehabilitation.

Additionally, some state historic tax credit programs provide additional incentives for projects which incorporate affordable housing.

Another list of criteria comes from Harry K. Schwartz, historic tax credit expert and consultant to the National Trust for Historic Preservation. Four of Schwartz's six criteria essentially echo Beaumont's considerations, although his reasoning sometimes departs from hers:

**“Eligible Buildings.”**

Although Beaumont argued in favor of restricting building eligibility in order to limit fiscal impact on the state, Schwartz believes that a state is better served by expanding the scope of eligible buildings to include: individual buildings listed on the National Register; buildings located within National Register historic districts which contribute to the district's character; individual buildings which have become locally designated landmarks; and buildings located within local historic districts which contribute to the district's character.

Neither Beaumont nor Schwartz's reasoning is inherently wrong, but the important thing to consider when analyzing a historic rehabilitation tax credit program, is to examine the program's goals: if the program is intended to target to a specific area or specified type of property, then placing certain limitations on eligible projects would make sense.

**“Standards for Rehabilitation.”**

Schwartz concurs with Beaumont that state programs should adopt the Secretary of the Interior's Standards for Rehabilitation.

**“Appropriate Rates.”**

Like Beaumont, Schwartz recognizes the need to offer a tax credit that is high enough to “constitute a meaningful incentive (2).”

**“Annual Aggregate Caps.”**

Although Beaumont considered the impact of program caps in her criteria, Schwartz makes a bold departure from Beaumont by asserting his belief that “those states that have resisted capping have had an economic advantage in attracting capital for historic preservation (2).” Schwartz essentially acknowledges the possible perverse effect of imposing a cap: that there will be winners and losers, creating an atmosphere of uncertainty.

In addition to those four criteria, Schwartz also includes two additional important considerations entirely overlooked by Beaumont:

**“Availability for Homeowners.”**

Schwartz astutely points out the potential importance of extending incentives to homeowners in absence of such a program at the federal level.

**“Transferability.”**

A state tax credit has value only to the extent that the credit holder has sufficient liability for state taxes that the credit can be used to offset. Although state tax rates vary, they are far lower than federal income tax rates. As a consequence, an apparently valuable state tax credit may wind up in the hands of a party unable to use it. There are several remedies to solve this problem, but many state statutes do not provide for them.

**Building on Beaumont and Schwartz**

Taken together, Beaumont and Schwartz’s combined sets of criteria provide a reasonable starting point for analyzing the “goodness” of such a specific type of program. However, both sets of criteria fail to address the following issues:

***Recapture Periods***

“Recapture period” is a period of time during which specified action, such as a change in ownership of the property, will trigger an obligation to pay back a ratable portion of the tax credit previously claimed.

### ***Unused Credit Expiration and “Recapture”***

A different form of “recapture” should be triggered after a period of *non-action* as well; what happens to allocated credits that are never claimed because the project is never completed? In Massachusetts, a handful of projects have received tax credit allocation, only to never have broken ground for construction (James Igoe, personal interview). As a result, unused credits are removed from the available pool but are never actually claimed. Developers should not be able to sit on credits for perpetuity; if the project does not come to fruition within a certain period of time, they should be required to relinquish their rights to use claim the credits.

### **But What Makes Good Policy?**

All of the criteria discussed so have referred to specific program characteristics without addressing a more fundamental question: what criteria must *any* program meet in order to be considered *good policy*? What about issues of efficiency and effectiveness? Accountability and transparency? Equity and sustainability?

Many sets of criteria have been developed for judging the “goodness” of policies and programs. According to policy analyst Eugene Bardach, such criteria are the “evaluative standards” against

which policy outcomes are weighed, permitting “values and philosophy” to enter policy analysis (Bardach 18).

In Carrots, Stick & Sermons, Marie-Louise Bemelmans-Videc discusses the qualities of “good governance,” by which refers to both the policies and the process taken to devise, enact and administer those policies. Bemelmans-Videc suggests the following four “values” – “the dominant criteria of ‘good governance’” – which ought to guide the creation, implementation and administration of policy (7):

1. *Effectiveness* stands for the degree of goal-realization due to the use of certain policy instruments; evaluation should also include (positive and negative) side-effects of the instrument;
2. *Efficiency* refers to the input-output/outcome ratio of policy instrumentation; evaluation includes problems of implementation of programs through the devised means (evaluation of the administrative process);
3. *Legality*, which refers to the degree of correspondence of administrative action in designing and implementing policies with the relevant formal rules as well as with the principles of proper (administrative) process. These last principles may entail values like equity and motivation (of administrative decisions); and
4. *Democracy*, referring to the degree to which administrative action in designing and implementing policies correspond with accepted norms as to government-citizen relationships in a democratic political order (7-8).

Bemelmans-Videc also suggests a fifth criterion, “legitimacy,” loosely defined as a policy instrument’s degree of “justness” as perceived by “involved actors:” those who interact with the program in any capacity (8). “Legitimacy” is isolated from the first four values due to the necessity of its presence within each. “Legitimacy,” she contends, must be present within the other four values in order for the policy or program to be truly “good:” a policy’s legitimacy is enhanced when it perceived as efficient and effective, and constructed in a legal and democratic manner. In an ideal situation, “good governance” is achieved when a policy instrument is in accordance with the four “values” of effectiveness, efficiency, legality and democracy, with the vein of legitimacy running through each.

However, Bemelmans-Videc finds that the combination of these criteria sometimes leads to self-contradiction; the key to devising “good” policy instruments then, is “a prioritizing process, a balancing act” (9).

A second set of criteria is suggested by Eugene Bardach in A Practical Guide for Policy Analysis. His criteria are divided into two sets: “Evaluative” and “Practical.” Much overlap occurs between Bemelmans-Videc and Bardach, yet Bardach offers some additive criteria which help expand Bemelman-Videc’s “values” into more refined attributes:

**Evaluative criteria:**

- Efficiency
- Equality, fairness, equity, “justice”
- Freedom, community, and “other ideas” (22)

### **Practical criteria:**

- Legality
- Political acceptability
- Robustness and Improvability

### **Putting it All Together: A Method for Evaluating the MAHRTC as Policy and Process**

Where Beaumont and Schwartz's criteria fall short, Bemelmans-Videc and Bardach pick up. Yet the criteria forwarded by Beaumont and Schwartz provide some subtle nuances that are not adequately addressed by Bemelmans-Videc's "values" and Bardach's criteria. A tandem application of both kinds of criteria becomes necessary.

The first step of my method for policy analysis is the identification of "*complete program*" criteria: the characteristics of a specific type of program which should be present if the program is to be considered "complete." For the purpose of analyzing the MAHRTC or any other historic rehabilitation tax credit program, these criteria will be drawn from Beaumont and Schwartz's (and Emmitt's) criteria as discussed earlier in this chapter. The criteria are essentially used as a checklist; the more of these characteristics that the program has, the more sound a program it may be. Meanwhile, as also previously discussed, it is important to bear in mind that certain programs have specific goals which may modify the degree of necessity of individual characteristics. The generation of a list of *goal-specified attributes* helps the policy analyst accommodate specific program's special objectives as stated within its legislative language.



Next, using the prototypes provided by Bemelmans-Videc and Bardach, I propose an approach which judges the “goodness” of a policy or program based on the degree to which its modified complete program attributes conform to the following *evaluative criteria*:

**Evaluative Criteria:**

- **Effectiveness.** How well does a policy achieve its stated goals?
- **Efficiency.** How well are resources used to achieve goals and put a policy in action?
- **Consistency/Legality.** What is the policy's degree of alignment with the broader goals and strategies of the government and with constitutional, legislative and regulatory establishment?
- **Inclusiveness/Equity.** How does the policy foster inclusion of all members and strata of society? Does it (intentionally or unintentionally) create advantages or disadvantages for some and not others?
- **Accountability/Transparency.** What degree of oversight of the program? Where applicable, how and to what extent is information regarding the program's performance made public?
- **Periodic Review/Improvability.** How is the performance of the program monitored? If problems are identified, how will those problems be addressed?
- **Legitimacy.** The vein of legitimacy – the quality of being considered acceptable – should run through all.



## CHAPTER 3

# MAHRTC: DEVELOPMENT AND STRUCTURE

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### CHAPTER QUESTIONS:

- *What guided the development and evolutionary progression of the MAHRTC program?*
- *How is the MAHRTC administered?*
- *How do the program's parameters affect its function and effectiveness?*
- *What changes to the program are currently being considered?*

Despite its rich and diverse heritage – and abundance of preservation organizations of varying sizes and levels of influence – Massachusetts was the last of the New England states<sup>1</sup> to establish some form of state-level historic rehabilitation tax credit; Vermont initiated its first program in 1998; Connecticut and Maine launched their own adaptations in 1999; and Rhode Island established its progressive and nationally-lauded<sup>2</sup> program in 2002.

It is not surprising, then, that the Commonwealth's preservation community considered it a great triumph when the legislation creating the Massachusetts Historic Rehabilitation Tax Credit was passed in 2003. After years observing the great perceived successes of historic rehabilitation tax credit programs in other states, the launch of Massachusetts' own program generated a great wave of enthusiasm among preservationists and developers alike.

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<sup>1</sup> With the exception of New Hampshire, which does not levy a state income tax.

<sup>2</sup> Rhode Island's state historic tax credit program, though not significantly older than Massachusetts', has already been the subject of extensive study (see Lipman Frizzell & Mitchell's two studies of the program in 2005 and 2007, *Rhode Island Historic Preservation Investment Tax Credit Economic & Fiscal Impact Analysis*); ironically, though the program has been incredibly popular and held up as a "model" state tax credit program was recently under the threat of elimination; a plan has been approved to retain the program, though its future is still tenuous (see Steve People's article, "Assembly vote save historic tax credit," in the 10 Apr 2008 Providence Journal).

Today, nearly five years after MAHRTC was first set into motion, it is frequently cited by Massachusetts preservation advocates as a vitally important instrument in the state's historic preservation toolkit (Tsipis A15).

## **CHAPTER ORGANIZATION**

This chapter is divided into three main parts:

1. **Backstory.** The chapter begins by narrating the development and evolution of the MAHRTC, beginning with its tenuous first steps as a time-limited pilot program in 2003, through the subsequent changes (and challenges) to the legislation, which not only guarantees the program's existence through the year 2011, but also ultimately lead to a 400% total increase in the program's annually available credits for allocation.
2. **Program orientation.** The second part of the chapter familiarizes the reader with the program's present parameters and administrative structure.
3. **Future prospects.** The chapter wraps up with a look at the current efforts to further develop the program.

## **FIRST DAYS: PROGRAM CREATION AND EVOLUTION**

### **Establishing a Unified Voice: The Massachusetts Preservation Coalition**

Preservation advocacy has enjoyed a long history in the Commonwealth; indeed, shortage of preservation societies, historic commissions and non-profit advocacy groups. However, one of the longstanding barriers to establishing a state historic tax credit in Massachusetts was the "fractured" nature of its preservation community (Igoe and Kelly, personal interview, 22 Apr.

2008). A general lack of communication and partnership between these many organizations had left the community without a unified voice to push its otherwise unified agenda.

This general lack of communication would begin to change when Preservation Massachusetts, a Boston-based private non-profit advocacy group, initiated the first steps to coordinate and mobilize the preservation community. It was primarily through the efforts of Preservation Massachusetts' which lead to the establishment of the Massachusetts Preservation Coalition (Igoe and Kelly, personal interview 22 April 2008).

The Massachusetts Preservation Coalition was established in January of 2002 as a network of seventeen organizations, ranging from local preservation societies (Preservation Worcester, for example), to state agencies (the Massachusetts Department of Conservation and Recreation), to large, national-level advocacy groups (the National Trust for Historic Preservation). Its mission was to establish an alliance among these organizations to "enhance and promote historic preservation issues and ideas, and develop strategies for successfully building and maintaining relationships [between] ... [these] organizations" (Preservation Mass' Website).

Among the individuals at the helm of this effort was James Igoe, President of Preservation Massachusetts. Long before Mr. Igoe first joined the organization in 2002, he had already recognized the potential benefits of encouraging collaboration within the Commonwealth's otherwise scattered preservation community. Previously serving as Executive Director of Preservation Worcester and as Chair of the Massachusetts Historical (MHC), Mr. Igoe was well acquainted with the many disjointed preservation organizations already in existence in

Massachusetts; he saw great potential in organizing and mobilizing these many groups as one body, pushing together to promote preservation as a tool for community revitalization and economic development in the Commonwealth (Igoe and Kelly, personal interview, 22 Apr. 2008).

According to Mr. Igoe, the Coalition's first meetings centered around establishing a unified set of objectives for the group. It quickly became clear that the Coalition's first main focus would be to put its efforts behind researching, drafting and lobbying for a state historic tax credit:

Our first goal was to engage all the preservation organizations in Massachusetts in a way that we could come up with one theme that all the organizations were particularly interested in. And at the same time, we decided that we wanted to find a way that we could continue to educate our state legislators about the value, the need and the significance of historic preservation. So, as the group talked about this, we decided that the state historic tax credit in Massachusetts would be a great thing for us to see whether we could pull off (Igoe and Kelly, personal interview, 22 Apr. 2008).

A tax credit subcommittee was formed to do the bulk of the background research and drafting of the proposed legislation. The subcommittee was made up of four individuals: James Igoe, President of Preservation Massachusetts; Marilyn Fenollosa, who was then Senior Program Officer and Regional Attorney for the Northeast Office of the National Trust for Historic Preservation; Albert Rex, historic real estate consultant and strategist; and Cara Metz, who was

then the State Historic Preservation Officer and Executive Director of the Massachusetts Historical Commission (Igoe and Kelly, personal interview, 22 Apr. 2008).

In preparation to draft and promote a state rehabilitation tax credit in Massachusetts, the Coalition undertook studies of other states' programs, notably those already established in Rhode Island, Missouri, Virginia and Maryland. The Coalition then based its initial draft of the regulations on what they viewed as the best features of each (Igoe and Kelly, personal interview, 22 Apr. 2008). Statistics derived of other states' programs' performance records provided substantive evidence in support of a strong economic development argument. This last point would become vitally important to building the program's palatability among an economically-driven state legislature (Kelly).

The original draft of the regulations differed quite substantially from what was eventually passed by the legislature. The original program was to offer a tax credit of up to 30% of qualified rehabilitation expenditures, was available to both commercial developers and residential homeowners, and would have placed no cap on the amount of tax credits available for annual allocation (Igoe and Kelly, personal interview, 22 Apr. 2008). While administration of the program was to be handled by the Massachusetts Historical Commission on behalf of the Secretary of the Commonwealth, William Galvin, letters of support from Preservation Massachusetts and the National Trust for Historic Preservation would be required as part of each project's application. This final feature of the proposed MAHRTC was included to ensure a continued role of these two non-profits, which were so instrumental in the creation of the

program; the decision to include this provision would become very important for the continued monitoring of the MAHRTC once it was set into motion.

The Coalition began vetting the proposed rehabilitation tax credit program with legislators in 2002. A lobbyist was hired by the Coalition to communicate the Coalition's ideas to members of the State Legislature. The Coalition also hosted a "legislative breakfast" to which state Senators and Representatives were invited and treated to a full presentation of the Coalition's proposed program (Igoe and Kelly, personal interview, 22 Apr. 2008). Through this process, the proposed MAHRTC attracted the attentions of Senators Mark Montigny of New Bedford and Steven Panagiotakos of Lowell, who both eventually became the program's sponsors.

Even as support for the proposed program grew among the legislature, it became clear that significant changes would have to be made before the MAHRTC would have a chance at actually being signed into law. In the end, the program was scaled back as a five-year pilot program to include a \$10 million annual cap, a tax credit up of to 20% of qualified rehabilitation expenditures, and would apply only to income-producing development only. The MAHRTC program also became a component of the Economic Stimulus Legislation of 2003, again, in hopes of increasing its chances of being passed. The bill as a whole was signed into law in 2003 – only a year after it was conceived – and thus was established the first state-level historic rehabilitation tax credit in Massachusetts.

Just as the Preservation Coalition hoped and expected, the program instantly generated a great deal of enthusiasm in the development community. Because all applicants were required to



obtain a letter of support from Preservation Massachusetts, Assistant Director Erin Kelly attests to the fact that the dollar amount in tax credits that were requested within the first year of the program far exceeded the annual \$10 million available (Igoe and Kelly, personal interview, 22 Apr. 2008).

The Massachusetts Historical Commission responded to the high volume of applications with a request for an increase in the annual cap to \$20 million. After MHC demonstrated the program's popularity the state legislature increased the annual cap to \$15 million in 2004 (Nicodemus).

By this time, existence of the MAHRTC was becoming more widespread; the \$5 million increase was not enough to keep up with the amounts requested by a large (and growing) pool of applicants. Most applicants were not receiving the full 20% credit that they had hoped they would receive, largely due to the fact that there was not enough allocation to go around (Igoe and Kelly, personal interview, 22 Apr. 2008).

Finally, in 2006, the Preservation Coalition Preservation Massachusetts, in conjunction with the development community and key legislators, began to lobby again for a second increase in the annual available credit cap. This time, the House proposed an increase to \$50 million per year and a two-year extension, while the Senate proposed an increase to \$35 million per year and a three-year extension. Ultimately, the Conference Committee voted to set the new cap at \$50 million a year, beginning (retroactively) in 2005, and running through December, 2011. The

legislation made \$100 million available in 2006 to accommodate the retroactive application (Preservation Massachusetts Website)

Despite overwhelming support for the program in both the House and Senate, Governor Mitt Romney vetoed the bill and its future became unclear. In his veto message, Romney said that the credits would cost the Commonwealth million of dollars and stated that “there is no apparent job creation or advancement in technology innovation resulting from the additional credits.” At a later press conference, he also said that the credits “unfairly provide tax breaks for big developers who create unnecessary new office space” (Katzen). What Romney failed to recognize, according to Erin Kelly of Preservation Massachusetts, was that the credits were applied to a much broader range of projects than those which provide office space; in addition to offices, projects utilizing the credit also provide retail space, cultural centers, mixed-use developments, and affordable and market-rate housing. In a resounding show of solid support for the program, the Legislature overrode Governor Romney’s veto: in the House, the vote was a unanimous 157-0, and 35-1 in the Senate.

## **CURRENT PROGRAM PARAMETERS AND ADMINISTRATIVE STRUCTURE**

Beside the two annual cap increases in 2004 and 2006, the basic structure of the MAHRTC has remained unchanged since it was first introduced in 2003.

To reiterate, a qualified rehabilitation project on an income-producing property is eligible to receive up to 20% of the cost of certified rehabilitation expenditures in tax credits, which may be applied against state income or excise taxes. The Massachusetts Historical Commission

(MHC) is the state agency charged with the duty to review applications and allocate the available credits.

### **Cap on Available Credits**

As of the time of this writing, the MAHRTC has an aggregate annual cap of \$50 million to be distributed among each year's newly selected projects. The imposition of a cap has certain implications for the nature of this program, which has been and will be further explored elsewhere in this document. Unlike some other state tax credit programs, the MAHRTC currently imposes no per-project cap.

### **The Massachusetts Historical Commission (MHC) and the Three-Tier Certification Process**

The Massachusetts Historical Commission (MHC) serves as the State Historic Preservation Office as established by the National Historic Preservation Act of 1966. MHC administers the MAHRTC on behalf of the Secretary of the Commonwealth, William Galvin. MHC receives and reviews applications for each of the three stages of certification required to successfully claim the tax credit. Applications for "Initial" and "Final" Certification are accepted on a rolling basis throughout the year; "Second Certification" applications are reviewed during three cycles; Second Certification application deadlines are April 30, August 31, and January 15.

### **Initial Certification**

The purpose of the Initial Certification is to determine the proposed project's eligibility for consideration of MAHRTC allocation. In order to be eligible for consideration, the structure must be deemed a "qualified historic structure," which must be:

- Located within the Commonwealth
- Individually listed on the National Register of Historic Places or is a contributing building within a district that is listed on the National Register of Historic Places, or
- Has been determined by the Massachusetts Historical Commission to be eligible for listing on the National Register of Historic Places, and
- Must be owned, in whole or in part, by the taxpaying applicant.

It should be noted that, like the Federal Historic Rehabilitation Tax Credit program, a structure which is "eligible for listing on the National Register of Historic Places" but not actually listed is still considered eligible to receive the tax credit. This important condition of both the FHRTC and MAHRTC allows unlisted projects to proceed without becoming bogged down in the National Register nomination process, which can take many months to complete. However, the FHRTC requires that the building actually become listed on the National Register within 30 months from when the eligibility determination was made. The MAHRTC, on the other hand, makes no such stipulation. "Eligible" buildings may receive allocation and remain simply "eligible."

Once it has been determined that the project meets these criteria, Initial Certification is granted.

## **Choosing Projects: Second Certification**

Simply put, “Second Certification” is the part of the process during which projects are actually selected to receive allocation of credit, and when the allocation is calculated and offered to the project proponent.

Before construction begins, project proponents must complete a Second Certification application which asks detailed questions about the proposed rehabilitation project, and are awarded on a “merit basis.” It follows, then, that criteria are used to choose projects that support the goals of the program.

Indeed, criteria for choosing which projects will receive tax credits are spelled out in the MAHRTC legislation (830 CMR 63.38 RI, which appears in this publication as Appendix A), and are as follows:

- a) *Affordable Housing.* At least 25 per cent of the tax credits shall be allowed for projects that contain affordable housing whenever possible and consistent with the criteria set forth in 830 CMR 63.38R.1(5).
- b) *Preservation.* The extent to which historic, architectural or cultural preservation is achieved for the features and portions of the structure and its site and environment. In considering the extent of historic preservation, the Commission will review the project’s utilization of traditional materials and technology and the retention of historic fabric. The project, when necessary, will be consistent with local and state planning

priorities for development or protection. In addition, the Commission will consider the extent to which the project complements other state revitalization efforts. The Commission will give consideration to the level of historic significance as defined by the National Register of Historic Places.

- c) *Potential for Loss or Destruction.* Consideration of the potential loss or destruction of the historic structure(s) but for the financial assistance of the credit by evaluating the overall condition of the property including, but not limited to, an assessment of deferred maintenance, water penetration or structural failure.
- d) *Statement of Need.* Assessment and demonstration of the impact and need for the financial assistance of the credit utilizing an evaluation of the extent of benefit from other funding sources.
- e) *Geographic Diversity.* The project's potential for enhancing the geographic distribution of tax credit allocations throughout the Commonwealth.
- f) *Administration and Feasibility of the Project.* The relative soundness and feasibility of the proposal as reflected in a budget that details eligible costs and a proposal consistent with the Secretary of Interior's Standards for the Rehabilitation of Historic Properties. Submission to the Commission of a conditions survey or work progress checklist. Compliance with relevant state laws or any pertinent Executive Orders such as Executive Orders regarding housing, affirmative action or sprawl and growth planning.
- g) *Public Support.* The extent to which the taxpayer has sought public comments or received public support for the project from public organizations including, but not

limited to, the Statewide Preservation Organization, the National Trust for Historic Preservation and any local historical commission.

- h) *State of Utility*. The extent to which the project will transform a structure or site that currently lacks beneficial or practical use into one that reflects positively on the community and the Commonwealth.
- i) *Economic Impact*. The project's economic impact on the surrounding community and the Commonwealth as a whole.

Once MHC has selected the project, rehabilitation proposals often need some adjustment – to ensure maximum compliance with the above criteria – before MHC is willing to supply full Second Certification. Once MHC has approved the plans, it provides the project proponent with a written notice “certifying that if completed as proposed, the rehabilitation work will meet the standards required for a certified rehabilitation,” and informs them of the amount of tax credits which have been allocated to their project. Projects which are not chosen to receive allocation do not receive any notice. However, just because a project is not selected the first time it applies, the project proponent is welcome to resubmit the application for MHC’s consideration in any future cycle. Similarly, if a project received only partial credit (equal to 10% of the proposed qualified expenditures, instead of the full 20%), project proponents may continue to submit applications in future cycles with hope to achieve the full 20%.

Interestingly, the statute explicitly states that MHC is not required to issue Second Certifications during any of the three application cycles. On the one hand, this prevents the

MHC from being forced to choose projects from an unsatisfactory crop. On the other hand, it also allows MHC to legitimately do nothing during an application cycle. Such a thing has actually already occurred, and will be discussed at length in Chapter 4 (Igoe and Kelly, Personal Interview, 22 Apr. 2008).

### **Final Certification**

Final Certification is issued once construction has been completed, “certifying that the work was completed as proposed and that the costs are consistent with the work completed.” The Final Certification certificate is then used by the developer to claim its allocated tax credit, or to transfer credits to a tax credit syndicator.

### **Recapture**

In the context of the MAHRTC, “recapture” refers to what occurs when an individual or business disposes of a property which has taken advantage of the MAHRTC within a five year period, beginning at the “completed project” date. If a property owner sells his rehabilitated building to another party, a process is triggered which obligates the original owner to pay a calculated portion of the credit back to the state. Transferees are not subject to recapture. For further details regarding recapture, see section 12 of Appendix A: 830 CMR 63.38R.1.

### **Minimum Investment**

The program has a minimum investment requirement by virtue of its “substantial rehabilitation” requirement. In order to qualify for the credit, a project must spend at least 25% of the structure’s adjusted basis on qualified rehabilitation expenditures.



## **Amount of Credit**

The legislation states that a project may receive *up to* 20% of qualified rehabilitation expenditures. As already mentioned, this means that some projects receive less than the full 20%. Projects which have not received the full 20% may reapply, but there is zero guarantee that the full 20% will ever be attained.

## **PROSPECTS FOR THE FUTURE**

Although the Massachusetts Preservation Coalition has been successful in achieving its initial goal to establish the MAHRTC, it continues to work to improve and promote the program.

### **Increasing the Cap**

“The way it’s evolved in Massachusetts is fairly responsible” James Igoe says of the gradual increases in the program’s annual cap. “[It has] probably been better for Massachusetts that we started at \$10 [million], brought it up to \$15 [million], before going to \$50 [million]”. He reasons that each time the cap has been raised, there has never been enough tier has allowed them to demonstrate the demand for the program. While he felt that an unlimited cap program is the ultimate goal, Mr. Igoe says that increasing the cap to \$100 million would help reduce the “backlog” of unfunded and under-funded programs which have accumulated under the \$10, \$15, and \$50 million caps.

### **Expanding the Program to include Residential Projects**

The Massachusetts Preservation Coalition is currently investigating the possibility of a state residential historic tax credit program.

### **Calls for Increased Transparency**

Very few people refute the success of Massachusetts' historic rehabilitation tax credit program since its implementation nearly five years ago. Millions of dollars have been invested in quality rehabilitation work. Communities throughout the Commonwealth have benefited from the creation of hundreds of short- and long-term jobs created by these projects. Applications continue to pour in at an increasing rate, especially since the cap was increased to \$50 million. The legislature has affirmed the program's success through its overwhelming support despite the former Governor's veto.

Ironically, however, the hope of quantifying the program's concrete success has proven difficult – nay, impossible – to achieve. In fact, what should be a relatively simple task – collecting and analyzing application and certification/allocation data – has been rendered impossible by a state agency that refuses to communicate with the public.

## **CHAPTER 4**

### **ANALYSIS: THE MAHRTC IN ITS CURRENT FORM**

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#### **CHAPTER QUESTIONS:**

- *What are the “complete program” criteria for a state historic tax credit program?*
- *How do the specific policy goals of the MAHRTC affect those criteria*
- *How does the MAHRTC weigh against the evaluative criteria set forth in Chapter 2?*

As the final paragraph of the immediately preceding chapter alluded, a thorough analysis of the MAHRTC is complicated by the fact that the MHC has not been cooperative in this effort. Requests for informational interviews have been ignored. Even the private non-profit organizations that played significant roles in developing and advocating for the program have been unable to obtain application and allocation data from MHC (Igoe and Kelly, Personal Interview, 22 Apr. 2008). Obviously the barrier to obtaining data has had significant consequences for the completeness of this analysis, but the reason for its absence is certainly indicative in and of itself, as will be discussed in later sections of this chapter.

#### **“COMPLETE PROGRAM” CRITERIA**

For the purpose of analyzing the MAHRTC (or any other state historic rehabilitation tax credit program), I offer the following criteria – a “checklist,” if you will – that such a program should have in order to be considered “complete:”

- Incentive attractive enough without unnecessary giveaways
- Simplicity of administration for both program administrators and property owners
- Streamlined yet thorough application paperwork

- Appropriate minimum investment requirements
- Provision of technical assistance as needed
- Good promotion and explanatory materials for property owners, outreach and education for consulting professionals
- Certainty for property owners
- Well-defined and appropriate rehabilitation standards
- Coordination with other relevant programs (i.e.: federal historic tax credit, affordable housing tax credits, etc.)
- Availability for homeowners
- Transferability
- Effective recapture
- Unused Credit Expiration and “Recapture”

### **Analysis:**

The following analysis discusses the MHRTC’s achievement with regards to the above criteria and assigns a “Grade” on each characteristic according to the following system:

✓ = MHRTC includes feature/sufficiently meets this criteria

? = includes feature, but achievement questionable

✗ = MHRTC lacks feature/does not sufficiently meet this criteria

***Incentive attractive enough without unnecessary giveaways.*** Massachusetts offers a tax credit of up to 20% of qualified rehabilitation expenditures with no per-project cap. According

to tax credit expert Harry Schwartz, this figure falls within the “appropriate” range of 20% to 30% (2). However, the key phrase here is “up to 20%,” because so many projects do not receive the full 20%, the inherent uncertainty in such a system could in turn make the incentive less attractive.

**Grade = ?**

***Simplicity of administration for both program administrators and property owners.***

Several aspects of the application process might be construed as convoluted. The function of three-cycle Second Certification review, for example, can be very confusing. Once MHC approves proposed plans and grants Second Certification to a project, the proponent receives a written notice detailing of the amount in tax credits that the project has been awarded. However, projects that are not chosen during that cycle receive no such notice. [detail more administrative confusion here].

**Grade = ?**

***Streamlined yet thorough application paperwork.*** The application paperwork is very easy to understand and complete. Thorough instructions are provided, and little room is left for ambiguity. See Appendix B for a copy of the Application Instructions, as well as Initial, Second, and Final Certification applications.

**Grade = ✓**

***Appropriate minimum expenditure requirements.*** Massachusetts’ minimum expenditure requirement is 25% of the structure’s adjusted basis. As discussed in Chapter 2, minimum

expenditure requirements calculated as a percentage of the property's adjusted basis provides for a greater flexibility. This approach seems more flexible than the across-the-board fixed requirement, and opens the program to a much wider variety of type and size of projects. The method also levels the playing field in the sense that a consistent *proportion* of minimum expenditure is invested for all projects; if every project spends 25% of the property's adjusted base on rehabilitation work, the program approaches a more consistent level of rehabilitation for each project.

**Grade = ✓**

***Provision of technical assistance as needed.*** Although MHC has a dedicated Technical Services Division, their own website claims that calling their office "...is not advisable. MHC has a small staff and such phone calls take staff time away from project reviews. Therefore telephoning MHC can actually result in a delay in MHC's response time."

**Grade = ?**

***Good promotion and explanatory materials for property owners, outreach and education for consulting professionals.*** Currently the only "promotional" and "educational" outreach provided by MHC is the limited information found on its arguably difficult-to-navigate website.

Some non-profits, such as Preservation Massachusetts, have hosted educational talks on the program for both property owners and consultants.

**Grade = ?**

**Certainty for property owners.** The inherent uncertainty written into the MAHRTC legislation – that the credit offered is *up to* 20% but not a guaranteed 20% – can present significant problems for those projects whose ability to move forward depends on receiving the full 20%. Again, it is important to acknowledge the significance of the cap in producing this uncertainty. With limited resources to be spread over many projects, the full 20% is not guaranteed as it is by the Federal program.

The reapplication option presented by the MAHRTC also contributes to a potential cycle of perpetuating uncertainty for project proponents. This feature also creates inefficiencies in the application and administration of the program. Project applications that are “denied” or only partially fulfilled are able to reapply as many times as necessary until the 20% is received.

However, since letters of denial are never sent to an applicant, an applicant may repeatedly reapply without ever knowing why the application was denied in the first place, wasting time and money for both applicant and MHC. And again, to reiterate once more, there is never any certainty that a project’s full 20% will ever be achieved; repeat reapplication might be a waste of resources for proponent and agency alike.

**Grade = X**

**Well-defined and appropriate rehabilitation standards.** All project proposals are judged against the Secretary of the Interior’s Standards for Rehabilitation (Appendix C), the set of

normative criteria used by the federal historic tax credit program and virtually all other state programs.

**Grade = ✓**

**Coordination with other relevant programs (i.e.: federal historic tax credit, affordable housing tax credits, etc.).** Massachusetts accepts documentation prepared for the federal tax credit program provided it gives sufficient information to demonstrate that the proposed rehabilitation meets the Secretary of the Interior's Standards for Rehabilitation.

**Grade = ✓**

**Availability for homeowners.** Owner-occupied/homeowner projects are not currently eligible to participate in Massachusetts.

**Grade = ✗**

**Transferability.** Massachusetts' program allows for direct transfer of credit to third party or even transfer by disproportionate allocation among multiple syndicators.

**Grade = ✓**

**Effective recapture.** Although recapture is written into the Massachusetts program legislation, some members of the preservation community do not believe that recapture terms have been strictly enforced (Igoe and Kelly, Personal Interview, 22 Apr. 2008); again, because MHC currently does not make the data available, it is difficult to say anything definitive about recapture activity.



**Grade = ?**

**Unused Credit Expiration and “Recapture”** What about projects that receive allocation, but are never completed, and thus never claim the credit? At least one confirmed instance of this situation has been witnessed by the Preservation Coalition; a mill rehabilitation project in the Merrimack Valley received a substantial credit allocation during the first few Second Certification rounds in 2003. However, because the project was never completed, the credit was never claimed. Thus, the allocation remains “allocated,” but unused, and thus eliminated from the pool of available credits (Igoe and Kelly, Personal Interview, 22 Apr. 2008).

**Grade = ?**

## **EVALUATIVE CRITERIA**

Lacking the hard data to make more conclusive arguments, it is virtually impossible to say anything substantive about the program’s **Effectiveness and Efficiency**. Because letters of public support are required from private non-profit groups such as Preservation Massachusetts and the National Trust for Historic Preservation, some loose data is known about the level of applications that have been seen. Clearly the program has at least increased interest in preservation in the Commonwealth among developers and property owners, and the two increases in the annual cap had each time lead to an increased volume of applications; there are consistently more applications asking for more money than there are tax credits to go around, so clearly, demand for the program is high (Igoe and Kelly, Personal Interview, 22 Apr. 2008).

**Consistency/Legality.** Again, without the data it is hard do draw any definitive conclusions, but it can be confirmed that the MAHRTC's goals of promoting increased preservation and economic development have been emphasized.

**Inclusiveness/Equity.** Some good guesses can be mad about the degree of inclusiveness/equity produced by this program. For one thing, we have already discussed the inherent advantage created for larger projects to scoop up a larger proportion of. Again, members of the preservation community have expressed their belief that smaller projects are passed over in favor of larger projects which ostensibly produce greater number of temporary and/or permanent jobs (Anonymous Personal Interview, 20 Apr. 2008).

The inclusion of a provision that 25% of the annual allocation must go to projects which incorporate affordable housing leads one to believe that the program genuinely aims to buoy more needy members of society; in fact, Erin Kelly of Preservation Massachusetts estimates that between 40-45% of known completed projects incorporate affordable housing units (Igoe and Kelly, Personal Interview, 22 Apr. 2008).

**Accountability/Transparency.** If my ability to speak on the topics of "Effectiveness" or "Equity" has been stunted, I am at least able to talk at some length about the program's serious lack of accountability and transparency.

As has already been repeated several times, MHC remains tight-fisted and shut-lipped about application and allocation data. Their unwillingness to share their information extends across

the board, applying equally to grad students as well as non-profits and members of the legislature (Igoe and Kelly, Personal Interview, 22 Apr. 2008).

James Igoe has expressed his feelings of “good fortune” to have purposefully written non-profit organizations such as Preservation Massachusetts and the National Trust into the legislation. Today, each organization’s function as providers of “letters of public support” remains the one sole manner that anyone outside the MHC has any finger on the pulse of the program.

Finally, and perhaps most importantly, the competitive nature of the MAHRTC should call attention to the need to maintain transparency of administration. A competitive program without a transparent selection process is bound to provoke suspicion of the agency which administers it.

**Periodic Review/Improvability.** To date, no known data analysis has taken place, largely due, once again, to MHC’s reluctance to share its information.

**Legitimacy.** Considering the “black box” nature of so many aspects of this program, with so many unknowns, very little positive can be said about its legitimacy.



## **CHAPTER 5 RECOMMENDATIONS**

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The previous chapter on Analysis revealed the strengths and weaknesses of the MAHRTC as it is currently administered and structured. This chapter follows up with recommendations to improve the MAHTRC's functionality and legitimacy.

### ***Oversight and Review***

First and foremost, it must be recognized that the citizens of Massachusetts deserve to know how this program has been performing over the course of the past five years. If it becomes necessary, some group of the Massachusetts preservation community should perhaps file a Freedom of Information Act (FOIA) request to demand that MHC release its data for public scrutiny.

Furthermore, the next update to the legislation should include a provision to ensure the periodic reassessment of the program, especially before any more major changes to the legislation occur.

### ***Continue 25% affordable housing requirement***

Massachusetts' program is actually unique among all state programs to offer priority allocation to proposals which incorporate affordable housing into their rehabilitation plans. In this respect, Massachusetts has the opportunity to serve as an example to other states, some of which have programs that seem biased against low-income individuals.

### ***Establish Homeowner Credit Program***

Massachusetts is one of only six states that does not offer a tax credit for historic homeowners out of the 29 total states with historic tax credit programs. Because no federal program exists for owner-occupied residential projects, it is important to level the playing field and offer homeowners an opportunity to receive tax relief for preserving their historic homes. However, some special attention must be paid to ensure that homeowners at many points on the income spectrum will have equal opportunity to participate if interested; too-high minimum expenditure requirements on residential projects in other states have thrown up walls to access for lower-income residents.

### ***Consider giving priority to projects which promote environmental sustainability***

Historic preservation already represents the ultimate in recycling, and growing interest in sustainable building. Considering Massachusetts' pioneering spirit embracing sustainability elsewhere in its legislation, perhaps the Commonwealth may consider giving priority to MAHRTC applicants whose projects meet certain sustainability standards, such as LEED-EB certification.

### ***Gradually increase cap, with careful review, until cap meets demand***

It has been suggested that raising the cap may potentially reduce the level of competitiveness in the program. Indeed, if the cap is at least raised to approach meeting the demand, then a greater degree of certainty may be won for program applicants. The questions are: how high should it go? Should some degree of competitiveness remain so that only top quality projects

are selected? Could the cap reasonably be eliminated without impacting Massachusetts tax income too greatly? Although the lauded success of the Federal program has been largely attributed to its capless state, it is questionable whether a small state like Massachusetts could withstand the amount of forgone tax revenues if all project applicants receive the full awards. Lacking concrete information about demand for this program, it is difficult to say at this time. As Mr. Igoe of Preservation Mass, the gradual step-up in the aggregate cap has been “a responsible approach.” Perhaps advocacy groups should push the legislature to continue increasing the cap gradually, while monitoring the program’s progress to find a suitable equilibrium.





## CHAPTER 6 AFTERWARD

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*“What’s most startling is that Galvin, whose office oversees the state public records law and is supposed to promote transparency in government, has resisted attempts by lawmakers and developers to find out who is getting the tax credits”*

Bob Mohl, “Preserving Power” in *CommonWealth Magazine*, Summer 2008

The thing about secretive proceedings is that they eventually garner enough suspicion to be pursued doggedly until blown wide open.

Just as this thesis was nearing completion, an article about the MAHRTC appeared in the Summer 2008 issue of *CommonWealth Magazine*.<sup>3</sup> The article, written by MassINC journalist Bruce Mohl, set out to answer many of the same questions posed by the present work. In the article, the author relays his own struggle to attain information from the program’s administrators. After running up against substantial resistance from the office of Secretary of the Commonwealth, Mohl filed a public records request. Two months later, Mohl became the first investigator to successfully to obtain a complete list of tax credit awards. The endeavor was not without cost, however; the MHC originally quoted an astonishing \$7,962 for copies of all 11,211 pages of documents related to the MAHRTC (Mohl 43). In one of his many ironic

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<sup>3</sup> *CommonWealth Magazine* is the quarterly publication of the Massachusetts Institute for a New Commonwealth (MassINC), an “independent, nonpartisan research and educational institute” (“About MassINC” MassInc. <[www.massinc.org](http://www.massinc.org)>.)

musings, Mohl quips, “although [Secretary of the Commonwealth] Galvin’s office urges government officials to waive any fees associated with providing access to public records, Galvin’s staff charged *CommonWealth* close to \$300 just to look at four tax credit applications” (38).

The article goes on to suggest some possible explanations for the secrecy. Although the legislation creating the MAHRTC gave allocation responsibility to the 15- member MHC, it allegedly appears that Galvin himself, the chairman of the commission, “makes the awards personally. Several members of the commission say they play no role in the award process, and a public records request for commission deliberations on tax credit awards turned up nothing” (39). The article goes on to explain the relevance of this discovery: that the many of the projects receiving the most tax credit allocations are those whose applicants have contributed significant amounts of money to Galvin’s campaigns.

Besides the allegations of palm-greasing, some worry that too many credits are being awarded to projects that do not need them as much as other projects that are not receiving as much or any credits. The biggest winner so far, Boston Red Sox, has received \$13,600,000 in tax credits – nearly 8% of all credits awarded since the MAHRTC began – for ongoing restoration efforts at Fenway Park (45). While the Red Sox franchise has not contributed to Galvin’s political committee, some people that Mohl interviewed were unhappy that such a lucrative organization would receive so much state aid: “The salaries they pay players at Fenway Park and the

success of the team is great,” says one interviewee, “but I think historic tax credits should be focused on greater benefits to the public good...[they] should be used in areas that are blighted” (45-46).

Like so much of my own discussion in this thesis, Mohl repeatedly references the program’s cap as the major confounding issue with the MAHRTC. And although some of interviewees suggested that the cap be eliminated, Mohl points to recent changes to the Rhode Island program as a reason not to eliminate the cap altogether. Without a cap, the program became “too successful” according to Edward Sanderson, executive director of the Rhode Island Historical Preservation and Heritage Commission, who issued \$4 million worth of historic tax credits in 2002, a number that rose to \$66 million last year. But With Rhode Island facing a significant budget deficit, the Rhode Island historic tax credit program has recently been put on hold. Projects which have already been approved will still be able to take advantage of the tax credits they have been awarded, agreeing to fund projects already in the pipeline but refusing to accept new ones.

One thing is certain, and the concluding line of the article puts it in very succinct terms: “When there’s a smaller pool of funds out there, it makes [Galvin] more powerful” (45). Indeed, Mohl’s conclusion confirms what I myself have posited: that the cap itself, by creating inherent uncertainty for project applicants, has actually enabled Galvin to be highly selective when making allocation decisions, and under such little scrutiny.

## Conclusion

Two major problems have been holding the MAHRTC back from realizing the lofty goals set for itself within the language of its own legislation.

First, MHC and the Office of the Secretary of the Commonwealth must administer the program with a much greater level of transparency. Information about the program should be readily available to anyone who should desire it. And while it would not guarantee that the program would be completely free of political manipulation, an open and transparent process would presumably lessen the chances that the credits would be awarded inappropriately. It is also suggested that the program be audited on a regular, perhaps annual basis to allow agency, government, and taxpayer alike understand where funds are being appropriated, to what ends, and to what benefits to the Commonwealth. Such an annual report would also help legislators make appropriate changes to the legislation to improve the program's function and level of goal-achievement.

Second, some serious thought ought to be given to raising the program's annual cap. As has been discussed, doing so has the potential to diminish the level of competition and increase the level of certainty for project applicants. While the Rhode Island case suggests that eliminating the cap altogether may not be the wisest choice for Massachusetts at this time, but striking the balance between budgetary feasibility and program certainty can be found.

Historic preservation has already been proven as a cost-effective approach to economic development; it follows that the MAHRTC has the potential to do great things for

Massachusetts. If appropriate changes can be made to the way that this program is structured and administered, it could very well be a very powerful tool for promoting the goals of preservation, stimulating the local economy, and salvaging our state's rich history and built heritage.



## **APPENDIX A: MAHRTC LEGISLATION (830 CMR 63.38R.1)**

### **830 CMR 63.38R.1 Historic Rehabilitation Tax Credit**

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830 CMR: DEPARTMENT OF REVENUE

830 CMR 63.00: TAXATION OF CORPORATIONS

830 CMR 63.00 is amended by adding the following section:

(1) *Statement of Purpose, Effective Date*

(a) *Statement of Purpose.* 830 CMR 63.38R.1 explains the calculation of the historic rehabilitation tax credit established by M.G.L. c. 62, § 6J and M.G.L. c. 63, § 38R (St. 2003, c. 141, §§ 22, 24 and 82, as amended by St. 2004, c. 65, §§ 5-9, 13-18, 54). Under the statute, the Commissioner, in consultation with the Massachusetts Historical Commission, shall authorize credits annually, for the period and amounts allowed under M.G.L. c. 62, § 6J and M.G.L. c. 63, § 38R.

(b) *Outline of Topics.* 830 CMR 63.38R.1 is organized as follows:

- (1) Statement of Purpose; Outline of Topics, Effective Date
- (2) Definitions
- (3) Amount of Credit
- (4) Certification of Rehabilitation; Chosen Projects; Written Notice
- (5) Chosen Projects; Application of Criteria
- (6) Application Process and Administrative Fees
- (7) Transferability of Credit
- (8) Allotment of Credit Among Partners, Members or Owners
- (9) First Tax Year for Claiming Credit
- (10) Carryforward of Credit
- (11) Limitations on Credit; Ordering of Credit
- (12) Recapture
- (13) Authorization to Take Further Actions

(c) *Effective Date.* 830 CMR 63.38R.1 takes effect upon promulgation and applies to tax years beginning on or after January 1, 2005.

(2) *Definitions.* For purposes of 830 CMR 63.38R.1, the following terms shall have the following meanings, unless the context requires otherwise:

*Certified rehabilitation*, the rehabilitation of a qualified historic structure that has been approved and certified by the Chairperson of the Massachusetts Historical Commission as being consistent with the standards established by the Secretary of the United States Department of the Interior for rehabilitation of historic properties.

*Chosen projects*, projects which have received second certification under 830 CMR 63.38R.1(4)(b).

*Code*, the Internal Revenue Code of 1986, as amended and in effect for the taxable year.

*Commission*, the Massachusetts Historical Commission.

*Commissioner*, the Commissioner of Revenue.

*Completed Projects*, chosen projects which have received final certification under 830 CMR 63.38R.1(4)(c) and which have been substantially rehabilitated and placed in service.

*Placed in service*, this term shall have the same meaning as the term is given under section 47 of the Code and any federal regulations thereunder.

*Project*, any building or structure, submitted by the taxpayer to the Commission for certification of rehabilitation.

*Qualified historic structure*, any building or structure, located within the Commonwealth that is individually listed on the National Register of Historic Places or is a contributing building within a district that is listed on the National Register of Historic Places or has been determined by the Massachusetts Historical Commission to be eligible for listing on the National Register of Historic Places, and which all or any portion of which is owned, in whole or in part, by the taxpayer.

*Qualified rehabilitation expenditure*, any amount properly chargeable to a capital account and described in section 47(c)(2)(A)(i) of the Code, as amended and in effect for the taxable year, incurred in connection with the certified rehabilitation of a qualified historic structure, but the term shall not include personal property, personal use property or the cost of acquiring any building or interest therein.

*Substantial rehabilitation* and *substantially rehabilitated*, the qualified rehabilitation expenditures of the building during the 24-month period selected by the taxpayer ending with or within the taxable year exceed 25 per cent of the taxpayer's adjusted basis in such building and its structural components as of the beginning of such period. In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the applicable period referred to in this paragraph shall be 60 months.

*Taxpayer*, a corporation or other entity subject to an excise imposed by M.G.L. c. 63 and a person, firm, partnership, trust, estate, limited liability company or other entity subject to the income tax imposed by M.G.L. c. 62.

### (3) *Amount of Credit.*

(a) *Calculation of Credit.* The credit shall be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic structure which has received final certification and has been placed in service as provided for in 830 CMR 63.38R.1(9).



(b) *Available Credit for Allocation.* The Commission shall determine and account for the amount of credit available for allocation. The amount available in any given year shall be equal to the sum of 1) the annual authorized credit amount for that year under M.G.L. c. 62, § 6J and M.G.L. c. 63, § 38R, 2) any recapture amounts, 3) any credit amount previously allocated to a chosen project under 830 CMR 63.38R.1(3)(c), which is disallowed by the Commission upon final certification under 830 CMR 63.38R.1(4)(c), 4) any credit amount previously allocated to a chosen project under 830 CMR 63.38R.1(3)(c), which is disallowed by the Commission upon the Commission's determination that the chosen project cannot move forward due to financial infeasibility or other impediment or the chosen project is materially changed from its plans as submitted and approved by the Commission when allocated the credit under 830 CMR 63.38R.1(3)(c), and 5) any credit amount authorized but not allocated in a previous year. Upon the Commission's determination that the project cannot move forward under 830 CMR 63.38R.1(3)(b)(4), the Commission shall issue a written notice to the chosen project containing a statement of reason for the Commission's determination. In no event shall the total amount of credits allocated during any given year exceed the amount that is available for allocation as set forth in the paragraph.

(c) *Allocation of Credit.* The Commission shall allocate the available credit among projects chosen to receive second certification. Each chosen project shall be allocated a percentage, not to exceed 20 per cent, of qualified rehabilitation expenditures as proposed and certified under 830 CMR 63.38R.1(4). The Commission shall apply the criteria set forth under 830 CMR 63.38R.1(5) and assess and prioritize each initially certified project within the deadlines set forth under 830 CMR 63.38R.1(6). After such assessment, the Commission may issue the second certification to one or more projects and allocate some or all of the available credit among such chosen projects.

(d) *Credit Certificates.* The Commission may issue a credit certificate to a completed project on or after the date it issues the final certification as allowed under 830 CMR 63.38R.1(4)(c). In no event shall the total amount of credit certificates issued for any given year exceed the total amount of credits that are available to be allocated for such year, as set forth in 830 CMR 63.38R.1(3)(b).

(e) *Examples.* The following examples illustrate the application of 830 CMR 63.38R.1(3).

*Example 1.* The annual authorized credit amount under M.G.L. c. 62, § 6J and M.G.L. c. 63, § 38R is \$15 million per calendar year for five years. In calendar year 1 the Commission issues to ten projects second certifications totaling \$11 million in allocated credits. The Commission will rollover into calendar year 2 the \$4 million of unallocated credits. Therefore, in calendar year 2 the Commission may allocate up to \$19 million in credits.

*Example 2.* The annual authorized credit amount under M.G.L. c. 62, § 6J and M.G.L. c. 63, § 38R is \$15 million per calendar year for five years. In calendar year 1 the Commission issues to ten projects second certifications totaling \$11 million in allocated credits and in calendar year 2 the Commission issues second certifications to twelve additional projects totaling \$17 million in allocated credits. Therefore, at the end of calendar year 2 the cumulative authorized maximum is \$30 million of which the Commission has allocated \$28 million. The Commission will rollover into calendar year 3 the \$2 million of unallocated credits. Therefore, in calendar year 3 the Commission may allocate up to \$17 million in credits.

#### (4) *Certification of Rehabilitation*

(a) *Initial Certification.* An initial certification is the certification by the Commission that the structure meets the definition of a qualified historic structure.

(b) *Second Certification; Chosen Projects; Written Notice.* A second certification is issued by the Commission prior to construction, certifying that if completed as proposed, the rehabilitation work will meet the standards required for a certified rehabilitation. The Commission may issue a second certification during or after the construction process.

1. Projects which receive second certification are chosen projects. The Commission shall allocate some or all of the available credit among chosen projects as provided for in 830 CMR 63.38R.1(3)(c).

2. The Commission shall issue a written notice to applicants for second certification within such time as prescribed by the Commission. A chosen project shall receive a written notice of acceptance that contains a statement detailing the allocation of credit as determined by the Commission under 830 CMR 63.38R.1(3)(c). An applicant that is not chosen for second certification shall receive a written notice that contains a statement of reason for its not having been selected.

(c) *Final Certification.* A final certification is issued by the Commission when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed. Such final certification shall be acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures for purposes of the credit allowed under M.G.L. c. 62, § 6j or M.G.L. c. 63, § 38R and this regulation.

#### (5) *Chosen Projects; Application of Criteria.*

Within the application schedule provided for in 830 CMR 38R.1(6)(a), the Commission shall assess each initially certified project's contribution to the significance of the area and the relative public benefit of its proposed rehabilitation to the Commonwealth by applying the following criteria:

(a) *Affordable Housing.* At least 25 per cent of the tax credits shall be allowed for projects that contain affordable housing whenever possible and consistent with the criteria set forth in 830 CMR 63.38R.1(5).

(b) *Preservation.* The extent to which historic, architectural or cultural preservation is achieved for the features and portions of the structure and its site and environment. In considering the extent of historic preservation, the Commission will review the project's utilization of traditional materials and technology and the retention of historic fabric. The project, when necessary, will be consistent with local and state planning priorities for development or protection. In addition, the Commission will consider the extent to which the project complements other state revitalization efforts. The Commission will give consideration to the level of historic significance as defined by the National Register of Historic Places.

(c) *Potential for Loss or Destruction.* Consideration of the potential loss or destruction of the historic structure(s) but for the financial assistance of the credit by evaluating the overall condition of the property including, but not limited to, an assessment of deferred maintenance, water penetration or structural failure.

(d) *Statement of Need.* Assessment and demonstration of the impact and need for the financial assistance of the credit utilizing an evaluation of the extent of benefit from other funding sources.

(e) *Geographic Diversity.* The project's potential for enhancing the geographic distribution of tax credit allocations throughout the Commonwealth.

(f) *Administration and Feasibility of the Project.* The relative soundness and feasibility of the proposal as reflected in a budget that details eligible costs and a proposal consistent with the Secretary of Interior's Standards for the Rehabilitation of Historic Properties. Submission to the Commission of a conditions survey or work progress checklist. Compliance with relevant state laws or any pertinent Executive Orders such as Executive Orders regarding housing, affirmative action or sprawl and growth planning.

(g) *Public Support.* The extent to which the taxpayer has sought public comments or received public support for the project from public organizations including, but not limited to, the Statewide Preservation Organization, the National Trust for Historic Preservation and any local historical commission.

(h) *State of Utility.* The extent to which the project will transform a structure or site that currently lacks beneficial or practical use into one that reflects positively on the community and the Commonwealth.

(i) *Economic Impact.* The project's economic impact on the surrounding community and the Commonwealth as a whole.

The Commission shall determine, utilizing the criteria set forth in 830 CMR 63.38R.1(5) and within the application schedule provided for in 830 CMR 63.38R.1(6), which projects, if any, are eligible to receive second certification under 830 CMR 63.38R.1(4)(b). The Commission's determination is not an adjudicatory proceeding under M.G.L. c. 30A, § 1 and therefore is not subject to review under M.G.L. c. 30A, § 14.

(6) *Application Process and Administrative Fees.*

(a) *Application Deadlines.* Applications for initial, second and final certification are to be submitted to the Commission. Applications for initial and final certification are accepted and considered on a rolling basis. Applications for second certification are accepted and considered on a schedule as follows:

1. applications received by the Commission by April 30 will be considered for approval within such time as prescribed by the Commission;
2. applications received by the Commission by August 31 will be considered for approval within such time as prescribed by the Commission; and
3. applications received by the Commission by January 15 will be considered for approval within such time as prescribed by the Commission.

The Commission is not required to issue second certifications in all application cycles.

(b) *Application Forms.* Application forms can be obtained from the Commission.

(c) *Initial Applications.* Applications for certification may be accepted under the application schedule on or after the effective date of this regulation, provided, however, that the Commission shall not issue final certifications before January 1, 2005.

(d) *Application Fees.* The Commission may impose a fee for any stage of the application and certification process.

(7) *Transferability of Credit.*

(a) *Transferors, Transferees.* Any taxpayer, allowed to take the historic rehabilitation credit may transfer the credit, in whole or in part, to any individual or entity, without the requirement of transferring any ownership interest in the project or any interest in the entity which owns the project. Transferees are entitled to apply the credits against the tax or excise with the same effect as if the transferee had incurred the qualified rehabilitation expenditures. For treatment of carryover credit, see 830 CMR 63.38R.1(10). The credit can be transferred only on or after the date a chosen project becomes a completed project. For recapture treatment, see 830 CMR 63.38R.1(12).

(b) *Notice and Transfer Statement.* The Commission, in consultation with the Department of Revenue, shall promulgate a form of transfer statement to be filed by the transferor of the rehabilitation credit. The transfer statement shall be required in addition to the transfer contract required in 830 CMR 63.38R.1(7)(c). Transfer Statement forms may be obtained from the Commission. The transferor shall file a transfer statement and a copy of the proposed transfer contract with the Department of Revenue prior to the transfer and shall further file with the Department of Revenue the executed transfer contract within 30 days after the completed transfer. The transfer statement shall provide the name and federal taxpayer identification number of each transferor and transferee. Further, such statement shall indicate the amount of historic rehabilitation credit transferred to each transferee. The statement shall also contain such other information as the Department of Revenue or the Commission may from time to time require.

(c) *Transfer Contract Requirements.* Any taxpayer transferring his or her credit must enter into a transfer contract with the transferee. The transfer contract must specify the following:

1. description and address for all structures in the project;
2. the date each structure in the project was placed in service;
3. the schedule of years during which the credit may be taken and the amount of credit previously taken for the project including all previous transferees; and
4. the amount of credit being transferred.

(d) *Transferred Eligibility to Claim Credit.* Any taxpayer who is a transferee of the historic rehabilitation credit may, provided all transfer and other requirements or limitations are met, apply such credit to

either the tax imposed under M.G.L. c. 62 or the excise imposed under M.G.L. c. 63.

**(8) Allotment of Credit Among Partners, Members or Owners.**

Historic rehabilitation tax credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or, without regard to their sharing of other tax or economic attributes of such entity, pursuant to an executed agreement among such persons designated as partners, members or owners documenting an alternative distribution method.

**(9) First Tax Year for Claiming Credit.**

A taxpayer may apply the credit against the tax or excise imposed by M.G.L. c. 62 or M.G.L. c. 63, beginning with the tax year a chosen project becomes a completed project.

**(10) Carryforward of Credit.**

**(a) Carryforward Period.** Any taxpayer allowed a credit under M.G.L. c. 62, § 6J or M.G.L. c. 63, § 38R and this regulation for any taxable year may carry over and apply to the tax imposed by M.G.L. c. 62 or the excise imposed by M.G.L. c. 63, in any of the succeeding five taxable years, the portion, as reduced from year to year, of those credits which exceed such tax or excise for the taxable year. The carryover period, for any taxpayer, cannot exceed five taxable years after the close of the taxable year during which the chosen project becomes a completed project as provided for in 830 CMR 63.38R.1(9).

**(b) Carryforward of Transferred Credits.** A transferee shall use the credit in the year it is transferred. If the credit allowable for any tax year exceeds the transferee's tax liability for that tax year, the transferee may carry forward and apply in a subsequent taxable year, the portion, as reduced from year to year, of those credits which exceed such tax for the taxable year; provided, however, that the carryover period cannot exceed five taxable years after the close of the taxable year during which the chosen project becomes a completed project as provided for in 830 CMR 63.38R.1(9).

**(11) Ordering of Credit; Limitations on Credit.**

**(a) Ordering of Credit.** The credit may be applied in combination with other credits allowed under M.G.L. c. 62 in any order. Similarly, the credit may be applied in combination with other credits allowed under M.G.L. c. 63 in any order.

**(b) Minimum Excise Limitation.** The credit may not be applied to reduce the minimum excise due under M.G.L. c. 63, §§ 32(b),39(b).

**(c) 50% Limitation Inapplicable.** In determining the amount of the credit allowable for a taxable year, the 50% limitation imposed by M.G.L. c. 63, § 32C does not apply.

**(d) Combined Group Members.** A taxpayer that participates in the filing a combined Massachusetts return of income may apply the credit against the portions of the combined group's excise liability attributable to the taxpayer, determined in accordance with the provisions of 830 CMR 63.32B.1(8), and not against

the excise liability of other group members.

(e) *Credit Nonrefundable.* The credit is nonrefundable.

(12) *Recapture.*

(a) *Recapture.* If, before the end of the five year period beginning on the date on which the chosen project becomes a completed project, the taxpayer disposes of such taxpayer's interest in the project, the taxpayer's tax for the taxable year in which such disposition occurs shall be increased by the recapture amount. Any carryforward credit shall be adjusted by reason of such disposition.

(b) *Transferees; Recapture.* Only taxpayers with an ownership interest on the date on which the chosen project becomes a completed project shall be subject to recapture. Transferees are not subject to recapture.

(c) *Amount of Recapture.* The recapture amount shall equal the amount of the credit taken by the taxpayer, including any transferred credit, minus the credit allowed for ownership, but not less than zero. The credit allowed for ownership shall be the product of the amount of the credit allowed multiplied by a ratio, the numerator of which is the number of months the rehabilitated structure is owned by the taxpayer, and the denominator of which is 60. Credit taken includes any credit transferred. The month of disposition is considered a month owned by the taxpayer.

(d) *Partial Disposition.* In the case of a partial disposition of the taxpayer's ownership interest in the project the recapture amount shall be pro rated.

(e) *Examples.* The following examples illustrate the application of 830 CMR 63.38R.1(12).

*Example 1.* Calendar year taxpayer is allowed \$100,000 of credit for a completed project as of April 30, 2005. In tax year 2005, taxpayer takes \$40,000 of credit on his return, transfers \$10,000 of credit and carries forward \$50,000 of credit. On April 30, 2006 taxpayer disposes of 100% of his interest in the project. The taxpayer has owned the project for 20% of the required time (12 months divided by 60 months) and is therefore allowed 20% of the \$100,000 credit for ownership, or \$20,000. The taxpayer has taken \$50,000 of credit (\$40,000 on his return plus the \$10,000 transferred credit) and will have a \$30,000 recapture tax in his 2006 tax year. The \$50,000 carryforward is disallowed.

*Example 2.* Same facts as Example 1, except that in tax year 2005 taxpayer takes \$10,000 of credit on his return, transfers \$5,000 of credit and carries forward \$85,000 of credit. The taxpayer has taken \$15,000 of the credit but is allowed \$20,000 of the credit for ownership. There is no recapture tax but the carryforward is reduced to \$5,000.

*Example 3.* Same facts as Example 2, except the taxpayer disposes of 10% of his ownership interest on April 30, 2006. In this case, 10% of the taxpayer's \$100,000 allowed credit is subject to recapture. The taxpayer has owned this portion (\$10,000) of the project for 20% of the required time (12 months divided by 60 months) and is allowed 20% of the \$10,000 credit for ownership, or \$2,000. In addition,

the taxpayer still is entitled to 90% of \$100,000 of the allowed credit. Therefore, the taxpayer is allowed \$92,000 of the credit. There is no recapture tax but the carryforward is reduced by \$8,000.

(13) *Authorization to Take Further Actions.*

Nothing in 830 CMR 63.38R.1 shall be deemed to limit the express or implied authority of the Commission or the Department of Revenue to take all actions deemed by the Commission or the Department of Revenue in their discretion to be consistent with the authority granted under M.G.L. c. 62, § 6J and M.G.L. c. 63, § 38R (St. 2003, c. 141, §§ 22, 24, 82 and St. 2004, c. 65, §§ 5-9, 13-18, 54).

REGULATORY AUTHORITY

830 CMR 63.38R.1: M.G.L. c. 62, §§ 6J and M.G.L. c. 63, § 38R (St. 2003, c. 141, §§ 22, 24, 82 and St. 2004, c. 65, §§ 5-9, 13-18, 54).

REGULATORY HISTORY

Emergency Regulation 4/13/04

Emergency Regulation 7/1/04

Emergency Regulation 9/29/04

Date of Promulgation: 12/17/04

Amend: 10/6/06 [sections (1)(a);(3)(b),(d),(e);(4)(b)2.;(6)(a)1,2,3]

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## APPENDIX B: INSTRUCTIONS FOR COMPLETING MAHRTC PART 1, PART 2 AND PART 3 APPLICATIONS

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### *Preliminary Guidance for Completing MHC's Application Form for State Historic Rehabilitation Tax Credit Program Historic Preservation Certification*

- Please make sure you type or print legibly the Application for State Historic Rehabilitation Tax Credit Program Historic Preservation Certification and fill out all applicable portions of the form.
- Please submit an application for each project separately. This will facilitate MHC's review of multiple project submissions.
- MHC will accept documentation prepared for the Federal Historic Preservation Tax Credit program provided it contains sufficient documentation to demonstrate that the project meets the selection criteria as outlined in 830 CMR 63.38R.1.
- Photographs submitted with applications should be 35 mm color photography. (Please note, if you are submitting a MHC Inventory Form B with Part 1, please follow MHC instructions for completion of the Inventory Form B, including photography.)
- In order to be considered for allocation, both Part 1 and Part 2 must be submitted by the application deadline.
- The application must be received at the MHC by 5:00 pm on the day of the deadline in order to be considered for allocation in that round.
- For applications already on file at the MHC from previous rounds, for reconsideration in the next application cycle, please submit the following information by the application deadline: a newly completed application form cover page for Part 1 and Part 2, updated letters of support, an updated estimated project budget which includes a new pro forma detailing overall project costs and certified rehabilitation expenditures, and any additional information with which the existing application may be supplemented.

### COMPLETING PART 1 APPLICATION FORM

One copy of the Application Part 1 Form for the Massachusetts Historical Commission State Historic Rehabilitation Tax Credit Program Historic Preservation Certification should be submitted. Please be sure to complete the following information.

#### I. Name of property, etc.:

- Provide the *property's* name (current and historic) and address.
- Indicate whether the property to be rehabilitated is listed individually in the National Register of Historic Places, whether it is located in a National Register Historic District as a contributing resource, whether it has been previously determined by the MHC to be eligible for listing, the property's level of significance (if information is available, see National Register nomination), or whether there has been no determination of eligibility.
- If no determination of eligibility has been made, complete and submit a Massachusetts Historical Commission Inventory Form B, available from MHC's website: <http://www.sec.state.ma.us/mhc>, with the application.

- Provide a USGS map with the project's location (and, if applicable, its location within the historic district).
- If an application for the federal tax credit has been submitted, please provide the NPS Federal Investment Tax Credit program project number.
- Finally, please attach current photos of the property to Part 1, if submitted separate from Part 2.
- MHC's National Register and Inventory files are open to the public Monday through Friday 8:45 AM until 5:00 PM.
- Please submit photographs of interior and exterior with the Inventory Form B.

2. Project contact:

- Provide the name, address, and daytime telephone number of the person to whom questions concerning the application and proposed rehabilitation work should be addressed.

3. Owner:

- Give the owner's name and, if applicable, organization.
- The owner must sign and date the application. Please submit the application with an original signature.
- If the owner is a partnership or corporation, provide the name of the entity and the person who signs the form.
- Names, addresses, and Social Security or Taxpayer Identification Numbers must be listed on a continuation sheet if the property has multiple owners.
- Provide any attachments necessary for reviewing Part 1 – Evaluation of Significance, e.g. Inventory Form B.

### COMPLETING PART 2 APPLICATION FORM

One copy of the Application Part 2 Form for the Massachusetts Historical Commission State Historic Rehabilitation Tax Credit Program Historic Preservation Certification should be submitted. Please be sure to complete the following information.

1. Name of property, etc.:

- Provide the property's name and street address.
- Indicate whether a Part 1 – Evaluation of Significance has been submitted for the property.
- If the Part 1 has been submitted, indicate the date it was submitted and, if applicable, the date of certification.

2. Project contact:

- Provide the name, address, and daytime telephone number of the primary person to whom questions concerning the application and proposed rehabilitation work should be addressed. This is especially important if the project contact has changed since the submission of Part 1.

3. Owner:

- Give the owner's name and, if applicable, organization.

- Provide the Social Security or Taxpayer Identification Number, address, and daytime telephone number.
  - The owner must sign and date the application, and the form containing the original signatures must be submitted.
  - If the owner is a partnership or corporation, provide the name of the entity and the person who signs the form.
  - Names, addresses, and Social Security or Taxpayer Identification Numbers must be listed on a continuation sheet if the property has multiple owners.
4. Data on building and rehabilitation project:
- Supply the date the building was constructed, the type of construction (e.g. bearing masonry, wood frame, etc.), the use(s) before rehabilitation, the proposed use(s) after rehabilitation, the estimated cost of rehabilitation, the phase the application covers, and the estimated project/phase start date.
  - Provide the total number of housing units *before* rehabilitation *and* the number of which are affordable and the total number of housing units *after* rehabilitation *and* the number that will be affordable. Please give the floor area before rehabilitation and the floor area after rehabilitation including additions. Please also provide the project's anticipated completion date. (Please note, MHC also requests a timeline under question 11.)
5. Public support for project:
- Indicate whether the project has support from the National Trust for Historic Preservation, the State Preservation Organization (PreservatiON MASS), the Local Historical Commission / Local Historic District Commission, and/or other entities. Other entities may include, but are not limited to, local government bodies, legislators, abutters, etc.
  - Attach letters of support.
6. Other sources of funding:
- Please be sure to attach a pro forma indicating the current and forecasted financial conditions for the proposed project. The pro forma should include the project's sources of funding and amounts, total project costs, and any funding gaps.
7. Compliance with Executive Orders, planning initiatives:
- List any Executive Orders pertaining to such issues as housing, affirmative action or sprawl and growth planning with which the project complies—Examples include, but are by no means limited to, Executive Order 215 and Executive Order 452.
  - List and describe any preservation initiatives and/or revitalization or development plans, including local, regional, or state plans, with which the project is consistent.
8. Is the property under threat of loss:
- Indicate if the project property is suffering from deferred maintenance, water penetration, structural failure, etc. Include information on insect damage, prior damage incurred due to incorrect repointing or other such treatment, fire or storm damage, etc.
  - State if demolition is imminent without the tax credit, whether the property has been vacant, and the number of years it has been vacant.
  - Please describe any additional pertinent factors contributing to the building's at-risk status.

9. Please highlight any outstanding preservation and restoration work, etc. proposed as part of the rehabilitation and reuse of the building:

- Describe noteworthy preservation and/or restoration work and/or any specialized craftsmanship that will be undertaken as part of the proposed project work. Examples include, but are by no means limited to, masonry repair, terra cotta restoration, window restoration or rehabilitation, wood restoration, stained glass conservation, metal restoration and/or replication, and rehabilitation or restoration of decorative interior finishes, etc.
- Please also describe any of the project's creative or innovative solutions to difficult preservation issues.

10. If you propose to replace windows, please submit a conditions assessment etc.:

- If the proposed project involves window replacement, please submit a conditions assessment that documents the percentage of loss or deterioration of the windows. Detailed photographs should accompany this assessment. Conditions assessment documentation should include detailed photographs, which should be 35 mm film photography.

11. Readiness to proceed:

- Please attach a project timeline which includes a site preparation start date or a construction date, dates on which financing (public or private) will be/has been secured, and an estimated completion date.

12. Economic impact:

- Please describe the number of jobs your project will create, including construction jobs, temporary employment, and permanent employment.
- Please also describe how your project will impact (directly and indirectly) the surrounding community and the Commonwealth as a whole.

13. Detailed Description of Rehabilitation/Preservation Work:

- Itemize the proposed rehabilitation by number based upon the architectural feature. Both interior and exterior work, including, for example, HVAC systems, fire suppression systems, etc., will be reviewed for their impacts to historic fabric.
- Indicate the architectural feature, its approximate date, and describe the feature and its condition.
- State whether the feature is original and provide date(s) of alteration if applicable.
- Cross-reference the feature with the photograph number and drawing number, and describe the proposed work and impact on the existing feature.
- Applications must include an existing conditions floor plan, and if applicable, a site plan, to which photographs are keyed.**
- Photographs should be 35 mm film photography, and MUST be numbered, labeled and cross referenced with the narrative portion of the application. Photographs should clearly depict the condition of the property prior to commencement of its rehabilitation. Photographs of the interior and exterior must be included.**
- Include one set of architectural drawings showing conditions prior to rehabilitation (drawings not to scale may be acceptable in some instances).**

- Provide one set of architectural drawings and specifications to clearly present the proposed project.
- Product specifications should be included in the application – e.g. replacement window shop drawings, catalogue cuts for storm windows, etc.
- Provide any attachments necessary to facilitate the review of Part 2 – Description of Rehabilitation.

#### COMPLETING PART 3 APPLICATION FORM

One copy of the Massachusetts Historical Commission State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 3 should be submitted. Please be sure to complete the following information.

##### 1. Name of property, etc.:

- Provide the property's name and address.
- Indicate if the property is a certified historic structure.
- If yes, provide the date of certification by MHC or the date of listing in the National Register.

##### 2. Data on rehabilitation project:

- Provide the project starting date.
- Indicate the date the rehabilitation work on the property was completed and the date the building was placed into service.
- Provide the estimated costs attributed solely to the rehabilitation of the historic structure.
- Provide the estimated costs attributed to new construction associated with rehabilitation, including additions, site work, parking lots, and landscaping.

##### 3. Owner:

- Give the owner's name and, if applicable, organization.
- Provide the Social Security or Taxpayer Identification Number, address, and daytime telephone number.
- Sign and date the application.
- If the owner is a partnership or corporation, provide the name of the entity and the person who signs the form.
- The form containing the original signatures must be submitted.
- Names, addresses, and Social Security or Taxpayer Identification Numbers of additional owners may be listed on the same sheet. Please submit the form with original signature(s).
- Provide 35 mm photographs of the completed project, keyed to a floor plan, and if applicable, to a site plan.
- Please provide photographs taken from the **same locations** as the Part 2 photos previously submitted.

#### COMPLETING THE AMENDMENT / CONTINUATION SHEET

- Indicate if the sheet continues the Description of Rehabilitation or amends the Description of Rehabilitation.



## **APPENDIX C: SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION**

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### **Introduction to the Standards**

The Secretary of the Interior is responsible for establishing standards for all programs under Departmental authority and for advising Federal agencies on the preservation of historic properties listed in or eligible for listing in the National Register of Historic Places.

The Standards for Rehabilitation (codified in 36 CFR 67 for use in the Federal Historic Preservation Tax Incentives program) address the most prevalent treatment. "Rehabilitation" is defined as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values."

Initially developed by the Secretary of the Interior to determine the appropriateness of proposed project work on registered properties within the Historic Preservation Fund grant-in-aid program, the Standards for Rehabilitation have been widely used over the years--particularly to determine if a rehabilitation qualifies as a Certified Rehabilitation for Federal tax purposes. In addition, the Standards have guided Federal agencies in carrying out their historic preservation responsibilities for properties in Federal ownership or control; and State and local officials in reviewing both Federal and nonfederal rehabilitation proposals. They have also been adopted by historic district and planning commissions across the country.

The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and interior of the buildings. They also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified for Federal tax purposes, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s), and where applicable, the district in which it is located.

As stated in the definition, the treatment "rehabilitation" assumes that at least some repair or alteration of the historic building will be needed in order to provide for an efficient contemporary use; however, these repairs and alterations must not damage or destroy materials, features or finishes that are important in defining the building's historic character. For example, certain treatments--if improperly applied--may cause or accelerate physical deterioration of the historic building. This can include using improper repointing or exterior masonry cleaning techniques, or introducing insulation that damages historic fabric. In almost all of these situations, use of these materials and treatments will result in a project that does not meet the Standards. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will fail to meet the Standards.

### **The Secretary of the Interior's Standards for Rehabilitation**

The Standards (Department of Interior regulations, 36 CFR 67) pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.



## **APPENDIX D: CRITERIA FOR EVALUATING A PROPERTY FOR LISTING ON THE NATIONAL REGISTER OF HISTORIC PLACES**

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Criteria for evaluation. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. that are associated with the lives of persons significant in our past; or
- C. that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or may be likely to yield, information important in prehistory or history.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (a) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- (b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- (c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.
- (d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- (e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

- (g) A property achieving significance within the past 50 years if it is of exceptional importance. [This exception is described further in NPS's "How To" booklet No. 2, entitled "How to Evaluate and Nominate Potential National Register Properties that Have Achieved Significance Within the Last 50 Years," available from NPS.]

## BIBLIOGRAPHY

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- Bardach, Eugene. A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving. Washington: CQ, 2004.
- Beaumont, C. E., & National Trust for Historic Preservation in the United States. Smart States, Better Communities: How State Governments Can Help Citizens Preserve Their Communities. Washington, DC: National Trust for Historic Preservation, 1996.
- Bemelmans-Videc, Ray C. Rist and Evert Verdung. Carrots, Sticks & Sermons: Policy Instruments & Their Evaluation. New Brunswick: Transaction, 1998.
- Hein, Erik M. "RE: Question re: D.C. Historic Tax Credit Programs." Email to the author. 14 Apr. 2008.
- Igoe, James and Erin Kelley. Personal interview. 22 Apr. 2008.
- Kelly, Erin. 0-30 + In Three Years: The Story of the Massachusetts State Historic Rehabilitation Tax Credit. Accessed 14 Apr. 2008. <<http://www.preservationmass.org/documents/From0toinThreeYearsTaxCreditPiece.doc>>.
- Lipman, Frizzell and Mitchell, LLC. Rhode Island Historic Preservation Investment Tax Credit: Economic & Fiscal Impact Analysis. 2007.
- Lohman, Janette. "Progressive Preservation." St. Louis Commerce Magazine. July 2000. <<http://www.stlcommercemagazine.com/archives/july2000/progressive.html>>.
- Massachusetts Historic Preservation Tax Credit (MAHRTC). Boston: Preservation Massachusetts. 5 Dec. 2006. <<http://www.preservationmass.org/documents/MassachusettsHistoricPreservationTaxCredit.pdf>>.
- Mohl, Bruce. "Preserving Power." CommonWealth Magazine. Summer 2008: 36-46.
- Nicodemus, Aaron. "Tax credits boost city's renovation: state fund swells to \$300M" New Bedford Standard Times. 19 June 2006.
- Preservation Mass Website. Preservation Massachusetts. Accessed 14 Apr. 2008. <<http://www.preservationmass.org>>.

Rypkema, D. D., & National Trust for Historic Preservation in the United States. The Economics of Historic Preservation: A Community Leader's Guide (2nd ed.). Washington, D.C.: National Trust for Historic Preservation, 2005.

Schuster, J. Mark. Inciting Preservation. In J.M. Schuster, J. de Monchaux & C.A. Riley II (Eds.), Preserving the Built Heritage: Tools for Implementation (49-80). Hanover: University Press of New England, 2007.

Schwartz, Harry K. State Tax Credits for Historic Preservation. Washington: National Trust for Historic Preservation, 2007.

Tsipis, Yanni. "History and the Housing Crisis." Boston Globe, 25 Sept. 2004: p. A15.

United States. National Park Service. Federal Incentives for Rehabilitating Historic Buildings: Annual Report for the Fiscal Year 2006. Washington: 2007.