



## HISTORIC TAX CREDIT TOOL BOX

# The Importance of Follow-Through in HTC Applications

JOHN M. TESS, PRESIDENT, HERITAGE CONSULTING GROUP

**S**ome developers look upon the historic tax credit (HTC) process as straightforward paperwork: Completing and submitting the Part 2 application; receiving approval from the National Park Service (NPS); and moving forward with the approved project, no longer in need of an HTC consultant.

There are many projects where this approach has worked, but it is not necessarily a wise approach. To start the conversation, consider a couple of scenarios:

The first is a project that begins with a conditional approval. NPS approves the work but attaches several conditions of varying consequence. Many may be boilerplate, such as the need to repair rather than replace windows, the need to do a mortar test patch or the need to submit tenant improvements. Others may be project-specific, requiring one or more design elements of the submitted project to be modified. But the Part 2 review is often completed early in the development-and-design process. The developer simply wants to know if he/she has a viable project, knowing that many of the details still need to be ironed out. Actual ownership has not

even transferred. As such, the project goes quiet for weeks or maybe months while the developer lines up financing. Time passes and the project finally moves forward; the developer knows that he has a conditional Part 2 approval, but the actual conditions have fallen off their radar. The project is completed but the Part 3 is a problem because the conditions were not addressed. Should the Part 2 conditions not be addressed, there is potential for Part 3 denial.

The second and more common scenario relates to the chaos of the construction process. The project team has an ever-growing number of specialists while more parts are “design-build.” Conceptually, the proposed rehabilitation is fine and the Part 2 is approved. But conceptual design lacks details that are often overlooked. Below are seven common mistakes that can and do lead to project denial. These are work items that may not be specifically addressed in the Part 2 application but can cause problems in getting NPS final approval.

**1. Soffits:** Many historic office buildings have relatively low floor-to-ceiling heights. That is why you see many 1920s buildings that were retrofitted with

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air conditioning in the 1970s where the ceiling drops in front of the window head. NPS is quite clear that for HTC projects, soffits must be either held above the window head or held back from the window 3 to 4 feet or more, depending on the project. Yet, generally, this detail is not required for permitting and often doesn't appear in even construction level plans. Architects may have a reflected ceiling plan, but they show ceiling design and not ceiling height. The design often relies on window treatments to hide soffits and contractors are left to frame in ceilings as best they can without regard to how the ceiling aligns with the window head.

**2. Window/wall abutments:** The project economics play a role in floor plans. Often, the layout and requisite number of rooms means that a wall will either abut a window or jog in front of it. Walls that abut windows are not approvable and as with soffits, window jogs must be held back 3 to 4 feet from the window. Typically, the Part 2 will have floor plans. However, as designs move from concept to reality, the layout can shift.

**3. Windows:** One of the more challenging aspects of a tax credit project is window replacement. NPS is precise in its reviews and approvals. But often, in the course of construction, the developer faces sticker shock, budget challenges or simply an aggressive subcontractor who offers a window similar to but not matching the approved replacement. The same can be said for storefront replacement. Yet, a product that varies from what was approved usually leads to problems in the final certification process.

**4. Rooftop additions:** As with windows, rooftop additions are challenging in tax credit projects and the NPS decision again is precise. Massing, design, materials and setback are specific, not general decisions. Visibility and absolute height are critical concerns. Yet, often what is submitted in the Part 2 application is not what is ultimately built. The reasons are many: The addition may need the roof structure to be strengthened

or a marketing decision is made to increase the ceiling height, add a deck with rail or reconfigure for better views. The point here is that even minor changes in rooftop design can mean the difference between a project being approved or denied.

**5. Mechanical systems:** It has become standard practice for HVAC to be "design-built." In practical terms, this means that mechanicals are only vaguely addressed in the Part 2 application. When built, the mechanicals may be problematic: Interior ductwork is exposed when it needs to be concealed. The ducting is too close to windows when it should be either above the window head or held back 3 to 4 feet. Rooftop equipment is too big, too visible, placed on top of the rooftop addition and/or screened per local codes. The tax credit program allows NPS 100 percent design review, even for design-build elements.

**6. Tenant improvements:** Many projects are phased, beginning with core and shell work followed by tenant buildouts for leased spaces. These may be ground-floor restaurant or retail spaces, or it may be upper-floor office tenants. The new tenant often has its own architect and the tenant has its own intended design aesthetic. Again, NPS has 100 percent design review over a project and the failure of a tenant to comply with the Secretary's Standards can lead to Part 3 denials. In fact, the NPS retains design review authority over the entire project for five years following completion of the project. Yet, in some instances, the tenant may not even realize that NPS has design review over their space.

**7. Code upgrades:** Commonly, design changes occur as a project goes through a city's permitting process. Plans examiners review the designs for compliance to local codes, sometimes identifying additional work that or design changes necessary for the project to secure its permits. As relates to the HTC process, some of these changes can be benign, but not always. Changes prompted by code requirements do not inevitably mean

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NPS concurrence and if not submitted to NPS for review, can cause problems in the final certification.

Each of these situations can result in the project being denied or facing expensive mitigation costs.

The common-sense solution is to realize that the HTC program is a process, not a singular event. It is not simply getting the forms submitted. Rather, it is having a HTC consultant be an integral part the development team.

At this risk of sounding self-serving, there is wisdom in retaining a qualified HTC consultant. The federal tax credit is worth 20 percent of the rehabilitation expenses and where state incentives exist, that amount can reach 40 percent or even more. Given the dollars involved, it is not prudent to have someone inexperienced managing the tax credit process. It is in the best interest of an owner to have someone who is specifically charged with managing the HTC process and monitoring its progress. Watching over the project and submitting amendments to address conditions and project changes is critical to achieving final certification.

The HTC professional needs to be a proactive partner in the process. This means receiving and reviewing construction meeting minutes, participating in ongoing design and project meetings and conducting periodic site visits. This oversight allows the HTC professional to identify potential problems and to problem solve with

the development team. Even in the best of instances, there are often aspects of a project that were not quite built as submitted. Large, complex projects often mean that things can and do slip between the cracks. Monitoring minutes and regular site visits offer early problem identification. Proactive dialogue, particularly with state historic preservation office staff, can go a long way to address and resolve those problems during, not after, the construction process, thereby saving time and money.

At the end of the day, the development process is inclined to require periodic amendments to keep the project current, such that the expectations of the reviewers align with the actual planned construction. To manage this, it is important to have a skilled HTC professional on the team who is solely charged with that role. It is also important to involve that person in the ongoing construction process so that he or she is fully aware of project status. It is more expensive than simply hiring someone to fill out the forms, but when the HTC represents 20 percent (or more) of the project budget, it is a wise investment. ❖

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*John M. Tess is president and founder of Heritage Consulting Group, a national firm that assists property owners seeking local, state and federal historic tax incentives for the rehabilitation of historic properties. Since 1982 Heritage Consulting Group has represented historic projects totaling more than \$3 billion in rehabilitation construction. He can be reached at 503-228-0272 or [jmtess@heritage-consulting.com](mailto:jmtess@heritage-consulting.com).*

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