



## The Low-Income Housing Tax Credits Issue



### Celebrating the LIHTC on Native Nation Lands in California

Nine years into the California LIHTC set-aside for affordable housing on Native lands, more than \$130 million in tax credits have been awarded to build or rehabilitate nearly 350 homes, but demand still far outpaces the limited set-aside.

Page 16

### Partnering with a Nonprofit for a LIHTC Development

What are the benefits and challenges of private for-profit affordable housing developers partnering with a nonprofit?

Page 18



### Temporary Regulations Provide Details to Assist in Complying with Final AIT Guidance

Temporary regulations provide context for the practical application of final average income test regulations.

Page 47

### 45L Credit Extension Expands Clean Energy Possibilities for LIHTC Developers

The Inflation Reduction Act includes a 10-year extension of the Section 45L Energy Efficiency Home Credit, providing a long runway for an incentive that previously was renewed on short-term bases.

Page 74

# Essex Portfolio: Utilizing HTCs on Multiple Historically Unrelated Buildings



CINDY HAMILTON, HERITAGE CONSULTING GROUP

The rules and regulations of the historic tax credit (HTC) program that lend themselves well to the rehabilitation of larger buildings, in contrast, pose numerous challenges to smaller commercial and multi-family buildings as well as former single-family residences.

To qualify for the federal HTC, a project must undergo a substantial rehabilitation, which means the qualified rehabilitation expenditures (QREs) incurred during the substantial rehabilitation period must exceed the greater of \$5,000 or the adjusted basis of the building and its structural improvements within a given measurement period. This threshold and the overall costs associated with meeting the Secretary of the Interior's Standards for Rehabilitation makes the HTC program a relatively easier fit for larger buildings that can maximize economic returns and support the intended use, compared to smaller projects. These components of the program can often steer HTC participants away from smaller buildings located on historic main streets or single-family residences.

Formerly single-family residences, as well as small apartment buildings, are among the more challenging buildings to rehabilitate through the HTC program. The challenges do not often lie in the rehabilitation itself, but rather in other details, such as ensuring the project meets the adjusted basis and getting the project through the historic designation process. For many formerly single-family homes pursuing



Image: Courtesy of Heritage Consulting Group  
Fairstead is currently rehabilitating six historic buildings in Newark, New Jersey, as part of the Essex Portfolio.

HTCs, if they are not already listed in the National Register of Historic Places, either individually or in a historic district, utilizing the credits can be even more challenging. Some developers, however, have identified an opportunity to rehabilitate smaller buildings, like former single-family homes, particularly when grouped together as a larger redevelopment project.

Case in point: National real estate firm Fairstead is currently rehabilitating six former single-family houses in Newark, New Jersey, that were previously converted for use as multifamily housing under prior ownership and serve as deeply affordable rentals for the community, utilizing a portfolio concept. Fairstead's managing partner Brett Meringoff said Fairstead is preserving the affordability of the portfolio while delivering substantial renovations to improve quality of life for residents. Although for the purposes of the HTCs, each of the six buildings encompasses its own individual project, the six are inextricably linked.

### Essex Portfolio

The Essex Portfolio, as it is known by the project team, includes nearly 700 housing units spread across multiple buildings in downtown Newark. For Fairstead, the development is much more than the rehabilitation of six buildings, as the project also includes many more recent buildings that do not qualify for HTCs. In addition to the HTCs, the development is also utilizing low-income housing tax credits (LIHTCs), which will ultimately result in the preservation of hundreds of low-income housing units, as well as necessary updates to their features and finishes.

Each of the six buildings involved in HTC projects is a contributing resource to Newark's Lincoln Park Historic District, which was listed in the National Register of Historic Places in 1984. The district is comprised of a collection of townhouses and commercial buildings dating to the late-1800s and early-1900s. Among the many buildings in the district are beautiful stone single-family residences that date

to a period in which Newark was among the most prominent industrial centers in the country. Five of the six buildings are using HTCs.

### More About Fairstead

Fairstead, headquartered in New York City, currently manages over 24,000 housing units in 28 states. Meringoff joined the firm in 2020 having 23 years of experience in the affordable housing industry. Since joining the firm, Meringoff has overseen the completion of numerous developments expanding the company's standing in the affordable housing industry.

Fairstead, according to Meringoff, often looks to twin HTC and LIHTC deals. "When I joined Fairstead," he explained, "I was tasked with expanding our business dealings, which resulted in exploring more combined deals." After working on an adaptive reuse project in Manhattan that did not qualify for HTCs, the company has looked to use the incentive as often as possible. The Essex Portfolio project serves as their most recent example of a twinned deal.

### Rehabilitation

The HTC rehabilitations of the six buildings in the Essex Portfolio will result in necessary updates to buildings that "have not been improved upon in nearly 30 years," according to Meringoff. Although the scope of work and intent of the project is similar across the board, the six buildings are viewed as individual projects by the National Park Service (NPS). As separate HTC projects, the rehabilitation of each building is reviewed and determined to meet the Secretary of the Interior's Standards on its own merit. While the buildings are similar in design, a cookie-cutter approach to their rehabilitation is not possible. Though general scopes of work can be repeated, each building presents its own set of circumstances, from floor plan to finishes. The design for each building must reflect these realities in order to obtain NPS approval.

Through the HTC design review process, this requires retention of specific features and finishes, such as exterior masonry and ornamentation or hardwood

flooring at the interior. Each building is unique in its own way and contains different design elements that need to be accounted for in the redesign of the building. “For projects like Essex it is not possible to have a uniform design across the board, as the State Historic Preservation Office (SHPO) or the NPS may require specific finishes be used in specific buildings, but not in the others,” said Meringoff.

With unique designs and challenges for each building “not everything in the review processes aligns appropriately” as noted by Meringoff. The project team needs to account for the different requirements for each building to meet the standards, while also maintaining the project’s schedule and timeline.”

Timing, therefore, is perhaps the most important hurdle to navigate in projects such as Essex, where closing on a larger portfolio is dependent on multiple NPS Part 2 approvals. Meringoff explained, “all agencies have their own timeline. Our job is to manage that to the best of our abilities and bring it all together at the conclusion of the project.” In the case of Essex, this not only means navigating the review process through SHPO and the NPS, but also reviews through the LIHTC side of the development, and local review through permitting. As recounted by Meringoff, in order for a portfolio such as this to be successful, “The project team needs to account for the different requirements each review agency operates under, while also maintaining the project’s schedule and timeline.” For Meringoff, however, the challenges

navigating timelines are worth it to “ensure that living conditions are enhanced for those that need it most.”

## Conclusion

The Essex project illustrates the ability to utilize HTCs on smaller scale buildings, most notably former single-family residences and small multi-family buildings. Utilizing a portfolio approach, Fairstead was able to make the financials work and the project was able to move forward. Meringoff highlighted the complexity of these deals, noting “there is far more complexity than isolated developments. From the developer’s perspective, you have different types of buildings that require more work and come with more risk.” He continued, “when you marry this to the HTC program, you add in their requirements and not everything aligns the way you ultimately wish it would.” Understanding the unique features of each building and the need to tailor the design to meet the standards is critical to maintaining the HTC review timeline as part of the overall project schedule.

Despite the challenges posed by multi-building or twinned projects, Fairstead’s Essex project will ultimately result in the successful update of and preservation of affordable housing in downtown Newark. According to Meringoff, the key to a successful multi-building project is “the right team. With the right team in place you can more easily recognize specific issues and address them in a timely manner.” ♦

.....  
Cindy Hamilton is president of Heritage Consulting Group.

---

© Novogradac 2023 - All Rights Reserved.

*This article first appeared in the May 2023 issue of the Novogradac Journal of Tax Credits. Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law.*

*Notice pursuant to IRS regulations: Any discussion of U.S. federal or state tax issues contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any discussion on tax issues reflected in the article are not intended to be construed as tax advice or to create an accountant-client relationship between the reader and Novogradac & Company LLP and/or the author(s) of the article, and should not be relied upon by readers since tax results depend on the particular circumstances of each taxpayer. Readers should consult a competent tax advisor before pursuing any tax savings strategies. Any opinions or conclusions expressed by the author(s) should not be construed as opinions or conclusions of Novogradac & Company LLP.*

*This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit [www.novoco.com](http://www.novoco.com).*

## EDITORIAL BOARD

### PUBLISHER

Michael J. Novogradac, CPA

### EDITORIAL DIRECTOR

Alex Ruiz

### TECHNICAL EDITORS

Thomas Boccia, CPA  
Chris Key, CPA  
Diana Letsinger, CPA

Matt Meeker, CPA  
John Sciarretti, CPA  
Stacey Stewart, CPA

## COPY

### SENIOR EDITOR

Brad Stanhope

### SENIOR MARKETING MANAGER

Teresa Garcia

### SENIOR COPY EDITOR

Mark O'Meara

### SENIOR WRITER

Nick DeCicco

### CONTRIBUTING WRITERS

George Barlow  
Jim Campbell  
Elizabeth Glynn  
Cindy Hamilton  
Rich Larsen

Josh Mason  
Stephanie Naquin  
Brent Parker  
Charles A. Rhuda, III

## ART

### CREATIVE DIRECTOR

Alexandra Louie

### GRAPHIC DESIGNER

Brandon Yoder

## CONTACT

### CORRESPONDENCE AND EDITORIAL SUBMISSIONS

Teresa Garcia  
teresa.garcia@novoco.com  
925.949.4232

### ADVERTISING INQUIRIES

Christianna Cohen  
christianna.cohen@novoco.com  
925.949.4216

ALL MATERIAL IN THIS PUBLICATION IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS PROFESSIONAL ADVICE OFFERED BY NOVOGRADAC OR BY ANY CONTRIBUTORS TO THIS PUBLICATION.

ADVICE AND INTERPRETATION REGARDING THE LOW-INCOME HOUSING TAX CREDIT OR ANY OTHER MATERIAL COVERED IN THIS PUBLICATION CAN ONLY BE OBTAINED FROM YOUR TAX AND/OR LEGAL ADVISOR.

## ADVISORY BOARD

### OPPORTUNITY ZONES

Dan Altman	SIDLEY AUSTIN LLP
Glenn A. Graff	APPEGATE & THORNE-THOMSEN
Jill Homan	JAVELIN 19 INVESTMENTS
Shay Hawkins	OPPORTUNITY FUNDS ASSOCIATION

### LOW-INCOME HOUSING TAX CREDITS

Jim Campbell	SOMERSET DEVELOPMENT COMPANY LLC
Tom Dixon	LUMENT
Richard Gerwitz	CITI COMMUNITY CAPITAL
Elizabeth Bland Glynn	TRAVOIS INC.
Rochelle Lento	DYKEMA GOSSETT PLLC
John Lisella III	U.S. BANCORP COMMUNITY DEV. CORP.
Derrick Lovett	MBD COMMUNITY HOUSING CORP.
Rob Wasserman	HUNTINGTON NATIONAL BANK.

### PROPERTY COMPLIANCE

Jen Brewerton	DOMINIUM
Kristen Han	WNC
Michael Kotin	KAY KAY REALTY CORP.

### HOUSING AND URBAN DEVELOPMENT

Victor Cirilo	NEWARK HOUSING AUTHORITY
Flynann Janisse	RAINBOW HOUSING
Ray Landry	DAVIS-PENN MORTGAGE CO.
Denise Muha	NATIONAL LEASED HOUSING ASSOCIATION
Monica Sussman	NIXON PEABODY LLP

### NEW MARKETS TAX CREDITS

Frank Altman	COMMUNITY REINVESTMENT FUND
Maria Bustria-Glickman	US BANK
Elaine DiPietro	BLOOMING VENTURES LLC
Chimeka Gladney	ENTERPRISE COMMUNITY INVESTMENT INC.
Tracey Gunn Lowell	U.S. BANCORP COMMUNITY DEV. CORP.
Ruth Sparrow	FUTURES UNLIMITED LAW PC
William Turner	WELLS FARGO

### HISTORIC TAX CREDITS

Irvin Henderson	HENDERSON & COMPANY
Heather Buthe	NATIONAL TRUST COMMUNITY INVESTMENT CORP.
Donna Rodney	ENTERPRISE COMMUNITY INVESTMENTS
Cindy Hamilton	HERITAGE CONSULTING GROUP

### RENEWABLE ENERGY TAX CREDITS

Jim Howard	DUDLEY VENTURES
Elizabeth Kaiga	DNV GL
Forrest Milder	NIXON PEABODY LLP