Greenbaum Attorneys Successfully Influence EDA Policy Concerning Incentives for the Redevelopment of Historic Properties

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Developers seeking to redevelop New Jersey properties deemed historic sites now have greater incentive to do so as a result of a regulatory reinterpretation and ensuing policy change by the New Jersey Economic Development Authority (EDA). The firm is gratified to have played a direct role in bringing about this change.

For over thirty years, the federal Historic Rehabilitation Tax Credit (HTC) has provided a 20% Federal income tax credit to encourage private investment in the rehabilitation and re-use of income-producing buildings that are determined to be "certified historic structures" by the U.S. National Park Service. The HTC is responsible for the creation of many jobs and is one of the most successful and cost-effective community revitalization programs in the country.

In addition to this federal incentive, the EDA provides additional incentives and tax credits at the state level for similar redevelopment projects under the newly expanded Economic Redevelopment and Growth Program (ERG). However, the EDA's proposed regulations (N.J.A.C. 19:31-4.2) exclude "…any particular costs for which the project has received Federal, State or local funding" from the base cost of a project against which the ERG credit is measured.

The EDA has interpreted this exclusion to include benefits received under the HTC. As a result, the base cost of a qualified redevelopment project is reduced by the HTC incentive available to the developer prior to calculating the credit available under the ERG program. This reduction diminishes the value of the incentive provided by the ERG program. Also, in what appears to be an inconsistency, the EDA does not require the same base cost reduction for other federal tax credits similar to the HTC,

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such as the Low Income Housing Tax Credit and the New Markets Tax Credit.

In conjunction with our client's planned redevelopment of a historic hospital facility in Essex County, members of our firm recently worked with the New Jersey Office of the Attorney General to analyze the reason for the EDA's interpretation of the exclusion language of the proposed regulations as referenced above, and for the differing treatment of the HTC against similar federal tax credit programs for purposes of the ERG credits. In an effort to influence the Office of the Attorney General to modify its position, we suggested that there was no sustainable reason for the inconsistency in treatments.

Following a months-long process of submitting written memoranda, conducting phone conferences with the Office of the Attorney General, and responding with research and analysis at its request, we achieved success in influencing that office to revise its interpretation of the exclusion language, and therefore its position, concerning the treatment of the HTC under the ERG credit program.

Going forward, the amount of the HTC will no longer reduce the base cost of a qualified project prior to calculating the credits available under the ERG program. Since the change in policy is a change of interpretation of the proposed regulations, a language change to the proposed regulations does not seem to be forthcoming or necessary. Still, the implications of this policy change should be significant for our clients and all redevelopers seeking to take advantage of both the HTC and the credits available under ERG, as it will undoubtedly enhance developers' ability to undertake historic site redevelopment projects.

Please contact the Authors of this Alert, Robert S. Goldsmith and Laurence E. Fundler, with questions or comments.