

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	09/25/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 10/3/2014**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

34 04 07 Sustainable Communities Tax Credit Certification

**3. Name of Promulgating Authority**

Department of Planning

**4. Name of Regulations Coordinator Telephone Number**

Margaret H Drake 410-514-7800

**Mailing Address**

OAG/MDP 100 Community Place

**City State Zip Code**  
Crownsville MD 21032-2023

**Email**  
mdrake@mdp.state.md.us

**5. Name of Person to Call About this Document Telephone No.**

Collin Ingraham 410-514-7671

**Email Address**  
Collin.Ingraham@maryland.gov

**6. Check applicable items:**

- New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: .

- Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes - No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Paul Cuccuzzella, Assistant Attorney General, (telephone #410-767-1409) on September 25, 2014. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Amanda Stakem Conn

**Title**

Deputy Secretary

**Date**

Septmeber 23, 2014

**Telephone No.**

410-767-4485

**Title 34**  
**DEPARTMENT OF PLANNING**

**Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS**

**34.04.07 Sustainable Communities Tax Credit Certifications**

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland

**Notice of Proposed Action**

□

The Secretary of the Maryland Department of Planning proposes to (1) repeal in their entirety Regulations 01. through .07 in COMAR 34.04.07. and (2) adopt new Regulations .01 through .08 in COMAR 34.04.07.

**Statement of Purpose**

The purpose of this action is to clarify certain existing regulations and add and remove other regulations in order to conform the regulations to Chapter 601, Laws of Maryland 2014, which removed certain requirements and added options for small commercial projects to receive Sustainable Communities Tax Credit Certifications.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

The proposed regulations changes will implement the 2014 statutory changes that expand the eligible rehabilitation projects to include a new category of funding targeting the redevelopment of small commercial structures located in designated Sustainable Communities. This program is authorized to provide incentives equal to \$4,000,000 over the next 2 years and effectively leverage an additional \$16,000,000 in private investment toward redevelopment projects that might otherwise not happen.

**II. Types of Economic Impact.**

Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
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A. On issuing agency:	(R+)	slight
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B. On other State agencies: NONE  
 C. On local governments: NONE

Benefit (+) Cost (-)	Magnitude
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D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	moderate

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

- A. Increase in fees paid.
- F. Taxpayers will benefit from additional opportunities to earn tax credits for rehabilitation work.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

The proposed action has a meaningful economic impact on small business. The incentive is targeted to the revitalization of small commercial structures and is limited to projects with redevelopment costs under \$500,000 which will largely target the full \$4,000,000 in available tax credits to small businesses

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Collin Ingraham, Administrator, Preservation Financial Incentives, Maryland Historical Trust, 100 Community Place, Crownsville, MD 21032-2023, or call 410-514-7671, or email to Collin.Ingraham@maryland.gov, or fax to 410-987-4071. Comments will be accepted through November 17, 2014. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2015
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?  
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

General funds are available in FY 2016 for approved tax credit applications for approved small commercial tax credit applications.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this

proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

Attached Document:

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## **Title 34 DEPARTMENT OF PLANNING**

### **Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS**

#### **Chapter 07 Sustainable Communities Tax Credit Certifications**

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland

##### **.01 Scope.**

*This chapter establishes procedures for certification of sustainable communities rehabilitations by the Director of MHT. Certification of a sustainable communities rehabilitation is an eligibility requirement for a taxpayer to claim a sustainable communities tax credit.*

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means State Finance and Procurement Article, §5A-303, of the Code.

(2) "Business entity" means:

(a) a person, as defined in State Finance and Procurement Article, §1-101(p) of the Code, conducting or operating a trade or business in the State that is subject to State income tax as defined in Tax-General Article §10-101(n) of the Code; or

(b) a non-profit organization conducting or operating a business in the State that:

(i) is registered to do business and in good standing with the Maryland State Department of Assessments and Taxation; and  
(ii) is exempt from taxation under §501(c)(3) of the federal Internal Revenue Code.

(3) "Certified heritage area" has the meaning stated in § 13-1101 of the Financial Institutions Article of the Code.

(4) Certified Historic Structure. (a) "Certified historic structure" means a structure that is located in the State and is:

(i) listed on the National Register of Historic Places;

(ii) designated as a historic property under local law and determined by the Director to be eligible for listing on the National Register of Historic Places;

(iii) located in a historic district listed on the National Register of Historic Places, or in a local historic district that the Director determines is eligible for listing on the National Register of Historic Places, and certified by the Director as contributing to the significance of the district; or

(iv) located in a certified heritage area and certified by the Maryland Heritage Areas Authority as contributing to the significance of the certified heritage area

(b) "Certified historic structure" does not include a structure that is owned by the State, a political subdivision of the State, or the federal government.

(5) "Certified rehabilitation" means a completed rehabilitation of a certified historic structure that the Director certifies is a substantial rehabilitation in conformance with rehabilitation standards of the United States Secretary of the Interior.

(6) "Code" means the Annotated Code of Maryland.

(7) "Competitive commercial rehabilitation" means a rehabilitation of a certified historic structure, other than a rehabilitation of a single family, owner-occupied residence, or a small commercial rehabilitation project, which is :

(a) subject to a competitive rating and ranking process under the Program, and

(b) not owner-occupied as a residence.

(8) "Criteria for Listing" means the Secretary of the Interior's Criteria for Listing in the National Register of Historic Places, 36 CFR §§60.3 and 60.4, as amended, or successor criteria.

(9) "Director" means the Director of the Maryland Historical Trust.

(10) "Disposition" means the transfer of legal title or, in the case of a leasehold, the leasehold interest, or any portions thereof in property, including a sale-and-leaseback transaction, a transfer on the foreclosure of a security interest, or a transfer by gift, but excluding a transfer title or the leasehold interest to a creditor on creation of a security interest lien, mortgage or deed of trust.

(11) "Disqualifying work" means work that, if performed on a certified rehabilitation during the rehabilitation portion or during the Recapture Period, would have made the rehabilitation ineligible for certification.

(12) "Financial assistance" means action by the State or a State unit to award grants, loans, loan guarantees, tax benefits, or insurance to a public or private entity to finance, wholly or

partly, a project that involves or may result in building construction, building alteration, or land disturbance.

(13) "High performance building" means a building that:

(a) meets or exceeds the current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) green building rating system gold rating; or

(b) achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services.

(c) a "high performance building" is eligible for a 5% tax credit when used with the competitive commercial tax credit

(14) Historic Property means a district, site, building, structure, monument, or object significant to:

(a) the prehistory or history of the State; or

(b) the upland or underwater archeology, architecture, engineering, or culture of the State; and

(c) "Historic property" includes related artifacts, records, and remains.

(15) "Income-producing" means used for a commercial trade or business that is intended to generate cash flow other than a single family owner occupied residence..

(16) "Initial credit certificate" means a certificate issued by the Director, at the time the Part 2 is approved, that grants a business entity a tax credit under the Act for a small commercial or competitive commercial rehabilitation.

(17) "Local historic district" means a district that the governing body of a county or municipal corporation, or the Mayor and City Council of Baltimore, has designated as historic under local law.

(18) "MHT" means the Maryland Historical Trust.

(19) "National register structure" means a structure that is

(a) listed on the National Register of Historic Places; or

(b) located in a historic district listed on the National Register of Historic Places and certified by the Director as contributing to the significance of the district.

(20) "Political subdivision" means a county or municipal corporation of the State.

(21) "Program" means the Sustainable Communities Tax Credit Program established by the Act.

(22) "Qualified rehabilitation expenditure" means any amount that:

(a) is properly chargeable to a capital account;

(b) is expended in the rehabilitation of a structure that, by the end of the calendar year in which the certified rehabilitation is completed, is a certified historic structure;

(c) is expended in compliance with a plan of proposed rehabilitation that has been approved by the Director; and

(d) is not funded, financed, or otherwise reimbursed by any:

(i) State or local grant;

(ii) grant made from the proceeds of tax-exempt bonds issued by the State, a political subdivision of the State, or an instrumentality of the State or of a political subdivision of the State;

(iii) State tax credit other than the tax credit provided for under the Act; or

(iv) other financial assistance from the State or a political subdivision of the State, other than a loan that must be repaid at an interest rate that is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

(23) "Recapture period" means the taxable year in which the certified rehabilitation is completed or any of the 4 taxable years succeeding that taxable year, during which tax credits allowed under the Program may be recaptured in the event disqualifying work is performed, or



disposal of the certified rehabilitation occurs. Homeowner, small commercial and competitive commercial rehabilitations are subject to the recapture period. Tax credits for single-family owner occupied properties are only subject to recapture in the event disqualifying work is performed.

(24) Rehabilitation means the process of returning a structure to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the structure and its site and environment which make the structure and its site and environment historically, architecturally, or culturally significant, but excludes alteration which is primarily remodeling, landscaping, or items of interior décor.

(25) "Secretary" means the Secretary of Planning.

(26) "Single-family, owner-occupied residence" means

(a) a structure or a portion of a structure occupied by the owner and the owner's immediate family as their primary or secondary residence; or

(b) a residential unit in a cooperative project owned by or leased to a cooperative housing corporation, as defined in Corporations and Associations Article, §5-6B-01, of the Code, and leased for exclusive occupancy to, and occupied by, a member of the corporation and the member's immediate family under a proprietary lease.

(c) a small commercial rehabilitation project.

(27) "Small commercial rehabilitation" means the rehabilitation of a certified historic structure that is located in a designated sustainable community and, when placed in service upon completion of the rehabilitation:

(a) no greater than 75% of the habitable interior portions of the structure when placed in service are used for rental residential purposes; and

(b) is not designated as being used for residential purposes as stated in the records of the State Department of Assessments and Taxation.

(28) "Smart Growth Subcabinet" means the Smart Growth Subcabinet established under State Government Article, Title 9, Subtitle 14, of the Code.

(29) "Standards for Certified Historic Structure Rehabilitation" means the Secretary of the Interior's Standards for Rehabilitation, 36 CFR §§67.7 and 67.6(b)(1)–(7), as amended, or successor standards.

(30) "Standards for Evaluating Significance" means the Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts, 36 CFR §67.5, as amended, or successor standards.

(31) "State" means the State of Maryland

(32) "State unit" has the meaning stated in State Government Article, §11-101, of the Code.

(33) "Substantial rehabilitation" means rehabilitation of a structure for which the qualified rehabilitation expenditures, during the 24-month period selected by the taxpayer ending with or within the taxable year, exceed:

(a) for single-family, owner-occupied residential rehabilitations, \$5,000;

(b) for a small commercial rehabilitation, \$5,000; or

(c) for competitive commercial rehabilitations, the greater of:

(i) the adjusted basis of the structure, as determined under the provisions of Tax-General Article of the Code; or

(ii) \$25,000.

(34) "Sustainable community" has the meaning defined in Housing and Community Development Article, § 6-201(l), of the Code.

(35) "Tax Credit" means one of the following State income tax credits for the rehabilitation of real property:

(a) "Homeowner" tax credit for a single-family, owner occupied residence, a one-time State income tax credit for single-family, owner occupied residential rehabilitations:

(i) equal to 20 percent of qualified rehabilitation expenditures; and

- (ii) capped at \$50,000 in a contiguous 24-month period; and
- (iii) requiring a minimum of \$5,000 of eligible expenses to qualify.

(b) "Small commercial" tax credit, a one-time State income tax credit for a small commercial rehabilitation located within a sustainable community:

- (i) equal to 20 percent of qualified rehabilitation expenditures; and
- (ii) capped at \$50,000 in a contiguous 24-month period; and
- (iii) for projects that have a minimum of \$5,000 and a maximum of \$500,000 in total qualified rehabilitation expenditures; and

(c) "Competitive commercial" tax credit, a one-time State income tax credit for a competitive commercial rehabilitation:

- (i) equal to 20 percent of qualified rehabilitation expenditures unless it is a high performance building;
- (ii) capped at \$3,000,000 worth of credits;
- (iii) for projects that have eligible expenses that exceed the greater of the adjusted basis value of the structure, as determined under the provisions of Tax-General Article of the Code, or \$25,000; and.

(36) "Taxpayer" means a business entity or individual that makes qualified rehabilitation expenditures.

(37) "Trust" means the Maryland Historical Trust.

#### **.03 Certification of Structures as Certified Historic Structures (Part 1).**

A. A taxpayer may request that a structure be certified by the Director as a certified historic structure by filing an application for certification with the Director. An application shall be filed on standard forms available from MHT. An incomplete application may not be processed until all required application information has been received.

B. The Director shall determine whether the structure for which a complete application is received meets the Criteria for Listing, or Standards for Evaluating Significance. If the structure meets the Criteria for Listing, or Standards for Evaluating Significance, the Director shall approve the application. If the structure does not meet the Criteria for Listing, or Standards for Evaluating Significance, the Director shall deny the application. The Director shall promptly send the applicant notice that the application has been approved or denied.

#### **.04 Procedures for Application for and Review of Certifications of Eligibility of Certified Historic Structure Rehabilitations (Part 2).**

A. A taxpayer may file an application with the Director requesting the Director to determine that a proposed substantial rehabilitation, if completed in accordance with the requirements of the Program, will qualify as a certified rehabilitation.

B. Applications shall be filed on standard forms available from MHT.

C. If the application is for a competitive commercial rehabilitation or a small commercial rehabilitation, the application shall request that the Director award the rehabilitation an initial tax credit certificate stating the maximum amount of credit for which the rehabilitation project may qualify.

D. In reviewing an application for certification of proposed rehabilitation projects, the Director shall determine:

(1) whether the proposed substantial rehabilitation of a certified historic structure for which a complete application is received under §A of this regulation meets the Standards for Certified Historic Structure Rehabilitation; and

(a) for a rehabilitation of a single family, owner-occupied residence, that the credit amount will not exceed \$50,000 in a contiguous 24-month period;

(b) for a small commercial rehabilitation, that the credit amount will not exceed \$50,000 in a contiguous 24-month period; or

(c) for a competitive commercial rehabilitation:

(i) total credits for the rehabilitation do not exceed \$3,000,000;

(ii) whether the plans for rehabilitation rank competitively to qualify for an award of available credits;

(iii) whether the plans for rehabilitation will qualify the certified historic structure as a high performance building eligible for the additional 5 percent tax credit available for high performance rehabilitations; and

(iv) that the rehabilitation will establish an external marker, or, at a minimum, an internal marker, that identifies that the rehabilitation was funded by the Program.

(2) In reviewing applications for certification of proposed competitive commercial rehabilitations, the Director shall:

(a) award initial credit certificates for available credits to those rehabilitations that rank competitively in the order that the rehabilitations meet the criteria of §F of this regulation; and

(b) promptly send the applicant notice of the determination and any award of a competitive commercial rehabilitation initial credit certificate.

E. Applications for certification of competitive commercial rehabilitations must include.

(1) documentation that the applicant has received letters of intent for all project funding not included in the amount of the credit for which the rehabilitation may qualify; and

(2) if the applicant is not at the time of the application the fee-simple owner of the property to be rehabilitated:

(a) a written statement from the fee-simple owner of the property indicating that the owner is aware of the application and has no objection to the request for certification; and

(b) evidence of ownership or site control of the property within 18 months of the Part 2 approval date.

F. Incomplete and unacceptable applications.

(1) An application may not be processed until all required application information has been received by MHT.

(2) An application received by MHT that does not include all required information, as determined by MHT, shall be deemed an incomplete application, and if required application information is not received by MHT within a reasonable time, as determined by MHT, the incomplete application shall be returned to the applicant.

(3) The Director may not accept an application if:

(i) at the time the application is received, any substantial part of the rehabilitation has begun unless the rehabilitation work for a competitive commercial rehabilitation has previously been approved under the federal historic tax credit;

(ii) the plans for the rehabilitation do not provide for an external marker or, at least, an internal marker for the structure that identifies that the rehabilitation was funded in part by tax credits under the Program; or

(iii) during the same year that the application is submitted the applicant has previously submitted three or more applications for competitive commercial rehabilitations that exceed \$500,000 in total qualified rehabilitation expenditures.

G. Applications for certification of competitive commercial rehabilitations shall be competitively ranked based on the following criteria:

(1) The extent to which the certified historic structure is:

(a) a rare example of an architectural style, or

(b) a structure designed by a noted architect.

(2) Whether the certified historic structure is:

(a) protected by a historic preservation easement held by MHT; or

(b) subject to preservation conditions or restrictions through a Memorandum of Understanding or Programmatic Agreement with MHT or some other instrument acceptable in form and substance to MHT.

(3) Whether the certified historic structure is located:

(a) in a jurisdiction that has been historically under-represented in the award of tax credits for commercial rehabilitation based on the number of National Register listed structures in each jurisdiction;

(b) in a sustainable community approved by the Smart Growth Subcabinet;

(c) in an area:

(i) where the political subdivision has implemented regulatory streamlining or other development incentives that foster redevelopment and revitalization in priority funding areas, as defined in State Finance and Procurement Article, Title 5, Subtitle 7B, Annotated Code of Maryland, and

(ii) where the appropriate local governing body, or the planning board or commission if designated by the local governing body, has certified those regulatory streamlining or other development incentives to the Smart Growth Subcabinet; or

(iii) targeted by the State for additional revitalization and economic development opportunities due to the focusing of State resources and incentives.

(4) Whether the rehabilitation project is one which will include affordable and workforce housing options.

(5) Whether the rehabilitation is consistent with and advances current growth and development policies and programs of the State identified by the Director in consultation with the Secretary.

(6) If the certified historic structure is a certified historic structure, the extent to which the rehabilitation:

(a) sustains the existing form, integrity, and material of the certified historic structure; or

(b) by removing later work or replacing missing earlier work, accurately recovers the form and details of the certified historic structure as it appeared at the period of time for which the structure is historically significant.

(7) The extent to which:

(a) qualified rehabilitation expenditures for the rehabilitation will exceed the assessed value of the certified historic structure; and

(b) the need for rehabilitation of the certified historic structure is of an urgent or emergency nature.

(8) Such other criteria as MHT may determine from time to time.

H. The Director may assign differing weights to the criteria set forth in §F of this regulation.

I. An initial credit certificate issued under Regulation .04 of this chapter for a competitive commercial rehabilitation shall expire, and the Director may not certify a competitive commercial rehabilitation as a certified historic structure rehabilitation, if:

(1) the applicant has not provided documentation that it is the fee-simple owner or has site control of the property evidenced by a qualifying long term lease or other documentation satisfactory to the Director; or

(2) within the 18 months after the initial credit certificate is issued, the applicant fails to notify MHT, in writing, that the rehabilitation has begun.

J. At any time before completion of a substantial rehabilitation, an applicant may amend an application submitted pursuant to §A of this Regulation.

K. Fiscal limitation on rehabilitation certifications.

(1) For any State fiscal year, the total credit amount of initial credit certificates for competitive commercial rehabilitations awarded by the Director to rehabilitations in a single county or Baltimore City may not exceed 60 percent of the credits available for award in that fiscal year, except that, if the aggregate credit amounts under initial credit certificates issued in the State fiscal year total less than the amount appropriated for that State fiscal year, any excess amount may be issued under initial credit certificates for projects in any county or Baltimore City.

(2) For any State fiscal year, the credit amount of an initial credit certificate for a competitive commercial rehabilitation may not exceed the lesser of the maximum amount of qualified rehabilitation expenditures specified in the application for approval of plans for rehabilitation or \$3,000,000 for:

- (a) the phased commercial rehabilitation of the same structure or property;
- (b) the separate rehabilitation of different components of the same certified historic structure or property; and
- (c) the rehabilitation of multiple certified historic structures that are functionally related to serve an overall purpose.

(3) The credit amount for a rehabilitation of a single-family, owner-occupied residence or small commercial project may not exceed \$50,000.

(4) The Director may not issue an initial credit certificate for a small commercial project after the aggregate amount of initial credit certificates issued for all small commercial projects under this Program totals \$4,000,000.

**L. Administrative Fees.**

(1) The Director may not accept an application for certification of:

- (a) rehabilitation of a single-family, owner-occupied residence or small commercial rehabilitation until the applicant pays an administrative fee of \$10; or
- (b) a competitive commercial rehabilitation until the applicant pays an administrative fee of \$250.

(2) For a completed rehabilitation of a single-family, owner-occupied residence or small commercial rehabilitation, the Director may not approve an application for certification of a completed rehabilitation under Regulation .05 of this chapter until the applicant pays an administrative fee not to exceed 3 percent of the credit amount for which the rehabilitation would be eligible based on the greater of the estimated or actual qualified rehabilitation expenditures, less the \$10 fee previously paid.

(3) The Director may not issue an initial credit certificate until the applicant pays an administrative fee not to exceed 3 percent of the initial credit certificate award, less the \$250 fee previously paid, as described in the application or by public notice posted on the Trust's website. If the fee is not received by the Trust within 90 days after the Trust sends notice that the fee is due, any reservation of an award of an initial credit certificate for the rehabilitation shall expire and the Trust may not accept an application from the applicant for a commercial rehabilitation during the 3 fiscal years following the fiscal year in which the certificate expired for failure to pay the fee.

**.05 Procedures for Certification of Completed Rehabilitation (Part 3).**

**A. Certification of completed rehabilitation.**

(1) For any substantial rehabilitation certified under regulation .04 of this chapter, the applicant may file an application with the Director requesting the Director to issue a certificate that a completed substantial rehabilitation of a certified historic structure is a certified historic structure rehabilitation.

(2) An application for certification of a completed substantial rehabilitation shall be filed on standard forms available from MHT; an incomplete application may not be processed until all required application information has been received.

(3) The Director may not certify a completed substantial rehabilitation if the applicant does not state under oath in the application the amount of the applicant's qualified rehabilitation expenditures.

B. Except for reasonable cause as determined by the Director, the Director may not certify a competitive commercial rehabilitation as a certified historic structure rehabilitation, if:

- (1) the rehabilitation is not completed within 30 months after the initial credit certificate (Part 2) is issued; or

**Commented [CF1]:** I pulled the content here from the last couple sections of .04, and created this new .05. Seems that Part 3 should have its own regulation, just like Parts 1 and 2 do.

(2) the applicant does not submit to MHT a request for certification of the completed competitive commercial rehabilitation within 12 months after the expiration of  
(a) the initial credit certificate; or  
(b) the date to which the Director postponed the expiration of the initial credit certificate, if applicable.

(3) The MHT Director may postpone the expiration of the Part 2. Requests for expiration extensions must be made in writing to the Director and must cite a reasonable cause for the delay.

C. The Director shall determine whether an application for certification of a completed substantial rehabilitation meets the Standards for Certified Historic Structure Rehabilitation. The Director shall also determine whether a competitive commercial rehabilitation qualifies as a high performance building, and promptly send notice to the applicant of the determination. The Director may inspect a rehabilitation to determine whether the rehabilitation as completed meets the Standards or qualifies as a high performance building.

D. Applicants who have been approved for the additional 5 percent tax credit for high performance buildings must file for the additional credit within 18 months from the completion of the rehabilitation or the remaining credits shall expire.

#### **.06 Administrative Review.**

A. An applicant whose application has been denied or approved with conditions by the Director or the Director's designee under Regulation .03, .04 or .05 of this chapter may file a written request for reconsideration with the Director within 30 days after the notice of disapproval or approval with conditions is sent.

B. The Director shall review the request for reconsideration within 60 days after receipt of the request. If the Director determines that the application filed under Regulation .03, .04 or .05 of this chapter meets the standards set forth in that regulation, the Director shall approve the application. If the Director determines that the application filed under Regulation .03, .04 or .05 does not meet the standards set forth in that regulation, the Director shall deny the request for reconsideration or approved the request with conditions. The Director shall promptly notify the applicant of the Director's determination.

C. An applicant whose request for reconsideration has been denied or approved with conditions by the Director or §A or §B of this Regulation may file a written request for reconsideration with the Board of Trustees of MHT within 30 days after the notice of denial or approval with conditions is sent.

D. The request for reconsideration of the Director's action under Regulation .06C of this chapter is deemed delegated to the Director for review and determination if:

(1) the request for reconsideration was filed without:

(a) an application for determination that the proposed substantial rehabilitation meets the Standards for Certified Historic Structure Rehabilitation; and

(b) written determination from the Director or the Director's designee that the proposed substantial rehabilitation meets the Standards; or

(2) the substantial rehabilitation was substantially complete at the time the application for certification of the substantial rehabilitation was filed.

E. A request for reconsideration deemed delegated to the Director under Regulation .06D of this chapter may be considered by the Director only if the request includes:

(1) information that the Director determines:

(a) is relevant to the determination;

(b) was not included in the application denied or approved with conditions; and

(c) may alter the determination; or

(2) substantial credible evidence that the process for review of applications under Regulation .03B, .04 or .05, of this chapter has not been followed, which the Director concludes may alter the determination.

F. The MHT Board of Trustees of shall review the request within 60 days after the receipt of the request. If the Board determines that the application filed under Regulation .03, .04 or .05 of this chapter meets the standards set forth in that regulation, the Board shall deny the request for reconsideration or approved the request with conditions. The Director shall promptly notify the applicant of the Board's determination. The determination of the Board shall be final and not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, of the Code.

G. The MHT Board of Trustees may delegate to the Director any review and determination under this Regulation.

#### **.07 Determining Disqualifying Work, Recapture of Tax Credits.**

A. Upon the request of the Comptroller, the Director shall determine whether any disqualifying work has occurred during a certified rehabilitation or during the recapture period that would make the rehabilitation ineligible for certification, and shall promptly notify the Comptroller.

B. Tax credit shall be recaptured if, during the rehabilitation certified under the Program or during the recapture period:

(1) for competitive commercial and small commercial projects

(a) any disqualifying work is performed on the certified rehabilitation; or

(b) the disposition of the certified rehabilitation occurs; and

(2) for a homeowner project where any disqualifying work is performed on the certified rehabilitation.

C. Tax credits shall be recaptured as follows:

(1) If disqualifying work or disposition occurs during the taxable year in which the certified rehabilitation was completed, 100% of the tax credit shall be recaptured.

(2) If disqualifying work or disposition occurs during the first full year after the taxable year in which the certified rehabilitation was completed, 80% of the credit shall be recaptured.

(3) If disqualifying work or disposition occurs during the second full year after the taxable year in which the certified rehabilitation was completed, 60% of the credit shall be recaptured.

(4) If disqualifying work or disposition occurs during the third full year after the taxable year in which the certified rehabilitation was completed, 40% of the credit shall be recaptured.

(5) If disqualifying work or disposition occurs during the fourth full year after the taxable year in which the certified rehabilitation was completed, 20% of the credit shall be recaptured.

D. The business entity that claimed the tax credit shall pay the recaptured amount of the tax credit as taxes payable to the State for the taxable year in which the disqualifying work or disposition occurred.

#### **.08 General Provisions.**

A. Program Administration.

(1) The Director's designee may take any action or make any decision required or permitted to be taken or made by the Director under this chapter.

(2) The Director may establish operational handbooks or manuals governing matters relating to administration of this chapter including descriptive statements of procedures which do not directly affect the rights of the public or procedures otherwise available to the public.

(3) The Program may adopt a handbook containing internal guidelines or policies related to the administration of the Program or establishing other requirements relating to the Program. The handbook shall be available for public examination at MHT or on MHT's website.

(4) An action or decision to be taken or permitted by the Director under the Act or these regulations may be delegated by the Director to a designee.

(5) Records for individual projects shall be retained by the applicant for 7 years from completion of the project or for 2 years from the date the recapture period ends.

(6) MHT makes no representation and accepts no responsibility as to any tax or other consequences to an entity, a person, an individual, or any other party arising out of the approval or certification, or allocation of credits for a project.

B. Waiver. The Secretary may waive or vary particular provisions of this chapter if:

(1) The waiver or variance is not inconsistent with the Act and other pertinent legal authorizations, if any;

(2) In a written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act; and

(3) The Office of the Attorney General approves the waiver for form and legal sufficiency.

C. False Statements. An applicant who knowingly makes or causes to be made a false statement that is material to an action taken by the Director or the Director's designee under this chapter is subject to revocation of any certifications under this chapter made in reliance on the false statement, and any other penalties applicable under the law.