



MOHAWK VALLEY

BROWNFIELDS DEVELOPER SUMMIT

NETWORK. EXPLORE. INVEST.

The Building Blocks of Capital Stacking

- Michael Morse, Empire State Development
- Beth Cummings, NYS Parks, Recreation & Historic Preservation
- Joe Endres, Hodgson Russ
- Kate Jarosh, Springcity Development

Moderator: Julie Pacatte, Schoharie Economic Enterprise Corp

Capital Stack
=
Equity +
Debt +
Grants +
Tax Credits

SOURCES, *typical*

- Empire State Development
 - Grants + Tax Credits
- NY Office of Parks, Rec & Historic Preservation
 - Grants + Historic Tax Credits
- NY Department of Environmental Conservation
 - Grants + Brownfield Tax Credits
- NY Department of State
 - Grants
- Federal EDA, EPA + USDA
 - Grants
- Utilities ie National Grid
 - Grants

USES, *typical*

- Community Planning
 - Brownfield Opportunity Area (BOA)
 - Feasibility Study
 - Revolving Loan Funds
- Site Investigation
 - Phase 1 Title Search
 - Phase 2 Preliminary Site Testing
- Site Clean-Up
- Reinvestment
 - Renovations
 - New Construction
- Reuse Business Activities
 - Tailored to business activities, fit-up
 - Job Creation

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Michael Morse, VP, Strategic Business Development, Empire State Development

Empire State Development

2023 Brownfields Development Summit

‘Capital Stacking’

ESD Assistance Overview

Empire State Development

NYS's primary agent for ED, comprised of agency (NYSDED) and Corporation (UDC, dba ESDC) staff:

- 10 Regional Offices, with co-headquarters in NYC and Albany
- Specialized departments including International Business, Strategic Business, Small Business, Workforce Development, MWBE, and more
- Support existing businesses and attract new ones in effort to grow both traditional industrie sectors and emerging technologies
- Help companies improve productivity and competitiveness by incentivizing modernization and access to technical assistance
- Public / private partners help leverage assistance needed to facilitate projects (NYS agencies, IDAs, utilities, regional dev. groups, etc.)
- Apply through CFA or via PIW and direct involvement with ESD staff

Assistance Factors

ESD assistance is intended to leverage other public and private resources to fill gaps in project budgets, encourage job creation / retention, and investments in facilities and equipment.

In determining how much to provide and in what form(s) for a given project, ESD considers such factors as:

- Need for capital and availability of other funding sources
- Competing offers from other locations
- Amount of public funds to offer per new or retained job
- Percentage / amount of equity contributed by the prospect
- Special factors such as bringing a new or transformative industry to a region or highly distressed area

Primary Tools

Capital Grants

Through multiple programs, most notably the Economic Development Fund, ESD capital grants may assist with:

- Land acquisition
- Construction, expansion and rehabilitation of facilities
- Acquisition and installation of machinery & equipment (M&E), as well as furniture, fixtures & equipment (FF&E)
- Working capital in rare / unique circumstances
- Grant amounts depend on investment and job-creation commitments

Job Development Authority (JDA) Loans

- Fixed rate M&E / RE loans for mfg. and certain service businesses
- Up to 40% of project cost (60% in distressed areas), with min. 10% equity and balance as bank financing

Primary Tools (cont.)

Excelsior Jobs Program

- 4 fully refundable, discretionary tax credits claimed over an up-to 10-year period:
- Excelsior Jobs Tax Credit: A credit of 6.85 percent (7.5% for 'Green' projects) of wages per new job to cover a portion of the associated payroll cost
- Excelsior Investment Tax Credit: Valued at 2% (5% for 'Green' projects) of qualified investments
- Excelsior Research & Development Tax Credit: A credit of 50% of the Federal Research and Development credit up to 3% percent of research expenditures
- Excelsior Real Property Tax Credit: Available to firms locating in certain distressed areas and to firms in targeted industries that meet higher employment and investment thresholds (Regionally Significant)

Additional Tools

FAST NY

- \$200M shovel-ready grant program created to attract and expand key growth industries
- Certification, pre-development grants and infrastructure-focused capital grants are available to help prepare key commercial / industrial sites for development
- Focus is on high-tech, high-wage, high-growth opportunities, as well as logistics, distribution and other large employers
- Municipalities, IDAs and ED organizations are eligible applicants
- Minimum 40 acre sites (exceptions considered) and brownfield redevelopment encouraged

Additional Tools (cont.)

Restore NY

- Funding for projects involving the demolition, deconstruction, rehabilitation / reconstruction of vacant, abandoned, condemned and surplus properties
- Applicants must be municipalities, demonstrate a 10% match, and hold a public hearing
- Applications are initially evaluated at the regional level
- Priority is given to projects in distressed communities and brownfield opportunity areas
- Next round TBD

Strategic Planning & Feasibility Studies

Infrastructure Grants

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Beth Cumming, Senior Historic Restoration Site Coordinator
NYS Parks, Recreation & Historic Preservation

New York State Historic Preservation Office



New York State
Parks, Recreation and
Historic Preservation

Division for Historic Preservation

PO Box 189 - Peebles Island, Waterford, NY 12188

518-237-8643 | parks.ny.gov/shpo

Federal Tax Incentives for Rehabilitating Historic Buildings

Annual Report for Fiscal Year 2022



National Park Service
U.S. Department of the Interior
Technical Preservation Services



Technical Preservation Services

National Park Service
U.S. Department of the Interior



About The Standards Tax Incentives How To Preserve Sustainability Historic Surplus Property Education & Training Hot Topics

Home > Tax Incentives > Before You Apply

A A A

20% Historic Rehabilitation Tax Credit

[Download program brochure](#)

More information you should know before you apply

- [Eligibility Requirements](#)
- [Qualified Expenses](#)
- [IRS Information](#)
- [Functionally Related Structures](#)

Program Regulations

[NPS Regulations—36 CFR 67](#)

[Internal Revenue Service Regulations 26 CFR 1.48-12. Qualified rehabilitated buildings](#)

[Internal Revenue Code Section 47. Rehabilitation Credit](#)

[Public Law No: 115-97 \(December 22, 2017\)](#) amending the Internal Revenue Code, modifies the 20% Historic Rehabilitation Tax Credit, repeals the 10% non-historic tax credit, and provides transition rules for both credits.

[Incentives provides a general introduction to the program in an](#)



The following information pertains to the 20% federal tax credit for the rehabilitation of historic properties.

Tax Credit Basics

- The amount of credit available under this program equals 20% of the qualifying expenses of your rehabilitation.
- The tax credit is only available to properties that will be used for a business or other income-producing purpose, and a "substantial" amount must be spent rehabilitating the historic building.
- Your building needs to be certified as a historic structure by the National Park Service.
- Rehabilitation work has to meet the [Secretary of the Interior's Standards for Rehabilitation](#), as determined by the National Park Service.

Before applying, consult your accountant or tax advisor to make sure that this federal tax credit is beneficial to you. Certain income and other restrictions may have a bearing on whether an owner is able to use the credit. IRS administers the Department of the Treasury's involvement with the Federal Historic Preservation Tax

The Federal Historic Preservation Tax Incentive Program was created as a result of the federal **Tax Reform Act of 1976**. The program offers a 20% credit toward qualified rehabilitation expenditures for rehabilitation of Income Producing certified historic structures.



- Since 2011, Historic Tax Credits have catalyzed **\$12 Billion** in private investment in NYS
- NYS has approved the use of the commercial tax credit for **more than 1,000** historic properties
- Historic Tax Credits have been used in **60 counties** in NYS
- The Historic Tax Credit returns money to the treasury: tax credit usage has generated **over \$1.3 Billion** in local, state, and federal tax revenue
- Historic Tax Credit usage has also **created 70,000 jobs** in NYS
- The program **continues to grow** with projects combining Low Income Housing Tax Credits and other funding sources such as the Brownfields Credits.

PRESERVATION TAX CREDITS FOR INCOME-PRODUCING PROPERTIES

20% Federal Commercial
Rehabilitation Tax Credit

+

20 to 30%* NYS Commercial
Rehabilitation Tax Credit

=

**40 to 50% Investment Tax Credit for
Historic Commercial Properties**

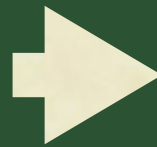
**If your investment is under \$2.5m, the NYS
credit will be 30%*



PRESERVATION PARTNERSHIP PROGRAM



New York State
Parks, Recreation and
Historic Preservation



- For commercial, industrial, agricultural or rental residential properties
- Tax credit is a dollar-for-dollar reduction in state and federal tax liability
- Single review process for federal and state credits

WHAT BUILDINGS QUALIFY?



- Listed Individually on the State and National Register of Historic Places
- Listed in a State or National Register Historic District
- Located in a Local Historic District which has been certified by the National Park Service
- Individual Buildings & Historic Districts that are eligible for the registers or in the Process of Listing

SUBSTANTIAL REHABILITATION



Value of the Property
minus
Value of the Land
minus
Depreciation
plus
Capital Improvements
Adjusted Basis

NEW YORK STATE

COMMERCIAL REHABILITATION TAX CREDIT PROGRAM ELIGIBILITY

- Project qualifies for the federal credit
- Property is located in eligible census tract
- Applicant is required to pay state fees
- State credit is capped at \$5 million
(no cap on federal credit)

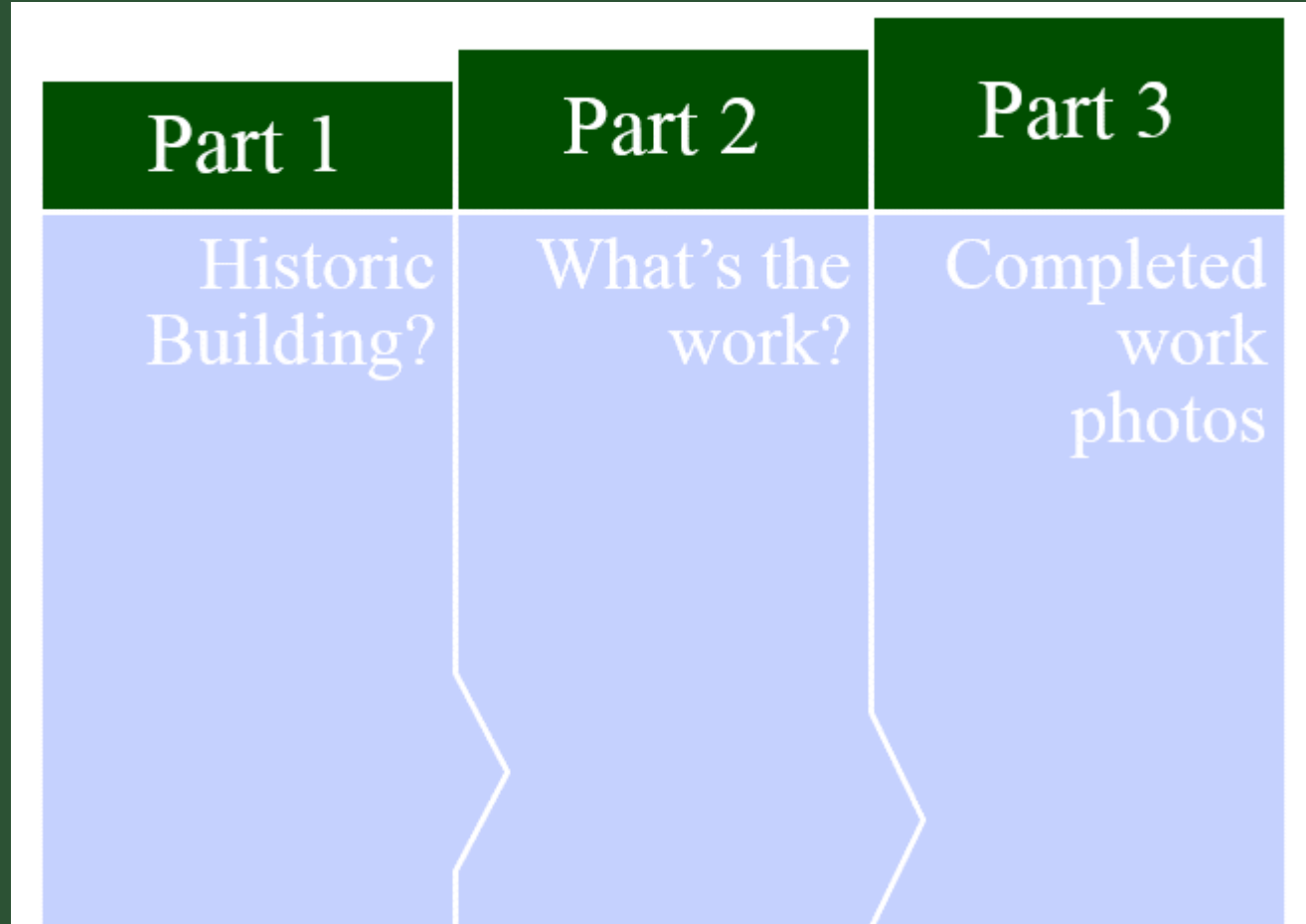


SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

The Secretary of the Interior Standards for Rehabilitation are a series of guidelines issued by the National Park Service that guide decision-making about work or changes to historic properties. The basic concepts are:

- ***Retain*** Existing Historic Materials
- ***Repair*** Damaged Historic Materials
- ***Replace*** any Materials deteriorated Beyond Repair; in Kind, if Possible

THE PAPERWORK



The Application can be found online at:

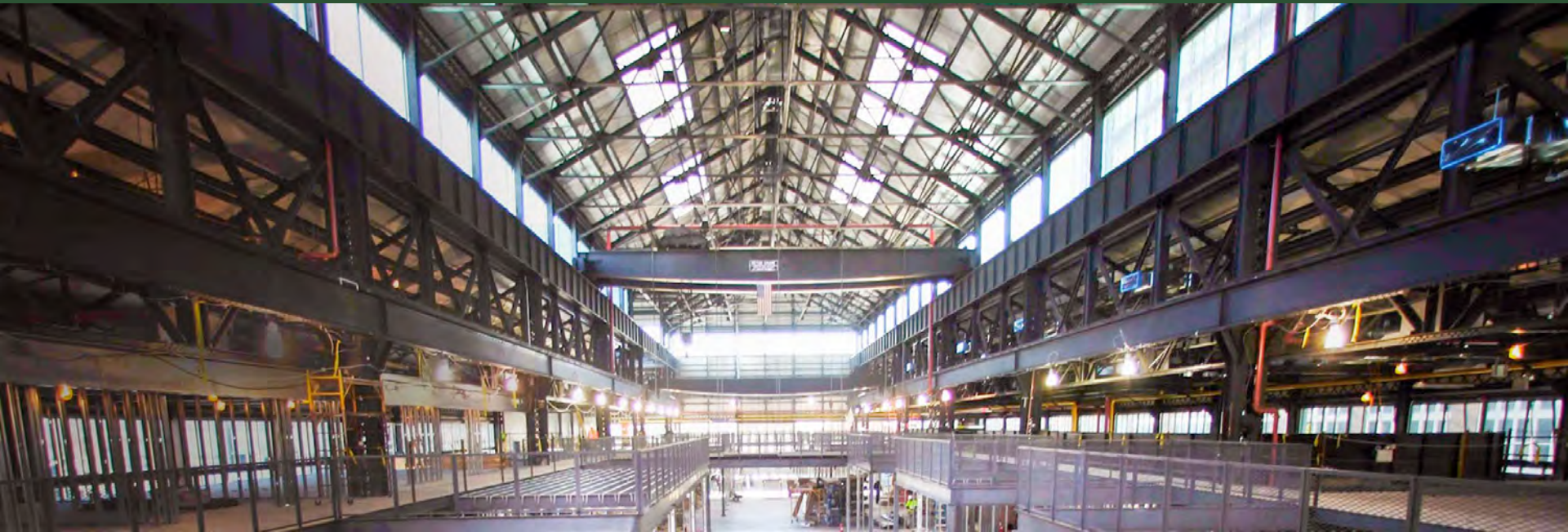
<https://www.nps.gov/subjects/taxincentives/historic-preservation-certification-application.htm>

Division for Historic Preservation

Peebles Island State Park
PO Box 189
Waterford, NY 12188

(518) 237-8643

www.parks.ny.gov/shpo



New York State
Parks, Recreation and
Historic Preservation

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**Joe Endres, Partner, Sales & Use Tax Practice Leader,
Abandoned Property Audits Practice Leader, Co-Leader Brownfield Redevelopment
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Mohawk Valley Brownfield Redevelopment Summit

Building Your Capital Stack: Funding Redevelopment

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Administrating Agencies

- Two state agencies administer the NYS Brownfield Cleanup Program:

- NYSDEC

However, don't forget that the NYS Department of Health acts as a partner to the NYSDEC in implementation.

- NYS Department of Taxation and Finance

However, don't forget that the Comptroller's Office reviews and approves all refund payments.



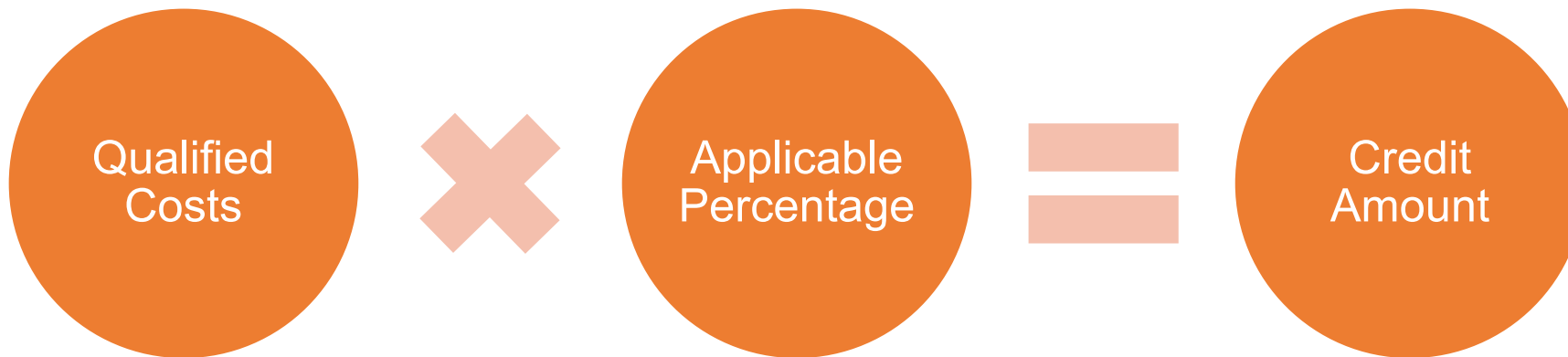
Tax Credit Overview

Overview of the Brownfield Tax Credit Program (“BTCP”):

- BTCP 1.0 (Accepted before 6/23/08).
- BTCP 2.0 (Accepted between 6/23/08 and 7/1/15).
- BTCP 3.0 (Accepted after 7/1/15).
- BTCP 4.0 Passed as part of the 2022 NYS Budget – Program extended to 2032!

Credit Calculation

- Credits are generated by two types of costs:
 1. Remediation costs
 2. Development/Construction costs
- Simple Calculation:



REDEVELOPMENT CLAIMED COSTS AND CREDITS

- **Site Preparation**

- Costs - \$2,968,923,062

- Credits - \$930,846,317 (31.35%)

- **Onsite Groundwater Remediation**

- Costs - \$108,747,300

- Credits - \$ 29,788,472 (27.39%)

REDEVELOPMENT CLAIMED COSTS AND CREDITS

- **Tangible Property Component**
- Costs - \$19,349,563,713
- Credits - \$2,633,872,982 (13.6%)

- **Total**
- Costs - \$22,409,574,718
- Credits - \$3,592,741,056 (16.03%)

Audit Overview

- Assume all BTCP claims are audited by the NYS Department of Taxation and Finance. Specifically, the Tax Department's Desk Audit Bureau will begin an audit usually within 90 days of receiving a credit claim.
 - Partnerships and S corps – usually only one audit, but all partner and shareholder refunds are held until audit is complete.
- Brownfield Tax Credit (“BTC”) Audits are the Wild West of Tax Audits – no regulations mean significant uncertainty.
- Credit claims must be filed within the applicable statute of limitation (typically 3 years), or else be forfeited.
- Once the audit is completed and the credits are approved, if there is a refund, the refund payment is usually made within 90 to 120 days, though delays can occur – there is no mechanism within the Tax Law to force payment of the credit within a certain time frame.

Hot Audit Topics Relating to Capital Stack

- Be careful of trying to combine programs – some programs don't work well together.
- Formal prohibition against using both the Brownfield credits and the NYS ITC, the Empire Zone ITC or the Excelsior ITC.
- Even if no formal prohibition, operation of other programs might raise issues. For example, several federal programs require an adjustment to basis in the underlying property. This can impact the Brownfield credits. (e.g., federal Historic Tax Credit, federal Investment Tax Credit in some instances, etc.). Structural planning can help avoid some of these basis issues.
- Federal, state and local grants cannot be used to pay costs that would otherwise kick off credits unless they are also included in the claimant's federal taxable income or federal adjusted gross income.

Hot Audit Topics

- Be careful of special allocations of credits
- Special allocations of the credits will generally be allowed if they correspond to a special allocation of the depreciation deductions and have substantial economic effect.
- In other words, it is generally safe for credits generally to follow depreciation deduction.

Hot Audit Topics

- Be careful of depreciation timelines under BCP 3.0 and later.
- Taxpayers must be careful when using accelerated depreciation for federal income tax purposes and cost segregation studies.
- Auditors have taken the position that if a taxpayer elects to depreciate property on a 5 or 7 year basis, but which could have been depreciated over 15 years or more, the Department will disallow those credits unless it qualifies for other reasons

Hot Audit Topics

- Be careful of property classified as “land improvements” and entering the basis of “real property” as defined by Treasury Regs.
- Audit takes the position that this property does not qualify as “tangible property or a building/structural component of a building.” Tax Law § 21(a)(3)(i).
- We have seen the Department disallow costs associated with property not part of the building that enter the basis of real property (e.g., [IRS Publication 946](#) and asset class 00.3 Land Improvements such as sidewalks, roads, canals, waterways, drainage facilities, sewers (not including municipal sewers in Class 51), wharves and docks, bridges, fences, landscaping shrubbery, or radio and television transmitting towers.).

Thank You

Call or email with questions!



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Traditional Project Capital Stack

- Private Equity: 15–30% of project costs
- Bank Finance: 70–85% of project costs

- In the current environment, expanding the Capital Stack has become increasingly important to a project “penciling out.”

Air City Lofts – Phase 1

Completed May 2021

- 2 Buildings with 146,745 GSF
- 84 Residential Units
- 30,000 SF of Commercial Space

Capital Stack

- Private Equity
- Bank Finance
- IDA Benefits
- ESD Grant
- County/City Grant



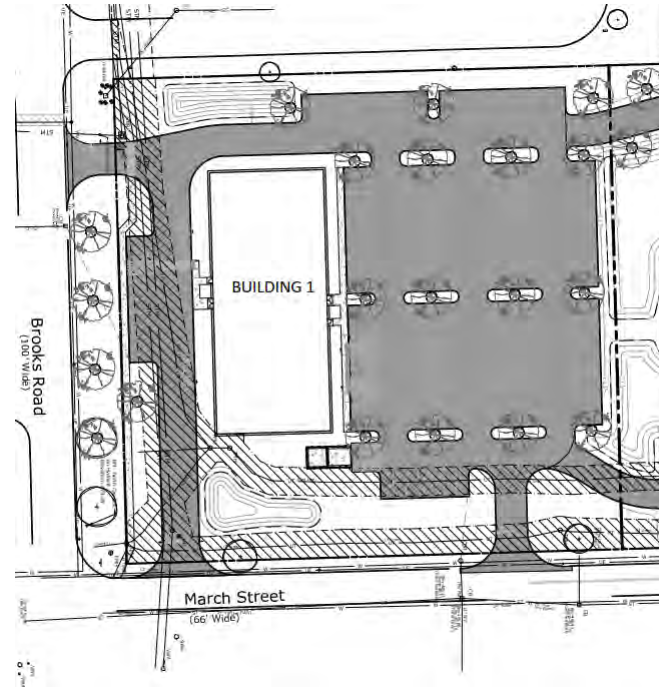
Project Polaris – Hangar Rd

Completed October 2021

- 46,179 GSF
- Commercial Use

Capital Stack

- Private Equity
- Bank Finance
- IDA Benefits
- ESD Grant

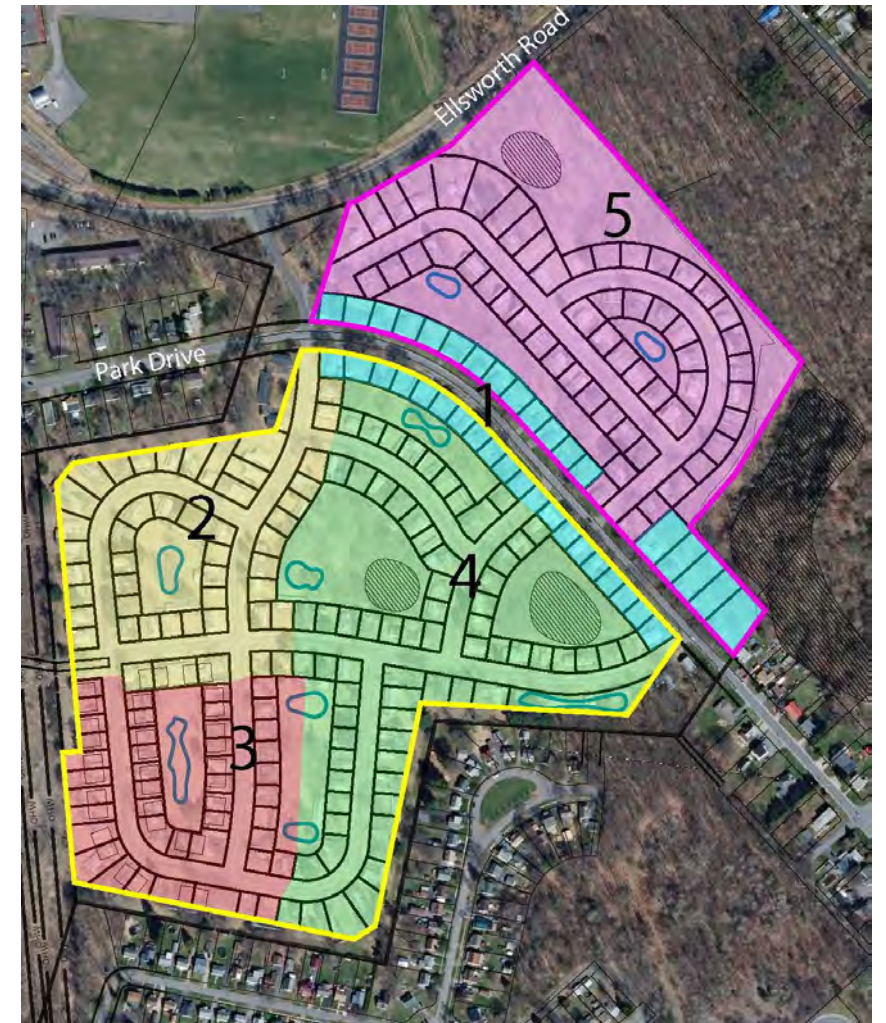


Woodhaven – Park Drive

- 250 Single Family Homes
- Total Phases - 5

Capital Stack

- Private Equity
- Bank Finance
- IDA Benefits
- Public/Private Partnership



American Theater – Troy, NY

Under Development

- 5,400SF, former Vaudeville Theater
- Historic Renovation/Rehabilitation

Capital Stack

- Private Equity
- Bank Finance
- IDA Benefits
- ESD Grant
- Restore NY
- Historic Tax Credits
- National Grid Grant
- ARPA



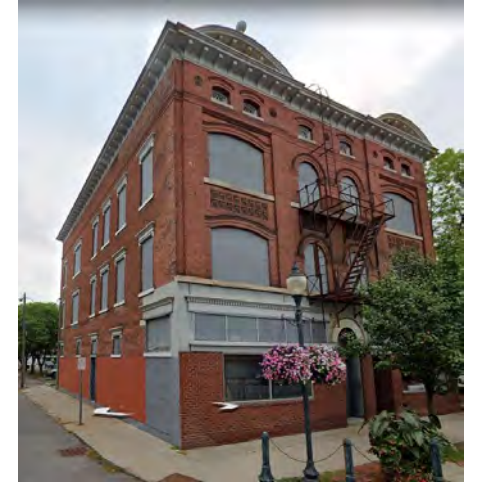
Market Sq Apartments– Glens Falls, NY

Under Development

- 18 apartments; 10,000SF comm
- Historic Renovation/Rehabilitation

Capital Stack

- Private Equity
- Bank Finance
- IDA Benefits
- DRI (ESD)
- Restore NY
- Historic Tax Credits
- National Grid Grant





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Q&A

Thank You!