MICHIGAN STRATEGIC FUND

STATE HISTORIC PRESERVATION OFFICE

HISTORIC PRESERVATION CERTIFICATION

Filed with the secretary of state on March 17, 2022

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the state historic preservation office by sections 266a and 676 of the income tax act of 1967, 1967 PA 281, MCL 206.266a and 206.676)

R 206.201, R 206.202, R 206.203, R 206.204, R 206.205, R 206.206, R 206.207, R 206.208, R 206.209, R 206.210, R 206.211, and R 206.212 are added to the Michigan Administrative Code, as follows:

R 206.201 Purpose.

Rule 201. The purpose of these rules is to prescribe the procedures whereby a qualified taxpayer may request all of the following in order to qualify for a tax credit under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713:

(a) A certification of historic significance.

(b) Certification of a rehabilitation plan.

(c) Certification of a completed rehabilitation of a historic resource.

R 206.202 Definitions.

Rule 202. (1) As used in these rules:

(a) “Act” means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

(b) “Applicant” means a qualified taxpayer or taxpayers making application for the tax credits.

(c) “Compliance period” means the 5-year period beginning on the date a certificate of completed rehabilitation is issued.

(d) “Federal Secretary” means the United States Secretary of the Interior, or a designee authorized by the Secretary, in the course of carrying out the Secretary's responsibilities to certify historic significance, rehabilitation plans, and rehabilitation work under federal law.

(e) "Inspection" means a visit by an authorized representative of the office to a certified or potentially certified historic resource for the purposes of reviewing and evaluating the significance of the historic resource or the ongoing or completed rehabilitation or for the purpose of determining whether an unapproved alteration to the completed rehabilitation was made during the 5-year compliance period.

(f) “In writing” means written comments provided via first class mail, certified mail, or email.

(g) “Project types” means owner-occupied residential resources, small nonresidential historic resources, and large nonresidential historic resources as those terms are defined in the act.

(h) “Property” means 1 or more historic resources located on 1 or more parcels under the control of a common owner where the structures are judged by the office to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house.

(i) "Rehabilitation" means the process of returning a historic resource to a useful state, through repair or alteration, that makes possible an efficient or a functional use while preserving the portions and features of the historic resource that are significant to its historical, architectural, and cultural values.

(j) “Returned to service” means the date on which, based on all the facts and circumstances, either of the following occurs:

(i) The historic resource has reached a degree of completion that would permit its operation at substantially its designed level, even though it is not in operation.

(ii) The historic resource is, in fact, in operation at substantially its designed level.

(k) "Standards and guidelines" means the Federal Secretary's standards for rehabilitation and guidelines for rehabilitating historic buildings set forth in, and authorized by 36 CFR part 67.

(l) "Tax credit" means a credit against a federal tax as allowed by section 47(a)(2) of the internal revenue code of 1990, 26 USC 47, or against a state tax as allowed by section 266a or section 676 of the act, MCL 206.266a and 206.676.

(m) “Year” means a calendar year beginning January 1 and ending December 31.

(2) A term defined in the act has the same meaning when used in these rules.

R 206.203 Preliminary information.

Rule 203. A qualified taxpayer who owns or holds a long-term lease for a resource that they believe is a historic resource and, if rehabilitated, could qualify them for a tax credit, may communicate with the office and request information on a preliminary basis with respect to whether the resource appears to be historic, whether a rehabilitation plan appears to conform with standards and guidelines, or whether completed rehabilitation appears to conform with standards and guidelines. Preliminary comments are not binding on the office, nor do they replace any formal reviews prescribed by these rules.

R 206.204 Certification; historic significance.

Rule 204. (1) An applicant shall submit an application to the office for certification of historic significance of the possible historic resource. If the applicant is eligible to claim only a federal tax credit, then the applicant shall apply on a historic preservation certification application prescribed by the National Park Service. If the applicant is eligible to claim both a federal and state tax credit, then the applicant shall apply on a historic preservation certification application prescribed by the National Park Service and file a state part 1 application, remit the state fee as prescribed in R 206.209, and provide

any other project information prescribed by the office. If the applicant is eligible to claim only a state tax credit, the applicant shall apply only on a historic preservation certification application state part 1, remit the state fee as prescribed in R 206.209, and provide any other project information prescribed by the office. An applicant may seek state part 1 certification on the basis that a property is individually eligible for listing in the National Register of Historic Places.

(2) A state part 1 application must include all of the following:

(a) Applicant name, business entity's name, mailing address, phone number, and email of each owner or long-term lessee seeking the credit, if any.

(b) Common modern name and historic name of the resource, if any.

(c) Address of the resource.

(d) Name of any historic district in which the resource is located, if applicable.

(e) For any historic resources not individually listed in the National Register of Historic Places, current photographs of the resource detailing the following:

(i) The historic resource, site, and landscaping before alteration.

(ii) The historic resource in conjunction with adjacent properties and structures along the streetscape.

(iii) All interior spaces, such as a room, and each significant interior feature.

(f) For any historic resource not individually listed in the National Register of Historic Places or seeking a preliminary determination of individual eligibility, all of the following must be provided:

(i) A brief description of the resource, including major alterations, distinctive features and spaces, and dates of construction activity.

(ii) A brief statement of significance, summarizing how the resource reflects historical values, including the values that may give a designated historic district its distinctive character.

(iii) A map clearly locating the resource in a local unit or in an established historic district.

(iv) A letter or letters from the office indicating that all of the following has been met:

(A) A National Register of Historic Places preliminary questionnaire has been received by the office.

(B) The National Register of Historic Places preliminary questionnaire has been reviewed by the office.

(C) The resource appears to be individually eligible for listing in the National Register of Historic Places.

(g) The social security number or federal taxpayer identification number of each applicant.

(h) The signature of each applicant.

(i) A completed declaration of location form if the resource is located within a local historic district.

(j) Any other information requested by the office.

(k) The state review fee as prescribed in R 206.209.

(3) In addition to all the state part 1 application requirements described under subrule (2) of this rule, an applicant shall submit any attachments that the office determines are necessary to perform its evaluation and determination. The office shall notify an

applicant, in writing, if additional information or materials are required. The office shall not process the application until the requested information or materials are furnished by the applicant to the satisfaction of the office.

(4) Upon receipt of a complete and adequately documented application, the office shall review the submission to determine the eligibility of a possible historic resource for participation in the federal or state tax credit program, or both.

(5) Within 120 days of receipt of a complete application, the office shall provide written notification to the applicant of its determination on the application for historic significance certification.

R 206.205 Certification; rehabilitation plan.

Rule 205. (1) To initiate a review of a rehabilitation plan for certification purposes, an applicant with an approved state part 1 application shall submit a state part 2 application to the office for the historic resource. An applicant may submit a state part 1 and 2 application simultaneously, but the office will not review the state part 2 application until it has determined that the state part 1 applications is complete, and the property is a qualified historic resource. If the applicant is eligible to claim only a federal tax credit, then the applicant shall apply on a historic preservation certification application prescribed by the National Park Service. If the applicant is eligible to claim both a federal and state tax credit, then the applicant shall apply on a historic preservation certification application prescribed by the National Park Service and file a state part 2 application, remit the state fee as prescribed in R 206.209, and provide any other project information prescribed by the office. If the applicant is eligible to claim only a state tax credit, then the applicant shall apply on a historic preservation certification application state part 2, remit the state fee as prescribed in R 206.209, provide any other project information prescribed by the office, and a verification of state equalized value form, as required by the act.

(2) The office will accept only 1 state part 2 application per property at a time. If multiple state part 2 applications for a property are received, the first complete and properly documented state part 2 application received by the office will be accepted and processed for review. Any additional state part 2 applications received by the office for the same property will be deemed invalid.

(3) Applications for projects with National Park Service part 2 approvals, work carried out or, that were complete and returned to service before the effective date of the legislation, will not be accepted.

(4) An applicant may file a state part 2 application that includes work already completed. The office shall determine if the completed work is acceptable on its own and in conjunction with the proposed work included in the state part 2 application. A state part 2 application must not include any work that was completed more than 1 year before the date a state part 2 application was submitted to the office. If a state part 2 application includes previously completed work, and is awarded a preapproval letter, the 8-year period for completion of the project will be reduced to 7 years and the period to submit the state part 3 application reduced to the earliest of the following to occur:

(a) Eight years from the date of the preapproval letter.

(b) One year after the historic resource is returned to service.

(5) A state part 2 application must include all of the following:

(a) Applicant name, business entity's name, mailing address, phone number, and email of each owner or long-term lessee seeking the credit, if any.

(b) Common modern name and historic name of the resource, if any.

(c) Address of the resource.

(d) Photographs deemed sufficient by the office to document the interior and exterior appearance of the historic resource, its site, and environs before the commencement of rehabilitation.

(e) Verification of the resource's state equalized value as required by the act.

(f) Plans and specifications for the proposed rehabilitation work.

(g) Any plans for adjacent, attached, or related new construction.

(h) The social security number or federal taxpayer identification number of each applicant.

(i) Any additional documentation, such as window surveys or masonry cleaning specifications, requested by the office.

(j) The signature of applicant.

(k) Any other documents the office or its governing agency requires or determines necessary.

(l) The state review fee as prescribed in R 206.209.

(6) Upon receipt of a complete and adequately documented state part 2 application, the office shall review the submission to determine whether the applicant's rehabilitation plan meets the standards and guidelines. If the office determines that additional information or documentation is needed to evaluate the submission, the office shall notify the applicant in writing. The office shall not process the application until the information or documents, or both, have been provided. To qualify for certification, a proposed rehabilitation plan must comport with each element of the standards and guidelines, to the extent applicable.

(7) Within 120 days of receipt of a complete state part 2 application, the office shall notify the applicant, in writing, if the rehabilitation plan meets the standards and guidelines. If the office determines that the rehabilitation plan meets the standards and guidelines, the office shall issue a preapproval letter to the applicant. If the office determines that the rehabilitation plan does not meet the standards and guidelines, the office shall advise the applicant of any revisions necessary for the rehabilitation plan to meet the standards and guidelines. An applicant may submit a revised rehabilitation plan to the office. The office shall not process the application until the necessary revisions are provided to the office.

(8) In the event that all available credits have been awarded, all approved state part 2 applications not receiving a preapproval letter will be granted priority status in accordance with the provision of R 206.206.

R 206.206 Certification; credit reservation priority.

Rule 206. (1) State historic preservation applications will be reviewed upon receipt, and the office shall issue either a preapproval letter or a priority number based on the date that a complete and adequately documented state part 2 application was received by the office and the amount of available tax credits. When making preapprovals, the office shall offer the maximum amount of available credit, not to exceed 25% of the estimated qualified

expenditures, to the first applicant of a particular project type that has submitted a complete application to the office. If the available credit is less than the full credit anticipated by the applicant, the applicant may accept the reduced amount of credit or decline the offer and accept a priority number based on the date of the applicant's completed application. An applicant that declines a partial credit offer may receive additional credit offers, based on their requested amount of credit and priority number as additional credit becomes available. Declining a credit offer does not extend the 2-year limit on the original priority number assigned to the application.

(2) In any year, if the maximum amount of credit allocated to a specific project type or the annual maximum credit limit for the program is reached, the office shall do the following:

(a) Notify the public via its website that the office will no longer accept any additional applications for that project type or the program for the remainder of the year.

(b) Assign a priority number to all remaining complete applications that did not receive a preapproval letter. Priority numbers will be assigned to each application based on the date the completed application was received by the office.

(c) Allow applicants that submitted incomplete applications to submit a revised application. In the event a revised application is determined to be complete, the application must be assigned a priority number based on the date the revised complete application was received by the office.

(d) In the last month of each year, the office shall review all applications that have been assigned priority numbers and based on the lowest priority number, contact applicants to verify if the applicants are still seeking credit for a project. If so, the office shall do the following:

(i) Issue a preapproval letter for any recaptured, unclaimed, or returned credits from previous years to other applications within that project type based on priority numbers. If there are no applications within that specific project type that will accept the recaptured, unclaimed, or returned credit, then it must be made available to any approved application, regardless of project type, based on priority number.

(ii) Notify any applicants that have not received a preapproval letter and that have a priority number that was issued at least 2 years before the review date that the application has expired, the applicant is no longer be eligible for any available credit, and the applicant will need to submit a new application if the applicant wants to continue to seek a credit.

(iii) Determine which projects will receive funding in the next year based on priority number and project types.

(iv) Post on its website the total amount of credit, if any, per project type that will be available to new applications in the subsequent year.

(3) On the first business day of the new year, the office shall begin accepting new applications for that year for all project types with available credits until any or all conditions in subrule (2) of this rule are met.

R 206.207 Certification; rehabilitation plan amendments.

Rule 207. (1) To initiate a review of a rehabilitation plan amendment for certification purposes, an applicant with an approved state part 1 and 2 application shall submit a state amendment application to the office for the historic resource. If the applicant is eligible

to claim only a federal tax credit, the applicant shall apply on a historic preservation certification amendment application form as prescribed by the National Park Service. If the applicant is eligible to claim both, federal and state tax credits, then the applicant shall apply on a historic preservation certification application amendment form as prescribed by the National Park Service and file a state application amendment form, and any provide other project information prescribed by the office. If the applicant is eligible to claim only a state tax credit, then the applicant shall apply only on a historic preservation certification application amendment form prescribed by the office.

(2) An application for rehabilitation plan amendment must include all of the following:

(a) Applicant name, business entity's name, mailing address, phone number, and email of each owner or long-term lessee seeking the credit, if any.

(b) Common modern name and historic name of the resource, if any.

(c) Address of the resource.

(d) Photographs determined sufficient by the office to document the condition and appearance of the area or areas affected by the proposed work scope modifications.

(e) A written description of the proposed changes or new work.

(f) Plans and specifications for the amended rehabilitation work.

(g) Any plans for adjacent, attached, or related new construction as appropriate.

(h) The social security number or federal taxpayer identification number of applicant.

(i) Any additional documentation, such as window surveys or masonry cleaning specifications, requested by the office.

(j) The signature of each applicant.

(k) Any other documents the office or its governing agency require or determine necessary.

R 206.208 Certification; completed rehabilitation.

Rule 208. (1) To initiate a review of a completed rehabilitation, an applicant with an approved state part 1 and 2 application shall submit a state part 3 application to the office. If the applicant is eligible to claim only a federal tax credit, the applicant shall apply on a historic preservation certification application prescribed by the National Park Service. If the applicant is eligible to claim both a federal and state tax credit, then the applicant shall apply on a historic preservation certification application prescribed by the National Park Service and file a state part 3 application, remit the state fee as prescribed in R 206.209, and provide any other project information prescribed by the office. If the applicant is eligible to claim only a state tax credit, the applicant shall file the historic preservation certification application state part 3, remit the state fee as prescribed in R 206.209, and provide any other project information prescribed by the office.

(2) For an historic resource with a preliminary determination of eligibility for listing in the National Register of Historic Places state part 1, the listing process must be completed before the state part 3 application is submitted.

(3) Except as stipulated in R 206.205(4), the state part 3 application must be submitted within 9 years after the date of the preapproval letter or within in 1 year of the date that the historic resource is returned to service, whichever occurs first. If the state part 3 application is not submitted within the required time frame, the office shall rescind the

preapproval letter and notify the applicant in writing of the rescission and that the applicant will no longer be eligible for credits relating to the rescinded preapproval letter.

(4) The state part 3 application must include all of the following:

(a) Applicant name, business entity's name, mailing address, phone number, and email of each owner or long-term lessee, if any, seeking the credit.

(b) Common modern name and historic name of the resource, if any.

(c) Address of the resource.

(d) Date the preapproval letter was issued.

(e) The project completion date.

(f) The social security number or federal taxpayer identification number of applicant.

(g) A signed statement that the completed rehabilitation is consistent with the approved state part 2 application and meets the standards and guidelines.

(h) Photographs adequate to document the completed rehabilitation.

(i) For an historic resource with a preliminary determination of eligibility for listing in the National Register of Historic Places, the date the historic resource was officially listed.

(j) The state review fee as prescribed in R 206.209.

(k) All economic data as described in the act.

(l) Assignment/Reassignment form or forms if the credits are being transferred.

(5) When filing a state part 3 application, an applicant may request additional credit in excess of the amount stated in the preapproval letter. Requests for additional credit in excess of the amount stated in the preapproval letter must be treated as a new credit request and be given a new priority level based on the date of the request. Before the end of the year in which the state part 3 application was received, the office shall either approve the applicant’s request for additional credits, if any are available, or approve the existing state part 3 application based on the amount of credit listed in the applicant’s preapproval letter.

(6) Upon receipt of a complete and adequately documented request for certification of completed work and other items as described in this rule, the office shall perform a review to determine whether the completed rehabilitation conforms with the rehabilitation plans and plan amendments, if any, and meets the standards and guidelines. The office shall determine conformance to the standards and guidelines on the basis of application documentation and other available information showing the historic resource as it existed in its historic setting. To qualify for certification, the completed rehabilitation work must comport with each element of the standards and guidelines, to the extent applicable.

(7) Within 120 days of the receipt of the state part 3 application, the office shall notify the applicant of its determination in writing. The office may require changes in the completed rehabilitation to enable the completed rehabilitation to meet the standards and guidelines. The office shall not process the state part 3 application until the required changes in the completed rehabilitation have been made by the applicant.

(8) If the office determines that the completed rehabilitation meets the standards and guidelines, then the office shall notify both the applicant and the department of treasury of the office's determination.

R 206.209 Fees.

Rule 209. (1) An applicant that submits a historic preservation certification application prescribed by the National Park Service by itself, or in conjunction with a historic preservation certification application prescribed by the office, is responsible for the payment of fees to the National Park Service in the amount prescribed in 36 CFR 67.11.

(2) An applicant that submits a historic preservation certification application prescribed by the office, or in conjunction with a historic preservation certification application prescribed by the National Park Service, is responsible for payment of fees described in subrule (1) of this rule as well as those fees specified in subrules (3), (4), and (5) of this rule. The office shall not provide an applicant with any certification decision until the appropriate fee has been received. Upon request of the office, the applicant shall remit the appropriate fee as directed by the office. All fees are nonrefundable.

(3) An applicant shall remit the following state part 1 fees to the office based on property type:

(a) Owner-occupied residential properties: $50.00.

(b) All other properties: $100.00.

(4) An applicant shall remit the following state part 2 fees to the office based on property type and amount of qualified expenditures:

(a) Owner-occupied residential properties:

(i) One hundred dollars if anticipated qualified expenses are $20,000.00 or less.

(ii) Two percent of the anticipated credit if anticipated qualified expenses are greater than $20,000.00.

(b) All other properties:

(i) Two hundred dollars if anticipated qualified expenses are $40,000.00 or less.

(ii) Two percent of the anticipated credit if anticipated qualified expenses are greater than $40,000.00.

(5) An applicant shall remit the following state part 3 fees to the office based on the following fee schedule:

(a) Owner-occupied residential properties:

(i) One hundred dollars if anticipated qualified expenses are $20,000.00 or less.

(ii) Two percent of the credit received, not to exceed the preapproval letter credit if anticipated qualified expenses are greater than $20,000.00.

(b) All other properties:

(i) Two hundred dollars if anticipated qualified expenses are $40,000.00 or less.

(ii) Two percent of the credit received, not to exceed the preapproval letter credit if anticipated qualified expenses are greater than $40,000.00.

(6) Sale or transfer agreement processing: $1,000.00.

R 206.210 Inspection; revocation.

Rule 210. (1) The office may conduct an inspection of a historic resource during the

rehabilitation process and during the compliance period.

(2) The office may, after giving the qualified taxpayer 30 days' written notice, issue a revocation of a certificate of completed rehabilitation if the office determines that a rehabilitation was either not undertaken in conformity with the standards and guidelines or, if during the compliance period, either the historic resource was damaged, altered, or substantially changed or the applicant undertook further unapproved work inconsistent with the standards and guidelines. The office shall notify the department of treasury of any revocation issued under this subrule. The department of treasury shall determine the state tax consequences to the qualified taxpayer of a revocation of certification in accordance with section 266a(9) of the act, MCL 206.266a.

R 206.211 Appeals.

Rule 211. (1) An applicant may appeal a denial of an application for certification submitted under these rules. If the appeal involves a historic preservation certification application prescribed by the National Park Service by itself, or in conjunction with a historic preservation certification application prescribed by the office, then the applicant shall follow the procedures set forth in 36 CFR 67.10 to appeal the federal portion of the credit. If the appeal involves an application for certification prescribed by the office by itself, then the applicant shall follow the procedures prescribed in this rule for the state credit.

(2) To file an appeal under this rule, an applicant shall submit a written appeal to the state historic preservation officer, care of the office, within 60 days from the date of the denial. The request must state "APPEAL" on its header, state the reason or reasons the applicant believes the denial should be reversed, and include all information, records, and other materials the applicant wants considered.

(3) The state historic preservation officer, or his or her delegate, shall schedule a hearing. Once a final order has been issued, an applicant has exhausted all of their administrative remedies.

R 206.212 Sale or transfer of resource.

Rule 212. (1) If, during the compliance period, a qualified taxpayer wishes to either sell or transfer the qualified taxpayer's interest in the historic resource, the qualified taxpayer shall notify the office and the department of treasury in writing of their intent at least 6 months before the proposed sale or transfer.

(2) The qualified taxpayer shall do all of the following:

(a) Provide at their own expense, and in a form and manner acceptable to the office, all of the following information, in addition to the notice:

(i) Copy of the executed purchase and sale agreement.

(ii) Proof of notification to the department of treasury.

(iii) A copy of the deed to the property.

(iv) The name and project number of the project that received the credits.

(v) The name and address of the property being transferred.

(vi) The legal description of the property.

(vii) The name and contact information for all qualified taxpayers that received credits resulting from the previous state part 3 certification.

(viii) The name and contact information for the new owner.

(ix) The date the state part 3 certification for the project was issued.

(x) The total amount of state credits received by the project.

(xi) Any additional document or information requested by the office.

(b) Execute the historic resource transfer agreement.

(c) Remit the fee in accordance with rule R 206.209(6).

(3) Upon receipt of a fully executed historic resource transfer agreement, the office or its designee shall do both the following:

(a) Record the historic resource transfer agreement with the register deeds having jurisdiction over the property.

(b) Return a fully executed and recorded copy of the historic resource transfer agreement to the qualified taxpayer and the new owner.