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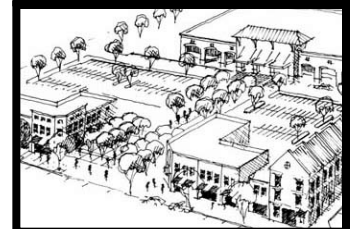
Spring 2009

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I. Introduction

Through green building programs, local governments are getting developers to build more energy efficient and environmentally sustainable buildings.¹ The ways in which municipalities go about achieving green building goals are wide and varied. Each local government faces challenges in tailoring a program to meet its specific needs. In some circumstances the best approach is to create an incentive structure, where developers are given something of value to offset their development costs.² These incentives can include direct monetary encouragement in the form of tax rebates, fee waivers, or grants.³ Intangible incentives such as expedited permitting or density bonuses are also common.⁴ Some jurisdictions utilize a hybrid of both mandates and incentives for certain types of development, both public and private.⁵

In Georgia, the green building movement has rapidly increased over the past five years largely without the

use of local government private development green building incentives.⁶ With the population of Atlanta estimated to increase by over two million people over the next 20 years, the demand for both commercial and residential development is likely to reflect the increased consumer demand for sustainable buildings and green residential development.⁷ If metro Atlanta jurisdictions and developers are to reap the benefits of the green building movement, an understanding and awareness of private development incentive programs is valuable. This paper focuses on private development incentives, and surveys the policies and ordinances that local governments around the country have utilized to provide incentives for private developers to build green, sustainable buildings. Georgia's existing green building programs are then briefly discussed, and, in conclusion, suggestions are made for local programs moving forward.

The environmental and economic benefits of building "green" can accrue to both builders and local governments alike.⁸ Local governments benefit from green building practices by becoming recognized environmental leaders.⁹ Promoting green building also enhances the health, safety, and welfare of a municipality's citizens and in turn can increase citizen satisfaction and retention.¹⁰ Builders and the management companies that own and operate green buildings likewise reap the benefits of recognized leadership in environmental stewardship. Green buildings offer substantial environmental benefits, such as "lower pollution from reduced energy use, reduced water consumption and wastewater output, reduced solid waste creation, cleaner outdoor air and

6 See Southface, *Green Building in Georgia*, *Southface Journal of Sustainable Building* (2005), available at <http://www.southface.org/web/resources&services/publications/journal/sfjv305/sfjv305-greenbuilding-n-ga.htm> (last visited May 11, 2009).

7 *Id.*

8 U.S. Environmental Protection Agency, *Frequent Questions, What Are the Benefits of Green Building*, <http://www.epa.gov/greenbuilding/pubs/faqs.htm#3> (last visited May 11, 2009).

9 U.S. Green Building Council, *Roadmap to Sustainable Government Buildings* (2009), available at <http://www.usgbc.org/ShowFile.aspx?DocumentID=5486>.

10 *BuildItGreen.org, Roadmap for Local Government, Overview of Green Building*, available at <http://www.builditgreen.org/files/uploads/Local%20Governments/RoadmapPart1.pdf> (last visited May 11, 2009).

1 Les Lo Baugh et al., *LEED Green Building Incentives*, 556 *PLI/Real* 23, 28 (2008).

2 *Id.*

3 U.S. Environmental Protection Agency Region 5, *Using Incentives to Promote Green Building Practices* (July 31, 2008), <http://www.nemw.org/Incentives2PromoteGreenDevMtgSummary.pdf>.

4 *Id.*

5 *Id.*

reduced ‘heat island’ effects, [and] improved health of building users.”¹¹ Additionally, green building techniques also provide economic advantages over comparable non-sustainable buildings. Such advantages include substantial operating savings, creation of market value, decreases in natural resource use, and improved health and productivity of building occupants.¹² Improvements in indoor air quality can also reduce the likelihood of liability in the context of workers’ compensation claims, personal injury claims, or governmental regulatory violations over poor indoor air quality.¹³

II. Green Building Standards

The standard used for measuring what constitutes green building varies with the jurisdiction and type of development. An overwhelming majority of jurisdictions, however, have adopted the Leadership in Energy and Environmental Design (LEED) Green Building Rating System as their benchmark for green development.¹⁴ The LEED system was created in 1998 and is administered by U.S. Green Building Council (USGBC), a national non-profit organization.¹⁵ The USGBC uses different rating systems dependent upon the type of development project. These systems include New Construction, Existing Buildings, Commercial Interiors, Core & Shell, Schools, Retail, Healthcare, and Homes.¹⁶

11 Benjamin S. Kingsley, *Making it Easy to Be Green: Using Impact Fees to Encourage Green Building*, 83 *N.Y.U. L. Rev.* 532, 537 (2008).

12 Carl J. Circo, *Using Mandates and Incentives to Promote Sustainable Construction and Green Building Projects in the Private Sector: A Call for More State Land Use Policy Initiatives*, 112 *Penn St. L. Rev.* 731, 736 (2008).

13 Julie H. Kim & Cherie S. Raidy, *Emerging Legal Requirements and Incentives for Going Green*, *Cal. Real Estate J.* (2007), available at http://www.foley.com/publications/pub_detail.aspx?pubid=4405.

14 Jesse W. Abair, *Green Buildings: What it Means to be “Green” and the Evolution of Green Building Laws*, 40 *Urb. Law.* 623, 625 (2008).

15 U.S. Green Building Council, *About USGBC*, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=124> (last visited April 12, 2009).

16 U.S. Green Building Council, *LEED Rating Systems*, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=222> (last visited April 12, 2009). Additionally, LEED for Neighborhood Development is another system that is currently in a

Each rating system, with the exception of LEED for Homes, is broken down into the following categories: Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, and Innovation & Design Process.¹⁷ LEED 2009, just launched on April 27, 2009, adds a seventh category that takes into account geographically specific regional environmental priorities.¹⁸ Within each category, points or “credits,” are awarded for items that have green features or benefits.¹⁹ In addition to the credited features, there are also certain prerequisite features that must be met for the project to be certified.²⁰

A developer can use the LEED checklist or “scorecard” to determine the number of credits that the building may receive.²¹ The development must receive a certain minimum number of credits in order to achieve various levels of certification from the USGBC.²² Either the project will fail to obtain a minimum number of LEED credits and will not receive certification, or the project will achieve one of the following designations: LEED Certified (the lowest form of LEED certification), LEED Silver, LEED Gold, or LEED Platinum (the highest form of LEED certification).²³ The higher the

pilot phase and is set to launch in late summer 2009. It is the first national program for sustainable neighborhood design, integrating principles of smart growth, urbanism, and green building. U.S. Green Building Council, *LEED for Neighborhood Development*, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=148> (last visited May 11, 2009).

17 U.S. Green Building Council, *LEED for New Construction Frequently Asked Questions*, available at <http://www.usgbc.org/ShowFile.aspx?DocumentID=3352> (last visited April 16, 2009).

18 U.S. Green Building Council, *LEED 2009: Technical Advancements to the LEED Rating System*, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1971> (last visited May 11, 2009).

19 U.S. Green Building Council, *Certification*, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1497> (last visited April 12, 2008).

20 See U.S. Green Building Council, *LEED 2009 For New Construction and Major Renovations*, available at <http://www.usgbc.org/ShowFile.aspx?DocumentID=5546> (last visited May 11, 2009).

21 *Id.*

22 *Id.*

23 As an example, the LEED 2009 for New Construction and Major Renovations rating system has the following credit breakdown: (1) 0-39 points, no certification; (2) 40-49 points, LEED Certified; (3) 50-59 points, LEED Silver; (4) 60-79

certification level, the more environmentally-friendly and sustainable the building design.

There are a number of competitors to LEED both in the commercial and residential construction market. One national competitor to LEED is the Green Globes rating system, which is accredited through the American National Standards Institute, and sponsored by the Green Building Initiative.²⁴ More widely adopted and used in Canada, the Green Globes system is primarily used by large developers and property management companies.²⁵ In addition, the Energy Star Program, created by the U.S. Environmental Protection Agency and U.S. Department of Energy in 1998,²⁶ certifies buildings in the top quarter of comparable buildings for achieving energy efficiency, meeting certain performance criteria, and satisfying minimum standards for healthy indoor air quality.²⁷

The residential development market presents a variety of challenging, localized green building considerations resulting in various residential green building certification programs offered as equivalents to LEED certification. For example, in Atlanta, EarthCraft House certification has become a well-recognized residential development designation.²⁸ Over 4,000 EarthCraft House single-family homes and over 1,500 EarthCraft multi-family dwelling units have been certified in the Atlanta metro area since 1999.²⁹ Much like the LEED standard, EarthCraft House follows a systems approach to home building, awarding credits based on efficiency, durability, indoor air quality, resource efficiency, waste management, and water conservation.³⁰

points, LEED Gold; and (5) 80 points and above, LEED Platinum. *See id.*

24 *Green Globes, What is Green Globes?*, <http://www.greenglobes.com/about.asp> (last visited April 15, 2009).

25 *Id.*

26 *EnergyStar.com, About ENERGY STAR*, http://www.energystar.gov/index.cfm?c=about.ab_index (last visited May 11, 2009).

27 *EnergyStar.com, The ENERGY STAR for Buildings & Manufacturing Plants*, http://www.energystar.gov/index.cfm?c=business.bus_bldgs (last visited May 11, 2009).

28 *Atlanta Building News, EarthCraft House Helps Atlanta Grow Green* (2007), available at <http://www.earthcrafthouse.com/documents/abn/abnmarch07.pdf>.

29 *Earthcraft House*, <http://www.earthcrafthouse.com/> (last visited April 15, 2009).

30 *EarthCraft House, EarthCraft House Overview*, <http://>

III. Survey of Local Jurisdictions – Green Building Incentive Programs for Private Development

The jurisdictions surveyed for this paper were selected to provide a broad overview of the various incentive programs that local governments are using to encourage green building in the private development sector. The municipalities range in population and size and include programs incorporated by a variety of jurisdictions including townships, cities, and counties. Direct monetary incentives are discussed first, and include fee waivers/refunds/reductions, tax incentives, “feebates,” utility rebates, and grants. Intangible incentives are discussed second and include expedited permitting/review, density bonus, publicity/awards, and free technical assistance/education. Compliance and enforcement of the various incentive programs is discussed in the last section.

A. Direct Monetary Incentives

1. Fee Waiver/Refund/Reduction

Local governments typically charge builders fees associated with plan review and permitting of their building projects. Additionally, if a builder wants a project to become LEED certified, there are fees associated with registering and certifying it through the USGBC.³¹ In exchange for achieving a designated green building standard, some local jurisdictions offer a reduction, waiver, or refund of the fees associated with development or green building certification.

Since 2005, Chicago, Illinois, has used a Green Permit Program to motivate developers to build green buildings in both the commercial and residential development sectors.³² Along with expedited permitting,³³ Chicago builders can receive a reduction

www.earthcrafthouse.com/About/criteria.htm (last visited May 11, 2009).

31 *Green Building Certification Institute, LEED Project Registration and Certification Fees*, <http://www.gbci.org/DisplayPage.aspx?CMSPageID=127> (last visited May 11, 2009).

32 *City of Chicago Department of Buildings, Green Permit Program* [hereinafter *Green Permit Program*], available at http://www.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/GreenPermitBrochure_1.pdf (last visited May 11, 2009).

33 *See discussion infra* Part III, B.1.

or a complete 100% waiver of consultant review fees in exchange for certain levels of LEED certification.³⁴ If the development is single-family residential, a two-star rating under the Chicago Green Homes program must be achieved in order to receive the incentive.³⁵ The Chicago Green Homes program is a checklist-based rating system that was developed by the Chicago Department of Environment.³⁶ Certain types of development must also achieve locality-specific sustainability and development goals, such as incorporation of green roofs or including a certain percentage of affordable housing units.³⁷ Builders must submit an application along with documentation of the building's green elements to the Chicago Department of Construction and Permits.³⁸ Applicants are then guided through the process by a designated team of green design experts.³⁹

Mecklenburg County, North Carolina⁴⁰ has a Green Permit Rebate Program.⁴¹ Under this program, the county offers a variable rebate of the fees associated with obtaining a building permit dependent upon the level of LEED certification achieved – a 10% reduction for LEED Certified, 15% for LEED Silver, 20% for LEED Gold, and 25% for LEED Platinum.⁴² The equivalent under the Green Globes system will also qualify a project for the fee reduction.⁴³ After a

verification process, the project is issued the applicable rebate.⁴⁴ This program was funded through an initial start-up amount of \$1.15 million and is supplemented with an annual 2-5% set-aside of the previous year's permitting fees.⁴⁵ The program is reviewed annually by the Mecklenburg Board of County Commissioners as part of the annual budget process.⁴⁶

2. Tax Incentives

Tax incentives to build green buildings typically take the form of either tax abatement or tax credits. Abatements typically reduce or eliminate the paying of a certain amount of tax, usually property tax, over a specified period of time.⁴⁷ This type of incentive is usually incorporated into a municipality's existing tax abatement policy.⁴⁸ In theory, abatements spur development by increasing builders' profit margins.⁴⁹ Because buyers pay reduced property taxes for a specified period of time, builders can charge more for the properties.⁵⁰ Tax credits, on the other hand, reduce tax liability dollar for dollar.⁵¹ The credit can be applied against a specified type of tax – such as corporate/business taxes, personal income taxes, and/or property taxes.⁵² The credit usually is awarded to the owner or occupant of the building and is claimable over a specified period of time, such as five to ten taxable years.⁵³ This allows for flexibility when tax

34 *Green Permit Program*, *supra* note 32.

35 *Id.*

36 *Id.*

37 *City of Chicago Department of Buildings, Green Permit Menu Items*, available at http://www.cityofchicago.org/web-portal/COCWebPortal/COC_EDITORIAL/GreenPermitMenuItems2009.pdf (last visited May 11, 2009).

38 *Green Permit Program*, *supra* note 32.

39 *Green Permit Program*, *supra* note 32.

40 Mecklenburg County has a population of 890,515. U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/37/37119.html> (last visited May 11, 2009). The county includes the city of Charlotte, NC. *Id.*

41 *County of Mecklenburg Code Enforcement, Mecklenburg County Code Enforcement's Green Permit Rebate Program* [hereinafter *Mecklenburg Green Permit Rebate Program*], <http://www.charmeck.org/Departments/LUESA/GreenPermitRebate/Home.htm> (last visited April 17, 2009).

42 *County of Mecklenburg Code Enforcement, Green Permit Rebate Program Description* [hereinafter *Mecklenburg Green Rebate Program Description*], <http://www.charmeck.org/Departments/LUESA/GreenPermitRebate/Program+Description.htm#II> (last visited April 17, 2009).

43 *Mecklenburg Green Permit Rebate Program*, *supra* note 41.

44 *Id.*

45 *Mecklenburg Green Rebate Program Description*, *supra* note 41.

46 *Id.*

47 Tax abatement is defined by Business Dictionary.com as “a reduction of or exemption from taxes granted by a government for a specified period, usually to encourage certain activities such as investment in capital equipment.” *BusinessDictionary.com*, <http://www.businessdictionary.com/definition/tax-abatement.html> (last visited April 17, 2009).

48 *See, e.g., Harris County, Tex., Guidelines & Criteria for Granting Tax Abatement in a Reinvestment Zone Created in Harris County 1* (2008) [hereinafter *Harris County Tax Abatement Guidelines*], available at <http://www.co.harris.tx.us/CmpDocuments/103/Economic%20Development/2008-05-20%20Approved%20Tax%20Abatement%20Guidelines.pdf> (last visited April 17, 2009).

49 *Playbook for Green Buildings & Neighborhoods, Tax Incentives*, <http://www.greenplaybook.org/buildings/act/policy/financial/articles75.htm> (last visited May 11, 2009).

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

liability in one year is not enough to use up the entire amount of the credit.

An example of the use of property tax abatement as a green building incentive can be found in Harris County, Texas.⁵⁴ In 2008, the county adopted an ordinance establishing a partial tax abatement in exchange for LEED certification with the USGBC.⁵⁵ This program was incorporated into Harris County's existing tax abatement scheme for designated "reinvestment zones."⁵⁶ This incentive promotes the county's aim of attracting industries that are committed to protecting the environment.⁵⁷ To be eligible for the program, the development must be new commercial construction, in a designated "reinvestment zone," and the costs of development must be at least \$1 million.⁵⁸ If eligible, builders then submit an application, along with a non-refundable \$1,000 application fee, to the county before construction begins.⁵⁹ Buildings that are LEED Certified are eligible for tax abatement at a rate of 1% of "Imputed LEED-Related Value Increment."⁶⁰ Although the term is not defined in the ordinance, this value is thought to approximate the incremental investment associated with obtaining the relevant level of LEED certification.⁶¹ In other words, to qualify for the abatement, after construction, the appraised value of the building must have increased by at least \$100,000 and be attributable to the LEED certification.⁶² If a building achieves a higher level of LEED certification, the tax abatement increases, maxing out at a 10% abatement in exchange for LEED Platinum certification.⁶³ The abatement is intended to offset the additional tax liability that sometimes results from the increased appraised values assigned

54 Press Release, Bay Area Economic Partnership, *Harris County "LEEDs" the Way in Texas' Commercial Green Building Tax Abatements* (Aug. 6, 2008) [hereinafter Harris County Press Release], available at <http://www.bayareahouston.org/DATA/Home/PressRoom/NewsReleases/HarrisCountyLEED-sthewa/Harris%20County%20LEEDs%20the%20way.PDF>.

55 *Id.*

56 *Harris County Tax Abatement Guidelines*, *supra* note 48, at 1.

57 *Id.*

58 Harris County Press Release, *supra* note 54.

59 *Id.*

60 *Harris County Tax Abatement Guidelines*, *supra* note 48, at 6.

61 Harris County Press Release, *supra* note 55.

62 *Id.*

63 *Harris County Tax Abatement Guidelines*, *supra* note 48, at 6.

to LEED certified buildings.⁶⁴ If the abatement is approved, the agreement is effective up to ten years.⁶⁵ The actual abatement benefit does not accrue until the construction project is completed and the appropriate LEED certification is obtained.⁶⁶

Baltimore County, Maryland offers property tax credits as an incentive to green building. Enacted in 2006, the county offers property tax credits in exchange for any new commercial construction that earns a minimum of LEED Silver certification.⁶⁷ The credit is for ten consecutive years and applies to the real property taxes assessed on the building.⁶⁸ In 2008, the Baltimore County Council adopted a bill that provides similar tax credits for new *residential* construction that earns a minimum of LEED Silver certification.⁶⁹ The amount of the credit varies depending on the level of LEED certification achieved. For example, a 40% credit is offered for LEED Silver certification, 60% for LEED Gold, and 100% for LEED Platinum.⁷⁰ The credit runs with the property and does not lapse if there is a change in ownership.⁷¹ Total tax credits for any one year cannot exceed \$5 million.⁷² The program is reviewed annually by the Baltimore County Council.⁷³

An example of a green building incentive offered on the state level is the Sustainable Building Tax Credit offered by the Oregon Department of Energy.⁷⁴ The credit is available for commercial buildings that

64 Harris County Press Release, *supra* note 54.

65 *Harris County Tax Abatement Guidelines*, *supra* note 48, at 7.

66 *Id.*

67 *County Council of Baltimore County, Md., Bill No. 78-07*, available at http://chapters.usgbc.org/baltimore/pdf/advocacy/Balt%20County_Commercial_b07807.pdf (last visited May 11, 2009).

68 *Id.*

69 *County Council of Baltimore County, Md., Bill No. 28-08*, available at [http://chapters.usgbc.org/baltimore/pdf/advocacy/Balt%20County_Residential%20b02808%20\(LEED%20Home%20Tax%20Credit\)_passed.pdf](http://chapters.usgbc.org/baltimore/pdf/advocacy/Balt%20County_Residential%20b02808%20(LEED%20Home%20Tax%20Credit)_passed.pdf) (last visited May 11, 2009).

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *Oregon Department of Energy, Conservation Division, BETC - Sustainable Buildings* [hereinafter *Oregon Sustainable Buildings*], <http://www.oregon.gov/ENERGY/CONS/BUS/tax/sustain.shtml> (last visited May 11, 2009).

achieve LEED Silver rating or higher.⁷⁵ The building must also meet additional locality-specific sustainability goals, such as increased energy efficiency, and must report the amount of solar radiation to be received by the building on an annual basis, as designated by the Oregon Department of Energy.⁷⁶ Unlike the property tax credits offered in Baltimore County, Maryland, which were based on the level of LEED Certification achieved, the amount of the Sustainable Building Tax Credit is based on gross square footage of the entire building.⁷⁷ The tax credit incentive was enacted to help offset the extra design and commissioning costs as well as the costs of registering and certifying with the USGBC.⁷⁸

3. Feebates

Under a feebate program, a municipality typically requires builders of all types of development to contribute to a fund.⁷⁹ Those builders creating projects that conform to certain sustainable criteria receive their fund contributions back.⁸⁰ The proceeds from the fund are usually used to pay for green building education programs or other incentives.⁸¹ The idea behind a feebate system is to encourage desired behavior by penalizing undesired behavior.⁸²

Arlington County, Virginia, is currently using a feebate structure in its Green Building Fund program.⁸³ The county requires that all developers who do not commit to achieving LEED certification contribute to the county's Green Building Fund at a rate of \$0.03 per square foot of development.⁸⁴ This number was

established based on the costs to register and certify a project with the USGBC.⁸⁵ If a development that has paid into the fund later becomes LEED certified, the contribution is refunded upon the county's receipt of LEED certification documentation.⁸⁶ To date, the current balance of the fund is \$130,600 and close to \$25,000 has been used on education and outreach programs to developers and the community on green building issues.⁸⁷

4. Utility Rebates

Utilities can also partner with municipalities to offer reductions in the costs of providing service in exchange for the construction of certain green building features. An example of this kind of partnership can be seen in the city of Pasadena, California.⁸⁸ Pasadena requires certain kinds of private development to achieve certain levels of LEED certification.⁸⁹ In addition, all projects must achieve specific LEED credit related to water efficiency.⁹⁰ If a building exceeds the minimum state energy efficiency standards by a certain percentage, customers of Pasadena Water and Power qualify for certain rebates from the utility.⁹¹ The utility matches one month's electricity savings for each percentage of efficiency better than code that the building performs, up to \$100,000 per building.⁹²

5. Grants

Portland, Oregon, offers money from its Green Investment Fund, a yearly grant supported by the City of Portland and Energy Trust of Oregon, in exchange for innovative approaches to green building.⁹³ For

75 *Id.*

76 *Id.*

77 Oregon Department of Energy, *Business Energy Tax Credits Technical Requirements* (June 20, 2008), available at http://www.oregon.gov/ENERGY/CONS/BUS/docs/Tech_Req.pdf.

78 Oregon Sustainable Buildings, *supra* note 74.

79 See, e.g., *Green Building Law Update, A Tale of Two Cities: Portland's Feebate*, <http://www.greenbuildinglawupdate.com/2008/12/articles/codes-and-regulations/a-tale-of-two-cities-portlands-feebate/> (last visited May 11, 2009).

80 *Id.*

81 *Id.*

82 *Id.*

83 Arlington County, Va., *Green Building*, <http://www.arlingtonva.us/DEPARTMENTS/EnvironmentalServices/epo/EnvironmentalServicesEpoGreenBuildings.aspx> (last visited May 11, 2009).

84 Arlington County, Va., *Green Building Density Incentive*

Policy for Site Plan Projects, County Board Agenda Item Meeting of March 14, 2009, 3 (Feb. 27, 2009) [hereinafter *Arlington County Density Incentive Program*], available at <http://www.co.arlington.va.us/Departments/EnvironmentalServices/epo/PDFfiles/file69951.pdf>.

85 *Id.*

86 *Id.* at 8.

87 *Id.* at 3.

88 City of Pasadena, *Green Building Program*, http://www.ci.pasadena.ca.us/permitcenter/GreenCity/building/gbprogram.asp#Green_Building_Incentives (last visited May 11, 2009).

89 Pasadena, Cal., Code § 14.90 (2008).

90 *Id.* § 14.90.050.

91 Pasadena Water and Power, *High-Performance Building Program*, available at <http://www.ci.pasadena.ca.us/waterand-power/HPBP.pdf> (last visited May 11, 2009).

92 *Id.*

93 City of Portland Bureau of Planning and Sustainability,

2009, the total fund and maximum amount available for any one project is set at \$425,000.⁹⁴ Industrial, multi-family residential, commercial, and mixed-use projects within the Portland city limits are eligible, and public or private organizations may apply.⁹⁵ Portland's incentive program is one of the few jurisdictions surveyed in this report that does not use LEED certification as a baseline standard for green building.⁹⁶ Instead, the city created its own scoring system based on locality-specific goals of energy efficiency, waste reduction, stormwater management, and community connectivity.⁹⁷ Established in 2000, the program has awarded funding to over 110 projects.⁹⁸

B. Intangible Incentives

1. Expedited Permitting/Review

Building permitting and plan review often make up a lengthy part of the development process. For projects that meet certain green building criteria, some municipalities offer expedited permitting and/or plan review. Green building projects thus pass through the process faster, saving time and money for the developer.

Since 2005, Chicago, Illinois, has offered its Green Permit Program to developers who incorporate green building components into their projects.⁹⁹ As discussed in the fee waiver section, Chicago builders can receive expedited permitting along with a reduction in consultant fees in exchange for meeting certain levels of LEED certification.¹⁰⁰ Applicants must submit documentation outlining the green building components to be used in the project to the Chicago Department of Construction and Permits, whose staff then guides the applicant through the

process.¹⁰¹ If a project is accepted into the program, the permitting turnaround time depends upon the type of construction.¹⁰² Commercial projects that earn LEED Certified or Silver will receive a permit in less than 30 days.¹⁰³ If LEED Gold or Platinum is achieved, the turnaround time is tightened to 15 days.¹⁰⁴ Residential projects must earn a two-star rating under the Chicago Green Homes program in order to be eligible for expedited permitting.¹⁰⁵ In addition, for both commercial and residential development, a project must also utilize certain strategies or technologies that enhance sustainability, expand affordable housing, stimulate economic development in traditionally depressed areas, and/or increase accessibility.¹⁰⁶

Starting in October 2009, the city of Dallas, Texas, will offer expedited plan review for projects that provide a checklist from LEED, Green Build North Texas, or an equivalent, approved green building standard that demonstrates that the project would be eligible to obtain certification under the selected standard.¹⁰⁷ After October 2011, expedited plan review will only be available to projects that can demonstrate eligibility to obtain LEED Silver or higher, or an equivalent.¹⁰⁸

Los Angeles, California, has a Private Sector Green Building Plan, offering expedited plan review and permitting in exchange for projects that register with the USGBC to earn LEED Silver or higher.¹⁰⁹ All private development of 50,000 square feet or more in the city must earn LEED Certified.¹¹⁰ In addition, Los Angeles has a LEED Accredited Professional on staff as a part of its cross-departmental Sustainability Team.¹¹¹

Green Investment Fund Grant, <http://www.portlandonline.com/OSD/index.cfm?c=42134> (last visited May 11, 2009).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *City of Portland Green Investment Fund, Request for Proposals* (Dec. 1, 2008), available at <http://www.portlandonline.com/OSD/index.cfm?c=49139&a=220343>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Green Permit Program*, *supra* note 32.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Dallas, Tex., Code* § 1003.1.1 (2008).

¹⁰⁸ *Dallas, Tex., Code* § 1003.1.2 (2008).

¹⁰⁹ *City of Los Angeles, Antonio Villaraigosa Mayor of Los Angeles, Green Building*, <http://www.ci.la.ca.us/Mayor/villaraigosaplan/EnergyandEnvironment/GreenBuilding/index.htm> (last visited May 11, 2009).

¹¹⁰ *Los Angeles, Cal. Code* § 16.10 (2008).

¹¹¹ See *Building a Green Los Angeles, Green Building Team*, available at <http://www.ci.la.ca.us/Mayor/stellent/groups/elect>

2. Density Bonus

Some municipalities allow developers to build at a higher density than the underlying zoning allows if certain green building criteria are met. The density bonus is usually measured either in terms of Floor Area Ratio (FAR), square footage, or building height.¹¹² FAR requirements represent the ratio of the total floor area of a building to the size of the lot upon which it is located.¹¹³ Most jurisdictions restrict the zoning district where this type of development can take place. This type of incentive is attractive to developers because it increases the valuation of the building and allows the developer to expect more rent from the building.¹¹⁴

Arlington County, Virginia, offers a FAR bonus in exchange for certain levels of LEED certification.¹¹⁵ Between .5 and .10 FAR is awarded for projects achieving the LEED Certified level.¹¹⁶ Up to .50 FAR is awarded for LEED Platinum projects.¹¹⁷ The incentive is not limited by the type of development (commercial or multi-family residential) or by the form of development (new construction or rehabilitation).¹¹⁸ Arlington's density incentive program has been successful in encouraging developers to build to the LEED standard. Since December 2003, approximately 36% of buildings approved by the county have site plan conditions and enforcement mechanisms that require LEED certification.¹¹⁹ Out

of a total of 5,599,588 square feet of office space, 3,099,235 square feet has been approved with the LEED incentive bonus.¹²⁰ Roughly 55% of the office space approved in the county is slated to be certified under the LEED standard, including three Certified, six Silver, one Gold, and one Platinum.¹²¹ In the residential sector, 2,211 units have been approved with the LEED incentive bonus out of a total of 9,019 units.¹²²

The City of Germantown, Tennessee, based its incentive program on developers' desire for additional height.¹²³ Germantown allows for height bonuses in two areas of its designated Smart Growth Zoning District in exchange for LEED certification.¹²⁴ The height bonus confers up to one additional story over the base maximum building height allowed in the district.¹²⁵ Both new development and rehabilitation are eligible for the height bonus consideration.¹²⁶ If the building is at least 60% office, LEED certification is required.¹²⁷

3. Publicity/Awards

The city of Gainesville, Florida, offers marketing and advertising incentives along with expedited permitting and permit fee reductions in exchange for a builder's commitment to build to LEED certification standard or its equivalent under the Florida Green Building Coalition Green Home Designation Standard.¹²⁸ This advertising includes placement of building signs designating the project as being under the city's green building program, inclusion of the project developers on the city's green building web page, and permission to use the city's green building program logo on the developer's brochures and other advertising materials.¹²⁹ The city also offers press releases that

edofficials/@myr_ch_contributor/documents/contributor_web_content/lacity_004869.pdf (last visited May 11, 2009).

112 See *Center for Land Use Education, Planning Implementation Tools - Density Bonus* (2005) [hereinafter *Planning Implementation Tools - Density Bonus*], available at <http://www.uwsp.edu/CNR/landcenter/pdf/implementation/densitybonus.pdf>.

113 *Understanding Density and Floor Area Ratio, Examples of Residential, Mixed Use, Commercial and Industrial Developments in Boulder*, available at http://www.bouldercolorado.gov/files/PDS/planning%20and%20zoning/density_floorarearatio.pdf (last visited May 11, 2009).

114 See *Planning Implementation Tools - Density Bonus*, *supra* note 112.

115 *Arlington County, Va., Green Building Incentive Program*, <http://www.arlingtonva.us/Departments/EnvironmentalServices/epo/EnvironmentalServicesEpoIncentiveProgram.aspx> (last visited May 11, 2009).

116 *Id.*

117 *Id.*

118 *Id.*

119 *Arlington County Density Incentive Program*, *supra* note 84, at 4.

120 *Id.*

121 *Id.* at 5.

122 *Id.*

123 Email from Lauren Johnson, Land Use Planner, City of Germantown, to Anne Marie Pippin, student, University of Georgia School of Law (April 14, 2009, 11:59 EDT) (on file with author).

124 *Germantown, Tenn., Code* § 23-767(k) (2008).

125 *Id.*

126 *Id.*

127 *Id.*

128 *City of Gainesville, Fla., Code* § 6-11 (2008).

129 *City of Gainesville, Fla., Code* § 6-12(3) (2008).

promote green building developments.¹³⁰ In addition, the city confers its “Green Building Award” annually to a development project from each of the city’s designated development sub-groups: new residential construction, residential retrofitting/remodeling, new commercial/non-city construction, and new city-owned civic or office construction.¹³¹

4. Free Technical Assistance/Education

Chicago, Illinois, offers a Green Building Education and Awareness Program.¹³² The program highlights the work of green builders and seeks to drive demand for their product.¹³³ The program also has an educational component that is housed in the Chicago Center for Green Technology.¹³⁴ This building was the county’s first municipal building to be renovated to the LEED Platinum level.¹³⁵ The Center for Green Technology houses the Green Building Resource Center, which offers resources and technical assistance to developers and the general public seeking to learn more about green building techniques.¹³⁶ Resources include green building standards and construction guides, reference books, material samples, and a database of green product information.¹³⁷

C. Compliance

Compliance is an evolving issue for local governments to ensure that developers are not receiving incentives without complying with the applicable green building standard.¹³⁸ The enforcement or compliance mechanism employed is dependent upon the type of incentive offered. For example, jurisdictions that offer expedited permitting typically require LEED

certification documentation (or its equivalent) prior to acceptance into the expedited permitting program.¹³⁹ Additionally, if tax incentives are offered, the incentive does not accrue until after the project is complete and the proper green building certification is verified.¹⁴⁰ For other types of incentives that must be conferred prior to the completion of the project, such as a density bonus, compliance issues can be a little more complex.¹⁴¹ The examples below illustrate the range of approaches currently being taken.

Arlington County, Virginia, requires developers to post a bond or letter of credit prior to issuance of the first certificate of occupancy if they are applying for the county’s green building FAR bonus.¹⁴² The amount of the bond or letter of credit is calculated based on the size of the bonus density approved multiplied by the average rental rate for space in the specific area, approximating the benefit the developer will see as a result of the density bonus.¹⁴³ If the development is not able to achieve LEED certification at any level after receiving the density bonus, the bond or credit amount defaults to the county.¹⁴⁴ To date, none of the developers who have posted bond have failed to meet their obligations.¹⁴⁵

In Germantown, Tennessee, if a developer does not achieve LEED certification, the building will not be issued a certificate of occupancy.¹⁴⁶ If a developer violates the requirements of the Green Building Program employed in the city of Dallas, Texas, they may be fined up to \$2,000.¹⁴⁷

Pasadena, California, employs a Green Building Compliance Official, who verifies project registration

130 *Id.*

131 *City of Gainesville, Fla., Code* § 6-12(4) (2008).

132 *City of Chicago, Policies and Incentives*, http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?topChannelName=HomePage&contentOID=536910903&Failed_Reason=Invalid+timestamp,+engine+has+been+restart+ed&contenTypeName=COC_EDITORIAL&com.broadvision.session.new=Yes&Failed_Page=%2Fwebportal%2FportalContentItemAction.do (last visited May 11, 2009).

133 *Id.*

134 *Id.*

135 *Id.*

136 *Id.*

137 *Id.*

138 Lo Baugh et al., *supra* note 1, at 29.

139 *See* sources cited *supra* notes 33, 108, 110.

140 *See* sources cited *supra* notes 49, 68, 70.

141 *See* sources cited *supra* notes 116, 125.

142 *Arlington County Density Incentive Program*, *supra* note 84, at 7.

143 *Id.*

144 *Id.*

145 *Id.*

146 Email from Lauren Johnson, Land Use Planner, City of Germantown, to Anne Marie Pippin, student, University of Georgia School of Law (April 14, 2009, 11:59 EDT)(on file with author).

147 *Dallas, Tex., Ordinance No. 27131*, Section 10 (April 9, 2008), available at <https://www.usgbc.org/ShowFile.aspx?DocumentID=4046> (last visited April 17, 2009).

with the USGBC and reviews the LEED checklist prior to issuing the appropriate permit.¹⁴⁸ This official is either the director of planning and development or his or her designee.¹⁴⁹ Additionally, during construction the compliance official verifies that the LEED checklist measures are being implemented.¹⁵⁰ If at any time the official determines that the project is not in compliance, a stop work order may be issued and may remain in effect until the official determines that the project is in compliance.¹⁵¹ The official is given some discretion in determining whether the requirements of the LEED checklist are met and if not whether the applicant has made a good faith effort to comply.¹⁵² In determining good faith, the official is allowed to take into account the availability of green building materials and technologies, the availability of markets for materials to be recycled, and the documented efforts of the applicant to comply.¹⁵³

IV. Existing LEED Incentives for Private Development in Georgia

Chatham County is the only jurisdiction in Georgia that is currently offering private development green building incentives.¹⁵⁴ The county passed an ordinance giving full state and county property tax abatement for commercial buildings achieving LEED Gold certification.¹⁵⁵ Full abatement is offered for the first five years, then subsequently tapers off by 20% each year until the tenth year.¹⁵⁶ In order to qualify for the tax abatement, projects must be new or expanding businesses in an enterprise zone that increase employment opportunities.¹⁵⁷

Also, three jurisdictions in Georgia have chosen to employ a mandate structure for public as well as private development projects: the cities of Chamblee, Conyers, and Doraville.¹⁵⁸ The City of Chamblee requires all new commercial construction of 20,000 square feet or greater to earn LEED Certified status or one Green Globe.¹⁵⁹ The City of Conyers requires all new residential or municipal buildings with over 5,000 square feet of occupied space to be LEED Certified or certified through EarthCraft House.¹⁶⁰ Lastly, the City of Doraville requires all new commercial, industrial, and multi-family residential buildings over 20,000 square feet to be LEED Certified.¹⁶¹ Each of the above jurisdictions has the same or similar requirements for publicly-funded municipal development.

Other jurisdictions in Georgia mandate certain levels of LEED certification for publicly-funded development projects only. One such jurisdiction is Athens-Clarke County, which adopted a resolution in 2004 requiring all new municipal buildings to be LEED Certified.¹⁶² Another example is the City of Atlanta, which passed an ordinance in 2003 requiring all city-funded projects over 5,000 square feet or costing over \$2 million to achieve LEED Silver certification.¹⁶³

148 *Pasadena, Cal., Code* § 14.90.060 (2008).

149 *Pasadena, Cal., Code* § 14.90.030 (2008).

150 *Pasadena, Cal., Code* § 14.90.060 (2008).

151 *Pasadena, Cal., Code* § 14.90.070 (2008).

152 *Id.*

153 *Id.*

154 *U.S. Green Building Council, Summary of Government LEED Incentives*, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1852> (last visited April 16, 2009) [hereinafter *Summary of Government LEED Incentives*].

155 *Chatham County, Ga., Code* § 7-1002(a)(2) (2008).

156 *Chatham County, Ga., Code* § 7-1002(a)(2)(A-E) (2008).

157 *Chatham County, Ga., Code* § 7-1002(a) (2008).

158 *Summary of Government LEED Incentives*, *supra* note 154.

159 *Chamblee, Ga., Code* § 93-1 (2008).

160 *Conyers, Ga., Code* § 8-2-114 (2008).

161 *Doraville, Ga., Ordinance No. 2008* (2008), available at http://bcap-energy.org/files/DoravilleGA_2008LEEDOrdinance.pdf.

162 *Athens-Clarke County, Ga., Res. No. CEN-001* (Aug. 7, 2006), available at <https://www.usgbc.org/ShowFile.aspx?DocumentID=2265> (last visited April 16, 2009).

163 *Atlanta, Ga., Code* § 75-19 (2008).

V. Conclusion

Local government private development incentive programs vary from place to place, and depend upon many factors including the local government's administrative structure, existing policies, type of development to be incentivized, and the resources and funding available. Any Georgia jurisdiction looking to implement a green building incentive program will need to take these factors into account as well as the legislative constraints of Georgia's Home Rule system. Additionally, local governments in Georgia may want to consider implementing awareness and educational programs in order to familiarize the local development community with green building techniques and practices. Many jurisdictions surveyed in this paper give educational workshops and seminars for both developers and local government staff, and use marketing and publicity to highlight the work of green builders in the area. Developers in cities such as Atlanta have already embraced green building and have recognized that it is not a fad.¹⁶⁴ With Atlanta expected to incorporate green building requirements into its building code for private development in the near future,¹⁶⁵ other surrounding cities are sure to follow with private development green building programs of their own.

¹⁶⁴ Beth Mattson-Teig, *Sustainable Standards Enter Building Codes*, *National Real Estate Investor*, Feb 7, 2008, http://nreionline.com/brokernews/greenbuildingnews/standards_building_codes/.

¹⁶⁵ *Id.*

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