



National Trust *for*
Historic Preservation
Save the past. Enrich the future.

July 20, 2023

The Honorable Sara C. Bronin
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Dear Chair Bronin:

The National Trust for Historic Preservation appreciates the opportunity to offer comments on the application and interpretation of the Secretary of the Interior's Standards for the Treatment of Historic Properties (*Secretary's Standards*). For the purposes of this inquiry, the National Trust will address its comments on the rehabilitation standard with a focus on buildings, as suggested in the request for comments by the Advisory Council on Historic Preservation (ACHP).

The ACHP presented two questions concerning the *Secretary's Standards*, including identification of any substantive or procedural issues associated with their application and interpretation, and the role that guidance and training might have in improving the federal response to equity, housing supply, energy efficiency, renewable energy, or climate change-related concerns. The National Trust will focus its comments on the application and interpretation of the *Secretary's Standards* as it relates to the Historic Rehabilitation Tax Credit (HTC), at 36 C.F.R. Part 67, but we would offer additional comments on the broader scope of the *Secretary's Standards* should an extended review be undertaken.¹

The National Trust has long called for the application and interpretation of the *Secretary's Standards* to be sufficiently flexible to produce positive preservation outcomes while maintaining a clear set of expectations for satisfying those standards. As the ACHP noted in its request for comments, the Standards are regularly referenced by multiple federal agencies for a variety of purposes. The *Secretary's Standards* are also used at the state and local levels to protect historic places when planning for rehabilitation that is regulated or funded at the state and/or local level. State agencies, for example, use the *Secretary's Standards* to regulate state historic tax credits and other grants. The National Trust also requires that entities receiving our bricks and mortar grants adhere to the *Secretary's Standards*.

¹ The National Trust's comments are substantially influenced by the work of our subsidiary, the National Trust Community Investment Corporation (NTCIC). Since 2000, NTCIC has provided over \$1.3 billion in equity for HTC and multi-tax-credit projects, becoming one of the country's leading tax credit syndicators. See <https://ntcic.com>.

Perhaps nowhere are the *Secretary's Standards* more actively referenced and implemented than through the certification process to qualify for federal historic tax credits. Through this program, the *Secretary's Standards* are utilized daily as owners of historic buildings endeavor to rehabilitate these properties while retaining the buildings' historic character. The HTC represents the federal government's largest investment in the rehabilitation of historic properties and is often appropriately described as a highly successful community investment strategy, with more than 48,000 historic properties rehabilitated over the course of four decades and a direct economic investment of \$181 billion. Simply stated, our nation would not look or feel the same without this longstanding and successful economic incentive. One need look no further than the 39 states that now offer some form of state-level historic tax incentive, modeled after the federal historic tax credit, to understand the broad and lasting success of this incentive, which relies so heavily on the application and interpretation of the *Secretary's Standards*. The agencies regulating these state tax incentives also rely on the application of the *Secretary's Standards* as required by state law.

The historic preservation field acknowledges the success and all that this incentive has accomplished, where the *Secretary's Standards* have served at the center of the certification process. It is also appropriate to ask, however, how this incentive might be improved, particularly as it relates to the application of the *Secretary's Standards*. How could this incentive spur even greater investment in historic preservation? There are more than 129 million existing buildings in the U.S., with approximately half of those buildings having reached 45 years old or older.² The number of federal HTC projects certified by the NPS averages roughly 1,000 projects each year. How could this tax incentive be expanded to help fund the rehabilitation of even more of our nation's older building stock?

The National Trust is committed to the idea that the HTC should maximize opportunities to use historic preservation to promote economic development and community revitalization. We recognize that, while the Standards have served to inform historic preservation activity for generations, today there is a greater emphasis on how historic preservation functions as a solution to pressing social issues, like equitable development, affordable housing, environmental sustainability, and other social objectives. Toward this end, it is reasonable and appropriate to periodically conduct a peer-reviewed examination of the application of the *Secretary's Standards* as it relates to federal historic tax credit to ensure the program is effectively incentivizing private investment in the rehabilitation of historic buildings. After nearly fifty years of program implementation, the National Trust believes it is an appropriate time for the National Park Service to evaluate, in consultation with a broad and diverse set of historic rehabilitation stakeholders, whether changes to the application and interpretation of the *Secretary's Standards* would help to increase the effectiveness of the program in the future.

Over the course of several years beginning in 2003 and concluding in September 2006, the National Trust participated in the development of recommendations to the National Park Service seeking to improve the administration of the federal historic tax credit. The National Trust participated in this

² Department of Energy, Office of Energy Efficiency & Renewable Energy, "Around half of the nation's more than 123 million homes and 5.9 million commercial buildings were built before 1980, prior to the existence of today's efficient products and most equipment standards and building codes. These buildings represent a significant opportunity to unlock energy savings through efficiency improvements, and this means local jobs." <https://www.energy.gov/eere/buildings/about-building-technologies-office>

process as a member of the Historic Preservation Development Council, where part of the objective was to improve the federal historic tax credit by making it more sensitive to the realities of the real estate development process.³ The recommendations, as they pertain to the application and interpretation of the *Secretary's Standards*, include the following findings, which are just as relevant and applicable today as they were 17 years ago:

The Committee finds that the Federal Historic Rehabilitation Tax Credit Program's application of the *Standards* is marked by considerable flexibility. Nevertheless, the Committee finds that in some cases reconciling interpretation of the *Standards* with other public policy goals, such as smart growth, energy efficiency, and affordable housing, can be problematic. The Committee finds further that in some cases reconciling interpretation of the *Standards* with market pressures that are part of large and complex projects or in projects where a building's historic function or design makes adaptive use especially difficult can be problematic.

The Committee recommends that the NPS, in consultation with its historic preservation partners, reexamine and revise as appropriate its interpretation of the Standards in order to provide some greater measure of flexibility in addressing especially challenging projects. The NPS review should focus in particular on windows, interior treatments, new additions and related new construction, modern-day requirements, and use of modern technologies and materials.⁴

In thinking about how to address uncertainty in the application of the *Secretary's Standards*, the Historic Preservation Development Council noted the importance of clear and accessible guidance:

The Committee finds that in some cases the NPS interpretation of individual treatment issues such as window replacement, interior alterations, new construction, and new building technologies is unclear. There is also a lack of accessible guidance concerning the significant flexibility that already exists in the program to meet today's challenges. This lack of clarity has led to uncertainty and errors on the part of project designers.

The Committee recommends that the NPS, in consultation with its historic preservation partners, review, revise and enhance its guidance materials as appropriate, so that the NPS interpretation of the Standards is clearer to project designers, and so that the outcome of the NPS review is more predictable.⁵

Federal regulations governing the application and interpretation of the *Secretary's Standards* for purposes of certifying historic tax credit projects include a "reasonableness" standard that is intended to guide the decision-making process. The regulations specify, "The following Standards are to be applied to specific rehabilitation projects ***in a reasonable manner, taking into consideration economic and technical feasibility.***"⁶ It is noteworthy that this directive is not included in the subsequent chapter, The Secretary of the Interior's Standards for the Treatment of Historic Properties, which states, "The standards will be applied **taking into consideration the economic and technical**

³ National Park System Advisory Board Report, "Federal Historic Rehabilitation Tax Credit Program, Recommendations for Making a Good Program Better" 2006.

⁴ Id. at page 19.

⁵ Id. at page 22.

⁶ 36 C.F.R. 67.7(b), Standards for rehabilitation (emphasis added).

feasibility of each project,”⁷ without the reference to “reasonable[ness]”. This distinction is presumably intended as necessary to ensure that the historic tax credit is adequately incentivizing private investment in the complex work to rehabilitate historic buildings. By including a reasonableness standard to the application of the *Secretary’s Standards* for purposes of certifying HTC projects, the regulations emphasize that the totality of circumstances, including economic and technical feasibility, is a fundamental governing principle.

A key policy objective of the National Trust is building support for the idea that reusing and retrofitting existing buildings is an effective and impactful strategy to promote sustainable community development and reduce carbon emissions. In 2013, the National Park Service produced, [“The Secretary of the Interior’s Standards for Rehabilitation & Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings,”](#) which seeks to enhance overall understanding and interpretation of basic preservation principles.⁷ A number of challenges remain, however. Updated guidance could address areas where the *Secretary’s Standards* frequently come into conflict with energy efficiency goals, such as wall insulation, windows, and solar panels. The June 2023 National Trust report, [State Historic Tax Credits: Opportunities for Affordable Housing and Sustainability](#) summarizes the results of conversations with more than 30 practitioners engaged in the work of preservation, development, housing, sustainability, and climate action. The majority of practitioners recommended “address[ing] conflicts between energy efficiency requirements and interpretation of the Secretary of the Interior’s Standards. Given advancements in building technologies and the adoption of increasingly rigorous building codes, electrification requirements, building performance standards, and other climate policies in a growing number of communities, the economic feasibility of adaptive reuse projects that utilize HTCs is likely to be reduced unless we develop a way to reconcile and align these important objectives.

Recognizing that rehabilitation, as distinct from the restoration treatment, allows some alterations to be made to historic buildings that are necessary to accommodate modern uses, a consistent program of producing technical guidance will help to ensure that the historic tax credit program is performing as intended. To clarify the intended flexibility in the program, the NPS, in consultation with its historic preservation partners, should continue to develop and prioritize publishing guidance to enhance understanding of how to apply and interpret the *Secretary’s Standards* with a particular focus on how project reviewers and applicants should understand the reasonableness standard. Guidance should seek to explain the project review analysis that allows a finding that the project as a whole meets the *Secretary’s Standards*, even where satisfying a specific standard in isolation may prove problematic.

The *Secretary’s Standards* have served at the center of the preservation movement for 46 years and have guided the successful completion of rehabilitation projects in every state in the nation. The National Trust believes the *Secretary’s Standards* are sufficiently flexible as written and that it is their interpretation and application that requires periodic evaluation to ensure they are working as intended. A regular cadence of guidance is necessary on a variety of issues to position the *Secretary’s Standards* for the future. The National Trust recognizes the work of the National Park Service to produce guidance including sustainable development and flood adaptation and encourages the agency to prioritize its stated intention of producing guidance on the interpretation of the *Secretary’s*


⁷ 36 C.F.R. 68.3, Standards (emphasis added).

Standards with an opportunity for national preservation partners to offer suggestions on how to reconcile historic preservation standards with important policy objectives like ensuring equitable preservation outcomes for underserved communities, affordable housing creation, and sustainable and less carbon-intensive development.

As was understood nearly two decades ago, there is an inherent tension in carrying out a rehabilitation program that seeks to accommodate more than one public policy goal. It is important, however, that we endeavor to balance the goals of historic preservation, real estate development pressures, and other social objectives. A review of the *Secretary's Standards* and subsequent guidance would help facilitate eliminating barriers that will lead to increased use of the historic tax credit program and the preservation of more of our nation's historic buildings. The National Trust is committed to working with our federal partners in support of a strong historic preservation program that is well positioned for the future.

Thank you for the opportunity to offer these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaw Sprague". The signature is stylized with a large, sweeping initial "S" and a horizontal line extending to the right.

Shaw Sprague
Vice President of Government Relations