



## Historic Preservation and the Federal Historic Tax Credit

\* \* \*

## Addressing Challenges of the 21<sup>st</sup> Century

September 2023

The [Historic Tax Credit Coalition \(HTCC\)](https://www.historiccredit.com) is an organization of industry stakeholders who recognize the importance of the federal Historic Tax Credit and work to improve and expand the use of this important economic development tool.

## FOREWORD

Congress of the United States  
Washington, DC 20515

September 2023

As members of Congress keenly interested in community development, preservation, and improving the federal historic tax credit, we are grateful for the Historic Tax Credit Coalition's work in producing this report on the state of the program. For decades, the federal historic tax credit has improved our communities, created jobs, and contributed to a sense of place and belonging. We have fought to maintain this vital tool in Congress and have long supported enhancements to the federal credit. These changes are needed now more than ever before, as this report demonstrates.

While more than 2,000 miles apart and reflecting different constituencies, the cities, towns, main streets, and rural areas of Illinois' 16<sup>th</sup> District and Oregon's 3<sup>rd</sup> District have benefitted tremendously from the credit. But there are many more buildings waiting to be rehabilitated. It is past time for new tools to improve the credit for the next several decades and beyond.

The changes outlined in this report and contained in our Historic Tax Credit Growth and Opportunity Act (HTC-GO) would add significant value back to the credit after years of lost value and uncertainty. These legislative changes, however, are not all that is needed. It is crucial that our partners in the administration work to update the program as well so the tax credit can continue to be a success.

We hope as interested parties read this report they will consider ways to improve the credit and support our efforts.

We look forward to continuing to work to enact HTC-GO and make the historic tax credit an even strong economic driver for Illinois, Oregon, and the entire country.

Sincerely,



Darin LaHood  
Member of Congress



Earl Blumenauer  
Member of Congress

## INTRODUCTION

The proponents who encouraged it, the legislators who enacted it, the presidents who oversaw it, the hard-working administrators and leadership and staff of the National Park Service, State Historic Preservation Offices and the Internal Revenue Service who administer it, the program consultants, professional advisors, and project sponsors who work with it, and especially the communities that use it to save thousands of our great buildings and give them renewed lives as the anchors of community development, that also increases housing and creates jobs are all very rightly proud of the outsized economic development and preservation need served by the historic tax credit.

At the same time, changes throughout the last decade in how the credit is administered, in the provisions of the Internal Revenue Code, and in the financing marketplace have buffeted the historic credit, affecting its utility, ease of use, value, reach, and impact.

With that in mind, the Historic Tax Credit Coalition studied the industry and produced this report that highlights the successes as well as the growing difficulties and recommendations for 21<sup>st</sup> century modernization.

We hope that reading this report, and especially its recommendations, will help fuel the changes needed to keep the historic credit as the integral development and preservation tool it has been in America for more than five decades.

## Table of Contents

<b>FOREWORD</b> .....	<b>2</b>
<b>INTRODUCTION</b> .....	<b>3</b>
<b>BACKGROUND</b> .....	<b>5</b>
<b>PART I - DECADES OF SUCCESS FOR HISTORIC PRESERVATION</b> .....	<b>8</b>
National Historic Preservation Efforts Begin in 1965 .....	8
Origins of the Historic Rehabilitation Tax Credit.....	8
The NPS and the IRS.....	9
Program Statistics .....	11
Relative Success of the HTC.....	13
<b>PART II -- WORKING WITH THE NATIONAL PARK SERVICE</b> .....	<b>14</b>
Introduction.....	14
Previous Recommendations for Change .....	14
HTCC Survey Results .....	17
The Review Process Significantly Affects Projects.....	19
Illustrative Results from the HTCC Survey .....	19
HTCC Recommendations for NPS and SHPOs.....	21
<b>Part III – OTHER CHALLENGES IN THE PROGRAM</b> .....	<b>28</b>
Historic Boardwalk Hall and Administrative Guidance.....	28
Further Legislative Changes and Comparisons to Other Tax Credits.....	29
Legislative Recommendations.....	29
<b>Conclusion</b> .....	<b>33</b>
<b>Appendix A</b> .....	<b>34</b>
<b>Appendix B</b> .....	<b>61</b>
<b>Appendix C</b> .....	<b>86</b>

## BACKGROUND

The federal rehabilitation tax credit, better known as the historic tax credit (HTC)<sup>1</sup>, originated in the late 1970s as one of America’s first “investment tax credits.”<sup>2</sup> The HTC facilitates the rehabilitation of historic buildings and structures by providing a tax incentive based on a percentage of “qualified rehabilitation expenditures” (QREs).

The incentive has proven to be a powerful tool for preserving our nation’s historic properties while generating community redevelopment and reinvestment and ultimately economic growth. The HTC has preserved tens of thousands of historic buildings, facilitated the creation of a nearly 200,000 low- and moderate-income housing units and supported the rehabilitation and reuse of almost 50,000 buildings, many blighted, from the country’s urban core to its small-town main streets<sup>3</sup>. It has been utilized in the redevelopment of former factories, airport terminals, office buildings, mills, schools, theaters, and any number of other building types. It has accomplished all these worthy goals while creating hundreds of thousands of jobs and advancing environmental protection through reuse of existing structures and materials.

The HTC is uncommon in that it is administered by two federal agencies that operate independently:

- The National Park Service (NPS), a bureau within the U.S. Department of the Interior, works together with state historic preservation offices (SHPOs) in the 50 states to address compliance with the Secretary of the Interior’s *Standards for the Treatment of Historic Properties* (36 CFR Part 68, 1995) (the Secretary’s Standards).
- The Internal Revenue Service (IRS) interprets and administers the Internal Revenue Code of 1986, as amended (Code), specifically addressing matters of tax credit entitlement and compliance.

The workings of each agency greatly impact the success of the HTC program and, ultimately, whether the program’s objectives of community redevelopment and revitalization,

---

<sup>1</sup> Internal Revenue Code §47.

<sup>2</sup> An “investment tax credit” (ITC) is an incentive for business investment. An ITC allows a taxpayer to claim a credit against its federal tax liability for a percentage of the investment. In the case of the HTC, a tax credit is taken over five years equal to 20% of the “qualified rehabilitation expenditures,” as explained later in this report.

<sup>3</sup> Data from the National Park Service’s most recent annual report available at <https://www.nps.gov/subjects/taxincentives/upload/report-2022-annual.pdf>

rehabilitation, preservation and adaptive reuse of historic buildings and economic growth can be achieved.

The most recent Annual Report of the NPS refers to the HTC program (which the NPS calls the Federal Historic Preservation Tax Incentives Program) as:

*[T]he nation's most effective program to promote historic preservation and community revitalization through historic rehabilitation. With over 48,000 completed projects since its enactment in 1976, the program has leveraged over \$122.90 billion in private investment in the rehabilitation of historic properties — spurring the rehabilitation of historic structures of every period, size, style, and type in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.<sup>4</sup>*

Despite decades of great success and accomplishment under the HTC program, steps can and should be taken to improve the efficiency and appeal of the program, particularly as the program confronts the challenges of the 21st century. Present-day factors impacting modern historic preservation efforts include the following:

- During the past 40 years, construction practices have evolved considerably to adapt to changing global environments.
- Costs have risen exponentially.
- Labor, trade, and material resources have become scarce and expensive.
- The focus of the commercial real estate markets has shifted, as have the demands of building occupants.
- There is pressing need to create more sustainable buildings, particularly in the face of climate change.
- The country faces a housing crisis and there is urgent need to create more affordable housing.
- Construction codes and other permitting requirements have evolved.
- The global pandemic resulting from COVID-19 will continue to impact American economic and socioeconomic culture for years to come.

With changing times in mind, the Historic Tax Credit Coalition (HTCC) was founded more than a decade ago to represent the industry, advocate for the preservation and improvement of the HTC, and serve as a central voice for those who use and care about the HTC. In addition to its work as an advocacy organization and trade association and in response to current market conditions, the HTCC undertook a survey of historic consultants,

---

<sup>4</sup> Ibid.

preservation leaders and other users of the incentive to identify programmatic areas that would benefit from adaptation in the 21<sup>st</sup> century. The HTCC's experience and research has revealed that many aspects of the HTC program, particularly the legislative contours of the program, SHPO and NPS review and some guidance, have not yet adapted to modern-day challenges. These items have made use of the HTC more difficult and have made successful rehabilitations harder to accomplish.

The HTCC is pleased to offer this review of the program, the results of its survey and the recommendations set forth in this report. The report is divided into three sections. The first section provides a brief legislative history of the HTC program and a description of its successful past. The second section includes a summary of the HTCC survey and recommendations based on survey findings. The third section speaks to the financial challenges credit transactions face, including recommendations for legislative improvements to the HTC program, primarily through the Historic Tax Credit Growth and Opportunity (HTC-GO) Act.<sup>5</sup>

---

<sup>5</sup> 117<sup>th</sup> Congress H.R. 1785 and S. 639.

## PART I - DECADES OF SUCCESS FOR HISTORIC PRESERVATION

### National Historic Preservation Efforts Begin in 1965

In 1965, President Lyndon B. Johnson convened a special committee on historic preservation. Interest in saving our nation's heritage was a response to the demolition of swaths of historic buildings under urban renewal programs of the 1950s and the loss of significant buildings like New York's Pennsylvania Station in the 1960s. The committee released a report entitled *With Heritage So Rich*, which solidified the rationale for why preservation is important to American society and culture. The federal historic tax credit program grew out of this report with the adoption of the National Historic Preservation Act of 1966 (NHPA).

The NHPA focused on federally licensed or funded projects and their impact on historic resources. To monitor such impacts, the NHPA created SHPOs for each state, the Advisory Council on Historic Preservation (ACHP), the National Register of Historic Places (National Register), and the Section 106 review process. Section 106 of the NHPA requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country. If a federal or federally assisted project has the potential to affect historic properties, a Section 106 review must take place.

### Origins of the Historic Rehabilitation Tax Credit

The NHPA's purview was federal involvement in historic resources; but it offered little to support private-sector investment in preservation. The first attempt to motivate private investment in historic resources came in 1976 in the form of 60-month accelerated depreciation for the rehabilitation of old buildings. Soon thereafter, as part of The Revenue Act of 1978, the first historic tax credit was made part of the general investment tax credit and provided a tax credit equal to 10% of rehabilitation expenditures for buildings 20 years old or older. The federal Historic Tax Credit in the form known today was enacted in 1981 as a bi-partisan effort of the Reagan Administration and a Democratically controlled Congress to stimulate the American economy struggling to emerge from a deep recession. It was an effort to promote private investments in existing buildings as part of a broader package of incentives to promote economic growth. The legislation created a 25% credit for certified historic rehabilitations, a 20% credit for rehabilitations of buildings at least 40 years old, and a 15% credit for rehabilitations of buildings at least 30 years old.

The 1981 law was retained and modified as part of the 1986 Tax Reform Act, providing for 20% and 10% credits for certified and pre-1936, but not certified, rehabilitations. The report of the Ways and Means Committee stated these reasons for its continuing support of the HTC:

*The Congress concluded that the incentives granted to rehabilitations in 1981 remain justified. Such incentives are needed because the social and aesthetic values of rehabilitating and preserving older structures are not necessarily considered in investors' profit projections. A tax incentive is needed because market forces might otherwise channel investments away from such projects because of the extra costs of undertaking rehabilitations of older or historic buildings.*

The 10% credit was removed in 2017 as part of the Tax Cuts and Jobs Act (TCJA), leaving a 20% credit for certified rehabilitations of certified historic structures. In addition, the TCJA extended the HTC from being claimed in one year (which had been the standard since 1979) to being claimed over 5 years (that is, 20% per year). The industry reports that this change resulted in a reduced value for the credit on a present value basis.

## The NPS and the IRS

The HTC program is administered by the NPS and the IRS, two federal agencies that act independently but play key roles in the success of the program. In order to qualify for Historic Tax Credits, a building must:

1. Have been previously placed in service;
2. Be listed in the National Register (NR) or located in a registered historic district and certified as being of historic significance to the district;
3. Be eligible for depreciation;
4. Accrue Qualified Rehabilitation Expenditures of at least 100% of its adjusted basis at the start of some 24-month or 60-month period in accordance with more specific requirements of the Internal Revenue Code; and
5. Have the rehabilitation certified by the National Park Service.

The Code designates the Secretary of the Interior as the authority to determine historic districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. The Secretary has delegated these certification responsibilities to the Technical Preservations Services of the NPS.

To receive the HTC, a project must meet the Secretary's Standards. The four standards are rehabilitation, preservation, restoration, and reconstruction. The Standards were originally published in 1977 and revised in 1990 and 1995 as part of Department of the Interior regulations (36 CFR Part 67). The Secretary's Standards have not been modified since 1995.

The Secretary's standard for *rehabilitation* is defined as:

*the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.*<sup>6</sup>

Since the beginning of the program, the NPS has shared administration of the preservation aspects with SHPOs from all states and territories across the country. SHPO offices undertake the early part of the review process, adding their expertise on local history and preservation. For states with state credits, the SHPO will usually also handle review of state credit approvals if they are separate from federal approval.

Finally, once a project receives all its approvals from NPS, the taxpayer will claim a credit with the IRS by including the NPS approval with its tax return. At this point, the IRS will have jurisdiction over tax matters – computation of the proper amount of qualified rehabilitation expenditures, including whether particular expenditure relate to capitalized costs or deductible expenses, and many aspects related to the role of an investor, such as whether the investor was an owner of an interest in the building at the time it was placed in service, whether the QREs are properly allocated to the investor, whether any limitations imposed by the passive activity or at-risk rules apply to limit the ability to claim or use the credit, and others.

The coupling of tax incentives and NPS review was successful from the start, with over 5,000 projects reviewed and approved between 1976 and 1982 under the provisions in effect in those years.

In 1986, extensive changes to the Code made passive investments in tax-favored transactions largely unusable by individual investors. This led to the rise of corporate investors using partnership and master lease structures. Transactions involving corporate investors grew through the 1990s and the HTC became a more common source of financing

---

<sup>6</sup> 36 CFR Section 68.2

for older buildings. This change also increased the financial size of projects and, in many ways, the complexity.

## Program Statistics

Overall, the program has been successful in securing the longevity of thousands of historic resources. The Rutgers University Edward J. Bloustein School of Planning and Policy (Rutgers) and the NPS together publish an annual report on the economic impact of the HTC. The 2021 report concluded that the HTC was responsible for significant job creation and other benefits, as detailed in the following table:

**National Economic Impacts**

The following table summarizes the impacts of the HTC in inflation-adjusted 2021 dollars for each of these economic measures for the cumulative period FY 1978–2021 and for FY 2021.

National Total Impacts 2021 \$ billion	FEDERAL HTC-ASSISTED REHABILITATION	
	<b>\$199.1 billion</b> CUMULATIVE (FY 1978–2021) <sup>2</sup> historic rehabilitation expenditures results in:	<b>\$8.0 billion</b> ANNUAL FY 2021 historic rehabilitation expenditures results in:
Jobs (person-years, in thousands)	3,042	135
Income (\$ billion)	\$157.3	\$5.6
Output (\$ billion)	\$428.4	\$15.0
GDP (\$ billion)	\$213.8	\$7.7
Taxes (\$ billion)	\$60.7	\$2.1
Federal (\$ billion)	\$42.9	\$1.3
State (\$ billion)	\$8.8	\$0.3
Local (\$ billion)	\$9.0	\$0.4

The benefits of investment in HTC-related historic rehabilitation projects are extensive, increasing payrolls and production in nearly all sectors of the nation's economy. The cumulative effects for the period of FY 1978 through FY 2021 are illustrative. During that period, \$199.1 billion in HTC-related rehabilitation investment created 3,042,000 jobs and \$213.8 billion in GDP, about 30% of which (940,000 jobs and \$63.6 billion in GDP) was in the construction sector. This is as one would expect, given the share of such projects that require the employment of building contractors and trades. Other major beneficiaries were the service sector (550,000 jobs, \$28.4 billion in GDP), the manufacturing sector (642,000 jobs, \$56.7 billion in GDP), and the retail trade sector (427,000 jobs, \$15.1 billion in GDP). As a result of both direct and multiplier effects, and due to the interconnectedness of the national economy, sectors not immediately associated with historic rehabilitation, such as agriculture, mining, transportation, and public utilities, benefit as well. (see Exhibit 3.1).

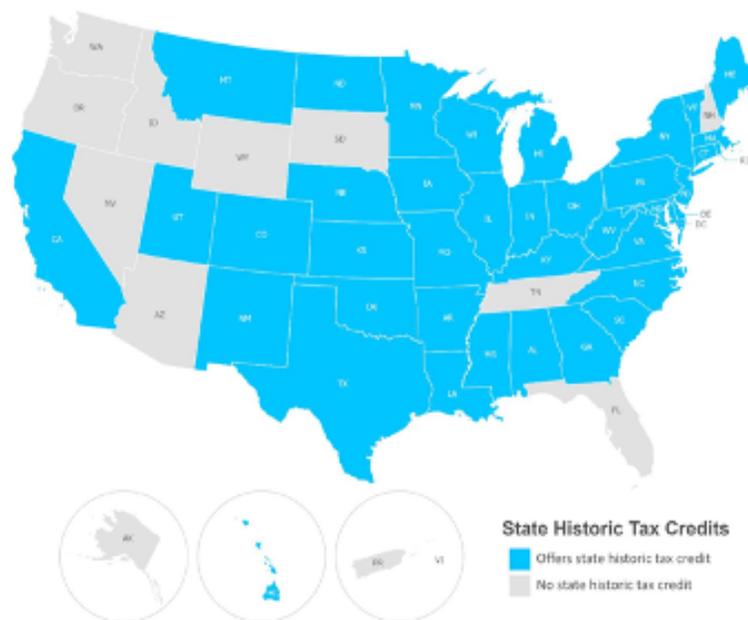
The most recent economic benefits of the Federal HTC are also impressive. In FY 2021, HTC-related investments generated approximately 135,000 jobs, including 48,000 in construction and 30,000 in manufacturing, and were responsible for \$7.7 billion in GDP, including \$2.5 billion in construction and \$2.2 billion in manufacturing. HTC-related activity in FY 2021 generated \$5.6 billion in income, with construction (\$2.1 billion) and manufacturing (\$1.3 billion) reaping major shares. (See Exhibit 3.2)

*Annual Report on the Economic Impact of the Federal Historic Tax Credits for Fiscal Year 2021.*

The Rutgers report notes, among other things, the HTC is responsible for the creation of more than 3 million jobs and \$7.7 billion in gross domestic content. In addition to positive

financial and economic impact, the HTC has successfully created and preserved a significant number of affordable housing units during its history with over 192,000 low- and moderate-income housing units being created using the HTC program.<sup>7</sup> The creation of the Rental Assistance Demonstration program (RAD) by the U.S. Department of Housing and Urban Development (HUD) in 2011 allowed sources like the HTC to also be used for the preservation and rehabilitation of public housing. Since 2011, large and small public housing authorities have utilized the HTC to support the preservation of affordable housing and address decades of deferred maintenance.

The success of the federal HTC also led many states to enact state historic tax credit programs. Existence of a state HTC often encourages use of the federal HTC program in that state. Some state programs require a federal approval while others have an independent process. Some state programs include benefits unavailable under the federal program, such as flexible program requirements or transferability of the state credit. There are 39 states with some form of state historic tax credit, many of which have a proven track record of their return on investment.



Map Source: National Trust for Historic Preservation

<sup>7</sup> Testimony of Garrett Watson, Senior Policy Analyst and Modeling Manager, Tax Foundation before the US Senate Committee on Finance, March 7, 2023, [https://files.taxfoundation.org/20230306162624/Testimony-Tax-Policy%E2%80%99s-Role-in-Increasing-Affordable-Housing-Supply.pdf?\\_gl=1\\*\\_gpi166\\*\\_ga\\*MTMyNjk1MzExMC4xNjg2NTc0NDQ5\\*\\_ga\\_FP7KWDV08V\\*MTY4NjU3NDQ00S4xLjEuMTY4NjU3NDk0MS41NC4wLjA](https://files.taxfoundation.org/20230306162624/Testimony-Tax-Policy%E2%80%99s-Role-in-Increasing-Affordable-Housing-Supply.pdf?_gl=1*_gpi166*_ga*MTMyNjk1MzExMC4xNjg2NTc0NDQ5*_ga_FP7KWDV08V*MTY4NjU3NDQ00S4xLjEuMTY4NjU3NDk0MS41NC4wLjA).

With state credits replicating the success of the federal program, statistics also show that HTC projects are concentrated in the places that need development the most. For example, NPS statistics show that 78.9% of applications approved between 2002 and 2017 were for projects in census tracts with incomes of 80% or less of area median or which have poverty rates greater than 20%. Fifty percent of all transactions support the development of either market-rate apartments or low-income housing.

### Relative Success of the HTC

Because the HTC is paid in full only upon the building's placement in service, a significant amount of the HTC-related revenue is generated for the Treasury even before the credit accrues to the investor – exactly the way a tax credit meant to spur economic activity should be structured. Of course, significant tax revenues are also generated by adding a productive building for business or residential use.

The HTC's relative efficiency is also demonstrated by its exceedingly low recapture rate. In general, a transfer of ownership within the 5-year compliance period triggers tax credit recapture. Recapture can also result from mortgage foreclosure, if the building's architectural character is altered, or if the building is lost because of a natural disaster. However, the recapture risk burns off 20% per year over 5 years. The firm Novogradac & Company LLP undertook an HTC recapture survey for the National Trust. It can be found here: <https://www.novoco.com/products/historic-rehabilitation-tax-credit-recapture-survey>. The study found a cumulative recapture rate of the HTC over the 2001-2011 measuring period was just .73%, reflecting a better than 99% project success rate. Note that the study's measuring period includes the years of the recession in the early part of the century.

The effectiveness of the HTC is also reflected in its rate for capital contributions. Historically, corporate investors have invested an average of \$.90-\$1.05 per tax credit dollar for the LLC or Limited Partnership ownership interests that allow them to claim the credits. Other investor benefits include the after-tax benefit of any taxable losses generated by depreciation, and a modest share of the company's operating cash flow and a share of the value of the property. Despite the historical value of the HTC, it should be noted that following the implementation of the 5-year credit and other changes, the HTC's investment value has fallen by 20 to 30%.

## PART II -- WORKING WITH THE NATIONAL PARK SERVICE

### Introduction

The NPS and SHPOs play an important role in the administration of the HTC. To qualify for the HTC, a building must secure three stages of approvals from these agencies:

- “Part 1” Approval of the building as a certified historic structure (that is, a building individually listed on the Register or determined to be significant to a registered historic district)
- “Part 2” Approval of the plans to rehabilitate the building
- “Part 3” Approval of the actual rehabilitation

As a result of several factors, including tax structuring, tax rules, and market conditions, most HTC projects with over \$5 million in QREs have an equity investor. The NPS and SHPOs are key to ensuring the economics of a project work out. For a project to attract the interest of investors, obtain a commitment to invest and actually receive an investment, file a tax return claiming the HTC so that it can be allocated to an investor, and then getting the period for possible IRS challenge to run and expire requires that these steps be accomplished within reasonable periods of times and with a reasonable amount of work on the part of the taxpayer. For example, investors are very likely to want preliminary approval, if not Part 1 Approval before they will commit to investing in a project. And IRS rules require an extended statute of limitations for the tax return on which the credits were claimed if the Part 3 is not timely received.

For many years, the HTC community found its dealing with the NPS and SHPOs to be fair, predictable, consistent, and flexible. In surveying the community in 2023, the HTCC found a change in that perception over the past several years, and an uncertainty in the program that creates significant obstacles to successful rehabilitations.

### Previous Recommendations for Change

At this point, there is about 50 years of history of the historic preservation community working with SHPOs and the NPS. Starting in the early 2000s, the community began making recommendations for how to improve the process.

In 2003, the *Tax Act Review Reform Policy Paper* was published by the National Conference of State Historic Preservation Officers (NCSHPO) and *Recommendations for Improving Administration of the Certified Historic Rehabilitation Tax Credit Program* was published by the Historic Preservation Development Council (HPDC). In 2004, the NPS considered input from constituents of the program, and published its own recommendations, entitled *Improving the Administration of the Federal Historic Rehabilitation Tax Credit Program*, and it decided to establish the National Park Service Advisory Board (NPSAB).

The 2004 Report identified the following recommendations:

- The HTC should be administered as a rehabilitation program rather than a preservation program.
- Program redundancy between SHPO and NPS review could hinder the HTC.
- Establishment of a demonstration program for small projects (no more than \$500,000 in tax credits or \$2.5 million in QREs).

In 2007, NPSAB produced a report, *Federal Historic Rehabilitation Tax Credit Program: Recommendations for Making a Good Program Better* (the 2007 Report), which was unanimously adopted by the National Park Service in 2007. The focus of the 2007 report was to answer two questions:

1. Are the requirements of the Federal Historic Rehabilitation Tax Credit Program clear to program users? Do program users have realistic expectations when they undertake projects? If the process is not clear, how can it be made clearer?
2. How can the interpretation of the Secretary of the Interior's Secretary's Standards for Rehabilitation be made more user-friendly so that program users and the preservation community can better understand them?

The report noted that the recentralization of the review staff of the NPS from five regional offices to a centralized office in 1995 "...led some SHPOs and program constituents to perceive 'shifts' in NPS interpretation of the Secretary's Standards."

The 2007 Report included recommendations to "provide greater ease and clarity for applicants to meet the program's requirements as well as help expand the benefits of historic preservation and economic development," and it noted the commitment of the NPS to implement the Committee's recommendations.

To that end, NPS developed materials and guidance on interpreting and applying the Secretary of the Interior’s Standards on several subjects including:

- Windows
- Interior Treatments
- New additions and related new construction
- Modern requirements and new technologies and materials
- Very large, functionally related, multiple-building complexes

The NPS also committed to more education, training, and written web-based guidance. Although some of the guidance was produced, many of the concerns expressed in 2004 remained and continued through the next decade.

Several years later, in 2013, then Secretary of the Interior Ken Salazar asked NPS to conduct an internal review “...with the intent of ensuring that the program is maximizing opportunities to use historic preservation to promote economic development and revitalization of communities, especially in urban areas.” NPS released a *Final Report on the Implementation of Program Review Recommendations and Action Plan* in December of 2016 (the 2016 Report).

The 2016 Report outlined eight “action steps” that NPS was taking to address the concerns expressed by Secretary Salazar including:

- Action 1 – Additional Webinars and Training
- Action 2 – Work with White House Council on Strong Cities, Strong Communities Initiative
- Action 3 – Tax Code Issues
- Action 4 – HTC Federal Inter-Agency Group
- Action 5 – Certified Local Governments and Local Partners
- Action 6 – Clarification of Guidance in Interpreting and Applying the Secretary of the Interior’s Secretary’s Standards for Rehabilitation
- Action 7 – Policy on Buildings Functionally Related Historically
- Action 8 – Administrative Guidance

As you will see from the survey data below and the anecdotes provided, many of these issues remain today. While the NPS has undertaken some recommendations from previous reports, such as undertaking webinars and training, and guidance on functionally related complexes, many other recommendations have gone unaddressed or in the case of

functionally related complexes the guidance has either been inadequate or inadequately followed to solve the problems identified.

## HTCC Survey Results

Plainly, there have been several times in this century when the NPS or affiliated entities have announced that steps are being taken to make the HTC program work better. However, the historic tax credit community has continued to express significant concerns that the steps taken have not accomplished the goals set before the NPS by others, or even those goals set forth by the NPS itself.

Now, in 2023, the HTCC has completed a survey of users of the program to determine the state of historic rehabilitation considering the concerns expressed in 2003, as well as the recommendations made in the 2007 and 2016 Reports.

The survey was provided to more than 50 historic consultants, and 32 completed it. Over 85% of the respondents have more than 10 years of experience with the program. Approximately 56% of the respondents have worked on more than 75 historic rehabilitation projects, representing more than 1,300 historic preservation certification applications (HPCAs).

The survey consisted of 23 questions. It focused on the current state of NPS review based on review timing, interpretation of the Secretary's Standards and Guidance and consistency of that interpretation and documentation required as part of the review. There were also some questions regarding to the Part 1 of the application as it relates to the National Register process. The results of that survey show that many of the issues that were concerns over the last 20 years remain as relevant today as they did then with the additional concerns of timing and a much more conservative and arduous process.

A key question was an overall evaluation of the NPS process. Here's that question and the responses:

Overall, how satisfied are you with the SHPO and NPS review process for historic projects?

- Very good to excellent (1 response, 3%)
- Good, but there are modest problems that can be handled at a reasonable cost in time and money (25%)
- Fair; the problems are a significant burden on the cost and time to develop historic projects (65%)
- Poor; the problems threaten to undermine the rehabilitation of historic projects (7%)

Many responses were consistent with the responses to that first question. For example:

- 83% of the respondents reported that some of their clients had decided not to go forward with a project due to issues with the program.
- 87% of the respondents felt that there has been a change in the interpretation of the Secretary's Standards over the last five years for Part 2 applications with 69% experiencing an increase in "the number of amendments requested/required" during that same period.
- 84% of the respondents have experienced an increase in review time, with most noting an additional level of requested documentation.
- 75% noted a lack of consistency between review of similar elements.
- 75% of respondents have experienced an increase in the level of requested documentation in Part 2.
- 87% of those surveyed stated that additional drawings were the most requested items with MEPs and additional photos being a close second and third. Respondents also noted elements like ownership documentation, renderings, site-line studies, samples (such as flooring, shingles, or color samples), and mock-ups.

When asked the three most pressing issues facing HTC projects today, the top answers were:

- 69% selected "Conservative interpretation of the Secretary Standards."
- 63% selected "Hold/Requests for more information."

- 59% selected “Inconsistent Review as compared to previous projects.”
- 56% said they have not experienced an increase in the level of documentation for Part 1s, but
- 79% have experienced an increase in the level of documentation for preliminary determinations of individual listing (PDILs).
- 75% noted that there has been an increase in the rigor in which PDILs and National Register nominations are reviewed.

The full statistical results of the survey are attached as Appendix B.

### The Review Process Significantly Affects Projects

In addition to the specific questions on its survey, the HTCC encouraged respondents to provide illustrations, both positive and negative, and members of our NPS Committee had many conversations with the community to get more specific examples. We have included over 40 examples in the attached Appendix A.

These responses reflect a widely held perception of delays and inconsistency in the SHPO and NPS processes which makes it challenging for developers to utilize the program. These delays and inconsistencies can significantly extend the time required to arrange both conventional financing and tax equity, as well as significantly increase the time required to rehabilitate and finish the project, which can materially increase costs. Based on the survey results, there is consensus in the industry and our Coalition that the NPS and SHPO review process for the program has become *both more stringent* and simultaneously *less consistent*, especially in the last 10 years. Indeed, even with the hiring of additional NPS staff, the process has become more cumbersome representing a significant departure from past practices.

This more stringent/less consistent review practice hasn’t just increased costs. It has resulted in many developers and their financing sources turning away from the program. This pattern is resulting in a steady reduction in the use of the program and its continued viability (See the HTCC’s June 2022 letter to NPS-TPS, attached as Appendix C).

### Illustrative Results from the HTCC Survey

As noted above, responses to the survey captured a widespread frustration with perceived changes in the administration of the program, as evidenced both in responses to the survey’s

multiple-choice questions and accompanying comments. Additionally, as a follow up to the survey, we contacted a large number of HTC consultants and asked them to share specific examples illustrating both successes and challenges on recent projects. For obvious reasons, these project examples were made anonymous by removing project names, locations, and other identifying factors.

The project examples submitted convey that the more conservative administration of the program at the state and federal levels has negatively impacted both the predictability of outcomes and the timing of reviews. The adverse impacts to project schedules and the added costs to projects have been contributing factors in the continued erosion in value of the credit causing developers to question the logic of using the program.

The examples provided by the consultants, along with some comments and suggestions offered, were remarkably consistent in identifying the central challenges that projects across the country are facing. As a very general summary the consultants conveyed these sentiments:

**Increased Stringency.** "The NPS review process for the program has become increasingly more stringent, especially in the last 10 years. Even with the hiring of additional NPS staff, the process has become more cumbersome signifying a significant departure from past practices."

**Loss of Collegiality.** Many consultants observed that, over many years, the program reflected a partnership between the private and public sectors, whereas in the current climate, it has become more adversarial in nature. Indeed, a substantial number of consultants conveyed their belief that the reviewers appeared to have an inherent distrust of consultants, something that was not the case historically.

**Discouraging Users.** "The more stringent review practice continues the current pattern of users turning away from the program".

**Discouraging Consultants.** Professionals have heard first-hand from NPS that they hold larger projects with consultants to a different standard.

**Discouraging Developers.** Feedback from developers has been many more "never again" experiences and the conclusion that forgoing HTCs in the future is the preferred alternative, because simply not using the credit is many times more attractive.

**Snowflakes.** "Every project is considered a snowflake with not enough consistency in the application of the standards according to building type."

The more detailed examples are organized in Appendix A, as follows, recognizing that *some examples did not fit into the identified categories and are included at the end of the appendix:*

**Part 1 – Evaluation of Significance**

- Increased level of documentation, which delays review timeframes
- Increased rigor in evaluating integrity

**Part 2 – Description of Rehabilitation**

- More conservative interpretation of the Standards
- Extended review timeframes due to hold letters and RFIs
- Inconsistent reviews, including inconsistency from comparable/previous project reviews, inconsistency between SHPO and NPS, and inconsistency between NPS reviewers

HTCC Recommendations for NPS and SHPOs

There is not one solution that will overcome the impacts of the above, but as previous reports have noted, there are several items we believe can be addressed to make the program stronger, more user-friendly and grow the number of projects that utilize the HTC therefore saving more of our historic assets.

We acknowledge that a quick review of our recommendations can suggest that we “want it both ways.” For example, we simultaneously call for (a) giving reviewers greater authority to resolve questions without having to go to a committee form of review, and (b) greater consistency across reviewers in resolving similar problems. We suggest more respect be given to SHPO reviews at the same time as we seek more uniform application of the Secretary’s Standards<sup>8</sup> by those same SHPOs. We do not see these recommendations as inconsistent. In many situations, we think that updated and clearer rules and regulations, regular trainings, and speedier reviews and appeals can achieve these multiple objectives.

Here are our recommendations:

---

<sup>8</sup> <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>

**Secretary of the Interior's *Standards for Rehabilitation*.** The ten Secretary's Standards are broadly written to accommodate many different building types and design elements, which leaves them up to interpretation. The Secretary's Standards for Rehabilitation were last updated in 1995 and most guidance on the Secretary's Standards published by NPS has been not revised in the past 18 years. This past February (2023) the AIA's Historic Resources Committee organized a colloquium around the Secretary's Standards (*Taliesin Colloquium 2023: The Evolution of Preservation Secretary's Standards and Guidelines*) which examined "Are the current policies and practices of historic preservation still valid or must they mature to meet the current challenges?" We agree that the Secretary's Standards have not kept pace with the current building stock and the requirements of current financing sources. As noted above, 87% of the respondents feel that there has been a change in the interpretation of the Secretary's Standards over the last five years, even though there have been no formal changes to the Standards. With that in mind, the HTCC recommends:

1. **Guidance**. It is important that new and predictable guidance is issued to address today's challenges, such as (i) modern movement buildings with fewer character defining features, and (ii) meeting the requirements of other funding sources, such as qualifying for funding sources associated with renewable energy and energy conservation. Development of this guidance should be undertaken in partnership with the users of the program that understand the real-world challenges of rehabilitating a building. The NPS should have a "guidance plan" in which it describes plans for the issuance of guidance in the coming year, and it should solicit suggestions from the historic community for what should be on that plan. It should then have a comment period and seriously consider comments received when it publishes guidance.

**Timing.** Real estate developers are entrepreneurial by nature and willing to take risks, provided the risks can be managed within a predictable timeframe. As noted in the survey responses, timeframes for review have become extended due to holds for requests for information as well more amendments and more stringent review. This makes it difficult to arrange financing, like traditional loans, tax equity, and other sources. The HTCC recommends:

2. **Application Checklist**. The NPS should provide guidance and a checklist to enable applicants to have confidence that they are submitting a "complete application" reducing the number of holds placed on projects for additional information and

reinforcing that the narrative supersedes the drawings. There should be a two-week timeline for the NPS to conclude that a submitted application is not complete, and a similarly short, reasonable timeline for an applicant to provide any additional information that the NPS requests.

3. **Resolving Discrepancies**. The NPS should adhere to the principal of 36 CFR §67.4(5): “In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application form shall take precedence.” We observe that this provision appears intended to discourage project sponsors from submitting excess documentation by saying that written submissions will control. However, in the experience of many users of the program, it has instead been used by the NPS to request supporting drawings and additional information even where the written submission is clear. This results in a corresponding cost and delay in review time. Indeed, many project developers and consultants have found that SHPOs, anticipating such requests from the NPS, have requested drawings and other items in advance of the matter being submitted to the NPS. Showing greater respect for the written submission would reduce the number of drawing and requests for information and reduce cost and save time.
4. **Prompt Review of Applications**. NPS should establish clear and consistently applied standards for the total review time of completed applications by NPS and SHPOs. 36 CFR §67.4(4) currently says the following: “Generally reviews of certification requests are concluded within 60 days of receipt of a complete, adequately documented application, as defined §67.4 and §67.6 (30 days at the State level and 30 days at the Federal level).” Barring a clear and substantial reason for delay, the total review by both, should stick to that 60-day timeline, and in any event, should take no more than 90 days, including non-business days and not adding any “tolling” while the application is being processed. In the experience of many developers and consultants, this general standard is not being met, and the term “days” is being interpreted differently than the plain wording of the regulation.
5. **Conditions and Amendments**. NPS should refine the “condition” and “amendment” processes to make responses easier and the process more streamlined, including actual contact with the applicant or their consultant in advance of placing a project on hold or issuing an RFI. Historically this has led to a more streamlined review by avoiding the need for multiple written exchanges.
6. **Kickoff Meeting for Larger Projects**. For projects over \$10 million of qualified costs, NPS should provide the option of an initial one-hour virtual kickoff meeting with the

project team, the SHPO reviewer, and the NPS reviewer. Many of the delays are due to misunderstandings or the written nature of the program filings.

7. **Reliance on Preliminary Reviews.** In its preliminary reviews, the NPS should endeavor to provide sufficient certainty that a developer can move forward with the rehabilitation of the Project allowing them to obtain loan and tax equity financing. Many developers find that they cannot convey the confidence required to move these aspects of project development forward, increasing development time and cost.

**Consistency with SHPOs.** A large number of respondents noted that the SHPO process called for far more conditions and far larger submissions, with the SHPOs stating that the NPS would not otherwise approve the project. At the same time, the HTCC is aware of the NPS claiming that it is not seeking such submissions. The HTCC recommends:

8. **NPS Training.** NPS should provide regular training and guidance that encourages reduced, less costly submissions. We recognize and applaud the NPS training for advanced users of the program this fall (September 2023). At the same time, we recommend that this not be once only, and that similar programs be held at least annually to support new staff at NPS and SHPOs, as well as new users of the program. As we noted above, we believe that regular trainings will assure consistency across the country, while not slowing down the review process or limiting the authority of SHPOs.
9. **Deference to SHPOs.** With consistency across the country established by better guidance and trainings, NPS should show greater deference to the recommendations and approvals of SHPOs. 36 CFR §67.1(1): “State comments are recorded on National Park Service Review Sheets (§67.2 168 (d) and (e)) and are carefully considered by the Secretary before a certification decision is made. Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary, based upon professional review of the application and related information.” Respondents noted that despite SHPO approval of a project or approval with conditions, NPS staff often override or add more conditions or request more information, even after lengthy review at the SHPO. We recommend that the NPS standard be modified to provide, “In general, significant deference should be given to the decisions and recommendations of states unless they are plainly wrong.”
10. **Funding of SHPOs.** We observe that some SHPOS are underfunded as compared to others. We recommend a study to determine best practices for funding and staffing SHPOs.

**Understanding the interplay of Financial Constraints.** Many survey respondents reported that NPS reviewers failed to take into account the impracticality of their requirements. Indeed, several observed that the NPS seemed to not appreciate that their requirements would cause a developer to conclude that simply demolishing an existing historic structure would be preferable to undertaking a rehabilitation. Presumably, this is not the intention of the program. The HTCC recommends:

11. **Financial Training.** NPS should develop a training program for NPS staff to appreciate the financing issues relevant to closing and completing an HTC rehabilitation. The HTCC would be pleased to work with the NPS to develop a program. Alternatively, there are formal programs designed for government officials. For example, NPS staff could participate in Urban Plan for Public Officials presented by the Urban Land Institute (ULI) for NPS staff to better understand the “trade-offs and risk at play in the entitlement and negotiation process.”
12. **Taking Cost into Consideration.** NPS should require its reviewers to consider the effect of their decisions on project financing, including where they may result in significant increases in the cost of projects and/o adverse impact on lender and tax equity funding sources.

**National Register of Historic Places.** As discussed above, to qualify for federal historic tax credits, a building must be a “certified historic structure,” one that is either individually listed on the National Register or found to be of historic significance to a NR district. The National Register process has become more difficult than in prior decades and requires a higher level of scholarship and details and the process does not consider the importance of the building to the community. This limits the type of buildings that can be listed due to the investment needed and a narrow interpretation of what is eligible. This is especially impactful in underserved communities of color or with buildings that have a stronger cultural than architectural history, but as equally important in their communities. The HTCC recommends:

13. **Limiting Additional Documentation.** NPS should address the required level of documentation in National Register Nominations, which has increased significantly over the last ten years. Guidance should include specific recommendations as to the appropriate amount of documentation. For projects that have cultural significance (versus architectural significance), especially those in underserved communities, the NPS should provide greater flexibility with respect to the level of building integrity and needed documentation for projects.

14. **Preliminary Determination of Individual Listing.** NPS should revise regulations 36 CFR §67.4(f), which provides guidance on preliminary determination of individual listing (PDIL). It now reads: “Applications must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR part 60 and National Register Bulletin 16, “Guidelines for Completing National Register of Historic Places Forms.” The revision should allow for PDILs to have less information but make the case why the structure or district meets the criteria under which it will be ultimately listed.
15. **Better National Register Predictability.** NPS should revise its National Register guidance to provide a more predictable process, and greater clarity to SHPOs. This is especially true for listings related to historic tax credit projects, and the timing of listings as related to Part 3. The absence of this clarity can result in significantly delayed issuance of Part 3s, which creates significant issues for both lenders and tax equity.

**Consistency and Repeatability.** The NPS should endeavor to have consistency and repeatability in its approval process. The HTCC recommends:

16. **Difficult Issues List.** At least annually, NPS should compile and publish a “difficult issues” list and assure that both reviewers and participants in the program are aware of how these issues get resolved.
17. **Case Studies.** As noted above, we believe that great efficiency could be achieved if reviewers have greater authority to approve applications without the need of committee approval. With this objective in mind, at least annually, NPS should publish case studies which illustrate approved processes for reviewing and approving certain types of structures (e.g., school buildings), and treatments (e.g., ceilings, floors, corridors), and assure that these processes are the primary considerations used in evaluating submissions where these issues arise. While special circumstances may call for additional items to be considered, the intention should be to bring consistency to the process and avoid the “snowflake” problem.

**Respect for Other Considerations.** In the 21<sup>st</sup> century, it is appropriate to consider evolving needs and problems facing America. The HTCC recommends:

18. **Housing.** Facilitating the use of historic structures to provide housing. For example, the rehabilitation of existing affordable housing or buildings into affordable housing

should be better established, and not hindered by impositions of overly difficult rehabilitation standards.

19. **Environmental Considerations and Energy Use.** NPS standards and reviews should pay close attention to environmental and energy reducing solutions in materials and construction. Where a significant reduction in energy usage can be accomplished or is required by local building codes with minimal loss of historic character, the energy-savings solution should be adopted. This is another area where an actual numerical or percentage standard might be adopted.

## Part III – OTHER CHALLENGES IN THE PROGRAM

In addition to the issues identified in the 2007 and 2016 reports and the HTCC 2023 survey, changes in real estate development and the Internal Revenue Code have also impacted historic rehabilitation. This part of the report addresses these concerns.

The past two decades have seen significant shifts in the real estate industry, but the historic tax credit has managed to stay consistent during these economic downturns. It has not been as successful at growing during economic prosperity or the growth of the overall real estate market. The HTC like all other development incentives and projects suffered from the real estate/financial crisis of the late 2000s. Most HTC projects froze in those years and the industry took a few years to recover. In particular, we have become aware that the growth of amounts spent on traditional construction has risen at a far higher rate than amounts spent on HTC projects.

### Historic Boardwalk Hall and Administrative Guidance

On Aug. 27, 2012, the U.S. Third Circuit Court of Appeals issued its ruling in the Historic Boardwalk Hall (HBH) case. The court concluded that the investor in New Jersey's Historic Boardwalk Hall project did not have a meaningful stake in the success or failure of the partnership that owned the project and generated the HTC. As a result, it wasn't a bona fide partner, and it was not entitled to the claimed losses and tax credits. Because certain features of the investment structure resembled the features of many HTC investments, the decision chilled the HTC market.

The Coalition asked for and eventually received guidance at the end of 2013 from the Internal Revenue Service, Revenue Procedure 2014-12. While this revenue procedure helped free up a completely frozen industry, it did weaken the value of the HTC by placing stricter rules on investors and their partners in HTC transactions.

Similarly, the IRS issued guidance in 2016 determining that so-called "Section 50(d) income" (associated with the popular master-tenant deal structure) was taxable to the investor without a corresponding increase in basis that would offset the tax consequences. As a result, the tax benefits to investors were once again reduced, making the HTC less valuable.

## Further Legislative Changes and Comparisons to Other Tax Credits

In 2017, as part of the TCJA, the HTC was again adversely affected by negative changes to the program. Ultimately, the 20% historic credit was modified from a one-year to a five-year credit, once again reducing the value of the credit.

In the Inflation Reduction Act of 2022 (the IRA), renewable energy credits were substantially enhanced in value, with direct pay from the IRS for government and tax-exempt project owners, ability to sell the credit for others, increased credit percentages in a variety of situations, and other sweeteners. Investors in Section 42 low-income housing tax credit transactions that are subject to the Community Reinvestment Act (CRA) get automatic credit from their regulators under this law for their investments, as do many investors in New Markets Tax Credit transactions. Thus, in addition to the adverse judicial and administrative impacts described above, the HTC has seen other credits be improved and gain advantages.

## Legislative Recommendations

### *The Historic Tax Credit Growth and Opportunity Act (HTC-GO)*

Senators Cardin (D-MD) and Cassidy (R-LA) and Representatives LaHood (R-IL-18) and Blumenauer (D-OR-3) introduced the Historic Tax Credit Growth and Opportunity Act (HTC-GO) in the 118<sup>th</sup> Congress (S. 639 and H.R. 1785).

The bill would make long overdue changes to the program to further encourage building reuse and redevelopment in small, midsize, and rural communities. The bill sponsors have recognized some of the needs of the program and designed improvements to make the HTC more attractive. While there are myriad examples of projects in rural and suburban areas, there is significantly more inventory that has yet to be rehabilitated. Additionally, HTC projects in these areas have a significant catalytic effect and a great influence on the community.

Here is a summary of the provisions in the HTC-GO legislation:

### **INCREASE THE REHABILITATION CREDIT FOR CERTAIN SMALL PROJECTS**

HTC-GO would create a 30% credit for smaller deals to make sure rural towns and all non-urban areas have an equal opportunity to take advantage of the credit. This small deal credit would be capped at Qualified Rehabilitation Expenses (QREs) of \$2.5 million, changing the credit allowed from \$500,000 to \$750,000 on the largest projects. There is a provision that transitions the credit rate downward where QREs are between \$2.5 million and \$3.75 million to avoid a credit “cliff.”

#### **Policy Rationale**

Small deals are the toughest to get done with compliance costs and other soft costs. Hard costs – dry wall, labor, etc. – are the same per square foot, regardless of the size of the project, but rents vary by geography and project size so this provision would help incentivize smaller projects by improving the economics of those transactions. An increased credit would make up some of these differences and encourage use of the Historic Tax Credit in rural and Main Street communities.

### **INCREASING THE TYPE OF BUILDINGS ELIGIBLE FOR REHABILITATION**

HTC-GO would change the definition of substantial rehabilitation. This provision would change the threshold to qualify for the credit as the greater of \$5,000 or 50% of adjusted basis.

#### **Policy Rationale**

Under current law, the substantial rehabilitation test requires building owners to spend 100% of their adjusted basis on the rehabilitation. Moving the threshold to 50% will better reflect the term “substantial” (as opposed to total) rehabilitation and will increase the universe of buildings eligible for the credit. This adjustment would allow the credit to be a catalyst for the rehabilitation of the next tier of buildings before they fall into total disrepair. The current rule disadvantages pre-rehabilitation sales to new owners because of the step up in basis. In addition, the current basis adjustment rule disadvantages both the HTC and the Low-Income Housing Tax Credit (LIHTC) in twinned deals because the LIHTC portion must follow the HTC basis adjustment, devaluing both credits.

## **ELIMINATING BASIS ADJUSTMENT**

HTC-GO would eliminate the depreciable basis adjustment associated with the HTC.

### **Policy Rationale**

This provision would increase the value of HTCs to users and investors at a very low cost to the Treasury. In particular, this provision would also allow the HTC to work better with LIHTC, where that credit may be reduced due to the HTC basis reduction, and Opportunity Zones, where the investor already starts with a zero basis which can make a further basis reduction complex. For each of these, the HTC basis adjustment has an unintended effect on the other benefit, leading to unnecessarily complex deal structures. It would also give the HTC parity with the LIHTC. This change would reduce or eliminate the taxation of the HTC when the investor exits the transaction, something that decreases the value of the federal incentive. Changing this provision would make it significantly easier to use the HTC to create affordable housing, including the conversion of office buildings to housing.

## **MODIFICATIONS REGARDING CERTAIN TAX-EXEMPT USE PROPERTY**

HTC-GO would eliminate the disqualified lease rules for all non-government properties. The disqualified leases that would be eliminated under the bill would include those with purchase options, leases in excess of 20 years, prior use rules, and leases in buildings that use tax-exempt financing.

### **Policy Rationale**

The current rules, while well-intentioned, severely limit the ability of community impact projects to use the federal HTC. Eliminating these rules would make community health centers, homeless shelters, arts and cultural facilities, community service centers, and other similar projects better able to use the HTC. It would reduce the amount of overhead and complexity in transactions for entities that are already on constrained budgets.

This class of projects is by far the most impactful and the least likely to provide a return, so flexibility is needed. Many times, these types of projects are in the first phase of reinvestment in economically distressed communities and catalyze foot traffic, economic activity, and downtown residency to pave the way for other projects that require more return on investment and profit to be feasible. In the case of the disqualified lease rules, it makes it prohibitively difficult for the current nonprofit owners of a building to use the credit.

## **TEMPORARY CREDIT INCREASE (\*House version only)**

HTC-GO would increase the credit to 30% for all projects for the next five years and then step it back down to 20% over three years.

### **Policy Rationale**

This provision would give a temporary boost to the credit at a time when it is suffering so many challenges. It would allow projects to make up for the many disruptions of the last few years and allow some of the hardest buildings to be completed.

### *OTHER POLICY IDEAS NOT IN HTC-GO*

The HTCC has also offered other policy ideas that could enhance the HTC. While they are not currently in a piece of legislation, they could be worth exploring as policymakers look for ways to help:

- Making HTC projects eligible for CRA credit – amending the CRA rules to provide one or more illustrations of HTC projects as eligible would significantly enhance the investor market for the HTC.
- Return to a one-year credit – There is no doubt that reinstating the one-year credit would be a significant enhancement. However, this currently does not have universal political support.
- Adding a bonus to the credit for low-income housing or other policy priorities – e.g., a 10% bonus for certain kinds of favored activities would boost the use of the credit. This kind of credit strategy was widely adopted in the energy credit provisions of the Inflation Reduction Act of 2022.
- Provide a transferable credit certificate for smaller projects. Smaller HTC projects are challenged to find equity investments and face costs similar to those for larger projects despite their smaller size. Consistent with both recent changes to renewable credits (which can now be sold following adoption of the Inflation Reduction Act) and prior HTC proposals, Congress should explore ways to leverage more investment to smaller HTC projects.
- In lieu of, or in addition to, the recommendations made in Part 2, legislatively revise the Secretary's Standards, review times, and other aspects of the regulatory process, using the foregoing data and evidence to make changes to the review of projects to make them more consistent, predictable, and user friendly.

## Conclusion

As described above, in recent years the HTC has become more difficult to use, as well as less valuable, both in an absolute sense and compared to the other tax credits that are available to potential investors. It also faces stringent underwriting by HTC investors, as well as higher costs and more challenges to meet building code and sustainability requirements. All of this combines to make the rehabilitation of historic buildings a more challenging undertaking and reduces the effectiveness of the HTC in incentivizing private development in our nation's existing historic buildings. In short, the HTC needs improvements to help it continue to do the great work of the last 40 years.

The Coalition would be pleased to discuss any of these ideas further.

## Appendix A

### PROJECT EXAMPLES

As discussed in the main body of the Report, the examples provided by the consultants, along with some comments and suggestions offered, were remarkably consistent in identifying the central challenges that projects across the country are facing, which can be categorized as follows, with *examples that did not fit into the identified categories and are included at the end of this section*:

#### **Part 1 – Evaluation of Significance**

- Increased level of documentation, which delays review timeframes
- Increased rigor in evaluating integrity

#### **Part 2 – Description of Rehabilitation**

- More conservative interpretation of the Standards
- Extended review timeframes due to hold letters and RFIs
- Inconsistent reviews, including inconsistency from comparable/previous project reviews, inconsistency between SHPO and NPS, and inconsistency between NPS reviewers

Project examples provided by consultants are included below illustrating each of the issues. In the following project examples, a summary of the example is provided in bold followed by the full response from the consultant in italics.

#### **PART 1 – EVALUATION OF SIGNIFICANCE**

The survey respondents identified two central issues with respect to reviews of Part 1 Applications including: increased level of documentation which impacts the cost and schedule of a project and increased rigor in evaluating integrity.

#### **Increased Level of Documentation**

**Example 1:** A Part 1 was submitted c. 2010 for a warehouse building and was approved at that time by the NPS. A subsequent applicant submitted a new Part 1 Application and the SHPO required three substantial revisions to the nomination before they would forward the application to the NPS. The NPS then approved the Part 1 Application within

**30 days. This example highlights the increased level of documentation required over the past ten years.**

*I recently took 6 months to get Part 1 approval for a large 20<sup>th</sup> century concrete warehouse. A Part 1 had previously been approved for the property c. 2010, but the current SHPO staff did not agree with that assessment. This should have been a quick and efficient process for the developer. Instead, a full nomination was submitted with a new Part 1 in mid-July per SHPO requirements. Because SHPO “doesn’t like warehouses,” they required three substantial revisions to the nomination before they would consider forwarding it to NPS (including one that questioned the extent of historic walls extant within the building). A new Part 1 approval was received from NPS within 30 days after they received the Part 1.*

**Example 2: SHPO required a Determination of Eligibility (DOE) in lieu of a Part 1 Application (if SHPO denies a DOE the application is not sent to the NPS and the application does not move forward).**

*We have several projects where we are trying to figure out if the buildings could be individually eligible for listing in the NRHP. Rather than submitting a Part 1 the SHPO office is requesting the preparation of a DOE with the requirement that the level of detail and historic context information is essentially an NR nomination. After submitting the DOE, the SHPO reviewer took three months to respond, and came back with many comments and required additional research far above what a normal DOE requires. The requirement by the SHPO to submit a DOE, not a HPCA Part 1, is problematic because if they deny eligibility, we have no ability to get NPS to weigh in. Taking three months to even get to a point where we can move forward with a Part 1 has caused extreme delays in the project.*

**Example 3: A Preliminary Determination for Individual Eligibility (PDIL) was submitted for a property that had received a Determination of Eligibility (DOE) seven years ago and a second DOE within the past year. The SHPO required two rounds of revisions, with the majority of comments related to NR-related, state-specific grammatical revisions and formatting. SHPO indicated that a fully developed and complete National Register nomination was required in order to submit to the NPS.**

*A project involving the headquarters of a nationally recognized manufacturer received a DOE seven years ago and a second DOE within the past year. The building retains integrity and has not been altered since the DOE decisions. A new owner wanted to move forward with historic tax credits and a Part 1 draft*

*nomination submitted. The nomination contained a fully developed statement of significance with criterion assessment. The SHPO reviewed and responded with a number of questions that they required be addressed for the Part 1 to advance to the NPS. The majority of their comments were NR-related, state-specific, grammatical revisions and formatting. The SHPO indicated that a fully developed and complete NR was required in order to submit to the NPS. A revised Part 1 was submitted and the SHPO issued another RFI requesting additional research and added context to the significance statement. This delayed process caused uncertainty in whether this site was ultimately going to be listed and impacted the overall schedule of the project.*

**Example 4: Part 1 Preliminary Determination of Individual Eligibility (PDIL) was submitted for a mid-century modern building. The SHPO required several rounds of revisions so that the final Part 1 transmitted to the NPS would be a fully developed National Register nomination. The developer was operating at risk during the rounds of Part 1 revisions with \$70,000/month in carrying costs. The cost of the delay eroded the benefit of the credit.**

*We submitted a Part 1 application for a Preliminary Determination for Individual Listing (draft nomination). The SHPO required several rounds of revisions so that the final Part 1 transmitted to the NPS would be a fully developed National Register Nomination (as SHPO believes this is the NPS requirement). The building was a mid-century modern building and there was uncertainty as to whether the NPS would ultimately issue a Part 1 approval, so the developer was operating at risk during the rounds of Part 1 revisions and had to hold off on advancing the Part 2 application/drawings. This back-and-forth with SHPO during the Part 1 review extended more than 120 days, all without the benefit of any input from the NPS. In addition to the cost of the nomination, the developer was paying \$70,000/month in carrying costs. The actual cost of delay significantly eroded the benefit of the credit.*

**Example 5: SHPO required a revised Part 1 Application for a district building, requiring additional documentation addressing the architectural and historical themes during the period of significance. This caused a delay in the project. Historically the documentation requirements for Part 1 Applications in district buildings were more minimal.**

*We submitted a Part 1 for a district building. For the application we prepared a typical architectural description and building history and statement of significance. After a 30-day review period, the SHPO responded that they needed a revised application with an argument that makes the case for why the building is*

*contributing to the district, and specifically addressing the architectural and historical themes during the period of significance. This additional documentation requirement is unnecessary for a district building and caused a 30+ day delay in the project.*

### **Increased Rigor in Evaluating Integrity**

**Example 6: An apartment building was nominated for listing. The building was largely intact with minor alterations. SHPO determined that the compromised integrity and the fact that there were other examples of apartment buildings in the city would preclude listing. The consultant was awaiting NPS response at the time of writing.**

*We nominated an apartment building under an MPS that has extensive discussion in the registration requirements about integrity. The building is probably 85% historically intact, inside and out, and was determined potentially eligible under the MPS by City staff a few years ago. It has its front porches with some replaced railings, all of its historic windows on the front and side elevations, and most of its simple decorative pieces, as well as intact apartments inside. On the exterior, it is missing its simple cornice, and its back porches were enclosed early on. These two items were enough for SHPO to declare that its integrity is compromised. This coupled with the fact that it is “just one of several apartment buildings in the city” made SHPO say it was ineligible for individual listing. SHPO did suggest we look at a historic district for the neighborhood, but that is not feasible. We submitted a Part 1 to get NPS’s say and are awaiting a response.*

**Example 7: SHPO raised an integrity issue on a warehouse project citing that the existence of temporary walls and the presence of stored goods detracted from the “open floor plans” of the warehouse. The NPS ultimately listed the building illustrating inconsistency between SHPO and the NPS.**

*SHPO took issue with the integrity of a very large, early 20<sup>th</sup> century warehouse. Items we debated included whether temporary walls and the presence of stored goods actually detracted from the “open floor plans” of the warehouses and whether the rehab of the one-story loading dock bays inhibited the ability of the building to read as a relay station as well as a warehouse. The building was listed earlier this year.*

## **Additional Part 1-Related Issues Raised in Project Examples -- Inconsistency in Reviews between SHPO and the NPS**

**Example 8:** SHPO and NPS disagreed on the eligibility of a building; resolution caused extreme delays in the Part 1 process.

*The Park Service expressly stated they wanted a building to be included in the tax credit submittal, but the SHPO is denying its eligibility, so SHPO and NPS are not on the same page, and we are currently going back and forth with both causing extreme delays in our ability to move forward with a Part 2 submittal.*

### **PART 2 – DESCRIPTION OF WORK**

The survey respondents identified three central issues with respect to the review of Part 2 Applications including: more conservative interpretation of the Standards, extended review time-frames due to hold letters and RFIs, and inconsistent reviews.

#### **Conservative Interpretation of the Standards**

**Example 9:** A mill complex received a Part 2 conditional approval with one condition ten years ago. The same applicant is resubmitting a Part 2 Application, but the scope of work approved in 2012 is no longer approvable by the NPS. This example highlights the more conservative interpretation of the Standards.

*We are working with a developer who is renovating a mill complex for which the HPCA Part 2 was approved by the NPS ten years ago. The approval included one condition (submittal of window drawings). The project was put on hold and now the same owner is resubmitting an updated HPCA Part 2 application. The 2012 scope of work included window replacement, drywall ceilings, 5 ½" of insulation at perimeter walls, and pouring a new layer of cement underlayment with carpeting or vinyl flooring installed. Other than replacement windows, none of the previously approved 2012 work would be approved under today's interpretation of the Standards.*

**Example 10:** An affordable housing developer is rehabilitating a small school. The anticipated level of scrutiny on projects that involve intact buildings with many original features creates uncertainty for applicants. As a result, this developer is considering forgoing the historic tax credits.

*We are just starting to work with an affordable housing developer on a small schoolhouse, for which they want to provide 6-8 units of affordable housing in the school and additional units in new construction on an adjacent parcel. The units are planned to be one/classroom, plus an additional unit on each floor in space occupied by one of two identical staircases. Potential issues facing the developer include flooring replacements (currently covered with LVL, but NPS may require hardwood or engineered wood), tin ceilings and mechanicals (NPS prohibits dropping ceilings for mechanicals in the units or corridors except in kitchens and baths), windows (single glazed and so large they cannot be opened, but NPS will likely require they be retained), wood trim (NPS now requiring all trim, cabinets, blackboards, closets, communicating doors be kept in all living areas), removal of the one stair of two matching stairs to accommodate a studio apartment (and NPS will likely require to somehow keep the door, sidelights, and transom within a small studio unit), insulation, and slate roof. What should be a straightforward rehabilitation project is now faced with countless questions of how the NPS will review the project, in light of the stricter interpretation of the Standards. The developer is considering not pursuing historic tax credits.*

**Example 11:** The building was constructed in the 1930s with additions in the 1960s and 1970s. The 1970s addition was not structurally sound and had to be removed. The NPS would not permit new construction matching that footprint. Following receipt of Part 2 approval, the NPS reviewer indicated that the project would be reviewed as two projects (1930s and 1950s) and the 1950s may not qualify as it was outside the district's period of significance. This had not been mentioned in the Part 1 or 2 reviews. Accountants and attorneys determined that the NPS was incorrect, but this caused angst for the applicant.

*A recent project converted a gas station into a bar/restaurant. The gas station is a contributing resource in a NRHD (period of significance ends 1947), with the original 1930s building, a 1950s addition, and a 1970s addition (located in between and connecting 1930s and 1950s). The proposed scope included removing the 1970s addition, which was not structurally sound, and rebuilding it almost exactly to the same footprint. NPS determined that because the 1970s portion was non-historic, removing and rebuilding in the same footprint did not meet the Standards because the reconstruction would be reviewed as new construction. NPS required the "new construction" to be set back from the primary facade farther than the existing 1970s addition, creating a space issue for code-required bathrooms. A heritage tree occupies the lot behind the gas station, so the new construction could not be moved to the rear of the building. Constructing bathrooms in the new portion of the*

*building rather than the historic portions seemed the best way to meet the Standards. When negotiating the setback requirement, the NPS reviewer brought up the fact that they were reviewing the project as 2 separate buildings (1930s and 1950s), and that the 1950s addition may not be eligible for HTCs at all due to the NRHD cutoff date of 1947, even though the building is listed as 1 address in the NRHD, and the project had received no such feedback during the Part 1 and 2 reviews (and the Part 1 approval made no mention of dividing the building into separate resources). Through consultation with tax credit accountants and attorneys, we were able to confirm that, because NPS never indicated in the Part 1 or Part 2 that the 1950s wing would not be eligible for HTCs that it is, in fact, eligible, but this side remark by the NPS reviewer seriously concerned the Applicant. Further, the arbitrary nature of the period of significance in the NRHD, created simply by using the 50-year cut off, makes these determinations fraught and, at times, not reflective of the actual history of the building.*

**Example 12:** The project had a secondary elevation that required an approximately 12” x 24” masonry infill where a former thru-wall air conditioning unit had been located. The mason could not find a matching brick and proposed salvaging from a less conspicuous location or applying a masonry stain to match the surrounding condition. The SHPO rejected these solutions but ultimately approved a stain. The back-and-forth delayed the Part 3 approval.

*The applicant successfully rehabilitated a warehouse building for use by numerous nonprofit organizations. The work was completed according to all approvals with the exception of one small patch of brickwork (approximately 12” x 24”) on a secondary elevation. The brickwork was infill of a patch where an AC unit was installed in the wall. The contractor could not find brick to match the size and color of the existing masonry, and installed brick that closely matched the size of the surrounding masonry but was not a color match. The applicant searched numerous salvage yards for brick to no avail. The State reviewer would not let the applicant mitigate the brick by painting or staining it or by salvaging brick from a less conspicuous location within the building and placed the Part 3 review on hold. The applicant found a long-term brick stain and proceeded to have a craftsman paint the brick so that it was imperceptible. Upon showing it to the reviewer and documenting that the stain was intended to last for up to twenty years, the State reviewer agreed that this was an acceptable approach and lifted the hold. The monthlong delay in trying to negotiate an acceptable solution with the reviewer resulted in significant delay of the Part 3 certification.*

**Example 13:** The applicant wanted to replace a non-original storefront to match the original based on historic photographs. The SHPO required retention of the existing as it was installed during the district’s period of significance. Criteria beyond age should be considered in decision making. This example demonstrates that decisions are frequently arbitrary.

*The storefront of a late 19th Century commercial building had been replaced during the period of significance for the downtown district to which it contributes. The original storefront had a single Richardsonian brick arch and a recessed wooden storefront, which were demolished during this earlier renovation. Good historic photographs were available of the original. The owner wished to recreate the original brick arch and wood storefront, SHPO recommended denial because the existing, non-original storefront dated to within the period of significance. Criteria for preserving or demolishing inappropriate and unsympathetic changes of the mid-to-late 20th century should be considered beyond just age. Similar situations have popped up on other buildings with long periods of significance and multiple rounds of change. It is difficult to know what the right path is. Especially as period of significance now often extends into the 1960s and 1970s, we are asked to preserve those later changes which may have damaged or covered over original features, such as dropped grid ceilings covering over original decorative plaster on another project.*

**Example 14:** The applicant installed a new compatible storefront system and did not specify a finish color. The applicant painted the storefront a bright blue. The NPS required that the applicant repaint the storefront.

*NPS approved a Part 2 application and subsequent amendments for a typical mid-sized commercial building along a busy commercial corridor in a city. The reviewer approved a compatible and contemporary new storefront system without specifying any conditions regarding finish color. The applicant selected a bright blue paint finish for the new assembly, which the Park Service reviewer rejected. The owner was required to re-paint the new storefront panels.*

**Observation 1:** The SHPO/NPS views on storefront design is pushing streetscapes to a sameness and limiting architecture to the lowest common denominator.

*New storefront assembly requirements limit good design. More and more we are seeing reviewers only allow either full-on restorations of missing historic storefronts or bulky new aluminum systems. The bulky new systems NPS and the State consider*

*compatible and contemporary kill the vibrancy of historic commercial corridors and hamstring good design. The variety of glazing types, storefront recesses, and other configurations gave historic commercial streetscapes a liveliness that is being eroded by the aluminum systems that are being replicated over and over again. The tax credit program is pushing streetscapes to a sameness and limiting architecture to the lowest common denominator.*

**Example 15:** A project was required to use a replacement window that had a matching exterior muntin grid in addition to a matching interior grid and spacer bars. Historically, the NPS required only an exterior grid and spacer system. There was no notification from NPS of this new requirement, which caused confusion. This requirement added cost to a project.

*A recent project requirement was to use a replacement window that had a matching exterior muntin grid in addition to a matching interior grid and spacer bars. We have had many of successful HTC projects where the replacement windows had only an exterior grid and spacer system. The use of an interior grid was not required in any of our projects over the past few decades. There was no notification of this new requirement, and it came to a great surprise to our experienced project team. The cost of adding an interior grid is significant. This change represents yet another example of the more conservative interpretation of the Standards and an unnecessary new requirement and burden.*

**Example 16:** The project involved replacement of non-historic windows. The NPS rejected the proposed window and required a replacement window with different dimensions based on conjecture. The review process for the replacement window was very lengthy and impacted the schedule. The applicant had to purchase and install 30 temporary windows to get the TCO.

*Within the last three years, we had a project that was completed with State and Federal tax credits which included replacing existing façade windows with new aluminum clad wood. Traditionally, when calling for replacement windows, our design will do its best to capture the existing conditions, profiles, and details ensure the manufacturers replacement window types are within acceptable tolerance. However, what was unique to this project was all windows including their framing had been replaced with 1x1 1970s style vinyl. We had no historic window or dimension to match to minus a center wood mullion that we called for repair or*

*replacement in kind. The façade was a Tudor revival style and the design wished to reintroduce that feel with the replacement windows. As such, our Part 2 drawing set included details of a certain manufacturer with proposed dimension and all existing dimensions that we could disclose (opening, sill heights, brick mold, center mullion). A conditional approval was achieved but, as standard protocol, final window shop drawings had to be provided for review and approval prior to fabrication. After some coordination with the SHPO, they approved the drawings however, the NPS took large issue with some of the proposed dimensions. Keep in mind, we had limited existing dimensions to match to. Come to learn, the NPS's review was conducted in a manner than placed the building within the context of what they would traditionally expect of a Tudor style window. Quite literally we were trying to design and match something that did not previously exist. This resulted in numerous emails between our office and the NPS including multiple conference calls all while construction was ongoing while we attempted to come to a resolution. After presenting what we felt was more than sufficient detail explaining why we believed the submitted window met the Standards for Rehabilitation, the NPS ruled nearly two (2) months into coordination (roughly seven months into construction) with them that the proposed window did not have an appropriate blind stop detail because it was too large. The NPS stated that we had to change window manufacturers and provided us with two (2) examples that they felt would be appropriate. In this specific instance, it felt like the NPS had a certain type of window in mind that they wanted furnished for the project and no matter what evidence was presented in favor of our proposed window, they would not accept. Having no choice but to pivot, we examined the provided options and reached out to each manufacturer. We felt one was better than the other and ultimately had shop drawings made for review and approval. The NPS approved the window however, given the construction timeline and the Owners need to have a Temporary Certificate of Occupancy (TCO) by a specific date because of their funding structure, the Owner purchased roughly thirty (30) temporary windows so occupancy could be had. This cost, coupled with the upshot of roughly \$45,000.00 for the alternate windows was incredibly detrimental.*

**Example 17:** This consultant has also observed a more rigorous review of window shop drawings over the past 2-3 years. While the NPS maintains that shop drawings are not required for purposes of HTC review, securing more preliminary proposal drawings can be logistically challenging. There is confusion in the industry regarding NPS requirements for window replacement submission.

*The review of window shop drawings has become monumentally difficult and time consuming. In years past, a typical window elevation detailing the most common type, annotated with dimensions, and supplemented with four or five section drawings, was approvable. As of the last two to three years, comprehensive shops of every type and section detail are required. These packages can easily exceed 50 pages depending upon the vendor and easily triple NPS review time. What are the NPS & SHPO expectations? Can they be the consistent throughout the country?*

**Example 18:** Part 3 was placed on hold due to SHPO concern for nine exterior light fixtures. Multiple submittals were required to resolve. The applicant incurred additional costs and a seven-month delay.

*Part 3 for the Commercial Building was submitted to SHPO in July 2021, following an extensive rehabilitation of the dilapidated and previously modified office building that was converted to affordable housing. The project included: retention and restoration of all exterior windows; full reinstatement of the historic cornice, nearly all of which was missing pre-rehabilitation; restoration of the heavily modified base levels of the building, exposing and preserving remaining historic fabric and restoring missing elements consistent with their historic appearance; preservation of 100% of remaining historic corridors; reinstatement of historic corridor patterns where previously modified, including uncovering and preserving historic mosaic tile flooring; and substantial preservation and repair of historic wood flooring. The review was placed on hold by SHPO due to concerns about the location, size, and color of 9 exterior light fixtures. Further clarification and justification of the light fixtures was submitted to SHPO but again placed on hold for the same concerns. A third submittal offered numerous comparable examples of similar fixtures installed on previously approved HTC projects, along with side-by-side comparisons of Part 2 and Part 3 photos highlighting the extensive preservation and restoration work that was completed and the minimal visual impact of the fixtures on the overall appearance. The Part 3 was ultimately approved by SHPO and NPS with no changes to the work, but not until November 2021 and January 2022, respectively. The seven-month review process cost the project tens of thousands of dollars in additional interest charges and professional services, over a very minor issue on an otherwise exemplary project.*

**Example 19:** In a factory to loft apartment conversion, the NPS required a flooring survey to document the conditions of the floors and to document dimensions, species, and direction of the floorboards. The submission of specification sheets on the proposed

**replacement flooring and the installation of mock-ups was also required. This level of documentation was not historically required and is costly and time-consuming to produce.**

*A recent project converted a 19<sup>th</sup> century factory to loft apartments. One of the key challenges the project faced was related to flooring. There was a requirement to produce a flooring survey to document the various conditions of the floors and we had to document flooring specifics such as dimensions, species, and direction of the boards. This level of documentation was not historically required as part of an HTC project and was time consuming and costly for the developer. The NPS then required the submission of flooring specification sheets and mock-ups for each floor type to assess the colors and dimensions of replacement products. The back-and-forth with the reviewers took many months and significantly impacted the project schedule.*

**Example 20:** The Part 2 included a condition that required that any uncovered historic wood flooring must be preserved or replaced in kind matching species and width dimension. The uncovered wood was a rare species that was challenging and expensive to match. This had cost and schedule implications for the applicant and impacted the tenants. The rigor in the review of flooring has dramatically increased in recent years.

*Within the last two years, we had a project that was completed with State and Federal tax credits. A portion of the project was the moderate rehabilitation of multiple 'perfect sixes' that each had three (3) apartment units. Unlike gut rehabs, moderate rehabs consist of cosmetic upgrades to a building. As such, the project budget is traditionally smaller and construction schedule far more aggressive. We received Part 2 Conditional Approvals from each the SHPO and NPS, however, the NPS tacked on a conditional item that any uncovered historic wood flooring must be preserved or replaced in kind matching species and width dimension. This item created both negative cost and schedule ramifications. We had to document and key the existing flooring conditions when they were uncovered during demolition to show the NPS that the conditions warranted replacement. What made this more challenging was tenants were being moved from their units and temporarily housed while the rehabs were conducted. The initial construction schedule allowed about 6 – 7 weeks per unit, so delays impacted tenants' lives amongst the financial implications. We as the architect had to move in rather quickly to document and guide the contractor appropriately so to not slow them down, however, this proved more challenging than imagined. We determined that the existing hardwood flooring was a rare southern yellow pine, which to have milled for replacement*

would have terminated the project before it could get off the ground because of the financial ramifications. The alternative to this was submitting an Amendment (60+ day delay while we waited for approvals) to install a prefinished hardwood that mirrored pine. The prefinished material would be installed when existing flooring was beyond the ability of repair or non – existent. This flooring was also custom milled (thought slightly cheaper than traditional wood), had a long lead time, and was over budget compared to the specified prefinished oak, but the Owner had no choice in the matter or risk jeopardizing their tax credits. Further, the Owner went as far as ordering enough prefinished pine flooring to replace each of the thirteen (13) buildings in its entirety to ensure the contractor did not run out of materials given how long the flooring took to mill. As such, on top of the material upcharges and delays, the Owner was left with about 5,000.00 square feet of flooring attic stock that they had nowhere to store and paid for unnecessarily. Lastly, the refinishing of existing hardwood floors was not in the contract budget so, anytime conditions warranted repair/refinishing, this became a change order and add.

**Example 21: Increased scrutiny of new flooring, required extensive research beyond what was previously required. Resolution took a year and impacted project schedule and cost.**

An ongoing project is a 1925 historic hotel that was converted to offices in the late 1970s. The 1970s modernization removed almost all historic fabric in the interior of the building. The current rehabilitation is converting the space back to a hotel. One of the key challenges the project has faced is related to flooring. Historic photographs showed tile in the lobby, but the assumption was that wood flooring had been used in other areas of the first floor including the dining room. There was a requirement from the reviewer to provide physical evidence that there had been wood flooring on the first floor to propose using wood floor. The historic hotel was part of a chain and extensive historic photographs of other hotels in the chain showed the presence of wood flooring on the first floor. With extensive additional research historic drawings and specifications were uncovered that showed wood floor existed. Reviewers did not find enough detail in the additional documentation for specific rooms in the building where wood was present to approve the use of wood flooring. Additionally, the historic photographs from other buildings were not allowed as comparative examples of how the other hotels in the chain were finished. This level of specific documentation and justification has never been historically required as part of an HTC project where no historic fabric existed and was extremely time consuming and costly for the developer. Ultimately the wood

*flooring was not approved, and reviewers required the project to use tile based on the documentation that showed tile in the historic lobby. This back-and-forth took nearly a year to work through and significantly impacted the project schedule and cost.*

**Example 22:** The owner purchased a building that had exposed brick walls and intended to retain that condition. The SHPO required that the walls be finished. The consultant alerted SHPO that NPS guidance currently available confirms that if a historic feature is missing at the time of Part 1 certification, its replacement cannot be a requirement of the Part 2. The SHPO indicated that the guidance is outdated and required that the walls be finished. The applicant decided to forgo the historic tax credits.

*A recent project involved a new restaurant going into an existing restaurant space in a typical Main Street commercial property. Previous owners many years prior had removed all historic wall finishes, leaving brick walls exposed. The new owner wished to maintain the existing exposed masonry walls. The consultants advocated for the owner, noting that, "Park Service guidance is fairly consistent in not requiring an owner to restore features and finishes entirely removed by a previous owner. Their 'Applying the Standards' page includes a memo summarizing tax credit evaluation of previously altered historic buildings (<https://www.nps.gov/subjects/taxincentives/upload/deteriorated-damaged-previously-altered.pdf>) The memo notes that if a historic feature is missing when Part 1 certification is issued, its replacement cannot be a requirement of the Part 2." The consultant found information in a historic assessor property card that indicated the wall finish in this space was originally metal panels. The restaurant owners were willing to install a compatible yet contemporary metal panel over the brick as a way of meeting the State's requirement. The State review team rejected the request, noting that the guidance from NPS was "fairly old," and that the guidance applies more to not requiring the recreation of missing features such as trim and fireplace mantels. The review team also rejected the metal panel option, believing that drywall would be more appropriate than a compatible and contemporary metal panel. The applicant chose not to continue with tax credits on this project because of the requirement.*

**Example 23:** A YMCA was rehabilitated into a boutique hotel restoring many spaces and features that had been lost to previous renovations. The historic pool was retained and the SHPO required an on-site meeting with the tile maker to review tile color and crazing patterns, which were historically an imperfection. This added unnecessary time and cost

**and effectively penalized the developer for reusing a historic element of the building which is frequently mothballed.**

*Conversion of an early 20<sup>th</sup> century YMCA into a boutique hotel restored many features that had been lost to previous renovations (open spaces, plaster ceilings, etc.) and retained significant elements like the two gymnasiums and the elevated running track. The project also incorporated the historic pool into the new spa and fitness facilities, restoring it to continue functioning as a swimming pool. While the team anticipated discussion with the NPS and SHPO about replacement wall tiles, the SHPO reviewer insisted on a meeting with the architect and a representative from the tilemaker on site to review not only color but also crazing patterns, an imperfection in the glazing of the original tiles. This added an unnecessary amount of time and money to the project, effectively penalizing the developer for reusing an important historic element of the building that is frequently infilled or mothballed during a rehab. This was just one of many challenging components of this project, which was compounded by the fact that both NPS and SHPO reviewers changed midway through the Part 2 review.*

**Example 24:** The applicant removed modern finishes in a commercial space exposing a pressed metal ceiling, which was disclosed to the SHPO/NPS. The applicant reinstalled the pressed metal ceiling 6” lower than the historic ceiling to conceal plumbing lines. The SHPO/NPS required that the ceilings be removed and reinstalled at the historic height with the plumbing exposed in areas and concealed in drywall in areas. The 6” drop was not readily perceivable and the exposed plumbing is not aesthetically desirable. This example illustrates what consultants have characterized as punitive conditions.

*A commercial building in an urban area had heavily modified commercial spaces and storefronts on the first floor, including non-historic flooring, dropped tile ceilings, covered storefronts, non-historic partitions, and wall paneling. The applicant removed all non-historic material and partitions and disclosed and retained discovered historic fabric at the storefront. The uncovered tin ceilings were dropped approximately 6” from their historic height (tight to the joists) to conceal plumbing lines for the apartments above. The State and NPS reviewers required the tin ceilings be removed, plumbing be exposed in some areas and enclosed with drywall in others, and tin reinstalled tight to the joists. Dropping a ceiling 6” did not compromise the historic character of the space, and as originally implemented was a vast improvement over the existing condition at the start of the project. The final (mitigated) product will have exposed systems in a finished commercial space when a 6” drop would have not been perceived by the average person.*

**Example 25:** Over the past five years the bar has been raised regarding the requirements for ceiling treatments. This more rigorous requirement has implications on design and construction.

*Lowered ceilings in corridors & units are becoming increasingly problematic. Just five years ago, the rule of thumb was to ensure there is more square footage of exposed ceiling surface in units than lowered or soffited ceilings. The bar has been raised, again over the last two to three years with and NPS now requiring viewsheds from the unit entry to unit windows documenting uninterrupted/original ceilings heights - this is not feasible on most/all projects when the units are stacked, and bathrooms and kitchens are positioned adjacent to the common corridors.*

**Example 26:** A former school was converted for low-income senior housing. Most of the historic coat closets remained but had been defaced with graffiti and carvings with obscenities. The applicant retained the coat closets and coated them with a more opaque stain to conceal the markings. The SHPO denied the project and it was subsequently overturned on a state-level appeal.

*A former school building was converted into housing for low-income seniors. Most classrooms retained historic chalkboards and coat closets. These features were preserved within new apartment units. Many of the coat closets had been defaced with graffiti, and some obscenities were carved into many of the closets. The applicant chose to re-stain the preserved closets with a more opaque stain that would conceal the obscenities and other markings. The State reviewer placed the Part 3 on hold and ultimately denied the project when the applicant was unwilling to move the seniors out of the new units to mitigate the unapproved stain. The completed work was an otherwise classic tax credit project that the reviewer described as "exemplary." The applicant won on appeal to the head of the State program.*

**Observation 2:** Interpretation of atrium guidance is getting more and more restrictive.

### **Extended Review Timeframes Due to Hold Letters and RFIs**

**Example 27:** A rehabilitation received conditional Part 2 approval, which included approval of replacement windows. The NPS applied a condition requiring review of the few additional window types that were not submitted. The NPS reviewer reopened

**review of all windows and resolution took a year. This resulted in significant project delays and costs.**

*The rehabilitation of connected commercial buildings received a conditional Part 2 approval, with a condition requiring review of the few additional window types that had not already been submitted. When those drawings were submitted, a new NPS reviewer reopened review of all of the windows and put the owner into a year-long reiterative cycle of reviewing and revising window drawings that required six amendments and multiple calls with NPS staff to understand what was being requested, despite the majority of the windows having already been approved. It resulted in significant project delays and costs.*

**Example 28: A school rehabilitation received a Part 2 hold. Following the submission of the additional information, the conditional approval included 21 conditions and sub-conditions. The increase in the number of conditions requires additional Amendment submission to achieve resolution. This increases risk to developers and extends project timelines.**

*A recent school rehab Part 2 application was put on hold with a request for additional information. Following the submittal of the requested information, the conditional approval included 21 conditions and sub-conditions.*

**Comment 1: The number of Amendments has risen from 3-4 per project to upwards of 15 on straightforward projects. This has resulted in extended project timelines and increased cost to owners/developers.**

*The number of amendments has exceeded the typical three or four and is now upwards of 15 for a single project. These are not overly complicated projects, typical school or mill rehabilitations, buildings we've all successfully completed dozens of times. The effort and time required by the consultant, architect, contractor, and subs to compile these amendments is upwards of 30 hours, depending on the scope and not including the countless internal calls conducted to ensure the amendments are being compiled and tracked.*

**Example 29: The SHPO required remedial work to address a stair railing, which required proof of the means of mitigation and delayed Part 3 certification.**

*A new stair from the commercial space to a basement was built to match the historic. The State reviewer required remediation of the stair rail at the Part 3. The applicant proposed enclosing the rails with drywall to create a knee-wall railing as*

*shown in an example provided by the Part 3 reviewer as an acceptable solution. The State reviewer originally required the rails be removed and drywall installed. The reviewer eventually relented and allowed the drywall to enclose the rails. Remediation work at the Part 3 is often very difficult as contracts may have run out and tenants now occupy the space. The concern is not that the stair required mitigation, but that the reviewer was requiring proof of the means of mitigation when the result was visually appropriate.*

**Example 30:** The project required the construction of a new elevator tower to accommodate a gurney sized elevator necessary to meet life safety requirements. The local historical commission approved this scope item, but the SHPO/NPS required extensive additional information to prove there were no alternative solutions. This caused significant schedule delays. The SHPO/NPS did not take the opinion of the local historic commission into account.

*A recent project converted a senior living apartment back into a hotel which was its original use. The conversion back to public occupancy required a gurney sized elevator to be provided and was one of the key challenges the project faced from the inception as it relates to fire life safety. The city was a certified local government with trained staff. A Certificate of Appropriateness (COA) was required to be issued as well as approval from the Cultural Heritage Commission and the Coastal Commission, both with extensive timelines for public hearings. The owner needed to develop the plans in stages to address the different committees' comments on the elevator tower expansion that was required in order to bring the building back to hotel use. The owner applied for the 20% Rehabilitation Tax Credit as a way to help offset the costs of project conversion and without the tax credit the project was not financially viable. The SHPO and NPS did not give any weight to the extensive design review process the owner had to go through and the owner's consultant was required to redocument and prove that the elevator tower could not go in any other location. Even after providing the same information that was used to obtain the COA the NPS still did not "believe" the professionals of the project team that there were no other solutions and put the project on HOLD for additional information and more complete drawings. Once those complete drawings were provided as well as the supporting information on why the location of the elevator tower was chosen the NPS reviewer reluctantly stated that they would accept the location of the new elevator tower, but they denied the project for other reasons and treated this item in the "cumulative effect" discussion as if it wasn't acceptable. In this example the*

*owner has no choice but to comply with fire department requirements or a certificate of occupancy would not be granted.*

*SHPO/NPS reviewers could reduce their review time on projects that have city historic designation by requiring copies of the project application, relevant correspondence and approvals, as well as an addendum from the architect that would cite the code requirements that are driving the design decisions. SHPO/NPS review process should respect & adopt the local authority's decision related to a project meeting the Secretary of the Interiors Standards whenever possible. NPS should have a database of cities and communities that have CLG status or equivalent status, that they acknowledge to be "preservation educated" communities as a way of expediting the review process. Staff can also take comfort in knowing that local city staff is looking after the project while construction is commencing. If NPS could require the owner of a landmark to transmit the Part 1, 2, and 3 to the local agency as a way of connecting the federal with the local review process more effectively.*

**Suggestion 1: Standardize Part 2 submission requirements for projects that have specific code issues so that the applicant knows what to include, and RFIs can be avoided.**

*Building Code requirements that projects must adhere to should have more definition to the standardize documentation request so the preparer of the application can collect the required/standardize information upfront, and a Request for Information (RFI) item can be avoided. This may need to be customized by State or Region. In California extensive full seismic upgrades are required on a majority of projects. Historic buildings are always very challenged meeting local code requirements, and the structural engineer has very little flexibility. Sometimes the corridors retain a high degree of historic fabric, while other buildings are very ordinary and have been altered over time. Historically hollow clay tile was used for wall infill material. This material is very unstable and heavy. The structural solution is often to remove the upper floor corridor, and room dividing walls, and replace them with drywall. This scope of work also triggers the removal of all the ceilings, doors and hardware, sidelights and or transom windows, baseboards, and door trim. Original flooring can be protected in place and reused. NPS guidance could state: Architectural and MEP drawings are required to justify and describe the scope. If corridors are required to be demolished the new walls must be reinstalled in the same location as the historic corridors. The dividing walls on the interior of the room have flexibility for a new layout. Each doorway location must be documented on as-built plans and photographed. The new door layout plan should*

*match the rhythm of the previous door layout unless conditions will not allow. If necessary, provide justification as to why the door layout was chosen. Historic doors and hardware, sidelights and transom windows modified for fire life safety code, baseboards, and door trim should be reinstalled. Or, if the level of historic fabric is minimal, the new doors should be a similar size as well as the door trim and baseboards. Corridor ceilings should be the same height as historic conditions unless the new MEP and fire sprinklers require modification of this height. If the ceiling is lowered, the applicant must provide MEP and Sprinkler drawings to support the new ceiling height.*

**Suggestion 2: Many local municipalities have professional staff that have qualifications equal to the SHPO/NPS staff. Yet, SHPO/NPS often have conflicting reviews from the local municipalities, which can force an applicant to forgo the historic tax credits or incur significant delays to resolve. SHPO/NPS should respect the local municipal review.**

*The NPS does not recognize the local city agencies historic property inventory and the local design review process for historic buildings. Many city agencies have greatly advanced their historic inventory records and policies and procedures for protecting their historic assets. Many of them have become CLG's – Certified Local Governments and received funding to train staff as well as accept requirements that they will implement the Secretary of the Interior's Standards in their design review process. This is very different than when the HTC program was created and currently the SHPO and NPS reviewers do not ask, or review any of the local correspondence. However, these departments often have a Cultural Heritage Commission and permitting staff members that are required to issue a Certificate of Appropriateness for a project in order for a building permit to be issued. This process is going on in conjunction with the property owner applying for the Federal Rehabilitation Tax Credit. Conflict arises when the property owner received approval from the local authority only to have the SHPO /NPS take a different position. The owner is left with a conflict that can only be resolved by walking away from the federal tax credits as the other is tied to receiving the building permit and sign off for the project. Reviewers currently take the position that they do not need to consider the decisions of the local authority. This results in irreconcilable differences that cannot be overcome and it results in delays in the project as the SHPO/NPS reviewer issue an RFI for items that should be required upfront and considered in the SHPO/NPS review.*

## Inconsistent Reviews

**Example 31:** A Part 2 Amendment was placed on hold by SHPO, citing numerous perceived issues and requiring substantial design revisions. The application requested that the design be presented to the NPS for informal review and the NPS determined the proposed work was acceptable. This example highlights the inherent subjectivity in reviews and the inconsistency in reviews between SHPO and NPS.

*A Part 2 Amendment was placed on hold by SHPO, citing numerous perceived issues with the design of a proposed addition and requesting substantial revisions. At the applicant's request, the design was subsequently presented to NPS for informal review, with NPS confirming that the design of the addition was acceptable as proposed. The Amendment was ultimately approved by SHPO and NPS with no changes to the design of the addition. This example highlights the lack of clarity regarding what is or is not compliant with the Standards, even for highly experienced SHPO reviewers, adding to the uncertainty facing applicants and the associated risks.*

**Example 32:** The project proposed the replacement of a modern storefront on an industrial building with a new aluminum storefront to match the configuration illustrated in historic photos. SHPO recommended a condition requiring new wood storefronts, stating that aluminum is not an acceptable replacement material. This is not consistent with prior projects where the NPS has long supported the use of aluminum storefronts. Ultimately the NPS permitted replacement with an aluminum storefront, highlighting the inconsistency between the SHPO and NPS reviews.

*The rehabilitation of a two-story light industrial building proposes to reinstall a storefront system that mimics the design of historic storefronts and vehicular doors. The original doors and storefront windows are no longer extant, although there are historic photos that document their original appearance/configuration. SHPO recommended a condition on the Part 2, stating that "components historically constructed of wood should be reconstructed of like material." The condition specifically states that "[a]luminum is not an acceptable replacement material." NPS had long supported the use of aluminum with a painted finish for situations like this where we know general appearance of the storefront elements, but the original materials are long gone. This has freaked out the developer who is new to HTCs. The NPS ultimately permitted replacement with an aluminum storefront.*

**Example 33:** New balconies were proposed within lightwells on the rear elevation of an early 20<sup>th</sup> century social club. NPS denied this feature, which was not consistent with earlier projects where the NPS permitted balconies on secondary and tertiary elevations.

*Conversion of an early 20<sup>th</sup> century social club into apartments proposed adding balconies within lightwells on the rear elevation of the W-shaped building. This façade faces an alley and a non-historic parking garage. Even though the balconies would not be visible from the street, NPS denied the inclusion of this feature. HTC projects have a long history of including balconies on secondary and tertiary elevations, particularly when they are not readily visible to passersby. The developer felt this was an important feature for units that lacked nice street views.*

**Example 34:** In a project where a church sanctuary was being redeveloped for community space, the Applicant proposed partial-height walls. The SHPO indicated that the NPS would not approve this treatment in spite of guidance that suggests otherwise. The project timeline was such that it was decided not to pursue as to risk schedule delays. On the same project, the SHPO communicated that the NPS would require that the chapel in the parish remain open with no subdivision. Ultimately the project team asked SHPO to forward the Application and the NPS ultimately approved. This example highlights the inconsistency between SHPO and the NPS.

*We had a recent project at a neighborhood church where the sanctuary is being reused as a community space with housing in the attached parish house. During design development, the project team proposed installing two partial-height and partial-width partition walls to subdivide the large sanctuary space into usable amenity spaces. SHPO indicated that any permanent subdivision in the Sanctuary would be denied, even though ITS 6 and 44 and the white page on Subdividing Assembly Spaces in Historic Buildings clearly allow for modest subdivision of these types of spaces. Because of the project timeline, the team elected to remove this item from the scope rather than risk extended negotiation with SHPO and TPS that would delay Part 2 approval and project financing.*

*On the same project, SHPO communicated that a multi-use chapel in the parish house would also need to be retained as one large volume. The chapel occupies half of the first floor and historically had movable accordion walls to subdivide it into smaller meeting rooms. SHPO gave the project team same reasoning—that TPS would deny the subdivision. Keeping the chapel as one volume would have eliminated multiple units from the project, risking critical financing that was tied to the number of affordable units. Because of the high stakes, the project team asked SHPO to submit the plans to TPS with the proposed subdivision. TPS overruled*

*SHPO's suggested condition denying the subdivision. While this was a good outcome for the project, the unclear—and ultimately inaccurate—information from SHPO caused a delay in the Part 2 approval.*

**Example 35: The NPS made a change in their requirements for corridor ceilings which has increased MEP costs. There is no guidance on this issue, which creates uncertainty for consultants and applicants.**

*NPS no longer allows lowered ceilings in corridors. There is no guidance detailing what is acceptable, which leaves consultants speculating as to the appropriate scope and has created massive cost increases and MEP modifications that are unprecedented.*

**Example 36: Mechanicals required to be in units rather than corridors, which was inconsistent with previous reviews. Better guidance is needed on mechanicals.**

*A recent project proposed the adaptive reuse of a vacant and deteriorating elementary school for use as an affordable senior housing community. The biggest challenge faced involved the incorporation of new mechanical systems to meet the needs of the proposed residential use. Initially a pre-existing dropped ceiling grid was proposed to be retained to conceal new mechanical systems; however, the ceiling required partial replacement due to a fire in the building. The proposal was rejected by SHPO who noted that if it could not be retained in its current condition it needed to be removed to restore the historic ceiling height. SHPO also conditioned that new dropped ceilings could not be placed within the corridors and had to be limited to closets and bathrooms within units. This decision was inconsistent with other similar projects and lacks understanding of mechanical system requirements. Better guidance and parameters for both maintaining/repairing non-historic elements and inserting new systems within historic buildings is needed.*

**Example 37: Wood-look LVT flooring was denied by SHPO/NPS for installation in a mid-century office tower being converted to apartments. Wood-look LVT flooring was approved in two other mid-century office towers that were converted to apartments in the same state, including one owned by the same applicant. This example highlights the inconsistency in reviews from one project to the next where the projects have similar fact patterns.**

*Part 2 approval for the proposed rehabilitation of a mid-century office tower being converted to apartments included a condition prohibiting the installation of new*

*flooring with a wood-like appearance within apartment units (the applicant had proposed wood-look LVT). Wood-look LVT flooring was subsequently approved for all apartment interiors in two other comparable projects (mid-century office towers being converted to apartments) in the same state, including one owned by the same partnership that was denied the use of wood-like flooring. SHPO and NPS reviewers offered no explanation for the different treatment of comparable proposals, and there are no clear factors that would justify different decisions. The applicant was understandably confused and frustrated by the conflicting and seemingly arbitrary outcomes.*

**Comment 2: A common cause of project delays is unclear or inaccurate information provided by SHPO that is subsequently overruled by the NPS. This creates risk and confusion for project teams. Written guidance from NPS and more transparency in reviews is needed.**

*In general, one common cause of project delays is unclear or inaccurate information SHPOs give to project teams on behalf of the TPS. We frequently hear from SHPO that design revision is needed because TPS won't approve a project otherwise. On multiple Part 2 applications within the past 3 years, however, significant recommended conditions from SHPO have been overruled by TPS. This creates intense confusion for project teams and makes it increasingly difficult for consultants to provide accurate advice. We appreciate that TPS has tried to communicate with consultants more directly in the last year via webinar updates. We're also looking forward to the in-person training in D.C. in September. At the moment, many of the SHPOs act as if their discussions with TPS are secret. When SHPO recommendations are overruled by TPS, it adds risk and frustration to an already challenging process. Written guidance from TPS and more transparency in reviews at all levels is greatly needed.*

### **Additional Part 2-Related Issues Raised in Project Examples**

#### **1) Unwillingness of Reviewers to Dialog with Consultants**

**Example 38:** A preliminary review was submitted proposing reconfiguration of a driveway on a campus and there were few comments received in the feedback. The Part 2 Application then was placed on hold. The preliminary review did not provide sufficient comments and the NPS reviewers would not agree to a call to discuss.

*A recent project involved a campus with multiple buildings organized around a central driveway and cul-de-sac, not original but within the period of significance. We submitted a preliminary review to SHPO and NPS that included reconfiguration of this driveway and received very few comments. We addressed those comments when submitting the Part 2, which was then placed on hold due to proposed changes to the landscape. The issue with this project is threefold: (1) the preliminary review did not provide us with substantial enough comments to anticipate the review that would come with the Part 2; (2) NPS reviewers declined to schedule a conference call to discuss the comments; (3) guidance on landscape features has been muddy at best from NPS reviewers. Taking into consideration, as well, that, in this case, NPS requests the retention of extensive asphalt, this is not in keeping with sustainability goals of the program and also made compliance with local permeable surface requirements difficult. Furthermore, considering that landscape and site work are not QREs, it seems silly to threaten denial of an otherwise very good preservation (in some areas, restoration) project over the reconfiguration of a driveway. We understand that NPS has review authority over an entire property, but items that are not QREs could receive a less strict review, which would provide necessary flexibility. Additionally, and more broadly, the preliminary review process varies widely state-to-state and reviewer-to-reviewer. In some cases, we're able to get real, substantive feedback and, even, have a conference call with SHPO and/or NPS to discuss the proposal. In other states, they're reluctant to complete the reviews at all or do not do so in a timely manner (two months in this case!) and we receive small comments and no interest in substantive conversation in a conference call. We use preliminary reviews often but receive mixed results and wish for more consistency.*

## **2) Expectation for Exploratory Demolition**

**Example 39: SHPO required the Applicant to pull up carpet and remove ceiling tiles in an occupied building, which is not always reasonable.**

*In occupied buildings, we are constantly asked to remove ceiling tiles, pull up carpet, etc., which is not possible in an occupied building. The SHPO claims this is an NPS requirement. Either way, it's unreasonable.*

### 3) Arbitrary Decision Making

**Example 40:** The project had a stair partially blocking a bricked-in window. The applicant wanted to remove the stair and restore the window. The applicant was permitted to remove the stair enclosure, but not the actual stair. The decision appeared arbitrary.

*A commercial building in an urban area had been modified multiple times, some within the period of significance. The applicant was making great strides in restoring original window openings which had been bricked in. A simple, corner stair partially blocked a bricked-in window which was planned to be restored. The stair had an enclosure, which met a brick chase, which interrupted the historic window opening. The applicant received approval to remove the brick chase and the stair enclosure, but not the actual stair. While the applicant has maintained the corner stair, it seems arbitrary to retain the stair while being able to retain the other associated features to restore the window.*

**Example 41:** The SHPO objected to a treatment at a non-historic garage entrance on a secondary elevation as shown in a Part 3 Application. SHPO required remedial work, which was ultimately approved by the NPS. The extended review period and unnecessary delays added substantial costs. The evaluation of such work is frequently based on personal design preferences and is a highly subjective interpretation.

*Part 3 for a Motor Sales Company building was submitted to SHPO in December 2020. The project included work to a former garage entry bay on the rear portion of a side (alley-facing) elevation that had been heavily modified post-period of significance and pre-rehabilitation including infill of the opening with stucco-coated walls and a recessed central entry. No historic fabric remained and no historic documentation of its appearance existed. In the rehabilitation, the existing non-historic infill walls were retained, with the non-historic entry door replaced in its existing location and wood trim applied to the stucco walls to create a more compatible and attractive appearance. Despite its location at the rear portion of a secondary elevation, and the lack of historic fabric pre-rehabilitation, SHPO objected to the altered appearance of the non-historic infill walls. At SHPO's suggestion, select areas of the stucco wall were painted a darker, contrasting color, after which the Part 3 was recommended for approval and ultimately approved by NPS in June 2021. Although the remediation itself was relatively simple and inexpensive, the extended review period added substantial interest costs to the project in addition to the time and effort required to reach an acceptable solution. This experience highlights how worthy projects can be subjected to unnecessary delays and*

*remedial work over very minor details, even of non-historic features in secondary locations, based on personal and highly subjective interpretations of compatibility.*

**Example 42:** SHPO placed a Part 2 Amendment on hold, expressing concern about certain scope elements. The applicant believed the concerns were not justified and refused to revise the proposal. SHPO issued three hold memos repeating the same issues resulting in months of delay. NPS ultimately approved the scope. Reviewers often leverage their review authority to push applicants beyond what is actually required to meet the Standards to meet their own personal objectives.

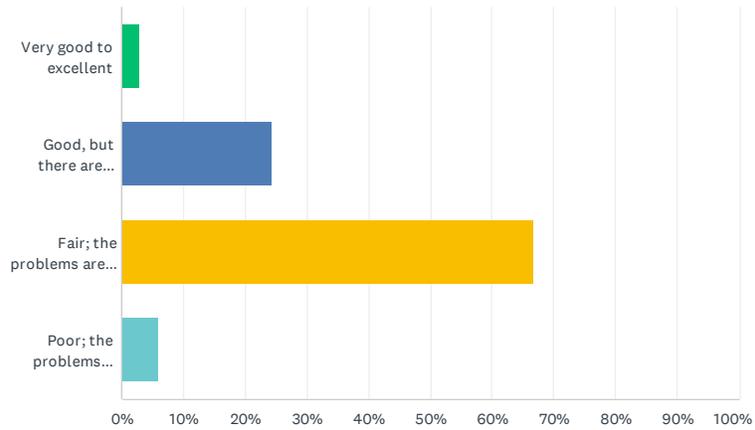
*A Part 2 Amendment was placed on hold by SHPO, expressing concerns about certain elements of several proposed work items, indicating that all would need to be revised in order to secure approval of the Amendment. The applicant believed the concerns were wholly unjustified and refused to revise the proposal, except to agree to shift a single wall (approximately 10 feet in length) one additional foot back from the exterior wall. The Amendment was ultimately approved by SHPO and NPS with no other changes, but only after three hold memos repeating the same issues and encouraging the applicant to make additional changes to their proposal, resulting in months of unnecessary delays when the project was already under construction. This represents a common example of efforts by HTC reviewers to push applicants beyond what is actually required to meet the Standards, unfairly leveraging their review authority and ability to delay progress in order to pursue personal objectives.*

## Appendix B

HTC Survey 2023

### Q1 Overall, how satisfied with the SHPO and NPS review process for historic projects?

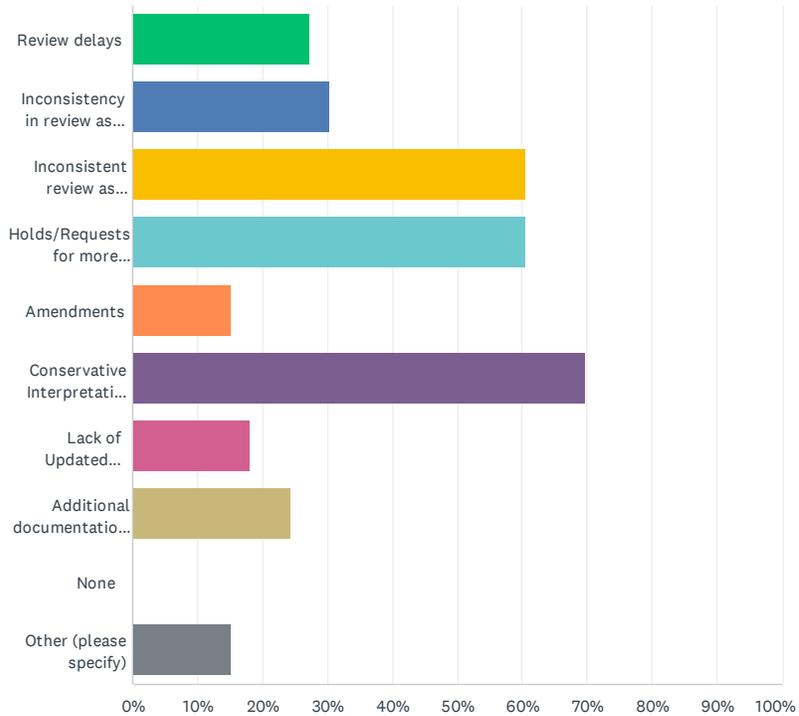
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very good to excellent	3.03%	1
Good, but there are modest problems that can be handled at a reasonable cost in time and money	24.24%	8
Fair, the problems are a significant burden on the cost and time to develop historic projects	66.67%	22
Poor; the problems threaten to undermine the rehabilitation of historic projects	6.06%	2
<b>TOTAL</b>		<b>33</b>

## Q2 What are the three most pressing issues that HTC projects are facing today (choose 3)?

Answered: 33 Skipped: 0

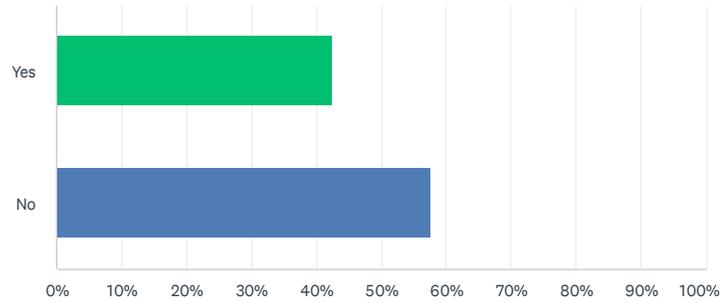


HTC Survey 2023

ANSWER CHOICES	RESPONSES	
Review delays	27.27%	9
Inconsistency in review as compared to other current projects	30.30%	10
Inconsistent review as compared to previous projects	60.61%	20
Holds/Requests for more information	60.61%	20
Amendments	15.15%	5
Conservative Interpretation of the Secretary's Standards	69.70%	23
Lack of Updated Guidance	18.18%	6
Additional documentation requirements	24.24%	8
None	0.00%	0
Other (please specify)	15.15%	5
Total Respondents: 33		

Q3 For Part 1s within an existing historic district, have you experienced an increase in the level of requested documentation?

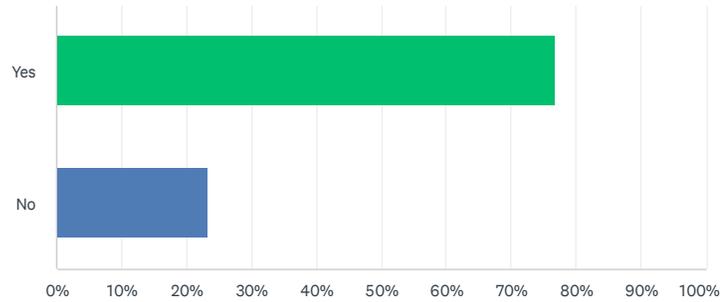
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	42.42%	14
No	57.58%	19
TOTAL		33

Q4 For Part 1 PDILs, have you experienced an increase in the level of requested documentation? Yes/No. If yes, please explain.

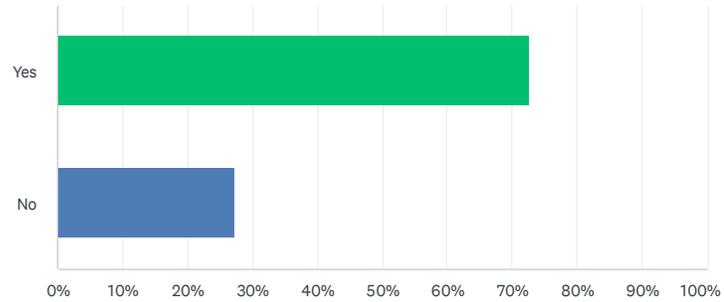
Answered: 30 Skipped: 3



ANSWER CHOICES	RESPONSES	
Yes	76.67%	23
No	23.33%	7
TOTAL		30

### Q5 For Part 1 applications and NR nominations, have you experienced an increased rigor in evaluating integrity?

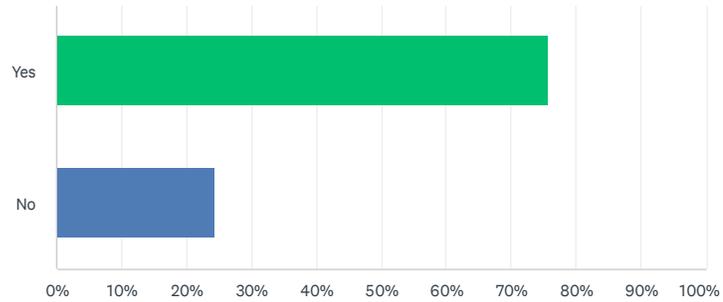
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	72.73%	24
No	27.27%	9
TOTAL		33

### Q6 For Part 2 applications, have you experienced an increased level of requested documentation?

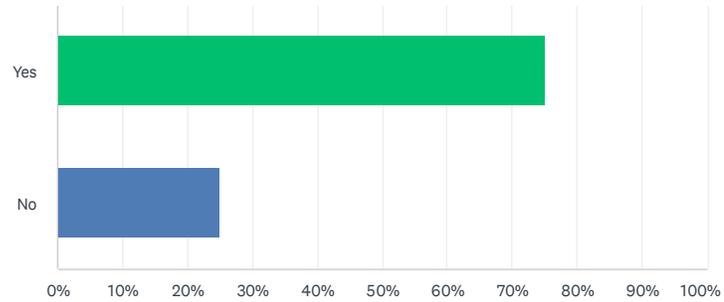
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	75.76%	25
No	24.24%	8
TOTAL		33

### Q7 Have you experienced a lack of consistency between reviews of similar elements of a Part 2?

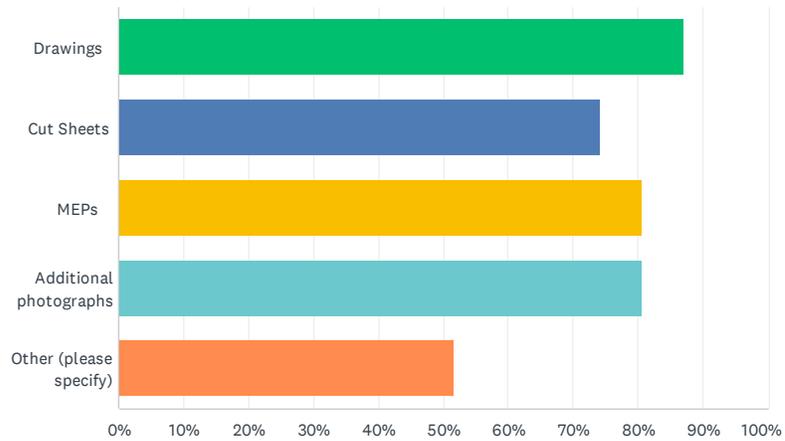
Answered: 32 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	75.00%	24
No	25.00%	8
TOTAL		32

### Q8 What kinds of additional documentation have been required?

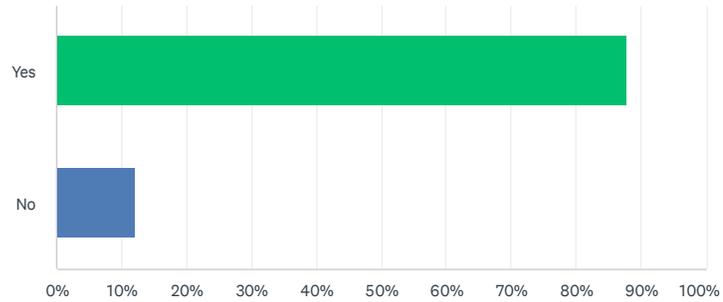
Answered: 31 Skipped: 2



ANSWER CHOICES	RESPONSES	
Drawings	87.10%	27
Cut Sheets	74.19%	23
MEPs	80.65%	25
Additional photographs	80.65%	25
Other (please specify)	51.61%	16
Total Respondents: 31		

### Q9 For Part 2 applications, have you experienced a change in the interpretation of the Standards over the past 5 years?

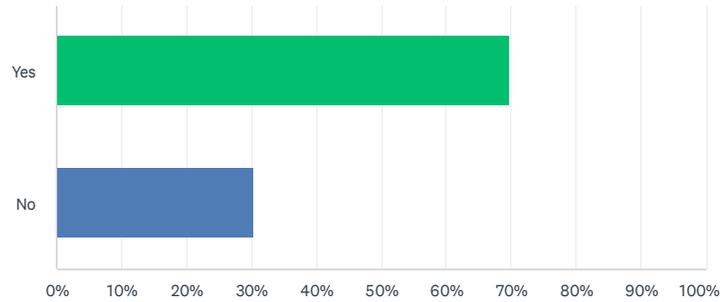
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	87.88%	29
No	12.12%	4
TOTAL		33

### Q10 Have you experienced an increase in the number of amendments requested/required by NPS or SHPO in the past 5 years?

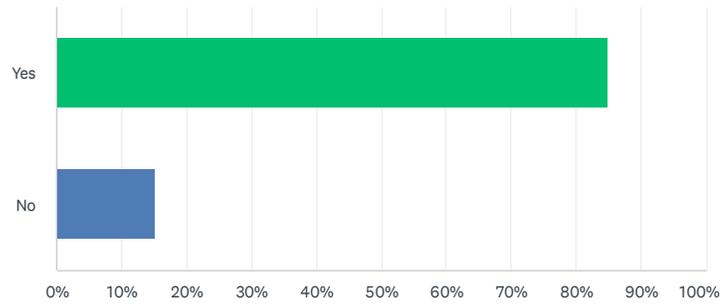
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	69.70%	23
No	30.30%	10
TOTAL		33

### Q11 Have you experienced an increase in review timeframes?

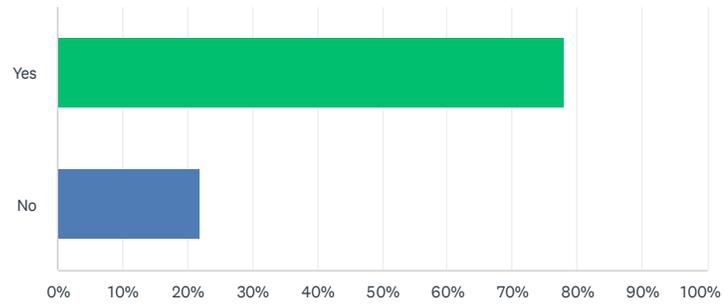
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	84.85%	28
No	15.15%	5
TOTAL		33

### Q12 Have you experienced an increase in project holds?

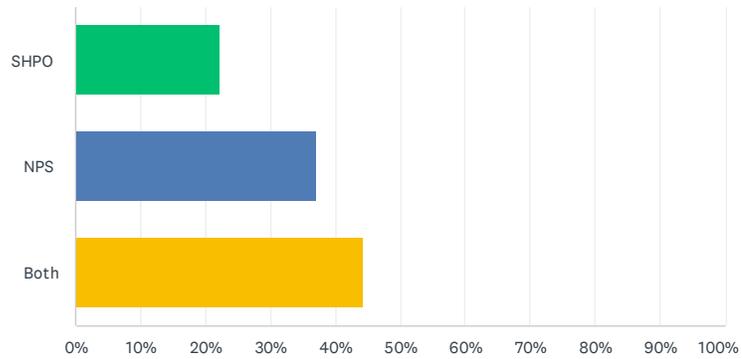
Answered: 32 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	78.13%	25
No	21.88%	7
TOTAL		32

### Q13 Have holds been more frequent at the state or federal level?

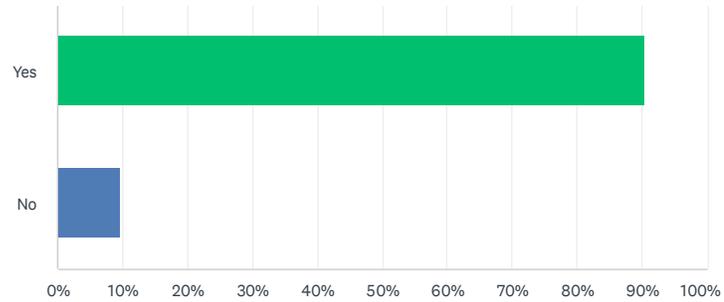
Answered: 27 Skipped: 6



ANSWER CHOICES	RESPONSES	
SHPO	22.22%	6
NPS	37.04%	10
Both	44.44%	12
Total Respondents: 27		

### Q14 Have you experienced an increase in requests for additional information?

Answered: 31 Skipped: 2



ANSWER CHOICES	RESPONSES	
Yes	90.32%	28
No	9.68%	3
TOTAL		31

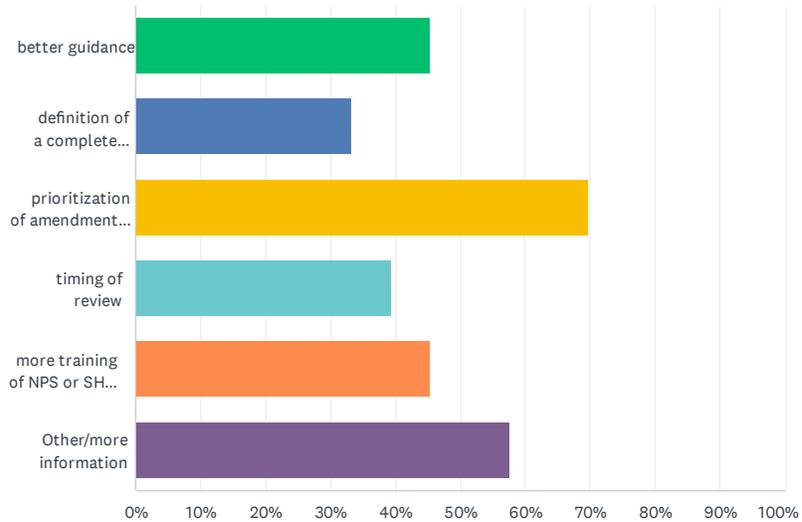
### Q15 If yes, can you quantify?

Answered: 12 Skipped: 21

#	RESPONSES	DATE
1	SHPO reviews much less rigorous and allow for review to continue; SHPO will convey information and have a conversation about a hold or potential hold. Some holds from NPS are for minor items when it almost seems like an excuse not to continue the review. How about reviewing the entire submittal and putting the missing or requested items in the conditions or comments. Our previous SHPO reviewer relayed that NPS directed the SHPOs to put on HOLD rather than ask for more info in the conditions/comments. This is unreasonable.	6/20/2023 6:05 PM
2	Roughly 30% of our workload	6/20/2023 10:37 AM
3	roughly 2 out of 3 Part 2s are getting additional info requests.	6/14/2023 10:53 PM
4	As noted in multiple questions above.	6/13/2023 8:46 PM
5	Two to three amendments was average 5 plus years ago. Feels like most projects now have a minimum of 10 and some larger projects have more than 20.	6/13/2023 2:36 PM
6	Don't know question	6/13/2023 12:36 PM
7	Almost every Part 2 and amendments have a request for additional information, often in the form of "conditions."	6/13/2023 10:10 AM
8	No. It is so integrated into the way I operate. I am so conscious about submitting as much information as I can from the beginning. Including all items listed in item #8. It has become standard practice.	6/13/2023 9:52 AM
9	Anytime there is a physical rooftop element a mockup is required. When we debate with NPS the size and make reductions we often get asked to redo the physical mockup, sometimes months after the initial mockup was completed. We get asked for modeling and renderings on projects that do not have that design expertise. Window detail elements from the manufacturer where the manufacturer does not control that specific element. And details for window products that have previously been approved on similar buildings by the same architectural and development team.	6/13/2023 9:49 AM
10	We routinely have projects put on hold by SHPO as many as 3 or 4 times with requests for additional information, often when the scope is clearly presented but SHPO is seemingly pressing for further changes.	6/12/2023 6:45 PM
11	Nearly every project has an RFI from SHPO before going on to NPS	6/9/2023 10:15 AM
12	Estimate 20%. Many of the RFIs are now from the SHPO offices. When there is an RFI from the SHPO followed by an RFI at the NPS this can be very problematic for a project schedule.	6/8/2023 4:24 PM

Q16 What are the top three changes that you think would help improve the program, such as:

Answered: 33 Skipped: 0

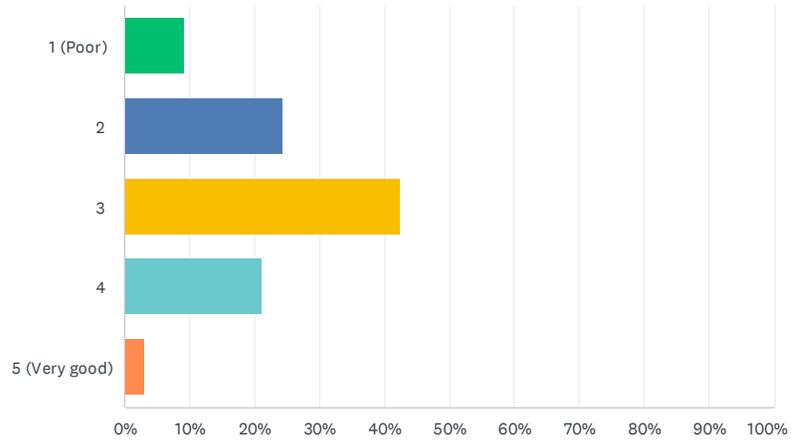


ANSWER CHOICES	RESPONSES	
better guidance	45.45%	15
definition of a complete application	33.33%	11
prioritization of amendments during construction	69.70%	23
timing of review	39.39%	13
more training of NPS or SHPO staff?	45.45%	15
Other/more information	57.58%	19
Total Respondents: 33		

HTC Survey 2023

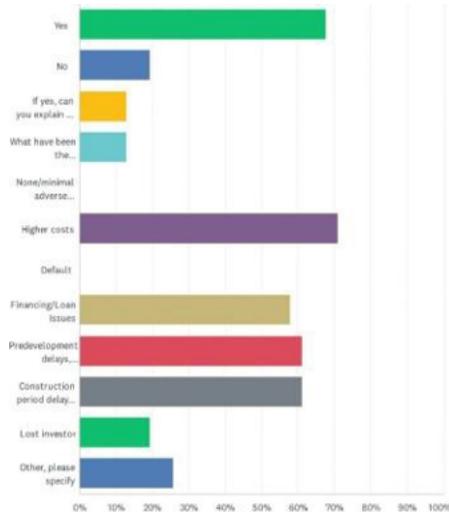
Q17 How would you rate the National Park Services administration of the HTC?

Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
1 (Poor)	9.09%	3
2	24.24%	8
3	42.42%	14
4	21.21%	7
5 (Very good)	3.03%	1
<b>TOTAL</b>		<b>33</b>

Q18 Based on the above question, has your rating changed over the past 5 years? If yes, what have been the consequences of these issues on your projects:



HTC Survey 2023

ANSWER CHOICES	RESPONSES
Yes	67.74% 21
No	19.35% 6
If yes, can you explain or quantify?	12.90% 4
What have been the consequences of these issues on your projects?	12.90% 4
None/minimal adverse consequences	0.00% 0
Higher costs	70.97% 22
Default	0.00% 0
Financing/Loan Issues	58.06% 18
Predevelopment delays, including HTC review	61.29% 19
Construction period delays, including supply chain	61.29% 19
Lost investor	19.35% 6
Other, please specify	25.81% 8
Total Respondents: 31	

Due to a formatting error, two questions were combined into Question 18. Accordingly, we have reformatted this question and the answers to properly display the data:

**Q 18A: Based on the above question, has your rating changed over the past 5 years:**

Yes ..... 25  
 No ..... 6

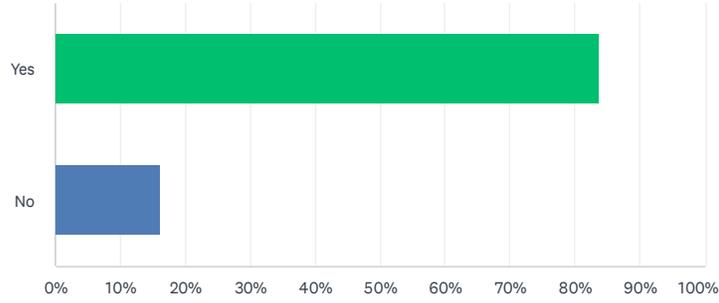
**Q 18B: If yes, what have been the consequences of these issues on your projects:**

Response	Number	Percentage*
None/minimal adverse consequences	0	0%
Higher Costs	22	88.00%
Default	0	0%
Financing/Loan Issues	18	72.00%
Predevelopment delays, including HTC review	19	76.00%
Construction period delays, including supply chain	19	76.00%
Lost investor	6	24.00%
Other, please specify	8	32.00%

\*Percentage is based on 25 yes responses.

### Q19 Have any of your clients decided not to go forward with a project due to any of the above?

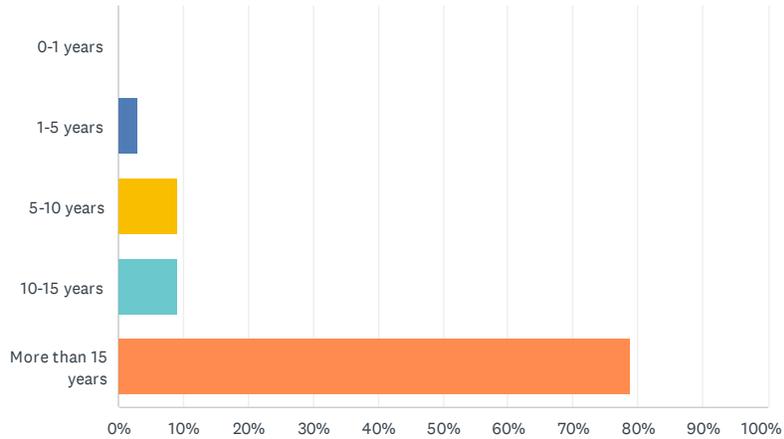
Answered: 31 Skipped: 2



ANSWER CHOICES	RESPONSES	
Yes	83.87%	26
No	16.13%	5
TOTAL		31

### Q20 How many years has your firm worked on HTC projects?

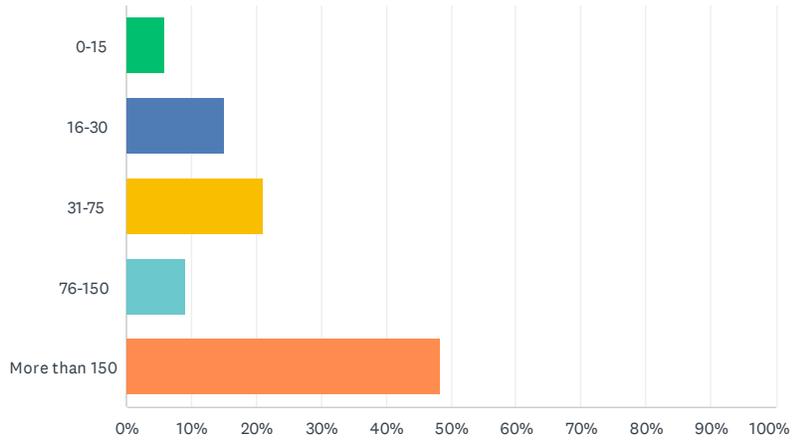
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES
0-1 years	0.00% 0
1-5 years	3.03% 1
5-10 years	9.09% 3
10-15 years	9.09% 3
More than 15 years	78.79% 26
TOTAL	33

### Q21 How many HTC applications has your firm submitted?

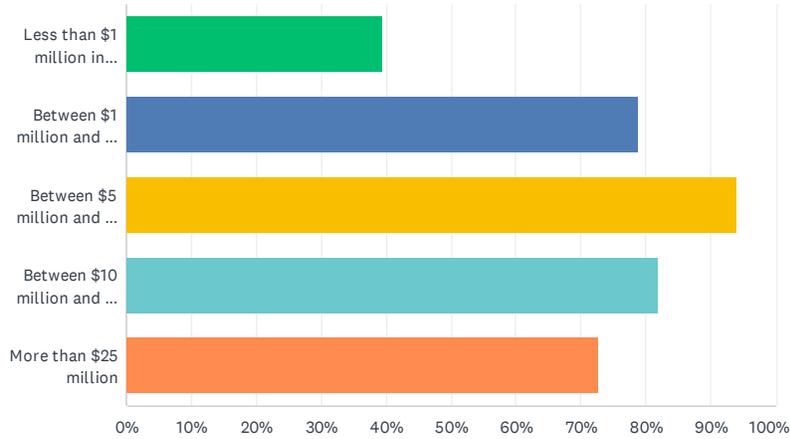
Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
0-15	6.06%	2
16-30	15.15%	5
31-75	21.21%	7
76-150	9.09%	3
More than 150	48.48%	16
TOTAL		33

Q22 Please check the box for each of the project sizes for which you handle a significant number of projects (you can check more than one).

Answered: 33 Skipped: 0



ANSWER CHOICES	RESPONSES	
Less than \$1 million in total development costs	39.39%	13
Between \$1 million and \$5 million	78.79%	26
Between \$5 million and \$10 million	93.94%	31
Between \$10 million and \$25 million	81.82%	27
More than \$25 million	72.73%	24
Total Respondents: 33		

HTC Survey 2023

Q23 Are there any additional comments you would like to add?

Answered: 19 Skipped: 14

#	RESPONSES	DATE
1	Primary issues we see are 1. Lack of consistency between NPS reviewers, inexperienced SHPO reviewers and NPS not able to implement a true national program. NPS reviewers need to conduct more site visits to projects and communicate with applicants far better. A phone call can go a long way in resolving issues.	8/1/2023 1:45 PM
2	Current NPS reviews are causing significant delays, increased costs and killing projects.	6/22/2023 8:14 PM
3	Morale is not improving. The best and the brightest will not want to stay in this field. Consultants and developers are SHPO and NPS partners!!! We are not the enemy. There are real life consequences of the conditions.	6/20/2023 6:05 PM
4	Inconsistencies at SHPO offices regarding SOI and eligibility cause significant project delays and result in projects not being forwarded to NPS in a timely manner	6/20/2023 2:18 PM
5	Inconsistency from NPS makes investors nervous, requiring amendments for conditions of approval to be approved before closing on construction. This did not happen on my projects 5 years ago or earlier.	6/14/2023 10:53 PM
6	It would be nice if the federal phasing requirements were more flexible like Virginia's program.	6/14/2023 3:21 PM
7	I've been doing HTC work for more than 20 years, in my own firm for 9 years, and working within the Standards for more than 35 years. The HTC program is a federal program that should be reviewed uniformly from state to state and at NPS. But it's not. Reviews are so different from state to state and within NPS. That is a failure of leadership and training at every level. Our state views a project as not meeting the Standards until we prove that it does. That's a much higher bar than it meets the Standards accept for....whatever. It seems our SHPO reviewers go to NPS training every year and then come back and tell us what NPS said, what the new guidance is, blah, blah, blah, which is there interpretation of what NPS said. We've gotten different direction on the same topic in another state. NPS training should be open to all consultants anytime it's held. That way we can hear directly from them and talk to them about real world issues rather than having a reviewer who can barely read drawings hold up a project because they don't know there have been ten other projects just like it approved.	6/13/2023 8:46 PM
8	The program has always ebbed and flowed. At times, the NPS has been preferential to work with than the SHPO and even vice-versa. However, over the last 5-10 years there has been such a conservative grip on the interpretation of the Standards and a lack of "customer service" from the NPS that it has become increasingly burdensome. More hand-in-hand collaborative efforts between the NPS and applicants, in coordination with the SHPOs, would make a world of difference. The NPS has far too often felt closed off and at the end of the process. We all need to work together more often because at the end of the day, we should all be in this to see historic buildings repurposed and not end up in the landfill. This program is meant to be adaptive reuse, not conservation and flexibility needs to be built into the fabric of these reviews. The program has great potential to be more impactful and run more smoothly, but that needs to come directly from the leadership. While we have had some clients exit the program and not return, given the state of the economy, inflation, etc. more people should be looking to the program for the value of the subsidy it provides and the NPS should be interested in provided the best possible experience for applicants while of course still being sensitive to the buildings and Standards.	6/13/2023 3:20 PM
9	It feels much more combative and a lot less collegial then it use to. There is a sense from long-term users of the program, both consultants and developers, that every project hard and unpredictable.	6/13/2023 2:36 PM
10	Interested to see how the implementation of digital submissions at NPS helps to streamline the application process and how that will interact with SHPO. NPS has also suggested that, with more staff, new guidance is being issued, which would help a lot	6/13/2023 1:10 PM
11	program desperately needs NPS Standards and process updated.	6/13/2023 12:36 PM

## HTC Survey 2023

12	The length of review (including time to prepare a complete application and preliminary reviews) is daunting, especially to new developers, and doesn't exactly align with the usual sequence of construction documentation/permitting. But, knowing what is likely to be approved, anticipating problems and submitting complete applications usually results in few amendments and few questions/problems during construction.	6/13/2023 11:21 AM
13	An area not previously referenced is climate change and sustainability. TPS, falling back on the Standards, constrains projects from implementing measures that are required to comply with stricter energy codes, as well as affordable housing and other requirements. Treatments that are not allowed or severely limited, but may be required by other programs and codes, include insulation, solar, and triple glazed windows. TPS has to get in line with the changing world environment.	6/13/2023 10:10 AM
14	Thank you for doing this survey. After many frank discussions over the years, it is nice to see that the Coalition is taking action. Also, please note that the folks at CT are doing a superb job and the reviewers at NPS that I have worked with over the years are very knowledgeable and are adding value to these projects. There is a balance...	6/13/2023 9:52 AM
15	I have spent much of my career convincing skeptical real estate developers and investors that historic preservation can be applied reasonably and that HTC reviews offer sufficient flexibility and certainty to be practical and reliable. That has become a difficult position to defend in recent years, as the perspective taken by SHPOs/NPS is increasingly narrow, unforgiving, and subjective. Where we used to be reasonably confident about where SHPO/NPS decisions would ultimately land, they are now incredibly difficult to predict and nothing feels safe. It has become difficult to appreciate the immensely powerful and transformative community impacts of HTC projects due to anxiety over SHPO/NPS decisions at all stages.	6/12/2023 6:45 PM
16	This work used to be fun and collaborative. Now it is a constant battle. At some point, NPS/SHPOs lost trust in consultants and developers. We need to be policed, rather than seen as a ally/partner in saving historic building	6/12/2023 12:50 PM
17	"policies" need to be written down -- for example, have often been told at trainings that there is a 2-out-of-3 rule for interior finishes (more modification allowed to 1 if other 2 are retained), some consultants have never heard of that, and reviewers hold to it inconsistently	6/9/2023 10:15 AM
18	There is far more scrutiny of individual elements of the project at the Part 3 application which has resulted in more project denials or requirements for remedial work. There is too much uncertainty and risk in the program compared with the other community development incentives. . The NPS has a selective interpretation of the period of significance and how the period of significance is applied to the scope of work of the project. The NPS has a lack of trust in consultants and frequently requires consultants to provide additional documentation to prove attestations in the application. This takes additional time and money. The application process and documentation requirements are too complicated and costly for smaller size projects. National Register listing is become a significant burden to developers. There is a lack of guidance for building features such as floor and ceiling treatments. The functionally related guidance is a disincentive for a developer to tackle large complexes.	6/8/2023 4:24 PM
19	I would like to say that I have been blessed with some excellent individual NPS reviewers in states I work in. It's not everyone at NPS who is a problem.	6/8/2023 10:02 AM

## Appendix C



June 2, 2022

Serena Bellew  
Deputy Associate Director  
Preservation Assistance Programs  
National Park Service  
1849 C Street, NW  
Washington, DC 20240

Brian Goeken  
Director  
Technical Preservation Services  
National Park Service  
1849 C Street, NW  
Washington, DC 20240

Dear Ms. Bellew and Mr. Goeken,

It has been sometime since our last meeting and many things have happened since that time, including the continuing pandemic, environmental concerns, and inflationary pressures on construction costs. All these factors have had a direct impact on the Historic Tax Credit (HTC) program and will continue to into the foreseeable future. It is the belief of the committee that, as in the past, the HTC program can play a large role in rebuilding America's big cities, small cities, and towns.

However, this can only happen if a smoother operation of the program is immediately implemented. As you are aware, many of these issues we have been discussing in our periodic meetings are the same issues that we have been discussing for years. As a result, we strongly urge that all the changes that we have requested be implemented as soon as possible. Many, if not all, can be implemented administratively and will lead to the smoother operation and wider use of the program.

There is consensus in the industry and our Coalition that the NPS review process for the program has become increasingly more stringent, especially in the last 10 years. Even since our last meeting and the hiring of additional NPS staff, supported by the Coalition, the process has become more cumbersome signifying a significant departure from past practices. We believe as this more stringent review practice continues so too will the current pattern of users turning away from the program. This pattern is resulting in a consistent reduction in the use of the program and its continued viability.

Increased scrutiny of project details, the more conservative interpretation of the Standards, and the prolonged review timeframes have directly impacted project costs and schedules. The REHAB Act (H.R. 1483) that has gained traction in the Congress in recent months, and the introduction of the Revitalizing Downtowns Act (S. 2511), could pose a direct threat to the historic tax credit program. The emergence of these legislative efforts reflects growing frustration with the HTC program on the part of users looking for alternative legislative options. Stakeholders compare reviews from a decade ago with those issued today, and it is

The Historic Tax Credit Coalition | Washington, DC  
[www.historiccredit.com](http://www.historiccredit.com)

- 1 -





evident that increased scrutiny, particularly relating to interior design items such as flooring and ceiling materials selections are leading to overly burdensome reviews.

Our membership has also expressed that the recent review practices create uncertainty for applicants. It is not uncommon for the NPS to now require exploratory demolition in buildings that applicants have yet to acquire for the NPS to assess whether there are historic materials beneath existing finishes that may require preservation or even restoration.

Historically, an owner could purchase a building with assurance that the NPS would accept existing conditions as the project starting point. Similarly, applicants are now routinely asked to expend significant dollars in advance of closings to provide advanced drawings of such items as MEPs and RCPs to be included in initial Part 2 applications. In the past, it was acceptable to discuss the overall approach to the mechanicals in the application narrative; with submission of these drawings provided in later amendments as detailed plans were prepared. These more rigorous requirements and the requirement for their early submittal have had significant impacts on the feasibility of projects and has created uncertainty for applicants.

In our May 24, 2021 memorandum, we identified seven issues that were voiced by our membership as industry priorities. As we indicated, this list had been culled and was not intended to be exhaustive. At our May 26, 2021 meeting you requested that we identify two issues for the NPS to address.

After considerable thought, discussion and taking into consideration what has occurred in the world since our last meeting we believe that our list of issues can be divided into two categories, namely those that NPS should act upon and affect change immediately and those which may require further discussion.

In addition to the issues discussed below, our committee notes that in deliberating the original historic rehabilitation provisions in the Tax Reform Act of 1976 and subsequent revisions to the incentives, Congress made clear its intention for the provisions to encourage community revitalization as well as historic preservation. We believe that the community revitalization emphasis of the law has been increasingly overlooked by NPS in its administration of the program, and a discussion of the importance of this aspect of the law is warranted as the specific elements outlined below are discussed.





## **IMMEDIATE ACTION ITEMS**

### **1. CONSISTENCY, REVIEW TIMES, AND INTERPRETATION**

**Issue** – More stringent interpretation, inconsistent application, and review times come up in every conversation we have. They are having a significant impact on HTC projects in every corner of the country. As the industry has weathered a number of regulatory and statutory challenges over the last decade plus, the number one concern of users of the credit is the regulatory review process. The uncertainty is driving people out of the market in droves and the program is suffering as a result. The HTC never took advantage of real estate booms or revitalized downtowns and remains almost the same size as it was a decade ago with significant increases in activity and costs.

#### **Recommendation**

We would like for the Agency to share or publish data on the following topics:

- Review times by year to include time “on hold,” so in short time from application submission to final action for Part I, II, or III;
- A review of the interpretation of the Secretary’s Standards over the life of the program; and
- A review of the actions taken across geographies both at the state level and the federal level over the last decade.

In each case we hope the Agency would be willing to break down the data by project size. We would suggest categories of (1) under \$1 million in Qualified Rehabilitation Expenditures (QREs), (2) \$1M-\$5M in QREs, (3) \$5M-\$20M in QREs, and (4) over \$20M in QREs. This will help users and the public better understand how the program is working for all types of projects and whether some types are seeing different treatment to help understand where any log jam is.

### **2. FUNCTIONALLY RELATED COMPLEXES**

**Issue 1** – While the 2017 guidance set out by NPS provides some useful paths for separating out buildings owned by a single or related developers into separate projects for purposes of certification, it does not provide broadly applicable paths for many types of projects in multiple building sites. As the program has matured, multiple building projects have become more complex and the equity market is paying much more attention to recapture issues.

It is our understanding that the NPS has experienced relatively few problems with inappropriate work involving multiple buildings during recapture periods. Often larger projects are drawn out over longer timeframes and there is a need to identify additional

The Historic Tax Credit Coalition | Washington, DC  
[www.historiccredit.com](http://www.historiccredit.com)

- 3 -





circumstances where buildings in multiple building complex can be treated as separate projects. The regulatory language under 36 CFR 67.6(b)(4) that undergirds the policy to include all buildings in a related project reads:

*For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation certification will be issued on the merits of the overall project rather than for each structure or individual component.*

### **Recommendation**

Providing more flexibility for multiple building projects will require a change to this language or, at least, a change in the definition of “project”. We would propose that “project” be defined as work on an individual building being undertaken by a discrete partnership or LLC, regardless of the makeup of that entity’s membership, with no potential effect on other projects in the complex. This approach would reflect the increasing complexity of development entity structuring as the HTC industry has matured and is consistent with legal the frameworks observed by the IRS as well as lenders and investors in HTC transactions.

Issue 2 – Situations where an owner/HTC applicant sells one or more buildings in a functionally-related complex have become an increasing area of concern as NPS has become less flexible in dealing with this fact pattern. For example, in prior years the sale of discrete buildings within a complex in an arms-length transaction where the seller has no relation to the buyer, work on a building undertaken by the purchaser was treated completely separately in the certification process, with no impact back to the seller’s certification.

### **Recommendation**

We believe that a project with this fact pattern should continue to lead to un-connected certifications for buyer and seller.

## **3. AMENDMENT PRIORITIZATION**

Issue – Amendments vary widely in their make-up and complexity, ranging from a change in the applicant entity name or TIN, to substantial changes in the scope or design of a project.





### **Recommendations that could be immediately implemented**

1. Prioritization of amendments by the SHPO or by a more professionalized front office at TPS might be a way to address this issue.
2. Given the need for quick turn-around of change orders during project construction, we request construction period amendments be placed in a similar prioritized category.

Implementation of the recommendations above would solve some of the day-to-day challenges being faced by users. Many of the recommendations in fact just revert to previous procedures followed earlier in the program.

### **ADMINISTRATIVE PROCEDURAL CHANGES**

Our membership has identified three items where positive change could be attained for the program through simple procedural changes that could be undertaken administratively:

#### **1. WHITE BOXING SPACES**

Issue – White boxing spaces has been a requirement for Part 3 approvals in recent years where historically finished space has not been completely fitted out. This requirement leads to unnecessary projects costs and a waste of resources. Since white-box finishes are likely to be substantially altered or removed as tenant fit-out is completed after Part 3 approval, those finishes no more represent part of a “completed project” than that space left raw until tenant fit-out is complete. With 5-year inspection of all finishes, NPS has the ability to enforce Standards-compliant work after Part 3 approval.

### **Recommendations that could be immediately implemented**

Given current economic conditions, environmental concerns, and project delays, it is recommended that the white boxing practice be eliminated or substantially scaled-back.

#### **2. PART 1 REVIEWS**

Over the last few years, there has been a disconnect in some instances between approved PDIL Part 1 HPCA applications and ultimate National Register listings, where approved PDILs were not leading to National Register listings in every case. We appreciate actions taken by NPS on this issue and believe there’s an improved understanding on the part of NR staff of the critical role reliable Part 1 approvals play in the successful administration of the tax credit program.

The Historic Tax Credit Coalition| Washington, DC  
[www.historiccredit.com](http://www.historiccredit.com)

- 5 -





**Issue** – Like the ever-increasing scholarship demands for NR nominations, our members are seeing a similar trend of increasing scholarship demands for historic district Part 1 applications. 36 CFR 67.4(c)(6) states that Part 1 applications for buildings in historic districts should include:

*[A] Brief statement of significance summarizing how the property does or does not reflect the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself (i.e., unusual building techniques, important event that took place there, etc.).*

**Recommendations that could be immediately implemented**

The regulations clearly contemplate a **brief** account of a building’s contribution to its district without the need for extensive historical research. We recommend that this approach be communicated to and taken by TPS staff.

**3. PROJECT PHASING**

**Issue** – 36 CFR 67.6(b)(8) relating to phased projects states in part:

*If complete information on the rehabilitation work of the later phases is not described in the initial part 2 application, it may be submitted at a later date but must be clearly identified as a later phase of a 60-month phased project that was previously submitted for review.*

As a practical matter—particularly in large, complex projects—the ability to provide detailed plans and specifications for “out-year” phases is very problematic. The concept of putting off the cost and time of preparing detailed plans for a phase that is likely not financed and may not be built for years is central to a successful phased project. In the past, a detailed Part 2 for early the phase(s) and a general description of later phases was accepted by NPS. More recently, detailed plans and Part 2 descriptions for future phases are being required by NPS, placing unreasonable logistical and financial strain on the early project phase(s).

**Recommendations that could be immediately implemented**

NPS should revert to the prior approach following the above regulatory language relating to phased projects, with only an outline account of future phases of work.





## **BROADER TPS ISSUES**

Our membership has identified two issues that would bring significant positive change, but we recognize that these issues are broader NPS Preservation Assistance Programs issues. We ask that NPS undertake a review of the following two items:

### **1. NATIONAL REGISTER REVIEWS**

Issue – The demands by the National Register of Historic Places regarding the level of scholarship required for nominations to the National Register have been ever-increasing, causing ongoing challenges in terms of the time and expense to building owners seeking Certified Historic Structure status. More recently, this barrier has been especially apparent for those nominations relating to women and people of color.

In addition, the fragmented nature of the National Register program administration by various SHPOs places a burden of uncertainty, lost time, and cost on program applicants.

Our specific recommendations are:

1. Timeframes should be set by NPS for review of nominations at the state level and the states should be held accountable in meeting those timelines.
2. NPS should stipulate that nominations not be held up for completion of rehabilitation projects.

### **2. APPEALS**

Issue – As more decisions from the Chief Appeals Officer have been rendered with referral back to TPS from the hearing officer, an important feature in NPS regulations regarding the appeal process have come into focus. The regulations provide an option for the hearing officer to send an issue appealed from back to TPS for further consideration. There are recent instances where a decision by the hearing officer containing guidance for compliance with the Standards has been ignored by TPS staff upon resubmittal by the hearing officer, ultimately leading to the potential need for re-appealing an issue contained in the initial denial.

### **Recommendations**

1. A solution to this problem would require a change in the regulations, with no option for the hearing officer to remand decisions back to TPS, but rather require the hearing officer to either uphold or overturn the original decision, with no further potential involvement by TPS.

The Historic Tax Credit Coalition | Washington, DC  
[www.historiccredit.com](http://www.historiccredit.com)

- 7 -





2. It is further recommended that once an appeal has been acted upon by the hearing officer, the hearing officer completes review of the project through Part 3 Certification.

Again, the changes we are requesting are not new and can easily be achieved administratively. It is important that the HTC program be enhanced by these changes, and we look forward to working with you to move these issues forward.

The Coalition looks forward to discussing these issues soon. Patrick Robertson of Confluence Government Relations can be contacted by email at [probertson@confluencegr.com](mailto:probertson@confluencegr.com) or by phone at 202-302-2957 to discuss matters further.

Sincerely,

Cohn Reznick LLP  
Cross Street Partners LLP  
EHT Traceries  
Heritage Consulting Group  
J. Jeffers & Co.  
Klein Hornig LLP  
Kutak Rock LLP  
Moran Construction Consultants, LLC  
National Trust Community Investment Corporation  
Novogradac Consulting LLP  
Powers & Company  
Roth Law Firm, L.L.C.  
Rogers Lewis Jackson Mann & Quinn, LLC  
Rosin Preservation  
Ryan, LLC  
Stonehenge Capital, LLC  
Tax Credit Capital, LLC  
Twain Financial

The Historic Tax Credit Coalition | Washington, DC  
[www.historiccredit.com](http://www.historiccredit.com)

- 8 -

