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National Park Service Responds to Recommendations for Improvement of Historic Tax Credit Program

By Alex Ruiz, Staff Writer, Novogradac & Company LLP

Over the course of 18 months, the National Conference of State Historic Preservation Officers (NCSHPO) and the Historic Preservation Development Council (HPDC), working with the National Trust for Historic Preservation (NTHP), have considered the National Park Service's (NPS) current administration of the Federal Historic Rehabilitation Tax Credit program and developed recommendations for improving that administration. In 2003, NCSHPO formally approved its recommendations and transmitted them to NPS for further consideration and discussion. HPDC more recently transmitted its recommendations to NPS in January 2004.

After a careful analysis of the two reports, and in close consultation with the Office of the Solicitor, the NPS prepared a paper, both as a response to the reports and as an initial work plan for improving program delivery for NPS and its partners.

NPS says the Federal Historic Rehabilitation Tax Credit program has been and remains one of the most powerful and successful federal tools to preserve our nation's historic inner cities and town centers. "Clearly, the program can only continue to be successful if it is used," NPS says in its report. "Therefore NPS is pleased that its partners and users have taken the time and effort to identify things that could be improved."

According to NPS, continuing efforts to evaluate and improve the program will ensure that it continues to be an effective stimulus in the years to come. In the nearly 30 years since the program was first authorized by Congress, NPS says that more than 31,188 properties have been certified, totaling \$31.43 billion. In addition, 97 percent of the submissions were certified in 2003.

Three Areas of Concern

While the groups do not necessarily agree with one another in all the specifics of their recommendations, NPS says both make recommendations for change in three broad areas: application of the Secretary's Standards for Rehabilitation; education and training; and the review process.

Applying the Secretary's Standards – Both reports called on NPS to avoid a perceived tendency to require "restoration" in a program for which "rehabilitation" is the regulatory standard. Similarly, both reports called on NPS to avoid any tendency to require improvements to a project that meets the rehabilitation standards without those improvements.

In its response, NPS agrees that the standard established in the law is "...to certify rehabilitations..." not restorations. The report says the call for more flexibility in applying the rehabilitation standards is an important policy issue that deserves NPS's "best efforts."

Therefore, NPS proposes to establish a committee of the National Park System Advisory Board by October 1, 2004.

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Chaired by a member of the board, the committee will be made up of appointees broadly representative of all of those who have a professional interest in the Secretary's Standards and how they are interpreted. The report says the committee will conduct its review and analysis by mid- to late 2005.

Education and Training – Likewise, both reports recommended increased NPS efforts in training all parties in the certification process. HPDC called for a broadly representative task force to review all NPS guidance materials to ensure that the materials are not biased in favor of restoration. HPDC specifically called for publication of appeals decisions as a way of disseminating additional information on acceptable treatments.

NPS says it agrees that communication between all parties regarding the certification process, clarity of guidance and important decisions is essential to assuring that the certification process runs smoothly and that all parties have accurate and timely information. As such, NPS has committed to an expanded venue of training sessions, agreed to promulgate new material on the web and to accept suggestions for additional topics, and assure that the information posted is accurate and timely. The recommendation for a task force to review materials to ensure an accurate portrayal of treatments as rehabilitation will be achieved by October 1, 2004, with a target date for completion of the review by December 31, 2004. Finally, by July 1, 2005 the NPS will devise and begin implementing a plan for sharing appeals decisions on the NPS web site.

The Review Process – According to NPS's report, both groups recommend placing greater reliance on states in making final certification decisions. NCSHPO proposed a system for NPS certification of individual states and a limited "expedited review" by NPS of project decisions submitted by certified states.

The NPS responded by saying it "recognizes that predictability and consistency in decision-making are a very significant factor for developers and owners involved in the rehabilitation of an historic structure." The NPS also recognizes that uncertainties can have an adverse influence on the decision to pursue the historic preservation income tax credits and thus the potential for preserving historic structures. Therefore, the NPS says it is committed to improving the consistency and predictability of decisions and to improving public information about the existing consistency of response (82 percent) at the state and federal level even as it strives to improve the record.

And although NPS says that a review by the solicitor's office has determined that greater decision-making by the states is not possible under existing law, the NPS invited NCSHPO to establish a task force to work with it to develop recommendations for the expansion of facilitated review and/or expedited review, electronic submissions, communication with parties and participation in the appeals process.

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A copy of the NPS report is available online at:
www2.cr.nps.gov/tps/tax/download/NPSreport.pdf ❖

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