



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

January 31, 2020

Mr. Seth D. Appleton
Office of the Assistant Secretary for Policy Development and Research
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-6000

Dear Assistant Secretary Appleton:

The National Trust for Historic Preservation (“National Trust”)¹ appreciates the opportunity to offer comments to the Department of Housing and Urban Development (“HUD”) and the White House Council on Eliminating Regulatory Barriers to Affordable Housing, regarding Federal, State, local and Tribal laws, regulations, and administrative practices that artificially raise the costs of affordable housing and contribute to shortages in housing supply. The nation’s housing crisis is a complex problem that lacks a single answer and requires a broad mix of strategies to solve.

The National Trust shares the Administration’s concern with the lack of affordable housing and the impact this shortage is having on families who are working to improve their quality of life and economic condition. The National Trust believes that strengthening America’s older and historic communities is critical to the future of our nation, and that improving access to housing is a key element of any successful strategy to revitalize America’s older communities.

Older and historic buildings are community assets with significant reuse potential that can make an important contribution to solving the affordable housing crisis. Older and historic buildings offer developers and planners a resource for retaining and developing a diverse building stock of affordable housing units in already established real estate markets, including the preservation of existing affordable housing and the adaptive reuse of other buildings into housing uses.

Executive Order 13878 establishing the White House Council on Eliminating Regulatory Barriers to Affordable Housing states that historic preservation requirements are a regulatory barrier to the development of affordable housing. The National Trust strongly disagrees with this broad

¹ The National Trust for Historic Preservation in the United States is a private nonprofit organization chartered by Congress in 1949 to “facilitate public participation” in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. *See* 54 U.S.C. § 312102(a). With more than one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust has been designated by Congress as a member of the federal Advisory Council on Historic Preservation, which is responsible for working with federal agencies to implement compliance with Section 106 of the National Historic Preservation Act. *Id.* §§ 304101(8), 304108(a).

characterization of the relationship between affordable housing and historic preservation. Our research shows that historic preservation is *not* a significant barrier to the creation of affordable housing. In fact, preservation regulations and administrative practices help retain valuable existing affordable housing and create new units through rehabilitation of vacant and underused structures.

Our research shows that demolishing historic buildings is not necessary to create more affordable housing. On the contrary, maximizing the efficiency of our older and historic building stock increases density and, with the right policies in place, will preserve and produce more affordable housing. Below we will describe a number of ways in which older and historic buildings contribute to the supply of affordable housing and are being adaptively reused to address contemporary community needs. In addition, we offer specific recommendations to bring a variety of historic preservation policies and incentives to bear to help address our nation's affordable housing crisis.

I. Basis for Reducing Barriers to Affordable Housing Development.

- *To what extent is there agreement that specific regulations and administrative practices result in higher cost or reduced availability of affordable housing?*

The National Trust does not agree that historic preservation regulations and administrative practices inevitably result in higher costs or reduced availability of affordable housing. Historic preservation is not a significant barrier to affordable housing, and demolishing historic buildings is not necessary to create more affordable housing. Local planning and preservation regulations can help *conserve existing* affordable housing and strengthening federal historic preservation incentives would help *create more* affordable housing.

Strengthen Historic Preservation Incentives to Create More Affordable Housing

Solutions to the affordable housing crisis are complex, but it must be acknowledged there are historic preservation policies in place that are helping address affordable housing needs as well as preservation policies that if adopted would increase the number of affordable housing units created each year.

The most significant federal policy, by dollar volume, supporting the preservation and adaptive reuse of our nation's older and historic buildings is the federal historic tax credit ("HTC").² Since President Reagan championed its enactment almost four decades ago, the HTC has leveraged more than \$150 billion in private investment and rehabilitated more than 44,000 older and historic buildings.³ In doing so, this valuable tax incentive has helped drive down the cost of housing and has increased the availability of low- and moderate-income housing units.

² The National Trust Community Investment Corporation (NTCIC) is a fully-owned subsidiary of the National Trust for Historic Preservation. NTCIC enables tax credit equity investments that support sustainable communities nationwide. NTCIC places qualified tax credits for federal and state historic (HTC), new markets (NMTC), solar (ITC) and low-income housing (LIHTC). <https://ntcic.com/>

³ U.S. Department of the Interior, National Park Service, Technical Preservation Services, 2018 Annual Report (Available at <https://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2018annual.pdf>)

The federal HTC is designed to create a strong economic incentive for developers who rehabilitate older and underused historic properties. The HTC is not limited by the type of building reuse, so long as it is income-producing. Nor is the HTC limited by the scale or location of a project. As a result, federal and state HTCs are used in combination with many other incentives including the Low Income Housing Tax Credit (“LIHTC”), the New Market Tax Credit (“NMTC”), brownfield and Opportunity Zone incentives, and HUD’s Rental Assistance Demonstration (“RAD”) program, which is making progress to address the \$26 billion dollar backlog of deferred maintenance in public housing properties.⁴

The rehabilitation and adaptive reuse of vacant or underutilized historic buildings as affordable housing has long been recognized as an important strategy for community revitalization. Utilizing the 20 percent HTC credit with LIHTC credits, allowable under Section 42 of the Internal Revenue Code (“IRC”) since passage of the 1986 Tax Reform Act, suggests that Congress has long intended for these programs to work in combination with one another.

The National Park Service’s Annual Report on Federal Tax Incentives for Rehabilitating Historic Buildings for Fiscal Year 2018 describes the significant impact HTC-driven adaptive reuse projects have had on housing supply.⁵ In FY18 alone, the HTC supported the rehabilitation of 6,994 housing units, created 12,527 units of new housing, and 6,152 units of low- and moderate-income housing. Since the HTC was established, the number of low- and moderate-income housing units created using this tax incentive is well over 166,000 units.⁶ And while this number is modest relative to the overall need, the potential to grow the number of affordable housing units in historic buildings through legislative enhancements is significant.

Bipartisan legislation currently pending before the House and Senate would strengthen the HTC and better incentivize the preservation of historic properties as affordable housing. Specifically, the Historic Tax Credit Growth and Opportunity Act (S. 2615 / H.R.2825)(“HTC-GO”), introduced by Senators Cassidy and Cardin in the Senate, and Representatives Blumenauer and LaHood in the House, would eliminate the IRC requirement that a building’s tax basis must be reduced by the amount of the HTC. Because Low Income Housing Tax Credits are determined as a percentage of the qualified basis of a property, when LIHTCs are combined with HTCs, the basis reduction requirement has the unintended consequence of significantly reducing the amount of equity that otherwise could be made available to a project. Enacting HTC-GO would make historic preservation projects more attractive to affordable housing developers and eliminate the current IRC impediment that results when combining these two incentives.

⁴ U.S. Department of Housing and Urban Development. “Rental Assistance Demonstration.” www.hud.gov/RAD

⁵ U.S. Department of the Interior, National Park Service, Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018 (available at <https://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2018annual.pdf>).

⁶ *Id.*

At the state level, historic tax credits are frequently coupled with the federal historic tax credit and the Low Income Housing Tax Credit in support of affordable housing creation. Today, there are 37 states that offer a historic tax credit for rehabilitating older and historic buildings. While generally modeled after the federal historic tax credit, these state incentives are often tailored to meet specific objectives. Several states, including Maine, Maryland, Massachusetts Connecticut and Delaware, offer additional historic tax credits for rehabilitation projects that also create affordable housing.

Within its existing authorities, we see an important opportunity for HUD to demonstrate that LIHTC projects can efficiently incorporate HTCs on substantially rehabilitated housing projects. In 2012, the Federal Housing Administration (FHA) launched a program to streamline mortgage insurance applications for Section 223(f) Program projects with equity from the sale of Low-Income Housing Tax Credits. Last year, FHA announced it would expand the program to include new construction and substantial rehabilitation of multifamily housing for its Section 221(d)(4) and Section 220 programs. In its notice announcing the expansion of the program, however, FHA specified that projects involving HTCs are not eligible for the Expedited Approval Process or the Standard Approval Process. The reason noted was the additional complexity these types of projects present and the presumed inability to complete projects with twinned tax incentives within the proscribed 60- and 90-day thresholds.

It is important to note that HUD's loan programs are commonly used in conjunction with HTC financing. As referenced above, over the life of the HTC program, tens of thousands of low- and moderate- income housing units benefitted from use of HTCs, a significant portion of which used both HTC and LIHTC incentives to produce affordable housing in previously underutilized historic properties or used HTC with HUD loan programs to develop affordable or mixed income properties without LIHTC. While we recognize that combining the credits can be complicated, it has become a common industry practice to use one or more credits in transactions that also include HUD's loan products. HTC projects that have had their rehabilitation plans approved by State Historic Preservation Offices and the National Park Service are considered "shovel ready" and the HTC approval process from this point forward is unlikely to delay an expedited review of the HUD loan product.

HTC projects that revitalize historic properties for affordable and mixed-income housing benefit communities from both an economic and social welfare standpoint, and HUD, as the lead federal agency of the Council has a critical opportunity to bring multiple federal resources to bear to support and coordinate economic development and revitalization strategies. Accordingly, we would encourage HUD to allow HTC projects to be eligible for FHA's expedited loan programs provided that the project is able to meet HUD's expedited timeline.

Historic Preservation is Not a Significant Barrier to Affordable Housing

Historic preservation regulations and practices impact only a small percentage of the land area of our cities. If we rethink popular notions of density and better utilize our existing building stock, historic review will not impede revitalization of older communities and will help create places that support a mix of market rate, workforce, and affordable housing.

Approximately three quarters of the nation’s existing affordable housing consists of private financed and managed units – what some have labelled “Naturally Occurring Affordable Housing” or “NOAH.” Many of these units are in older neighborhoods. Recent research conducted by the National Trust across 50 large American cities shows that urban neighborhoods with concentrations of older, smaller buildings have higher percentages of affordable housing units than areas where larger, newer buildings predominate. Local landmark ordinances and other planning tools can help communities conserve this valuable affordable housing stock while also allowing additions and new infill construction.

The facts illustrate that historic local preservation regulations and administrative practices are not the driving factors in higher costs or reduced availability of affordable housing. Historic preservation is often mischaracterized as a significant factor contributing to the shortage of affordable housing, when in reality, only a small percentage of the building stock in most American cities is included in historic districts and subject to design review by preservation agencies.

Research conducted by the National Trust’s Research and Policy Lab (“RPL”) shows that across ten major cities representing different regions of the country, the amount of municipal land area designated as either a local or national historic district averages well below five percent. (The exception is Washington, DC, which has the second-smallest land area of the ten cities, and the largest land area within historic districts and other landmark or park designations.) New York City, for example, has only 2.32 percent of its land area historically designated. To suggest that historic districts are a barrier to affordable housing and a driver of the affordable housing crisis ignores the more obvious reality that land values and construction costs play a far greater role in determining the availability of affordable housing than historic preservation regulations.

	City (Sq. Mi.)	Local Historic District (Sq. Mi.)	National Register Historic District (Sq. Mi.)	Total Area Designated	% Area Designated
Oakland	77.9	3.09	0.07	3.16	3.96%
Philadelphia	142.4	2.07	1.3	3.36	1.45%

Birmingham	148.4	2.06	5.6	5.56	1.38%
Los Angeles	478.2	8.5	0.54	8.9	1.77%
St. Louis	66.1	5.75	6.7	10.9	8.69%
Louisville	341.5	2.28	11.2	11.48	0.66%
New York City	302.4	7.02	8	11.62	2.32%
Chicago	234	2.24	15.9	17.24	0.95%
Atlanta	136	4.42	17.9	18.82	3.25%
Washington, DC	68.5	19.1	14.9	19.33	27.80%

Moreover, in our report *Older, Smaller, Better*, RPL examined three high-rent cities and found that areas with older, smaller, and mixed-vintage buildings had significantly more households per acre, more housing units per acre, and more people per square mile than areas with consistently newer, larger buildings.⁷ In Seattle, San Francisco, and Washington, D.C., streets with a mix of old and new buildings have greater population density and more businesses per commercial square foot than streets with large, new buildings. In Seattle and Washington, D.C., these areas also have significantly more jobs per commercial square foot.⁸

In New York City, a 2011 survey by Hunter College’s Department of Urban Affairs and Planning demonstrated that some 3,500 vacant buildings spread across the city’s five boroughs could potentially “house the city’s entire homeless population.”⁹ In addition, in his book Regreening the Built Environment: Nature, Green Space, and Sustainability, author Michael A. Richards states that “adaptive reuse of vacant buildings provides a sustainable means of development by preventing unnecessary new construction and subsequent sprawl, and can rejuvenate urban centers, foster compact development via urban infill, and preserve cultural heritage.”¹⁰

Historic review should not prevent revitalization of our older communities and should be applied in a way that promotes equitable, character-rich neighborhoods. For more than five decades, the National Historic Preservation Act (“NHPA”) has stood as an

⁷ National Trust for Historic Preservation. Preservation Green Lab. “Older, Smaller, Better – Measuring how the character of buildings and blocks influences urban vitality.” May 2014. (available at <https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b73e8fc7-7fb2-0fc7-202c-d0ed58ff3089&forceDialog=0>).

⁸ *Id.*

⁹ Hunter College Department of Urban Affairs and Planning. “Banking on Vacancy (Picture the Homeless).” 2011.

¹⁰ Regreening the Built Environment: Nature, Green Space, and Sustainability by Michael Richards. Routledge Publishing, 711 Third Avenue, New York, NY. 2018.

affirmation of the nation’s public interest in preserving our irreplaceable heritage.¹¹ Section 106 of the NHPA establishes a review process that is required when federal agencies are involved in projects that impact historic properties.¹² While Section 106 review authority can be delegated to local communities, it does not mandate the preservation of historic properties. It simply requires that federal agencies consider adverse effects to properties that are listed or eligible for the National Register of Historic Places. Fully integrating historic preservation reviews early into the project planning process is an effective way to both safeguard historic resources and prevent unnecessary delays.

Historic review through the Section 106 process also allows for considerable administrative flexibility. Programmatic Agreements can expedite the Section 106 review process and even exempt certain activities from review. As noted by the Advisory Council on Historic Preservation, “Thousands of communities rely on the use of a Programmatic Agreement to streamline the Section 106 review when administering HUD funds, which allows for the expeditious use of these monies in community revitalization and rehabilitation activities.”¹³ The Section 106 review process is sufficiently flexible to work in coordination with HUD programs in support of affordable housing creation.

With regard to review of federal historic tax credit projects, the National Trust has at various times offered its perspective on design review as it relates to the Secretary of the Interior's Standards for the Treatment of Historic Properties. More specifically, while we commend the National Park Service for its commitment to maximizing opportunities to use historic preservation to promote economic development and revitalization of our communities, we are aware that despite the fact that the vast majority of historic tax credit projects are approved without complication, there are examples where interpretation of the Secretary of the Interior’s Standards for Rehabilitation (“Secretary’s Standards”) challenge a project’s economic feasibility and can cause delay. The National Trust supports an approach to the interpretation of the Secretary’s Standards that centers on preserving historic integrity, but also one that allows adequate consideration of the broader economic context from which a project is based. The National Trust believes the Secretary’s Standards should not pose an undue impediment to building reuse, and we stand ready to assist however needed to help balance economic feasibility with historic preservation requirements.

By taking better advantage of our existing older and historic properties and rethinking some of the ways historic preservation regulations are administered, historic preservation offers an underutilized, but highly cost-effective and environmentally proactive, strategy for creating new affordable housing.

¹¹ National Historic Preservation Act of 1966, 54 U.S.C. §§ 300101 *et seq.*

¹² *Id.* § 306108.

¹³ Advisory Council on Historic Preservation. “In Response to FR-6187-N-01 White House Council on Eliminating Regulatory Barriers to Affordable Housing: Request for Information.” January 2020.

Demolishing Historic Buildings Does Not Create Affordable Housing

Historic preservation is often wrongly perceived as a barrier to increased density that supposedly limits the supply of affordable housing. Replacing older and historic neighborhoods with high-density upzoning, however, is unlikely to yield the affordable housing results that local governments seek.

It does not automatically follow that taller, denser buildings will increase housing supply and lower housing prices. A study of zoning in Chicago compared zoning reforms that encouraged development around transit stops and another set of reforms that expanded upzoned areas incentivizing taller, denser development.¹⁴ The study found that housing prices in the upzoned areas rose where building sizes increased. The study suggests there is a correlation between upzoning and an increase in housing prices. Because it is not unusual to see land values rise ahead of actual housing construction, there is also a danger that upzoning to promote more affordable housing will push low and middle income populations to the outer edges of denser development.¹⁵ At a time when land values and construction costs are considered exceptionally high, it is not unreasonable to expect that developers will choose to construct more profitable luxury housing over affordable housing absent market incentives or regulatory requirements.

Strategies that promote a greater variety of housing options, including high rise developments, but also compatible in-fill development and medium-density housing (i.e., rowhouses, duplexes, apartment courts, accessory dwelling units, basement apartments, etc.), can increase the supply of housing in tight markets and present solutions for communities where housing stock is abandoned or deteriorating. Compatible in-fill development presents important opportunities to locate new affordable housing seamlessly into existing communities. Underused parcels of land often include space to increase density and develop new affordable and mixed-income housing that complements existing neighborhoods without displacing residents and businesses.¹⁶

National Trust research shows that there is significant opportunity for “density without demolition” in our cities through development of vacant lots and reuse of vacant buildings. In its study of Little Havana in Miami, RPL found that this historic neighborhood – already one of the most densely populated in the Miami region – had a total of 550 vacant lots, representing roughly 4.6 million square feet of vacant land.¹⁷ This research also found 28 vacant buildings totaling 95,000 square feet of unused

¹⁴ Urban Affairs Review, “Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction.” Yonah Freemark. March 2019.

¹⁵ “Does Upzoning Boost the Housing Supply and Lower Prices? Maybe Not.” CityLab. Richard Florida. January 2019.

¹⁶ National Trust. Preservation Leadership Forum. “Inclusive, Accessible Cities: Pitting Preservation Against Affordable Housing Misses the Point.” David J. Brown. December 2016.

¹⁷ National Trust for Historic Preservation. Preservation Leadership Forum. “From Vacancy to Vitality in Little Havana.” Mike Powe. August 2019.

space. Through development of these unused lots and existing structures, Little Havana could add 2,500 new jobs, 10,000 new residents, and 550 new buildings – all without demolishing a single building.¹⁸

Retention and expansion of medium-scale housing must also be viewed as a key part of the affordable housing solution. A 2014 U.S. Census Bureau analysis shows the lack of medium-scale housing across the country, noting that 63 percent of the nation’s 117 million occupied housing units were detached homes, 13 percent are in buildings with 10 or more units, and only about 19 percent of our nation’s housing stock is comprised of other building types, from attached single-family up to nine-unit multiplex.¹⁹ A focus on preserving existing building stock will allow more opportunities to co-locate affordable housing development with other types of development without displacing residents or diminishing the character of our communities.²⁰ We should evaluate the efficiency of a re-use strategy that capitalizes on the existing building stock, paying particular attention to medium-scale housing and in-fill development that is already located in desirable areas near transit centers.

Preservation and reuse of our nation’s older and historic buildings has the potential to unleash far more density and more affordable housing in our cities and towns. By better aligning the historic and low-income housing tax credits, we can help bring a variety of affordable housing-types to the market. As the Department of Housing and Urban Development and the White House Council on Eliminating Regulatory Barriers to Affordable Housing prepare a report to the President, we stand ready to assist as you consider the ways in which historic preservation policies and incentives can be better utilized to address the nation’s affordable housing crisis.

Sincerely,

A handwritten signature in blue ink that reads "Paul W. Edmondson" with a stylized flourish at the end.

Paul W. Edmondson
President and CEO
National Trust for Historic Preservation

Cc:

White House Council on Eliminating Regulatory Barriers to Affordable Housing
The Honorable Aimee K. Jorjani, Chairman, Advisory Council on Historic Preservation

¹⁸ *Id.*

¹⁹ Next City “Will U.S. Cities Design Their Way Out of the Affordable Housing Crisis?” Amanda Kolson Hurley. January 2016

²⁰ *Id.*