February 28, 1990

SPECIAL DIRECTIVE 90-2

To: Directorate, Field Directorate, and WASO Division Chiefs

From: Director

Subject: Role of Economic and Technical Feasibility in Applying the Secretary's "Standards for Rehabilitation"

The Tax Reform Act of 1986 (IRC sections 46 and 48) requires the Secretary to make certification of historic significance and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to five National Park Service Regional Offices: Alaska, Mid-Atlantic, Rocky Mountain, Southeast, and Western. Appeals from regional certification decisions are heard by the Chief Appeals Officer in Washington.

Section 67.7 of the regulations states that "The . . . 'Standards for Rehabilitation' . . . are the guidelines used to determine if a rehabilitation project of a certified historic structure qualifies as a certified rehabilitation." Further, "The Standards shall be applied taking into consideration the economic and technical feasibility of each project." In some cases, building owners have interpreted "economic feasibility" as the maximum profit that can be generated from a project; this interpretation is incorrect. The regulations make clear that "in the final analysis . . . to be certified, the rehabilitation project must be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located." [Emphasis added.] The purpose of this directive is to formalize past practice with regard to technical and economic feasibility. There is no intention to strengthen or to weaken application of any standard.

Unlike some project reviews undertaken by the National Park Service, reviews for tax certification are governed by an explicit set of regulations; the Secretary's "Standards for Rehabilitation" are the sole criteria used to evaluate rehabilitation projects seeking tax credits. These rules cannot be waived in favor of other factors, such as potential social benefit and economic impact, or by other potentially mitigating circumstances. Certifications can be granted only when the rehabilitation is consistent with the historic character of the building.

Technical and economic feasibility are routinely taken into account during the review of rehabilitation projects; for example, the decision as to whether to repair or replace deteriorated window sash is made on the condition of the sash and their significance to the overall building, as well as the technical and economic feasibility of repair. In cases where the deteriorated windows are so badly rotted and deteriorated that repair is not technically feasible, replacement – in the context of rehabilitation – may be justified; if all other aspects of the project are satisfactory and the new sash are accurate replications, the overall project can be found to meet the Secretary's "Standards for Rehabilitation."

In another example, an owner seeks to subdivide an architecturally ornamented and intact front parlor so as to create an additional apartment unit and generate additional income. While the owner may claim that the additional apartment is necessary to improve the project's economic

feasibility, the subdivision would destroy the integrity of one of the building's most important interior spaces and would not be consistent with the historic character of the building. Such a rehabilitation, despite the economic feasibility claims, would not meet the Secretary of the Interior's "Standard for Rehabilitation."

In both examples, technical and economic feasibility were taken into account but only to the extent that the National Park Service was able to certify that the overall project met the Secretary's "Standards for Rehabilitation" and was consistent with the historic character of the structure.