

Preamble for Proposed New Rules

The Texas Historical Commission (THC) proposes a new Chapter 13 and new rules, Sections 13.1 - 13.8 of Chapter 13 (Title 13, Part II of the Texas Administrative Code) relating to the Texas Historic Preservation Tax Credit Program.

The Texas Historic Preservation Tax Credit Program is the agency's responsibility under House Bill 500, which enacted Subchapter S., Tax Credit for Certified Rehabilitation of Certified Historic Structures, Texas Tax Code Sec. 171.901 through Sec. 171.909. Section 171.909 states that the commission and the comptroller shall adopt rules necessary to implement this subchapter.

New Section 13.1 provides definitions of words and terms used in the rules.

New Section 13.2 outlines qualification requirements for the credit and the amount of the credit.

New Section 13.3 provides the purpose of the Texas Historic Preservation Tax Credit Program Application Part A – Evaluation of Significance. Part A of the application certifies that a building is a certified historic structure and shall be completed for all buildings to be included in the project.

New Section 13.4 provides the purpose of the Texas Historic Preservation Tax Credit Program Application Part B – Description of Rehabilitation. Part B of the application certifies that the proposed rehabilitation work is consistent with the Secretary of the Interior's Standards for Rehabilitation and shall be completed for all projects and phases of projects.

New Section 13.5 provides the purpose of the Texas Historic Preservation Tax Credit Program Application Part C – Request for Certification of Completed Work. Part 3 of the application certifies the completed work follows the Secretary of the Interior's Standards for Rehabilitation and the rehabilitation plan as approved by the Commission in the Part B review.

New Section 13.6 outlines the Commission's application review process for all parts of the Texas Historic Preservation Tax Credit application and requires an application review fee.

New Section 13.7 states the Commission may conduct an inspection of a project for which an application has been submitted and the Commission must give reasonable notice to the applicant of its intent to inspect the property.

New Section 13.8 outlines the relationship of the Texas Historic Preservation Tax Credit Program to the Federal Rehabilitation Tax Credit Program and the documents that must be submitted to the Commission for review.

New Sections 13.1 - 13.8 of Chapter 13 (Title 13, Part II of the Texas Administrative Code) relating to the Texas Historic Preservation Tax Credit Program are proposed under Texas Government Code § 442.005(q) and Texas Tax Code § 171.901-909, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by these new rules.

Mark Wolfe, Executive Director, has determined that for the first five-year period the new rules are in effect there will be minor fiscal implications for state or local government as a result of enforcing or administering these rules. The Texas Historical Commission will require a fee paid with the application for the credit, to be used to fund the administration of the program. Due to the unknown number of applications that will be filed, it is not possible to estimate the amount of fees that will be collected.

Mr. Wolfe has determined for each year of the first five-year period the new rules are in effect the public benefit anticipated as a result of the rules will be an increased clarity of the administration of the Texas Historic Preservation Tax Credit Program. Additionally, Mr. Wolfe has determined that there may be a positive effect on the owners/entities that apply and receive a Historic Preservation Tax Credit.

The proposal of these rules implements Texas Government Code § 442.005(q) and Texas Tax Code § 171.901-909.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Texas Administrative Code
Title 13 Cultural Resources
Part II Texas Historical Commission
Chapter 13 Administration of State Franchise Tax Credits for Certified Rehabilitation of Certified Historic Structures

RULES

TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

Texas Administrative Code, Title 13, Cultural Resources

Chapter 13, Administration of State Franchise Tax Credit for Certified Rehabilitation of Certified Historic Structures

§ 13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

- (1) Applicant--The entity that has submitted an application for a building or structure it owns.
- (2) Application--A fully completed Texas Historic Preservation Tax Credit Certification Application form submitted to the Commission, which includes three parts:
 - (A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;
 - (B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and
 - (C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.
- (3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:

Eligible costs and expenses	Part A review fee	Part B review fee	Part C review fee
\$5,000 to \$50,000	\$ -	\$ 150	\$ 150
\$50,001 to \$100,000	\$ -	\$ 250	\$ 250
\$100,001 to \$250,000	\$ -	\$ 375	\$ 375
\$250,001 to \$500,000	\$ -	\$ 500	\$ 500
\$500,001 to \$6,000,000	\$ -	0.15% of estimated eligible costs and expenses	0.15% of final eligible costs and expenses
Over \$6,000,000	\$ -	\$ 9,000	\$ 9,000

(4) Audited cost report--Such documentation as defined by the Comptroller in the Texas Administrative Code, Title 34, Chapter 3, Tax Administration [cross-reference Comptroller's rules].

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of eligibility--A document issued by the Commission to the applicant, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; specifies the date the certified historic structure was first placed in service after the rehabilitation; and specifies the aggregate eligible costs and expenses incurred in the certified rehabilitation, as indicated in the audited cost report.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

- (A) listed individually in the National Register of Historic Places;
- (B) designated as a Recorded Texas Historic Landmark under § 442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; *see* 13 Tex. Admin. Code § 21.6 and 26.3(63)-(64); or
- (C) certified by the Commission as contributing to the historic significance of:
 - (i) a historic district listed in the National Register of Historic Places;
 - or
 - (ii) a certified local district.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R. § 67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed and approved by the National Park Service prior to a determination that it meets the requirements for a certificated rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. For the purpose of notifications or filing of any applications or other correspondence, delivery shall be made to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, P.O. Box 12276, Austin, Texas 78711-2276.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 C.F.R. Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by Section 47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. § 1.48-12(c), incurred during the project.

(16) Federal rehabilitation tax credit-- A federal income tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in Section 47, Internal Revenue Code; 26 C.F.R. § 1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service-- The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner-- A person, partnership, company, corporation, or other entity holding an ownership interest in a property, which can include full or partial ownership in fee simple ownership.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by Treasury Regulation 26 C.F.R. § 1.48-12(b)(2)(v). Each phase of a phased development can independently support an application for a credit as though it was a stand-alone rehabilitation. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in service--A status obtained upon completion of the rehabilitation project when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or a certificate of substantial completion.

(21) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(22) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(23) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(24) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 C.F.R. § 67.7.

(25) Structure-- A building; see also certified historic structure.

§ 13.2. Qualification Requirements.

(a) Qualification for credit.

(1) An applicant is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure if:

(A) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(B) the applicant has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation; and

(C) the total amount of the eligible costs and expenses incurred exceeds \$5,000.

(2) A property for which eligible costs and expenses are submitted for the credit must meet Internal Revenue Code § 47(c)(2) which includes:

(A) non-residential real property; or

(B) residential rental property.

(b) Eligible costs and expenses. Eligible costs and expenses, when directly related to the rehabilitation of the property, include but are not limited to:

(1) expenditures associated with structural components as defined by Treasury Regulation 1.48-1(e)(2) including walls, partitions, floors, ceilings, windows and doors, stairs, elevators, escalators, sprinkling systems, fire escapes, components of

central air conditioning, heating, plumbing, and electrical systems and other components related to the operation or maintenance of the building;

- (2) architectural services;
- (3) engineering services;
- (4) construction management and labor, materials, and reasonable overhead;
- (5) subcontracted services;
- (6) development fees;
- (7) construction period interest and taxes; and
- (8) other items referenced in Internal Revenue Code § 47(c)(2).

(c) Ineligible costs and expenses. Eligible costs and expenses as defined in Internal Revenue Code § 47(c)(2) do not include the following:

- (1) the cost of acquiring any interest in the property;
- (2) the personal labor by the applicant;
- (3) any cost associated with the enlargement of an existing building;
- (4) site work expenditures, including any landscaping, sidewalks, paving, decks, outdoor lighting remote from the building, fencing, retaining walls or similar expenditures;
- (5) any cost associated with the rehabilitation of an outbuilding or ancillary structure unless it is certified by the Commission to contribute to the historical significance of the property; or
- (6) costs associated with application for a credit.

(d) Eligibility date for costs and expenses.

- (1) If the rehabilitated certified historic structure is placed in service on or after September 1, 2013, but before January 1, 2015, the application may include eligible costs and expenses for the project incurred up to 48 months prior to the date the property is placed in service.
- (2) If the rehabilitated certified historic structure is placed in service on or after January 1, 2015, Part A of the Texas Historic Preservation Tax Credit Certification Application must be submitted prior to the building being placed in service.
- (3) While the credit may be claimed for eligible costs and expenses incurred prior to the filing of an application, potential applicants are urged to file parts A and B of the application at the earliest possible date. This will allow the Commission to review the application and provide guidance to the applicant that will increase the chances that the application will ultimately be approved and the credit received.

(e) Phased development. Part B applications for rehabilitation of the same certified historic structure may be submitted by the same owner only if they describe clearly defined phases of work that align with a cost report that separates the eligible costs and expenses by phase. Separate Part B and C applications shall be submitted for review by the Commission prior to issuance of a certificate of eligibility for each phase.

(f) Amount of credit. The total amount of credit available is twenty-five percent (25%) of the aggregate eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

§ 13.3. Evaluation of Significance.

(a) Application Part A – Evaluation of Significance. Part A of the application requires information to allow the Commission to evaluate whether a building is a certified historic structure and shall be completed for all buildings to be included in the project. Part A of the application is evaluated against criteria for significance and integrity issued by the National Park Service.

(b) Application Requirements. Information to be submitted in the Part A includes:

- (1) Name, mailing address, telephone number, and email address of the property owner;
- (2) Name and address of the property;
- (3) Name of the historic district, if applicable;
- (4) Current photographs (not smaller than 4"x6", printed at 300 ppi if digital) of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance;
- (5) Date of construction of the property;
- (6) Brief description of the appearance of the property, including alterations, characteristic features and estimated date or dates of construction and alterations;
- (7) Brief statement of significance summarizing why a property is:
 - (A) eligible for individual listing in the National Register of Historic Places;
 - (B) contributes to a historic district listed in the National Register of Historic Places or a certified local district; or
 - (C) contributes to a potential historic district, accompanied by:
 - (i) a map showing the boundary of the potential historic district and the location of the property within the district;
 - (ii) photographs of other properties in the district; and
 - (iii) justification for the district's eligibility for listing in the National Register of Historic Places;
- (8) A map showing the location of the historic property;
- (9) Signature of the owner requesting the determination; and
- (10) Other information required on the application by the Commission.

(c) Consultation with Commission. Any person may informally consult with the Commission to determine whether a property is:

- (1) listed individually in the National Register of Historic Places;
- (2) designated as a Recorded Texas Historic Landmark or State Antiquities Landmark; or

(3) certified by the Commission as contributing to the historic significance of a historic district listed in the National Register of Historic Places or a certified local district.

(d) Automatic qualification as certified historic structure. If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, then it is a certified historic structure and should be indicated as such on Part A of the application.

(e) Preliminary determination of significance. An owner of a building not listed in the National Register of Historic Places, neither individually nor as a contributing element to a historic district; not designated a Recorded Texas Historic Landmark nor State Antiquities Landmark; and not listed in a certified local district may obtain a preliminary determination from the Commission as to whether the property is individually eligible to become a certified historic structure or is eligible as a contributing structure in a potential historic district by submitting Part A of the application. Determination will be based on criteria for listing in the National Register of Historic Places. Applications for a preliminary determination of significance must show how the property meets one of the following criteria for listing in the National Register of Historic Places and any applicable criteria considerations from the National Park Service.

(1) National Register of Historic Places criteria. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and one or more of (A) through (D) below:

(A) Properties that are associated with events that have made a significant contribution to the broad patterns of our history; or

(B) that are associated with the lives of persons significant in our past; or

(C) that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(D) that have yielded, or may be likely to yield, information important in prehistory or history.

(2) Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories:

(A) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(B) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(C) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

(D) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(E) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(F) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(G) A property achieving significance within the past 50 years if it is of exceptional importance.

(3) Issuance of a preliminary determination of significance does not bind the Commission to the designation of an individual historic structure or district. Applicants proceed with rehabilitation projects at their own risk. If a structure is ultimately not listed in the National Register of Historic Places, designated as a Recorded Texas Historic Landmark, or certified as a contributing element to a local district pursuant to 36 C.F.R. § 67.9, the preliminary determination does not become final, and the owner will not be eligible for the credit. The Commission shall not issue a certificate of eligibility until or unless the designation is final.

(f) Determination of contributing structures in existing historic districts. If a property is located in a district listed in the National Register of Historic Places or in a certified local district, an owner of the property shall request that the Commission determine whether the property is of historic significance contributing to the district by submitting Part A of the application. The Commission evaluates properties located within historic districts listed in the National Register of Historic Places or certified local districts to determine whether they contribute to the historic significance of the district by applying the following standards:

(1) A property contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.

(2) A property does not contribute to the historic significance of a district if it does not add to the district's sense of time and place and historical development, or if its location, design, setting materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Generally, buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old at the date of application.

(4) Certification of significance will be made on the basis of the appearance and condition of the property before beginning the rehabilitation work.

(5) If a nonhistoric surface material obscures a building's façade, it may be necessary for the owner to remove a portion of the surface material so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it will be considered eligible to be a certified historic structure.

(g) Subsequent Designation. If a property is not automatically qualified as a certified historic structure, an owner of a property shall request that the Commission determine whether the property is of historic significance by submitting Part A of the application in accordance with § 13.3(e-f). Upon listing in the National Register of Historic Places, designation as a Recorded Texas Historic Landmark, or certification as a contributing element to a local district pursuant to 36 C.F.R. § 67.9, a revised Part A should be submitted as stated in § 13.3(d). A building must be a certified historic structure prior to the credit being claimed.

(h) Multiple buildings. If a property contains more than one building and the Commission determines that the buildings have been functionally related historically to serve an overall purpose (such as a residence and a carriage house), then the functionally related buildings will be treated as a single certified historic structure, regardless of whether one of the buildings is separately listed or is located within a historic district. Buildings that are functionally related historically are those that have functioned together to serve an overall purpose during the property's period of significance.

(h) Portions of buildings. Portions of buildings, such as single condominium apartment units, are not independently eligible for certification. Two or more buildings or structures located on a single tract or parcel of land (or contiguous tracts or parcels), which are operated as an integrated unit (as evidenced by their operation, management and financing), may be treated as a single building or structure for the purposes of certification. Multiple buildings located on a single tract or parcel (or contiguous tracts or parcels) that the Commission determines have been functionally related historically to serve an overall purpose (such as a residence and a carriage house) during the property's period of significance shall be treated as a single certified historic structure, regardless of whether one of the buildings is separately listed in the National Register of Historic Places or as a Recorded Texas Historic Landmark or is located within a historic district.

(i) Relocation of historic buildings. Relocation of a historic building from its original site may disqualify the building from eligibility or result in removal of designation as a certified historic structure. Applications involving buildings that have been moved or are

to be moved will be evaluated on a case-by-case basis under the applicable criteria for designation as provided in this section. For a building listed in the National Register of Historic Places, the applicant will be responsible for updating the National Register of Historic Places nomination for the property or district, or the relocated building will not be considered a certified historic structure for the purpose of this credit. For a building designated as a Recorded Texas Historic Landmark, the applicant will be responsible for notifying the Commission and otherwise complying with the requirements of 13 Tex. Admin. Code § 21.11 prior to undertaking any relocation.

§ 13.4. Description of Rehabilitation.

(a) Application Part B – Description of Rehabilitation. Part B of the application requires information to allow the Commission to determine whether the proposed rehabilitation work is consistent with the Standards for Rehabilitation and shall be completed for all projects and phases of projects. Part B may only be submitted with Part A of the application or after the Part A of the application has been submitted to the Commission.

(b) Application Requirements. If a property is a certified historic structure or receives a preliminary determination of significance, an owner of the property shall request that the Commission determine whether the rehabilitation plan is in conformance with the Standards for Rehabilitation. Information to be submitted in the Part B includes:

- (1) Name, mailing address, telephone number, and email address of the property owner;
- (2) Name and address of the property;
- (3) Current photographs (not smaller than 4"x6", printed at 300 ppi if digital) of the building and its site, showing exterior and interior features and spaces adequate to document the property's condition immediately prior to commencement of work;
- (4) A rehabilitation plan including drawings of the site plan and the building floor plans showing existing conditions and all proposed work with elevation drawings if applicable to illustrate any new construction, alterations, or additions. Drawings of the existing building condition and drawings of the proposed project are required to substantiate the scope of the project. If the project is a phased development, a description of all phases of work with the associated timeline shall be provided;
- (5) Additional photos as necessary to completely illustrate all areas of the building that will be affected by the rehabilitation;
- (6) A timeframe by which all work included in the project will be completed with a projected starting date and completion or placed in service date;
- (7) An estimate of the aggregate eligible costs and expenses;
- (8) Signature of the owner requesting the review; and
- (9) Other information required on the application by the Commission.

(c) Determination of certified rehabilitation. Part B rehabilitation plans are reviewed by staff of the Commission for consistency with the Standards for Rehabilitation as set forth below:

- (1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- (3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- (10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

§ 13.5. Request for Certification of Completed Work.

(a) Application Part C – Request for Certification of Completed Work. Part C of the application requires information to allow the Commission to certify the completed work follows the Standards for Rehabilitation and the rehabilitation plan as approved by the Commission in the Part B review. Part C may be submitted when the project is placed in service.

- (b) Application requirements. Information to be submitted in the Part C includes:
- (1) Name, mailing address, telephone number, and email address of the property owner(s);
 - (2) Tax identification number(s);
 - (3) Name and address of the property;
 - (4) Photographs (not smaller than 4"x6", printed at 300 ppi if digital) of the completed work showing similar views of the photographs provided in Parts A and B;
 - (5) Evidence of the placed in service date, such as a certificate of occupancy issued by the local building official or a certificate of substantial completion;
 - (6) An audited cost report; and
 - (7) Other information required on the application by the Commission.

§ 13.6. Application Review Process.

- (a) Application form. The Commission staff will develop the application and may modify it as needed over time. All required forms, including application parts A, B, C, and amendment forms, are available from the Commission at no cost.
- (b) Delivery. Applications will be accepted beginning on January 1, 2015 and continuously thereafter. Applications should be delivered to the Commission by mail, hand delivery, or courier service. Faxed or e-mailed applications will not be accepted.
- (c) Application Part A – Evaluation of Significance. Part A of the application will be used by the Commission to confirm historic designation or to determine if the property is eligible for qualification as a certified historic structure.
- (1) If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, the property is qualified as a certified historic structure.
 - (2) The applicant will be responsible for providing sufficient information to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a building is eligible for designation as a certified historic structure, the staff may request additional information from the applicant. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.
 - (3) The Commission staff review of Part A of a complete application, unless otherwise provided in § 13.8, and shall notify the applicant in writing of any determination it makes upon completing the review of Part A of the application.
 - (4) There is no fee to review Part A of the application.
- (d) Application Part B – Description of Rehabilitation. Part B of the application will be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation.

(1) The applicant will be responsible for providing sufficient information, including photographs taken prior to the project, to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, staff may request additional information from the applicant, usually required to be submitted within 30 days. If the additional information requested not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(2) The Commission staff will review Part B of a complete application, unless otherwise provided in § 13.8, and shall notify the applicant in writing of any determination it makes upon completing the review of Part B of the application. In reviewing Part B of the application, the Commission shall determine if Part B is approved or not as follows:

(i) Consistent with the Standards for Rehabilitation as determined by the Commission. If all aspects of the Part B of the application meet the standards for rehabilitation, no additional information is required, and no conditions are imposed on the work, Part B is approved.

(ii) Consistent with the Standards for Rehabilitation with specific conditions of work required. The Commission may determine that the work described in the plan must be performed in a specific manner or with specific materials in order to fully comply with the Standards for Rehabilitation. In such cases, the Part B may be approved with specific conditions required. For applications found to be consistent with the Standards for Rehabilitation with specific conditions required, the applicant shall provide written acceptance to the Commission of all specific conditions required. Otherwise the application will be determined to be not consistent with the Standards for Rehabilitation; applications found to be consistent with the Standards for Rehabilitation with specific conditions required may proceed with the work but will only be eligible for the credit if the conditions listed are met as part of the rehabilitation work. Failure to follow the conditions may result in a determination by the Commission that the project is not consistent with the Standards for Rehabilitation; or

(iii) Not consistent with the Standards for Rehabilitation. Applications found not to be consistent with the Standards for Rehabilitation will be considered to be ineligible applications; the Commission shall make recommendations to the applicant that might bring the project into conformance with the Standards for Rehabilitation, however no warranty is made that the recommendations will bring the project into compliance with the Standards for Rehabilitation; the applicant may reapply and it will be treated as a new application and will be subject to a new application fee.

(3) An application fee is required to be received by the Commission before Commission review of Part B of the application. The fee is based on the estimated

amount of eligible costs and expenses listed by the applicant on Part B of the application.

(i) Applicants must submit the fee with their Part B application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(ii) The fee is based on the estimated aggregate eligible costs and expenses indicated in the Part B application and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments to a pending application or approved project do not require additional fees.

(4) Amendment Sheet. Changes to the project not anticipated in the original application shall be submitted to the Commission on an amendment sheet and must be approved by the Commission as consistent with the Standards for Rehabilitation before they are included in the project. The Commission shall review the amendment sheet and issue a determination in writing regarding whether or not the proposed change in the project is consistent with the Standards for Rehabilitation.

(5) Scope of Review. The review encompasses the building's site and environment as well as any buildings that were functionally related historically. Therefore, any new construction and site improvements occurring on the historic property are considered part of the project. Individual condominiums or commercial spaces within a larger historic building are not considered individual properties apart from the whole. The scope of review for a project is not limited to the work that qualifies as an eligible expense. Likewise, all work completed twenty-four (24) months before the submission of the application is considered part of the project, as is the cumulative effect of any work in previously completed or future phases.

(e) Application Part C - Request for Certification of Completed Work. Part C of the application will be used by the Commission to review completed projects for compliance with the work approved under Part B.

(1) The applicant shall file Part C of the application after the building is placed in service.

(2) The applicant will be responsible for providing sufficient information, including photographs before and after the project, to the Commission by which the Commission staff may verify compliance with the approved Part B. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, the application is incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff will review Part C of a complete application, unless otherwise provided in § 13.8, and shall notify the applicant in writing of any determination it makes upon completing the review of Part C of the application.

(i) If the completed project is found to be in compliance with the approved Part B and any required conditions and consistent with the Standards for Rehabilitation, and the building is a certified historic

structure at the time of the application, the Commission shall approve the project. The Commission then shall issue to the applicant a certificate of eligibility that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(ii) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project cannot, in the opinion of the Commission, be brought into compliance, or if the building is not a certified historic structure at the time of the application, then the Commission shall deny Part C of the application and no certificate of eligibility shall be issued.

(iii) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project can, in the opinion of the Commission, be brought into compliance, the Commission may issue remedial conditions that will bring the project into compliance. The applicant shall complete the remedial work and file an amended Part C. If the remedial work, in the opinion of the Commission, brings the project into compliance, then the Commission shall issue a certificate of eligibility.

(4) An application fee is charged before Commission review of the Part C of the application based on the amount of eligible costs and expenses listed by applicant on Part C of the application.

(i) Applicants must submit the fee with their Part C application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(ii) The fee is based on the eligible costs and expenses as indicated in the audited cost report and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments do not require additional fees.

§ 13.7. Inspection.

(a) Inspection. The Commission may conduct an inspection of a project for which an application has been submitted to review current conditions, work completed in association with the current application, or previously executed phases of work.

(b) Notice. The Commission must give reasonable notice of not less than 48 hours to the applicant of its intent to inspect the property.

(c) Eligibility for the credit. Completed phases of work that do not meet the Standards for Rehabilitation are not eligible for the credit, and future phases of work performed by the same owner on the same building shall not be eligible for a credit under this program.

§ 13.8. Relationship with the Federal Rehabilitation Tax Credit Program.

(a) Projects seeking federal and state credits. Projects seeking certification for both the federal rehabilitation tax credit and the Texas Historic Preservation Tax Credit must meet eligibility requirements for each program individually.

(1) Applicants for both programs shall submit the first page of the Part A, B, and C application forms, accompanied by the Part 1, 2, and 3 application forms for the federal rehabilitation tax credit program, respectively.

(2) A project submitted for the federal rehabilitation tax credit must be reviewed and approved by the National Park Service prior to a determination that it meets the requirements for a certified rehabilitation of a certified historic structure under this chapter. Determinations made by the National Park Service that a project includes a certified historic structure and/or a certified rehabilitation, including compliance with the Standards for Rehabilitation, for federal rehabilitation tax credit projects are binding on the Commission's determinations and shall supersede those determinations.

(3) The review fees required per § 13.6, Application Review Process, must be paid before the Commission will issue any determinations or certifications pursuant to the Texas Historic Preservation Tax Credit, even if the project has previously received certification by the National Park Service for the federal rehabilitation tax credit.

(b) Projects seeking state credit exclusively. If the applicant is eligible to claim a state credit exclusively, then the application forms for the Texas Historic Preservation Tax Credit provided by Commission shall be used. Determinations by the Commission that a project includes a certified historic structure and/or a certified rehabilitation apply only to the Texas Historic Preservation Tax Credit Program and are not binding on any other local or federal tax credit program.