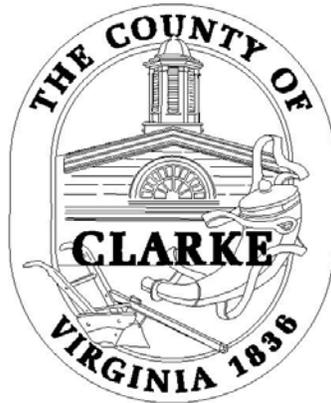


# **HISTORIC RESOURCES PLAN**

ADOPTED  
2007  
March  
20



**Clarke County  
Comprehensive Plan  
Implementing Component  
Article 6**

**HISTORIC PRESERVATION COMMISSION**

John K. Bieschke, Chair  
Thomas Gilpin, Vice-Chair  
Cliff Nelson, Planning Commission  
H. Baker  
Donald H. Cady  
Page Carter  
Robert Holmes

Charles Johnston, Planning Administrator  
Maral S. Kalbian, Architectural Historian

Clarke County Planning Department  
102 North Church Street  
Berryville, VA 22611  
540-955-5132

The Clarke County Historic Resources Plan was first adopted 2001 March 20  
and revised and readopted on 2007 March 20

**TABLE OF CONTENTS**

History and Historic Resources.....3  
County Historic Preservation Projects.....5  
State and National Preservation Programs in Clarke County.....7  
Appendix.....10

## **A. History and Historic Resources**

Native Americans inhabited the area of Clarke County for centuries before the first Europeans, with their African slaves, settled the region. Several prehistoric archeological sites have been discovered on the banks of the Shenandoah River in Clarke County, and records indicate that there are potentially thousands of such sites throughout the County. Native Americans passed through the Shenandoah Valley, a major trade route between present-day New York and Georgia. The Shenandoah River (“Daughter of the Stars”) and the Opequon Creek, are Indian-named, reflecting the heritage of the County's indigenous people. Although few Native American groups were resident in the Shenandoah Valley at the time of European settlement, the area remained within the territorial organization of tribes to the north and west.

Europeans first came into the Shenandoah Valley in the early 1700s. Thomas Fairfax, Sixth Baron Fairfax of Cameron (1693-1781), was the proprietor of the Northern Neck of Virginia as heir to the 1688 royal charter to the land between the Rappahannock and Potomac Rivers. Just less than half of Clarke County was part of a 50,212-acre grant given as payment by Lord Fairfax in 1730 to his agent Robert “King” Carter, the wealthiest and most prominent landholder in the Tidewater of Virginia. The remaining area of the County was distributed in smaller grants, either by the Council of Virginia or Lord Fairfax, or retained by him as the Manor of Greenway Court (his home after 1752) and as the Manor of Leeds. Several buildings and structures of the Greenway Court complex remain, including the 1761 Land Office. The village of White Post, near Greenway Court, grew up around the prominent post directing new settlers to Greenway Court. By tradition, the first post was erected in the early 1750s by George Washington, then a surveyor for Lord Fairfax.

Carter’s land in Clarke County was mostly unavailable for settlement until the mid-1700s when it was divided into tenancies and rented out to farmers. With the end of the Revolutionary War in 1783 and the commercial decline of tobacco, settlers from the Tidewater, most of whom were Carter’s descendents, began to move to Carter’s land in greater numbers. The Tidewater families imported their lifestyle, their appreciation of stylish architecture, their wealth, and the slave system, all of which are reflected in the structures they built. One of the Tidewater settlers was “King” Carter’s great-grandson, Nathaniel Burwell, builder of Carter Hall, the leading plantation in the County. The village of Millwood, near Carter Hall, developed around a prominent commercial mill completed in 1786. It was operated by Burwell and Revolutionary War hero, General Daniel Morgan. The establishment of this and several other mills during the late eighteenth and early nineteenth centuries reflects the transition from tobacco planting to wheat farming by Tidewater families.

African slaves brought from the Tidewater made the settlement and production of large plantations possible in Clarke County. In the 1840 census, over 50% of the County’s population was of African descent. By 2005, the percentage of African-Americans in the County had dropped to less than 7%.

Pioneers migrating south from Pennsylvania, New York, New Jersey, and Maryland in search of rich farmlands formed the broad pattern of European settlement of the Lower Shenandoah Valley. These people were, for the most part, Scots-Irish, English Quakers, and Germans, and they settled in the portion of the northern Shenandoah Valley that today is known as Frederick County and, to a lesser extent, in what is now Clarke. Clarke County was part of Orange County until 1738, when Frederick County was established out of Orange and remained part of Frederick County until 1836, when it became a separate entity. The socio-economic differences between what is now Clarke and the rest of Frederick County, and the considerable distance to the county seat in Winchester, contributed to the separation of Clarke County from Frederick.

The Civil War brought an abrupt end to any new construction and growth in Clarke County. The Battle of Cool Spring and several skirmishes took place in the County, and troops were

constantly passing through the area. Numerous buildings, including houses, barns, and mills, were destroyed during the period. The Shenandoah Valley provided Confederate troops with food and grain and became known as the "breadbasket of the Confederacy." Reconstruction came slowly, and there was little growth in the County until the 1880s when the Shenandoah Valley Railroad (now Norfolk Southern) was constructed and provided improved access to larger markets.

Clarke County was a highly productive agricultural county throughout the nineteenth century. According to 1860 census data, although Clarke was the smallest county in the Shenandoah Valley, it had the largest percentage of land in farms and ranked second in wheat production in the Valley. Wheat was the largest cash crop in the County until the early 20<sup>th</sup> century, when it was replaced by apple production. Clarke County's abundance of bluegrass has long made it a desirable location for horse breeding. The Tidewater families brought their thoroughbreds with them and began a tradition of horse breeding that has continued to the present. By the beginning of the 21<sup>st</sup> century, apple production declined, while beef and dairy cattle and horses were the mainstays of the local agricultural economy.

Berryville, incorporated in 1798, is the largest town in the County. It was first settled in 1775 and was originally known as Battletown, due to its rowdy taverns. Its location at the intersection of major roads leading to Alexandria, Baltimore, and Winchester made it the commercial center of the County and insured its selection as the seat of County government. Boyce, the second town of the County, was incorporated in 1910. It was originally settled in 1880 at the crossing of the Millwood-Winchester Turnpike (now Route 723) and the newly built Shenandoah Valley Railroad (now Norfolk Southern).

Today, Clarke County remains primarily rural, and agriculture is still one of its main sources of income. Berryville is still the commercial, governmental, and manufacturing center of the County. In the late 20<sup>th</sup> century, people increasingly moved to the County to construct new homes in rural settings, as well as restore older residences. In order to preserve the agricultural economy of the County and its rural character, the County enacted innovative land use regulations in 1980. These regulations limited residential growth in rural areas and focused new housing in the Berryville area.

The large number and diversity of historic structures and buildings accentuate Clarke County's rural and agricultural environment. A Countywide archeological assessment was completed in 1993 to survey the Native American presence. Possible sites of several palisade villages were located, as well as thousands of individual dwelling sites. All pre-World War II structures were also documented with reconnaissance-level surveys. A total of 962 historic properties were identified (each of which may include several structures), dating from the early 1700s through 1941 in the rural portion of the County. From approximately the same period, 236 historic structures and buildings were identified in Berryville, **54 100** in Boyce, 58 in Millwood, and 28 in White Post.

As a follow-up to the general identification of historic properties, more than 30% of the County has been placed on the Virginia Landmarks Register and the National Register of Historic Places, including the historic districts of: Greenway (30 square miles), Long Marsh (16 square miles), Cool Spring Civil War Battlefield (6 square miles), Berryville (150 acres), Boyce (102 acres), White Post (30 acres), and 28 individually listed structures. In addition, Greenway Court (the 1750 home of Lord Fairfax) and Saratoga (the 1780 home of Daniel Morgan) have been designated National Historic Landmarks, the highest level of national recognition for an historic property. The County is also part of the John Singleton Mosby Heritage Area, the first heritage area designated in Virginia. This Area approximates "Mosby's Confederacy," to encompass parts of six counties, of which Clarke is the only county included in its entirety.

## **B. County Historic Preservation Projects**

While part of the Washington Metropolitan Area, Clarke County is on the rural fringe of Northern Virginia, an area that is quickly being developed. Clarke is fortunate to have many of its historic resources surviving to date. Several of the large estates have remained in family ownership or have been purchased by persons knowledgeable about and sympathetic toward historic preservation. The Clarke County Board of Supervisors has recognized the importance of historical resources to the community. They realize that by identifying and maximizing the benefits of these resources, future generations can make intelligent decisions about future development in the County.

The Board of Supervisors appoints the seven-member Historic Preservation Commission (HPC), established in 1987. It serves as the architectural review board for properties in the local historic districts. The Ordinance establishing the Commission identifies its responsibilities:

1. Coordinate local historic preservation efforts with those of the Department of Historic Resources.
2. Sponsor public information activities and publicize historic preservation efforts, such as: speaking engagements, handouts, press releases, films, and making awards to people who have made significant contributions to preserving the County's heritage.
3. Report to the Planning Commission on its activities and make recommendations in an annual report to the Planning Commission and the Board of Supervisors concerning the operation of the Preservation Commission and the status of historic preservation within the County.
4. Grant the right to display authorized plaques to commemorate buildings or sites that are important and significant physical features in Clarke County.
5. Provide advice and recommendations to the Planning Commission on particular projects and developments, as specifically requested by the Planning Commission.
6. Review projects and developments that may change or alter the historic character of an existing County Historic District and report findings to the Planning Commission.
7. Issue Certificates of Appropriateness and formulate necessary administrative procedures, which shall include prescribed requirements for applications for such Certificates.
8. Advise persons living within a County Historic District on measures that they may take to preserve the historic character of their District.
9. Develop specific guidelines for each County Historic District before establishment of each such District, to delineate specific criteria for the approval of Certificates of Appropriateness, based upon the criteria listed in County Zoning Ordinance Section 4-I-5-c and the distinctive characteristics and features of each District. After establishing a County Historic District, proposed changes or amendments to the specific guidelines for that District shall be reviewed by the Planning Commission before instituting or implementing such changes or amendments.
10. Hold public meetings, as often as necessary, to fulfill the responsibilities assigned by this Ordinance.

At this time, there are two areas designated as County Historic Districts, one area in the village of White Post, encompassing 28 parcels, and 7 parcels in the village of Millwood, primarily focused on its commercial core.

In 1990, Clarke County enacted legislation (Clarke County Code Section 11-24) that provides a ten-year freeze of a property's assessed value, if renovation on it is done according to The Secretary of the Interior's Guidelines for Rehabilitation and is approved by the HPC. As of 1999, three property owners have taken advantage of this initiative.

Current activities include development of National Register Nominations for the northern Blue Ridge area of the County along Route 601, north of Mt. Weather and for the central area of the County around Old Chapel. In addition, the County continues to pursue efforts to protect the historic structures at Greenway Court.

Past accomplishments include:

1. completing architectural surveys of all structures in the County constructed before 1943;
2. conducting a County-wide assessment of archaeological resources, including a predictive model for the location of these sites;
3. incorporating of the historic resources that have been surveyed into the County Geographic Information System, using the National Park Service's Integrated Preservation Software;
4. preparing a video and driving tour brochures documenting the County's historic resources to inform and educate the general public;
5. re-installing nine missing Historic Highway Markers and the erection of eleven new Historic Markers;
6. sponsoring a TEA-21 Transportation Enhancement Grant for site improvements at the Burwell-Morgan Mill in Millwood;
7. placing the 1880 Josephine School on the National Register and contributing to its renovation and reopening as the Josephine School Community Museum, the Clarke County African-American Museum and Cultural Center;
8. preparing an African-American Context Report, documenting the history of blacks in the County;
9. placing most of the Town of Boyce on the National Register;
10. placing Blandy Farm, the University of Virginia Experimental Research Facility and State Arboretum of Virginia, on the National Register;
11. obtaining a conservation easement on the historic resources at Greenway Court and completing a Building Structural Report;

Clarke County has achieved the major milestone of having surveyed its historic resources and has made significant efforts in formally recognizing, protecting, and preserving these resources. In the future, efforts must be continued in the conservation of the County's heritage through public information and public assistance in compatible reuse projects. In addition, protecting the County's rich archaeological resources must also be a high priority. A balance between desires of property owners and respect for community identity must be achieved in order to benefit all.

### **C. State and National Preservation Programs in Clarke County**

The Commonwealth of Virginia encourages historic preservation through enabling legislation for local historic overlay districts and through its Department of Historic Resources (DHR). The DHR is made up of architectural historians, architects, archaeologists, historians, and archivists who administer the state's preservation program and serve as the State Historic Preservation Office in the federal preservation system. In 1995, DHR opened a satellite office in Winchester to serve the northern portion of the state. The office moved to Stephens City in 2006 and is now known as the Northern Region Preservation Office. The DHR works with local governments, private citizens, and organizations to carry out preservation programs.

A large part of these programs is the documentation of historic properties. Clarke County has conducted four historic surveys, the last completed in 1992. These surveys have resulted in the documentation of 962 historic properties (some containing multiple structures) in the rural parts of the County, 236 in Berryville, 100 in Boyce, 58 in Millwood, and 28 in White Post. These surveys were partially funded with County money and partially with grants awarded by the DHR.

After general documentation of the County's resources through surveying, registering each important building provides formal certification of its historic value. The Virginia Landmarks Register provides formal certification of the statewide importance of a site with the following registration criteria:

*No structure or site shall be deemed to be an historic one unless it has been prominently identified with, or best represents, some major aspect of the cultural, political, economic, military, or social history of the State or nation, or has had a relationship with the life of an historic personage or event representing some major aspect of, or ideals related to, the history of the State or nation. In the case of structures which are to be so designated, they shall embody the principal or unique features of an architectural style or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times. In order for a site to qualify as an archaeological site, it shall be an area from which it is reasonable to expect that artifacts, materials, and other specimens may be found which give insight to an understanding of aboriginal man or the colonial and early history and architecture of the State or nation.*

The National Register of Historic Places lists properties that possess national significance in history, architecture, archaeology, engineering, and culture, any of which can be present in districts, buildings, sites and objects. Integrity of location, design, setting, materials, feeling, workmanship, and association are considered, in addition to the following four Criteria for Evaluation:

1. Properties that are associated with events that have made a significant contribution to the broad patterns of our history;
2. Properties that are associated with the lives of persons significant in our past;
3. Properties that embody the distinctive characteristics of a type, period, or method of construction or that represent a significant and distinguishable entity whose components may lack individual distinction; and
4. Properties that have yielded, or may be likely to yield, information important in prehistory or history.

When considering properties for the National Register, the National Park Service may determine that a property has outstanding historic qualities and designate it a National Historic Landmark.

Currently, two properties in the County are listed as National Historic Landmarks, in part because of their association with significant historic figures, Lord Fairfax and Daniel Morgan.

| <u>Property Name</u> | <u>DHR File #</u> |
|----------------------|-------------------|
| 1. Greenway Court    | 21 - 28           |
| 2. Saratoga          | 21 - 70           |

Twenty-six individual properties and seven districts are listed on the State and National Registers.

| <u>Property Name</u>             | <u>DHR File #</u> |
|----------------------------------|-------------------|
| 1. Annfield                      | 21 - 02           |
| 2. Bethel Memorial Church        | 21 - 35           |
| 3. Blandy Experimental Farm      | 21 - 550          |
| 4. Burwell-Morgan Mill           | 21 - 23           |
| 5. Carter Hall                   | 21 - 12           |
| 6. Fairfield                     | 21 - 29           |
| 7. Farnley                       | 21 - 30           |
| 8. Glendale Farm                 | 21 - 34           |
| 9. Guilford                      | 21 - 39           |
| 10. Huntingdon                   | 21 - 188          |
| 11. Josephine City School        | 21 - 177          |
| 12. Long Branch                  | 21 - 95           |
| 13. Lucky Hit                    | 21 - 45           |
| 14. Meadea                       | 21 - 618          |
| 15. Norwood                      | 21 - 57           |
| 16. Old Chapel                   | 21 - 58           |
| 17. Old Clarke County Courthouse | 21 - 21           |
| 18. The River House              | 21 - 64           |
| 19. Scaleby                      | 21 - 86           |
| 20. Smithfield                   | 21 - 349          |
| 21. Soldier's Rest               | 21 - 73           |
| 22. The Tuleyries                | 21 - 82           |
| 23. Wickliffe Church             | 21 - 89           |
| 24. Chapel Hill                  | 21 - 14           |
| 25. Millwood Colored School      | 21 - 192-8        |
| 26. Clermont                     | 21 - 19           |

Districts

|   |            |
|---|------------|
| 1. Berryville Historic District<br>150 acres - 314 contributing resources                             | 168 - 12   |
| 2. Cool Spring Battlefield Historic District<br>4,064 acres (6 sq. miles) - 54 contributing resources | 21 - 976   |
| 3. Greenway Historic District<br>19,107 acres (30 sq. miles) - 606 contributing resources             | 21 - 963   |
| 4. Long Marsh Run Rural Historic District<br>10,293 acres (16 sq. miles) - 366 contributing resources | 21 - 967   |
| 5. White Post Historic District<br>30 acres - 28 contributing resources                               | 21 - 66    |
| 6. Boyce Historic District<br>102 acres - 100 contributing resources                                  | 172 - 0001 |
| 7. Millwood Commercial District<br>4 acres - 10 contributing resources                                | 21 - 5059  |

A contributing resource includes a building, structure, site, or object.

More than fifty individual properties in the rural portion of the County and districts for Boyce and Millwood have been identified as eligible for the Virginia Landmarks Register and the National Register of Historic Places.

Inclusion on the Virginia Landmarks Register and the National Register of Historic Places accomplishes the following:

1. It increases public awareness of the significance of an historic resource and encourages its preservation.
2. It does not restrict the property owner from using private funds in any way. However, when federal funds, licenses, or permits are used, the project review process will consider the impact of the project on the property.
3. It provides financial benefits, mostly in the form of federal and state tax incentives, for rehabilitation of listed buildings.

## **D. APPENDIX**

This appendix provides detailed information regarding:

1. The Four Types of Treatments of Historic Buildings,
2. The Secretary of the Interior's Standards for Rehabilitation,
3. Tax Credits for Rehabilitation,
4. The Federal Rehabilitation Tax Credit Program, and
5. The State Rehabilitation Tax Credit Program.

The U.S. National Park Service and the Virginia Department of Historic Resources are the sources of this information.

### **1. The Four Types of Treatments of Historic Buildings**

The four types of treatments of historic buildings are: Preservation, Rehabilitation, Restoration and Reconstruction. These four treatment types are intended to assist users in making sound historic preservation decisions and promote the use of 'a common language' in the planning stages of work.

#### *Preservation*

Use the property as it was used historically or find a new use that maximizes retention of distinctive features. Preserve the historic character (continuum of property's history). Stabilize, consolidate, and conserve existing historic materials. Replace minimum amount of fabric necessary and in kind (match materials).

#### *Rehabilitation*

Use the property as it was used historically or find a new use that requires minimal change to distinctive features. Preserve the historic character (continuum of property's history). Do not make changes that falsify the historical development. Repair deteriorated historic materials and features. Replace a severely deteriorated feature, using to the greatest extent possible, matching new materials. New additions and alterations should not destroy historic materials or character. New work should be differentiated from the old, yet compatible with it.

#### *Restoration*

Use the property as it was historically or find a new use that reflects the property's restoration period. Remove features from other periods, but document them first. Stabilize, consolidate, and conserve features from the restoration period. Replace a severely deteriorated feature from the restoration period with a matching feature (limited substitute materials may be used). Replace missing features from the restoration period based on documentation and physical evidence. Do not make changes that mix periods and falsify history to create a "hybrid" building. Do not execute a design that was never built.

#### *Reconstruction*

Do not reconstruct vanished portions of a property unless the reconstruction is essential to the public understanding. Reconstruct to one period of significance based on documentary and physical evidence. Precede reconstruction with thorough archeological investigation. Preserve any remaining historic features. Recreate the appearance of the property (substitute materials may be used). Identify the reconstructed property as a contemporary recreation. Do not execute a design that was never built.

## **2. The Secretary of the Interior's Standards for Rehabilitation**

The Standards, written by W. Brown Morton III and Gary Hume, were first codified in 1979 in response to a Federal mandate requiring the establishment of policies for all programs under the authority of the Department of the Interior. The Standards enable the Department of the Interior to direct work undertaken on historic buildings. They are used in review of all Federal projects involving historic properties listed on or eligible for listing in the National Register of Historic Places. Compliance with the Standards provides for the preservation of the historic and architectural integrity of buildings being rehabilitated. The Standards were most recently revised in 1992.

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 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.

### **3. Tax Credits for Rehabilitation**

Rehabilitation is the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values. In order to get tax credits (either on a state or national level), the rehabilitation work needs to be done according to the Secretary of the Interior's Standards for Rehabilitation. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

Initially developed by the Secretary of the Interior to determine the appropriateness of proposed project work on registered properties within the Historic Preservation Fund grant-in-aid program, the Standards for Rehabilitation have been widely used over the years, particularly to determine if a rehabilitation qualifies as a Certified Rehabilitation for Federal tax purposes. In addition, the Standards have guided Federal agencies in carrying out their historic preservation responsibilities for properties in Federal ownership or control and have guided State and local officials in reviewing both Federal and nonfederal rehabilitation proposals. They have also been adopted by historic district and planning commissions across the country. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and interior of the buildings. They also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction.

To be certified for Federal tax purposes, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s), and where applicable, the district in which it is located. As stated in the definition, the treatment "rehabilitation" assumes that at least some repair or alteration of the historic building will be needed in order to provide for an efficient contemporary use; however, these repairs and alterations must not damage or destroy materials, features or finishes that are important in defining the building's historic character. For example, certain treatments--if improperly applied--may cause or accelerate physical deterioration of the historic building. This can include using improper repointing or exterior masonry cleaning techniques, or introducing insulation that damages historic fabric. In almost all of these situations, use of these materials and treatments will result in a project that does not meet the Standards. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will fail to meet the Standards.

#### **4. The Federal Rehabilitation Tax Credit Program**

The federal historic rehabilitation tax credit, a dollar-for-dollar reduction of federal income tax liability, is calculated as a percentage of the eligible rehabilitation expenses. Certified historic rehabilitations will qualify investors for a 20% rehabilitation tax credit. Under this program, more than \$400 million has been proposed for the rehabilitation of Virginia landmark properties since 1976, and projects costing some \$220 million have been completed and certified. Rehabilitations of nonhistoric buildings built before 1936 can qualify investors for a 10% credit.

Certifications of buildings and rehabilitations, so that property owners can claim the credits, are requested through the Department of Historic Resources, and issued by the National Park Service, a division of the Department of the Interior. The Internal Revenue Service has full authority to determine tax treatment questions.

#### **INCOME PRODUCING PROPERTIES**

Properties must be income producing to qualify for the federal tax credits. Owner-occupied residences, for example, are not depreciable, and rehabilitations of such properties will not qualify. For certified historic rehabilitations only, rental residential use is considered to be income producing by the Internal Revenue Service.

#### **CERTIFIED HISTORIC STRUCTURES**

A building must be designated a "certified historic structure" to qualify for the 20% tax credit. A certified historic structure is any building that is: 1. listed individually in the National Register of Historic Places, or 2. located within a "registered historic district" and certified by the Secretary of the Interior as contributing to the historic character of that district.

A registered historic district is any district listed in the National Register of Historic Places; or any district designated under a state or local statute which has been certified by the Secretary of the Interior as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district, and which is certified as substantially meeting all of the requirements for the listing of districts in the National Register.

The Department of Historic Resources has records of all properties in Virginia that are listed in the National Register, and records of all registered historic districts. Please contact the archivist at DHR (804) 367-2386 or visit the Department at 2801 Kensington Avenue, Richmond, VA 23221 to consult with the archives.

#### **CERTIFIED HISTORIC REHABILITATIONS**

Rehabilitations of certified historic structures must be certified by the National Park Service for the investors to qualify for the 20% tax credit. The National Park Service evaluates rehabilitations for compliance with The Secretary of the Interior's Standards for Rehabilitation. Projects complying with the Standards will be designated "certified historic rehabilitations." If a rehabilitation of a certified historic structure is determined not to comply with the Standards, certification will be denied, and the applicants will not be eligible to claim a tax credit.

In addition to compliance with the Standards, a rehabilitation must satisfy two other tests to qualify for tax credits: "retention of external walls" and "substantial rehabilitation."

#### **RETENTION OF EXTERNAL WALLS**

Certified historic rehabilitations should generally satisfy the external wall retention test given below. In some instances (e.g., when walls have lost their integrity due to deterioration, or when existing external walls detract from the historic character of the structure) the National Park Service may determine to certify a rehabilitation notwithstanding the loss of or alteration to the external walls or structural framework.

Rehabilitations of non-historic buildings must satisfy these requirements for retention of external walls: 1. At least 50% of the building's existing external walls must be retained in place as external walls, and 2. At least 75% of the building's existing external walls must be retained in place as either external or internal walls, and 3. At least 75% of the building's internal structural framework must remain in place.

#### **SUBSTANTIAL REHABILITATION**

A rehabilitation must be substantial to qualify the investor for any tax credits. The Internal Revenue Service defines "substantial" as exceeding the owner's adjusted basis in the building, or \$5000, whichever is greater. The adjusted basis is generally defined as the purchase price, minus the value of the land, minus any depreciation already claimed, plus the value of any earlier capital improvements. The rehabilitation expenses must occur during a consecutive 24-month period; or, for phased rehabilitations, during a consecutive 60-month period.

#### **DEPRECIATION**

Qualified rehabilitation expenses are depreciated in straight-line fashion over 27½ years for residential rental property, and over 31½ years for nonresidential property. The full amount of the tax credit claimed is subtracted from the capital improvement expenses added to the building's depreciable basis.

#### **RECAPTURE**

Generally, if a certified rehabilitated building is held by the taxpayer for at least five years after the rehabilitation is completed, there is no recapture of the tax credits. If a rehabilitated property is disposed of, or if it loses its status as income producing, within five years of completion of the rehabilitation, any credits claimed will be subject to prorated recapture by the Internal Revenue Service.

The National Park Service reserves the right to inspect a rehabilitated property at any time during the five-year period after rehabilitation is completed, and to revoke certification if work was not undertaken as presented in the Historic Preservation Certification Application, or if further unapproved alterations have been made. The National Park Service will notify the Internal Revenue Service of any such revocations.

#### **REHABILITATIONS OF NONHISTORIC BUILDINGS**

A 10% rehabilitation tax credit is available for substantial rehabilitations of non-historic buildings constructed prior to 1936. No certification is required for these buildings. Rehabilitations of non-historic buildings are not reviewed by the Department of the Interior for compliance with The Secretary of the Interior's Standards for Rehabilitation.

The 10% tax credit is not available for certified historic structures. A building located within a registered historic district is not eligible for the 10% tax credit unless it is certified by the Department of the Interior as not contributing to the historical significance of the district. A request for decertification is made with Part 1 of the Historic Preservation Certification Application (Form 10-168, Rev. 12/86.)

Nonhistoric buildings must be rehabilitated for commercial use to qualify for the 10% tax credit. Rental residential use is not considered to be commercial use by the Internal Revenue Service.

As with certified historic rehabilitations, the rehabilitations of nonhistoric buildings must be substantial to qualify for the tax credits. Tax credits claimed for nonhistoric rehabilitations are subtracted in full from the amount added to the building's basis. The remainder of the rehabilitation expenses can be depreciated in straight-line fashion over 31½ years.

Property owners whose rehabilitations of certified historic buildings are determined not to comply with the Standards will not be eligible to claim the 20% tax credit, nor will they be able to claim the 10% tax credits.

#### **PASSIVE ACTIVITY RULES**

The Tax Reform Act of 1986 defines income and losses as "active," "portfolio," and "passive." Active income includes salary, wages, and business income. Portfolio income includes interest and dividends. Passive income is generally defined as income from businesses in which the taxpayer does not materially participate. Rental real estate, other than that involving services such as hotels, is considered a passive activity irrespective of the taxpayer's material participation. Material participation is defined as involvement in the activity on a regular, continuous, and substantial basis; limited partners are categorized as not materially participating.

Generally, noncorporate taxpayers are barred from using losses and credits from passive sources to offset tax liability from active or portfolio income. Losses and credits generated from passive sources can offset tax liability only against passive income. Two major exceptions to this rule assist rehabilitation projects:

1. A taxpayer who actively participates in rental real estate may take up to \$25,000 in losses annually from passive activity to offset non-passive income. This \$25,000 allowance is phased out for taxpayers with adjusted gross incomes between \$100,000 and \$150,000; each \$2 of income over \$100,000 reduces the \$25,000 exception by \$1.
2. Tax credits (but not deductions) from rental property activities can be used to offset the tax owed on up to \$25,000 of active income. Please note that this exemption is not an actual credit of \$25,000. A taxpayer in the 28 percent marginal tax bracket can use up to \$7000 in credits in a single tax year. This benefit is phased out for taxpayers with adjusted gross incomes between \$200,000 and \$250,000.

A taxpayer cannot use both of these exceptions in a single tax year. A taxpayer can use additional credits or deductions to reduce taxes on passive income. Unused passive losses and credits can be carried forward indefinitely, and can also be applied against gains upon disposition of the investment.

## ELIGIBLE REHABILITATION EXPENSES

The rehabilitation tax credit is calculated as a percentage of the eligible rehabilitation expenses. Rehabilitation expenses must be capital in nature and depreciable as real property. The Internal

Revenue Service regulations state that any amount that is properly chargeable to a building's capital account, made in connection with the rehabilitation of a qualified rehabilitated building, is an eligible rehabilitation expense. Architectural and engineering fees, site survey fees, legal expenses, insurance premiums, developer's fees, and other construction-related soft costs, if added to the basis of the real property with appropriate recovery periods (27½ years or 31½ years), are eligible rehabilitation expenses.

Acquisition is not considered a rehabilitation expense. The costs of new construction beyond the "shell" of the existing building, and the costs of landscaping, parking lots, and site work, are not considered rehabilitation expenses. The costs of personal property and furnishings are not considered rehabilitation expenses.

## CLAIMING THE CREDITS

The tax credit is available to the owners of, or, in certain situations, the lessees of a qualified rehabilitated building. Lessees may obtain credit for rehabilitation expenditures that they have incurred, provided that the lease term remaining on the date the rehabilitation is completed is at least 27½ years for a residential building or 31½ years for a nonresidential building. If a building is sold before its rehabilitation is completed, the purchasers are eligible to claim credits for all rehabilitation expenses.

Generally, the credits are claimed for the tax year in which the rehabilitation is completed and the building is placed in service. An approved Historic Preservation Certification Application, Part 3, "Request for Certification of Completed Work" (form 10-168c) should be filed with the federal tax return claiming the credit.

In the event final certification has not yet been received when the taxpayer files the tax return claiming the credit, a copy of the first page of the Historic Preservation Certification Application, Part 2 (form 10-168a) should be filed with the tax return, along with evidence that it has been received by the Department of Historic Resources or the National Park Service. In such cases, the taxpayer has up to 30 months after the date of the tax return claiming the tax credit to submit documentation of final certification of the rehabilitation to the Internal Revenue Service.

If a taxpayer's credits exceed tax liability for a given year, the unused credits can be carried forward for fifteen years, or carried back for three years. Credits and deductions that cannot be used in a tax year because of the passive activity rules may be used in future years to offset taxes owed on passive income, but they cannot be used to offset taxes owed on income from previous years.

## PHASED REHABILITATIONS

Normally, rehabilitation projects must be completed within a consecutive 24-month period. In some cases, where a rehabilitation project consists of two or more distinct stages of development, it may reasonably be expected to be completed in phases, and it may be carried out over a consecutive 60-month period. Written architectural plans and specifications, completed before the physical work on the rehabilitation begins, should describe the overall

project. These plans should describe generally all phases of the project; they are not required to contain detailed working drawings or detailed specifications.

It is not necessary for each phase to exceed in cost the property's adjusted basis; but the overall project must exceed the adjusted basis as determined from the beginning of the first phase.

The National Park Service can review each phase as it is completed, and respond with a "phased advisory letter", to confirm whether each phase complies with the Standards; but phased rehabilitations can not be given final certification until all phases are completed.

#### Preliminary

Internal Revenue Service rulings indicate that, for phased rehabilitations, credits may be claimed before completion of the entire project, on basis of "qualified progress expenditures," if construction is planned for more than two years.

#### FORMS

Applications for the certification of buildings and rehabilitations are made on the Department of the Interior's Historic Preservation Certification Application, Forms 10-168, 10-168a, 10-168b, and 10-168c (Rev. 12/86.) These forms are available from the Department of Historic Resources. Rehabilitation tax credits are claimed using the Internal Revenue Service form 3468, "Computation of Investment Credit." This form is available from the Internal Revenue Service.

#### APPLICATION AND REVIEW PROCEDURES

The Historic Preservation Certification Application is submitted to the Virginia Department of Historic Resources. The Department reviews the application for completeness, identifies potential conflicts with the Standards, and, if indicated, negotiates controversial aspects of projects with the applicant. Review of an application is generally completed within 30 days of receipt of complete information. The Department forwards the application to the National Park Service in Washington, D.C., with a written recommendation. A copy of the Department's recommendation is provided to the applicant.

The National Park Service generally completes review of applications for Virginia projects within 30 days. Complex or controversial projects will require longer review periods. Notification of the Park Service's decisions is provided to the applicant, to the Department of Historic Resources, and to the Internal Revenue Service.

In some cases, revisions to rehabilitation proposals are necessary to bring a project into compliance with the Standards. Such revisions are easier and less costly if the proposal is submitted to the Department prior to beginning construction. Review of a proposed rehabilitation with the Department of Historic Resources is a prudent approach to insuring a successful project.

## **5. The State Rehabilitation Tax Credit Program**

The state tax credit, which reduces the taxpayer's Virginia Income Tax liability, is calculated as a percentage of the eligible rehabilitation expenses. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against the tax imposed by §§ 58.1-320, 58.1-360 or 58.1-400, for 25% of the eligible expenses. Certifications of buildings and rehabilitations, so that property owners can claim the credits, are issued by the Virginia Department of Historic Resources. The Virginia Department of Taxation has full authority to determine tax treatment questions.

### **INCOME PRODUCING PROPERTIES**

Properties do not need to be income producing to qualify for the state tax credits. Rehabilitations of owner-occupied residences can qualify for the state tax credits. Rehabilitations of income-producing properties can also qualify for the state tax credits.

### **CERTIFIED HISTORIC STRUCTURES**

"Certified historic structure" means a property listed individually in the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed in the Virginia Landmarks Register or certified by the Director of the Virginia Department of Historic Resources as meeting the criteria for listing in the Virginia Landmarks Register.

For planning purposes, individual properties that have been determined by the Department and by the Historic Resources Board, through the DHR Preliminary Information Request, to be eligible for listing in the Virginia Landmarks Register, are considered "certified historic structures." Properties in historic districts that may be eligible for listing cannot be considered "certified historic structures." As of January 1998, it has not been determined whether properties that have been determined eligible must be formally listed in the Virginia Landmarks Register in order to confirm the tax credits.

The Department of Historic Resources has records of all properties in Virginia that are listed in the Virginia Landmarks Register, and of all registered historic districts. Property owners may consult Calder C. Loth, ed., *The Virginia Landmarks Register, Third Edition* (Charlottesville: University Press of Virginia, 1986; fourth edition anticipated 1999), which has listings complete through 1984; or, for more recent listings, contact Suzanne Durham, Archivist, Department of Historic Resources, (804) 786-3143. Applicants may also visit the Department at 2801 Kensington Avenue, Richmond, VA 23221 to consult with the archives.

### **CERTIFIED HISTORIC REHABILITATIONS**

Rehabilitations of certified historic structures must be certified by the Virginia Department of Historic Resources for the applicants to qualify for the state tax credit. All rehabilitation work must be consistent with The Secretary of the Interior's Standards for Rehabilitation for a project to be certified; all such projects will be designated "certified historic rehabilitations." If a rehabilitation project is determined not to be consistent with the Standards, certification will be denied, and the investors will not be eligible to claim a tax credit.

## **MATERIAL REHABILITATION**

"Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the Interior's Standards for Rehabilitation," the cost of which amounts to at least fifty percent of the assessed value of the buildings for local real estate tax purposes for the year before such rehabilitation expenses were incurred. Rehabilitation projects costing less than 50% of a building's assessed value will not qualify for the state rehabilitation tax credits.

## **ELIGIBLE REHABILITATION EXPENSES**

The rehabilitation tax credit is calculated as a percentage of the eligible rehabilitation expenses. Eligible rehabilitation expenses are expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

Rehabilitation expenses must be capital in nature and depreciable as real property. Acquisition is not considered a rehabilitation expense. The costs of new construction beyond the "shell" of the existing building, and the costs of landscaping, parking lots, and site work, are not considered rehabilitation expenses. The costs of personal property and furnishings are not considered rehabilitation expenses. Costs incurred before January 1, 1997, are not eligible rehabilitation expenses.

## **CLAIMING THE CREDITS**

The tax credit is available to the owners of a qualified rehabilitated building. Generally, the credits are claimed for the tax year in which the rehabilitation is completed and the building is placed in service. An approved Historic Preservation Certification Application, Part 3, "Request for Certification of Completed Work" should be filed with the tax return claiming the credit.

The credit is 25% of the eligible rehabilitation expenses. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer in the next five taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively.

## **ASSIGNMENT OF REHABILITATION CREDITS**

The assignment of state historic rehabilitation tax credits was enabled by the Virginia General Assembly in 2002, enhancing the value of these credits. Further information on this issue is available on the VDHR web site or from the VDHR staff in Richmond.