



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #1

Mission, Purpose, and Legal Authority of Easement Program

The mission of the Easement Program is to ensure the preservation—in perpetuity—of the historic landmarks that immeasurably enhance the quality of our lives and the character of our Commonwealth

The easement program is the Commonwealth of Virginia's most effective tool for the protection of diverse historic landmarks at minimal cost to the taxpayers. The Commonwealth's long-standing policy is to confirm the importance of historic resources and to support their private stewardship. The easement program identifies important landmarks and encourages their voluntary preservation in private ownership. It enables owners to ensure the permanent preservation of significant historic, architectural, archaeological, or cultural properties.

In addition to this support of private stewardship of historic properties, the easement program protects the Commonwealth's investment in historic properties that receive state grants or other public funding. By requiring that easements be placed on properties that receive a certain threshold level of public funding, the Commonwealth ensures that the public's investment in historic resources will not be compromised.

The legal authority for the Department of Historic Resources' Historic Preservation Easement Program is derived from the following sources:

CONSTITUTIONAL AUTHORITY:

CONSTITUTION OF VIRGINIA, Article XI:

Section 1. Natural resources and historical sites of the Commonwealth.

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Section 2. Conservation and development of natural resources and historical sites.

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Notwithstanding the time limitations of the provisions of Article X, Section 7, of this Constitution, the Commonwealth may participate for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

LEGISLATIVE AUTHORITY

Va. Code §10.1-2204: Duties of the Board of Historic Resources include “Acquire by purchase or gift designated landmarks and sites, or easements or interests therein.”

Va Code §10.1-1701, Open Space Land Act: “To carry out the purposes of this chapter, any public body may (i) acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land and (ii) designate any real property in which it has an interest of not less than five years' duration to be retained and used for the preservation and provision of open-space land. Any such interest may also be perpetual.”

Va Code §10.1-1700: “Open-space land” means any land which is provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, or (v) wetlands as defined in § [28.2-1300](#).



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #2

Acceptance of Easements

By placing a property under easement the Commonwealth has determined that the historic character and the public benefit added by easing the property warrant its protection—in roughly its current form and condition—in perpetuity. While many properties are historically significant, an easement places permanent restrictions on property, and should therefore be used to protect only those resources which are of enduring significance. An easement imposes on the Commonwealth the responsibility to monitor and enforce the terms of the easement, and creates a permanent relationship between the Commonwealth and a property's current and future owners. It is the policy of the Virginia Board of Historic Resources (the "Board") and the Virginia Department of Historic Resources (the "DHR") to accept only easements of perpetual duration.

Whether or not tax incentives are claimed for donation or conveyance of an easement, it is the practice of the Board and DHR to ensure that all easements it holds comply with state and federal laws governing conservation easements. The United States Internal Revenue Service Code and the U.S. Treasury Regulations have established standards for conservation practice as relates to the acceptance of easements, the stewardship of easement properties, and the overall management of easement programs. Virginia tax code requires that these standards be met as well. Failure to operate in a manner consistent with these legal requirements would jeopardize the standing of the program and its ability to meet stewardship commitments made by the Board and DHR to property owners throughout Virginia.

Additionally, it is the policy of the Board and DHR not to accept easements which conflict with other known interests of the Commonwealth, including public works projects, except under very unusual circumstances which would otherwise result in loss of the resource or degradation of the characteristics for which the property is listed in the Virginia Landmarks Register ("VLR") or on the Civil War Sites Advisory Commission (CWSAC) listing of battlefield properties.

Offer of an easement is first considered by DHR's Easement Acceptance Committee ("EAC"), comprised of department staff. In formulating its recommendation to the Board, the EAC will evaluate a number of factors including:

1. The level of historic and cultural significance of the property, including its status in the VLR or, for battlefield properties, its priority rating with the CWSAC as administered through the American Battlefield Protection Program of the National Park Service. Properties that do not fall within the boundaries of a CWSAC battlefield are generally not recommended for acceptance into DHR's easement program, and will be evaluated on a case by case basis, provided the property meets federal and state criteria for preservation as historically significant open-space, buffer, or scenic land.
2. The degree to which the public has or will have access to the resources that are protected by the easement. To some extent, photos of the property and access provided for research can constitute public access.
3. The ability of DHR to monitor the features of the property that will be protected through the easement and that contribute to the public benefit associated with the easement. The policy of DHR is to consider the range of public interests in the property (historic, open space, ecological) and work with other state agencies to develop a plan that best serves those interests.
4. The complexity of conservation issues. DHR will take into consideration features that are vulnerable to deterioration or will otherwise require a high level of monitoring by staff as well as reserved rights requested by the property owner.
5. The likelihood of the property remaining economically viable if placed under easement.
6. The degree to which other state goals and the agency mission are met.
7. Whether the property is adjacent to other protected or eased properties.
8. The degree to which property is an intact set of features or a complex of inter-related features.
9. DHR will consider negative factors, such as any work that appears necessary to stabilize or rehabilitate the property, existing damage or disturbance to the resource, evidence of relic hunting, looting, unauthorized salvage, or other deleterious actions, etc.

Considerations for Battlefield Resources:

The Board and DHR recognize the historic, archaeological, cultural, and scenic significance of battlefield properties and their unique characteristics. Often, battlefields are not listed on the National Register of Historic Places or the VLR. Therefore, DHR utilizes the priority rating system developed by the CWSAC as a basic requirement when evaluating easement offers for battlefields. DHR also acknowledges that many battlefield properties are working farms and understands the need to keep them viable for continued agricultural production. For each easement offer on a battlefield property, the DHR will:

1. Evaluate the appropriate level of protection for the battlefield landscape, and for existing architectural and built resources (including dwellings, outbuildings, and structures) on a case by case basis. If necessary, staff will present these resources to the DHR's Architectural Evaluation Team for a determination of eligibility for listing on the VLR.
2. Consider whether the existing architectural or built resources merit protection in the easement in the form of required maintenance or protections for exterior and interior architectural features. DHR will assess all existing buildings and structures on the property regardless of their association (or lack thereof) with a particular battle and may require maintenance of historic buildings and structures whether or not they existed at the time of the battle.

The EAC may use worksheets or other guidance forms to support its evaluation process. Although these worksheets or guidance forms may assign numerical designations to various factors, these ratings do not represent an official eligibility score. They merely assist staff in evaluating diverse factors when formulating recommendations for the Board's consideration. All of the relevant facts and circumstances will determine whether an easement offer is accepted or rejected, regardless of the numerical "score" reflected on the worksheet. Easement Staff will present the Board with the recommendation of the EAC to accept or reject an offer of easement.

Easement staff will apprise the property owner of the Board's decision in writing.

[revised policy adopted by the Virginia Board of Historic Resources December 18, 2008; revised policy adopted by the Virginia Board of Historic Resources March 17, 2011]



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #3

Monitoring and Inspections of Easement Properties

Once an easement has been acquired, the Department must maintain regular contact with the property owner and inspect the property on a regular basis to ensure that the features of the property that are subject to the easement are maintained and that the conservation value of the property is preserved.

The Department monitors each easement property to ensure compliance with the terms of the easement. Monitoring is conducted through official correspondence, general owner contact, inspections, and other means necessary. In general, the Department's goal is to maintain regular contact with property owners and conduct a full physical inspection at once a year or more often if necessary.

The Department also provides technical assistance and information to property owners, to assist in the appropriate treatment of historic resources and in an effort to foster an ongoing partnership. This contact may be in the form of newsletters, site visits, or other forms and questionnaires to facilitate the sharing of information between the Department and the property owner.

Property owners will be notified in writing by staff of a proposed inspection time and date, and will be encouraged to be present. Staff will work to arrange an inspection time and date that is convenient for the property owner.

The full inspection will cover all areas subject to the easement, and will be fully documented on the inspection form. Photographs (digital or film) will be taken to record the property at the time of inspection, and to illustrate any conditions that may require follow-up by easement staff. A report of the inspection will be incorporated into the easement file.

Property owners will be informed in writing by easement staff of the results of the inspection, and will be provided with a copy of the inspection form and any relevant photographs.

Solid baseline documentation in compliance with Treas. Reg. Section 1.170A-14(g)(5)(i) will be the basis for all inspections following recordation of an easement. Every future change should

be measured against the baseline documentation. See also Policy #4, *Documentation of Easement Properties*.

For easements accepted after December 31, 2008, an inspection worksheet that is tailored to the specific property will be developed at the same time that the baseline documentation is being developed. This form will be used for all subsequent inspections and will facilitate inspections by different staff members not as familiar with the property. The form will include the following:

- The features to be inspected should be consistent with those identified in the baseline documentation. Character-defining features and structural elements that require cautious treatment or are vulnerable to deterioration should be noted.
- The approximate age or life-expectancy of features that may require updating. For example, if non-historic gutters are known to have been installed 15 years ago, it will be helpful to know that within the next 5 to 10 years they may require replacement.
- Features of the property that are known to be non-historic will be noted.
- Areas that must be photo-documented during an inspection will be identified. At a minimum, each elevation of a structure should be photographed in addition to any areas of concern.
- Public access will be noted on the form. The staff member performing the inspection will record information collected from the property owner regarding any access that the public has had since the previous site visit.
- The effect of minor changes to the property will be noted. This includes, but is not limited to, vegetation that may need attention soon but not immediately, encroachment of adjacent development, or erosion.

In the case of easements accepted before December 31, 2008, revised inspection forms will be developed at the time of the next scheduled inspection. In cases where the baseline documentation in the easement file is limited, the staff member conducting the inspection will prepare a "Present Condition Report" to be used from that point forward.

An effort will also be made to update the records maintained by the department with regard to potential archaeological resources on easement properties.

A report on the inspection will be provided to the property owner within 30 days of the inspection. Anything identified during the inspection that is considered to be a violation of the terms of the easement will generally be addressed by staff within seven (7) business days (see also Policy #7, Violations). This timeframe may vary depending on the nature of the information available to staff. In cases where remedial work is needed, staff will set timeframes for the owner to complete such work. Timeframes for additional inspections will be established as necessary.



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #4

Documentation of Easement Properties

The baseline documentation for each property is evidence of the condition of the features and conservation values that are the subject of the easement. That is, the features that make the property worthy of protection in perpetuity must be recorded as part of the permanent file for the property so that its condition can be monitored over time.

As new easements are negotiated, staff will compile information on the history and significance of the property from various sources including the National Register of Historic Places, the archives of the Department, and the property owner.

In addition to the existing materials, other information will be collected as part of the easement process. Plat maps, topographic maps, and other information available will be collected, and detailed photographic documentation will be undertaken. Floor plans, insofar as they are available, will be included. If these are not available, staff will prepare sketches of floor plans, identifying significant features and to assist with the identification of features in photographs (photo point maps). Photographs (head-on) of each elevation and each feature identified as character-defining in nomination, and important non-historic features will be taken. The location from which the photos were taken will be noted on a plan. Natural features, to the extent that they contribute to the overall character and feel of the property should be photographed as well. All features of the property that are particularly vulnerable to deterioration will be documented.

The baseline documentation will be collected following the Board of Historic Resources meeting where the property is considered and as close as possible to the date that the easement is expected to be recorded so that the condition of the property at the time the easement is recorded is reflected in the baseline documentation. Even in cases where the existing property file located at DHR is relatively complete, photographs documenting the condition at the time of donation will be taken.

The property owner must acknowledge the accuracy and completeness of the baseline documentation by signing the cover sheet and returning it to DHR.

For all existing easements, the staff will examine the files prior to conducting a regularly scheduled easement inspection to determine the adequacy of the baseline documentation. In cases where the baseline documentation is found to be deficient, a Present Condition Report will

be prepared during the site visit. This report will be provided to and signed by the property owner and serve as baseline documentation from that point forward.



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #5

Review of Applications for Work on Easement Properties

While the placement of an historic property under easement is generally with the understanding that the historic character should be protected, the Virginia Board of Historic Resources (“Board”) and the Virginia Department of Historic Resources (“DHR”) recognize that there is a need for balance between maintaining historic preservation values and the continued use of an historic property. This dynamic balance requires careful consideration of any proposal to alter a property—including the review of restoration or rehabilitation work. In addition, there are instances where maintenance and other work is necessary to maintain the existing condition of the property.

It should be noted that each easement is drafted with specific reserved rights and restrictions, and that some easements may allow or prohibit certain alterations. This policy is meant to provide general guidance and does not apply across all easement documents, projects, or properties. In order to guide a property owner in understanding the type of work that can and cannot be conducted without prior approval, DHR has developed a list of examples of major and minor work (attached), unless otherwise specified in the easement. In all cases, the easement is the governing document. With limited exceptions, work defined as minor may be conducted without prior approval by the DHR. In cases where work defined as major is to be performed, the request for approval, as required by the terms of the easement, shall be submitted to DHR for consideration by easement staff.

DHR shall strive to respond to requests for approval within 30 days of receipt of a complete application, unless otherwise specified in the easement. A complete application will include:

- a letter or email from the property owner, architect, architectural historian, or other expert summarizing the work that is proposed and why it is necessary;
- plans, schematic drawings, and other design documents developed for the project (note: professional plans rendered by an architect or other preservation professional are not required);
- photographs of the property, specifically, existing conditions that are to be addressed in the project and historic features that would be affected by the proposed work; and
- any other information necessary to understand the proposal.

Easement staff may contact the owner, architect, architectural historian, etc. to schedule a site visit or to request additional information required by DHR for its evaluation. Internal procedures for regional office involvement will be followed in the processing of requests for approval.

Requests for approval shall be considered by easement program staff and will be evaluated for consistency with the terms of the easement and according to the *Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for the Treatment of Cultural Landscapes (36 C.F.R. 68)*, as these may be amended from time to time ("Secretary's Standards"), as well as other guidance documents and historic preservation principles and values. If the proposed work is complex or unusual, staff will present the request for approval to DHR's Treatment Committee. Upon the recommendation of the Treatment Committee, the request for approval may be heard by the Board before a final response is issued. Requests for approval shall not be unreasonably withheld, unless the request is not consistent with the terms of the easement.

In the event that an application is denied by easement staff, the property owner may request a reconsideration of the application by DHR's Treatment Committee. The Treatment Committee will then evaluate the application and issue a response, or recommend the application be presented to the DHR Director or Board for evaluation. The Board evaluation is considered the final response. Requests for approval will only be withheld due to inconsistencies with the terms of the easement or violations of the Secretary's Standards.

Requests for approval of work involving ground disturbing activities will further be considered by the Easement Program Archaeologist. Upon request by the Easement Program Archaeologist, DHR's Archaeological Evaluation Team will also consider projects involving ground disturbance in order to recommend an appropriate course of action.

All letters approving work to be performed on an easement property will include a sunset clause, or a timeframe within which the work must be completed. If the work is not done within the specified timeframe, the property owner must seek new approvals from DHR. Prior approval of work is not transferable to a new property owner.

Upon completion of work on an easement property, the Baseline Documentation Report or Present Condition Report must be updated with a Supplemental Statement briefly outlining the completed project.

Examples of Major and Minor Alterations

Alterations of a minor nature generally do not require review by DHR's easement staff. Minor alterations are considered to be ordinary maintenance and repair.

This list is not intended to be comprehensive; it is only a sampling of some of the more common types of alterations which may be contemplated by property owners.

PAINT

Minor – Exterior or interior hand scraping and repainting of painted non-decorative and non-significant surfaces as part of periodic maintenance.

Major – Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, wallpaper, ornamental woodwork, stone, decorative or significant original plaster or painting of previously unpainted surfaces.

WINDOWS AND DOORS

Minor – Regular maintenance including caulking, painting, and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major – Wholesale replacement of window or door units, including sashes, frames, thresholds, or trim, change in window fenestration patterns (relationship of existing window openings), creation of new window or door openings, or alteration of profile or setback of windows. The addition of storm windows is also considered a major change, however with review it is generally acceptable.

EXTERIOR

Minor – Spot repair of existing cladding and roofing including in-kind replacement of clapboarding, shingles, slates, and in-kind replacement in-kind of porch elements.

Major – Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing or installation of architectural detail which does not have a historical basis); construction of a new addition, altering or demolishing building additions, **spot repointing of masonry**. Structural stabilization of the property is also considered to be a major alteration.

NEW CONSTRUCTION/OUTBUILDINGS/LANDSCAPE

Minor – Routine maintenance of outbuildings and landscape including lawn mowing, pruning, gardening, and repair.

Major – subdivision of the property, ground disturbance or grading other than gardening, installation of drainage systems, new construction, demolition of existing outbuildings,

permitting utility or other easements to be placed on the property, altering or removing significant landscape features such as gardens, forested cover, view sheds, walks, plantings, ground disturbance affecting archaeological resources.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor – Repair of existing systems.

Major – Installing or upgrading systems which will result in major appearance changes (i.e. dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping), the removal of substantial quantities of original plaster or other materials in the course of construction, installation of geothermal systems.

Changes classified as major alterations are not necessarily unacceptable. Under the terms of the easement such changes must be reviewed by the DHR in order to assess their impact on the historic integrity of the resource.

It is the responsibility of the property owner to notify the DHR in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

DHR staff will work with property owners to provide technical assistance in the case of minor alterations and will use newsletters and site visits to inform property owners about minor and major alterations.

The intent of the easement is to enable the DHR to review proposed alterations and assess their impact on the integrity of the structure, not to preclude future change. DHR staff will attempt to work with property owners to develop mutually satisfactory solutions, which are in the best interests of the property.

[revised policy adopted by the Virginia Board of Historic Resources December 18, 2008; revised policy adopted by the Virginia Board of Historic Resources March 17, 2011]



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #6

Easement Amendments

It is the policy of the Board of Historic Resources that every easement be carefully and thoughtfully negotiated, and that the terms of each easement reflect the mutual expectations and desires of both the Grantor and the Grantee. Easement documents shall be drafted with the expectation that amendment will not be necessary. To that end, Department staff members are expected to work closely with property owners, appropriate counsel, and advisors to ensure that, to the greatest extent practicable, foreseeable future circumstances are considered at the time the easement document is drafted.

Because all future events cannot be anticipated, easements may need to be amended in certain exigent circumstances. Therefore, it is the policy of the Board to allow for consideration of appropriate amendments as circumstances dictate.

An amendment should strengthen the protection afforded by the original easement to the resource(s) on the property. For example, a property owner may wish to include additional acreage or more restrictive provisions concerning new construction to the existing easement. An amendment should not compromise the historic, architectural, archaeological, open space, cultural, or other environmental resources which the easement was intended to protect.

When determined to be appropriate by the Board, an amendment may be accepted that does not affirmatively strengthen protection of the resource, but which maintains the original easement protections in place. Such an amendment is judged to be “preservation neutral” because it neither strengthens nor weakens the protections to the resource(s) established in the original easement agreement. Circumstances when a “preservation-neutral” amendment may be considered include but are not necessarily limited to:

- Boundary adjustments which result in a *de minimus* change in the protected acreage;
- Changes in the location, configuration, or size of permitted subdivision parcels which do not result in expanded development rights, new construction closer to the manor house

or other primary resource(s) than would otherwise be permitted, or other significant diminution in the protection afforded by the original easement; and

- New subdivision rights which do not result in expanded development rights or new construction greater than that which would otherwise be permitted.

“Technical” amendments may be executed to address:

- Errors or omissions in the original easement, or to make other technical adjustments to the easement language;
- Changes which are understood by all parties, based on clear evidence, to be consistent with the original intent of the Grantor and the Grantee.
- Changes that have occurred by act of nature that affect the physical nature of the resource and the accuracy of the easement.

Under very unusual circumstances, the Board may consider an amendment which is not preservation-neutral. Any amendment which diminishes the protection afforded to the resource is not favored, and should be considered only as a last resort to prevent the resource itself from being compromised by neglect, deterioration, inappropriate changes or other circumstances.

[Adopted by the Board of Historic Resources, September 2007]



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #7

Violations

An easement represents a permanent commitment and partnership between the Grantor and the Grantee. The Virginia Board of Historic Resources (“Board”) and the Virginia Department of Historic Resources (“DHR”) take seriously their obligation to uphold and enforce the terms of each easement and to ensure that the resources they have been entrusted to protect are not lost through deterioration, neglect, irresponsible management, or inappropriate changes.

A *violation* is defined as any action or event or lack of maintenance that has caused or has the potential to cause harm to the conservation values and features of the property that are protected by the easement. Violations are individually evaluated and classified as follows:

Technical Violation – a violation that results when a property owner has made alterations that are consistent with the historic character of the property but did not follow the appropriate notification and approval procedure.

Minor Violation – a violation that results from inappropriate work or lack of proper maintenance where no permanent damage to the historic resources or the conservation values of the property have been noted, with the understanding that the level of violation will be elevated if the issue is not resolved.

Major Violation - a violation that results in irreversible damage to the historic resources, features, or conservation values of the property that are protected by the easement

In cases of a potential or known violation of the terms of an easement, or where issues of maintenance and/or repair constitute an imminent or serious threat to the integrity of the resource, DHR will implement the procedures summarized below. If the property is subject to a co-held easement, DHR will consult with the easement co-holder in investigating any potential violations and enforcing the terms of the easement, or as otherwise stipulated in the easement.

When notified of a potential violation by a third party, easement staff will make every attempt to contact the property owner by written correspondence, email, or telephone. Based on the nature of the potential violation, staff will arrange for a site visit, if needed, to assist in determining the action necessary to correct the violation. Easement staff or regional office staff shall make a site visit to the property within seven (7) business days if it has been determined that a major

violation occurred. The response to minor or technical violations will be determined on a case-by-case basis and according to the procedures outlined below.

If an easement staff member or other DHR staff member discovers a violation during the course of a site visit or other form of visual inspection, the staff member will document the violation in a Violation Report. Reports identifying technical, minor, and major violations will be directed to the Incentives Programs Manager, who will follow-up on the report or assign it to individual staff members for resolution. The Incentives Program Manager will notify the Division Director and Agency Director about any major violation.

When a violation has occurred, a letter outlining the nature of violation and recommendations to correct the violation will be sent to the property owner by certified mail requesting return receipt. The exact recommendation made by the DHR will vary depending on the circumstances and severity of the violation, the willingness of the property owner to address the situation in an appropriate manner, and other factors.

When a minor violation has occurred, staff will work with the property owner to remedy the situation. In the case of a technical violation, staff will also work closely with the property owner to ensure that future work be done only after proper prior notification and approval by DHR easement staff.

If, after consultation, a violation is not corrected within a reasonable time frame specified by DHR or if no response is received from the property owner, the violation will be brought to the attention of the Chairman of the Board and the Office of the Attorney General. Major violations will be reported to the Board and to the Office of the Attorney General immediately. DHR, through the Office of the Attorney General, will seek all available legal remedies to correct the situation, including, but not limited to liens on the property and other legal actions.

[revised policy adopted by the Virginia Board of Historic Resources December 18, 2008; revised policy adopted by the Virginia Board of Historic Resources March 17, 2011]



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #8

Easement Program Recordkeeping

The Virginia Department of Historic Resources (DHR) has created a written records policy for the Easement Program in conjunction with the Agency's established Records Retention Policy. The Easement Program Recordkeeping Policy governs how specific program related organizational and transactional records are created, collected, retained, stored and disposed. Originals and duplicates of all irreplaceable documents critical to the defense and support of each easement and easement-related transaction will be retained and stored by staff members. The recordkeeping mission of the Easement Program is to appropriately collect, retain, and archive key documents and records essential to the function of the program. The Easement Program Coordinator with assistance from the Easement Program Manager shall have the primary responsibility for recordkeeping.

I. LAND TRANSACTION RECORDS

1. Lists, Reports, and other Compilations:

The Virginia Department of Historic Resources takes seriously its role as an easement- holding organization and strives to meet or exceed all recommendations and guidelines for such organizations. In doing so, the Easement Program Coordinator, in conjunction with Easement Program staff members, will compile information in accordance with the 2006 revisions to the Internal Revenue Service tax code (as set forth in the *Pension Protection Act of 2006*) and will continue to monitor the following easement data:

1. number of easements held at beginning of year, acreage, and location
2. number of easements (and acreage) acquired (new easements)
3. number of easements modified, sold, transferred, released, or terminated (and acreage)
4. number of easements in following categories:
 - a. buildings and structures
 - b. easements that encumber a golf course or portions of a golf course
5. number of easements and acreage monitored by physical inspection or other means

6. all easements on buildings and structures acquired after August 16, 2006, and show if each easement meets the requirements of section 170(h)(4)(B). These are properties that are listed in the National Register or are contributing features of a National Register property.
7. number and nature of violations (Technical, Minor, and Major)
8. all project review requests by property name, file number, date received, and date closed

Note: Items D.1 and D.2 above shall be calculated from the effective date of this policy until such time as all historical easement records may be updated.

2. Recordkeeping and Records Storage:

Easement Program staff members will ensure the safety and security of the permanent files associated with easement properties. Key documents and records essential to the permanent files include: original signed and recorded Deeds of Easement, original signed Baseline Documentation Reports, original signed Present Condition Reports, critical correspondence, photographs, legal information, and monitoring reports from the property. These types of documents will be permanently retained in both paper and electronic format by utilizing the following recordkeeping policies:

A. Library of Virginia Archives:

Under the Virginia Public Records Act, (§ 42.1-79), the Library of Virginia is the official custodian and trustee of all state agency records transferred to the Archives, Library of Virginia (LOV). In addition, the Virginia Public Records Act §§ 42.1-76, et seq. of the *Code of Virginia* guides the retention and disposition of records. In compliance with the Virginia Public Records Act and the Virginia Department of Historic Resources Records Retention and Disposition Schedule (Specific Schedule Number 423-001; Easement Series Number 015284), original easement deeds, original Baseline Documentation Reports (BDR), and original Present Condition Reports (PCR) will be permanently archived in the LOV archival storage facility. The long-term goal of the Easement Program is to store copies of critical correspondence related to easement violations, project approval, and easement donation gift acknowledgment letters permanently at the LOV. The LOV files are open and accessible to the general public upon request.

The Easement Program Coordinator shall be responsible for transferring original signed and recorded easement deeds, Baseline Documentation Reports, and Present Condition Reports to the LOV on a semi-annual basis in conjunction with the Library of Virginia RM-17 Form. These files shall be accessioned chronologically by the recordation date of the easement deed. Until such time as these documents are transferred to the LOV archives, they shall be stored in a metal filing cabinet in the office of the Easement Program Coordinator.

B. Filing Rules and Protocols for Paper Easement Files:

Original and duplicate documents should be protected from daily use and reasonably secure from fire, floods, or other hazards. In order to attain this goal, a comprehensive

paper easement project file shall be created for each new property brought into the easement program. (SEE APPENDIX A)

This paper file shall contain individual folders labeled: Easement and Amendments, Baseline Documentation and Present Condition Reports, Monitoring Reports (formerly referred to as Inspections), Photographs, Project Review, Archaeology, Reenactments (if applicable), Maps and Surveys, Correspondence, Legal, Violations, General Reports and Documents, and FIELD. Information to be retained within these individual easement folders includes: copies of the recorded deed of easement, copies of the signed Baseline Documentation Report, copies of the signed Present Conditions Report, owner contact information, project related letters and correspondence, project tracking sheets, project or site analysis information, title work, evidence of insurance, surveys, maps, aerial photographs, attorney notes or comments upon reviewing the transaction, information sent to landowners suggesting they obtain independent legal and financial advice, grant or funding information, Easement Acceptance Committee and Board Approval letters, and monitoring information. Oversize architectural records, plans, and drawings shall be stored at the rear of the file, if possible. The paper easement file shall be stored in the onsite file storage facilities at DHR and may be accessed by the public upon request.

The front of each paper easement file shall be labeled with the Property File Number, Historic or General Property Name, and County. A permanent record-keeping card shall be inserted into the front of each individual easement file. Each time a file is pulled from the Archives for use by any DHR staff member, the staff member pulling the file shall write his or her name and the dates during which the file was used.

Draft easement deeds or Baseline Documentation Reports shall be kept for use as pre-closing data and shall not be retained for permanent easement file storage.

Sensitive material pertaining to the retention of IRS-related documents, Social Security Information, Easement Appraisals, or personal Financial Records will be retained in a separate file with the Easement Program Manager. A copy of the material with sensitive information redacted shall be kept in the paper easement file.

Printed copies of digital photographs from site visits or project review shall be stored in the easement file.

C. Electronic Records

Scanned copies of each individual Easement Deed, Easement Amendment, Baseline Documentation Report, and Present Condition Report shall be stored electronically in the Easement Program network location according to Section III and Appendix B below. If possible, electronic copies of project review letters, monitoring reports, correspondence, reports, and other information relevant to the easement property shall be scanned and stored in the electronic file.

II. ORGANIZATIONAL RECORDS

Organizational records assist with preservation of institutional memory and provide comprehensive documentation of the Easement Program since its inception. Original letters, program materials, agendas, minutes, and memoranda compiled over the years are extremely valuable and illustrate the purpose and mission of the program. These documents provide a unique testimony to the history of the Easement Program while supporting legal, fiscal, and administrative purposes.

The following organizational records shall be retained by the Easement Program Manager in a metal filing cabinet located at the Department of Historic Resources primary Richmond office:

- a. Employment and personnel records
- b. Financial Records
- c. Gift Acknowledgments and 8283 Forms, IRS-related documents, or other project financial records
- d. Grant proposals, agreements, reports, etc.
- e. Program files and other administrative records: strategic plans, annual plans, easement newsletters, and other communications materials
- f. State required records and reports
- g. Program Policies and Procedures

The following organizational records shall be retained by the Easement Program Coordinator both in electronic format and in a filing cabinet located at DHR's Richmond office:

Board Records:

- a. Lists of current and past Board Members
- b. Meeting notices and correspondence related to meeting agendas
- c. Agendas and Minutes of the Quarterly Board meetings
- d. Policies and Procedures
- e. Delegation of Authority
- f. Resolutions

Easement Acceptance Committee Records:

- a. Lists of current and past Committee members
- b. Meeting notices
- c. Meeting agendas and minutes
- d. Policies and Procedures
- e. Delegation of Authority

Easement Committee Records:

- a. Lists of current and past Committee members
- b. Meeting notices

- c. Meeting agendas and minutes
- d. Policies and Procedures
- e. Delegation of Authority

Policies and Procedures

- a. Copies of each Easement Program Policy with revisions
- b. Copies of internal Easement Program Procedures documents

Virginia Land Conservation Foundation Records

- a. Original Project Applications
- b. Original Scoring and Evaluation Sheets
- c. Program Related Notes and Correspondence
- d. Award Statistics

III. ELECTRONIC RECORDS

All easement data shall be stored on the DHR internal network in a separate Easement Program network location (SEE APPENDIX B) from other agency data. Critical program documents such as recorded deeds, recorded amendments, Baseline Documentation Reports, Present Condition Reports, project review letters, and critical correspondence, shall be scanned and retained in electronic format. The Department of Historic Resources backs electronic records on a daily basis and these records are taken offsite weekly to a separate location for storage.

A new electronic easement file shall only be created after recordation of the easement deed. All recorded easement deeds, recorded amendments, Baseline Documentation Reports, and Present Condition Reports, shall be scanned as electronic records and stored by individual file number in the Easement Program file on the DHR network. The electronic document shall identify either by cover sheet or properties information (metadata tags) the name and date of its creation as an electronic document.

All digital photographs from site visits or project review shall be stored electronically in the Easement Program file on the DHR network. These photos shall be retained at their original file size and appropriately labeled with the property name, file number, and site visit date. All electronic archival black and white photographs taken as baseline documentation and all digital photographs taken for Present Condition Reports or monitoring purposes shall be stored in the Easement Program network location only.

Only the following staff members of the Easement Program shall have the ability to alter or manipulate records in the electronic easement file: Easement Program Manager, Easement Program Coordinator, Easement Archaeologist, Easement Technical Advisor, and Easement Program Architect. The Easement Program Manager shall be the Easement Program network location "Owner" who will grant permission to have staff members added or deleted from the group of users able to alter or manipulate (read/write access) records in the electronic easement file. Other DHR staff will have read-only access. A "drop box" shall be created for non-easement program staff members to upload easement-related data to the network. This data shall

be reviewed by an easement staff member before transferring to the easement program network location.

The data contained in the Easement Database shall be maintained by the Easement Program Coordinator and other designated Easement staff members. This database shall contain a listing of all easement properties, transaction information, owner contact information, and general monitoring information. Technical support for the Easement Database will be the responsibility of DHR's Technology Administrator or an appropriate designee.

IV. DATA SENSITIVITY

In order to administer the Easement Program, staff must collect, compile, and retain both personal and project-related information for individual properties and landowners. Virginia law requires that state bodies not collect personal information about citizens unless it is required to provide services for the citizen. When sensitive information is collected, it must be protected from unauthorized access or disclosure. However, citizens also have the right to know how the information is collected, used, and who has access to it. Section 2.2-3704 of the *Code of Virginia* states that records are presumed open to public inspection, unless specifically made exempt pursuant to this chapter or other specific provisions of law:

2.2-3704: Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

Accessibility to public records is also regulated by the *Freedom of Information Act* (FOIA). Compliance with the provisions of this Act as well as Section 2.2-3700 of the *Code of Virginia* is administered by the Deputy Director of the Virginia Department of Historic Resources.

Specific provisions of Virginia law prohibiting disclosure of particular records are found throughout the Virginia Code. However, the following exemptions found in Section 2.2-3705.1 of the *Code of Virginia* have the strongest potential to impact Easement Program data:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.
3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.
4. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
5. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.
6. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.
7. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.
8. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

In addition, Section 1.2.1 of the IT System and Data Sensitivity Classification as set forth in *Commonwealth of Virginia ITRM SEC501-01* defines sensitive data as “data which, if compromised with respect to confidentiality, integrity, or availability, could adversely affect COV [Commonwealth of Virginia] interests, the conduct of agency programs, or the privacy to which individuals are entitled. Data is classified as sensitive if compromise of that data results in a material and significant adverse affect of COV’s interest, the inability of the affected agency to conduct its business, and the breach of privacy expectations. Data sensitivity classification is determined by the agency, and is the responsibility of the Data Owner, as defined in the *COV ITRM Risk Management Guideline* (ITRM Guideline SEC506-00).”

Under this classification system, the following Easement Program data should be identified and classified as sensitive:

- a. Real property appraisals or Conservation easement appraisals
- b. IRS Form 8283
- c. Original Baseline Documentation Reports
- d. Original Present Condition Reports

- e. Original archival black and white photographs or digital photographs

V. DESTRUCTION

With few exceptions, easement program documents should be permanently retained. Pre-closing documents such as draft deeds of easement and draft baseline documentation reports may be destroyed upon recordation of the final easement document and signature of the Baseline Documentation Report.

VI. REVISIONS

This Recordkeeping Policy shall be evaluated on an annual basis.

[Adopted by the Virginia Board of Historic Resources in December 2008; revised policy adopted by the Virginia Board of Historic Resources in September 2009; revised policy adopted by the Virginia Board of Historic Resources in September 2010]



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #9

Easement Requirements

As an easement holding organization, the Virginia Board of Historic Resources (“Board”) and the Virginia Department of Historic Resources (“DHR”) will work with property owners and their legal counsel to develop easement language that serves to protect the property subject to the easement. DHR will continue to update the standard template language to be included in all easements as necessary to reflect changes in federal and state law and historic preservation procedures and practices. It is the policy of the Board and DHR to develop language for each easement that will be both flexible and strong enough to remain in force in perpetuity.

In addition to stipulations already included in the templates used by DHR, easements accepted after December 31, 2008 will include the following stipulations, as appropriate.

- The property subject to the easement must be adequately insured against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance.
- Each easement will include a stipulation regarding extinguishment.
- Each easement will protect the entire exterior and specific interior architectural features (as appropriate, and depending on the historic integrity of interior features) for the primary built historic resources on the property. For battlefield properties that are not listed on the VLR, the appropriate level of protection for existing architectural and built resources (including dwellings, outbuildings, and structures) will be evaluated on a case by case basis.
- Consistent with the Internal Revenue Code requirements enacted with the Pension Protection Act of 2006, easements will stipulate that the height of easement properties may not be altered.
- Any restrictions on a property that are already in force (e.g. zoning, review by Architectural Review Board) will be identified in the easement document

- DHR will require that easements clearly state that DHR staff will be granted access to properties under easement, upon reasonable notification, in order to conduct an inspection of the features of the property that are protected by the easement.
- Easements will require that an owner of an easement property must notify DHR when the property has transferred ownership.
- Easements will reference the *Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for the Treatment of Cultural Landscapes* (36 C.F.R. 68), as these may be amended from time to time ("Secretary's Standards"), as the benchmark by which alterations to a property will be measured against.
- In order to derive the maximum public benefit from properties under easement, it is the policy of the Board and DHR to provide recommendations for public access in the easement document.
- In cases where an easement is to be co-held by DHR and other organizations or in cases where the property is subject to other levels of review (e.g. Architectural Review Board), every attempt will be made to sub-ordinate and clearly define responsibilities in the easement.

[revised policy adopted by the Virginia Board of Historic Resources December 18, 2008; revised policy adopted by the Virginia Board of Historic Resources March 17, 2011]



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #10

Policy and Procedure for Documenting New Easement Conformance with the Applicable Comprehensive Plan for the Area in which the Property is Located

POLICY

In determining whether a property is appropriate for an easement, the Virginia Department of Historic Resources (DHR) considers its designation within or identification in a statewide planning document such as the Virginia Landmarks Register, Virginia Outdoors Plan, or for the case of battlefield properties, its priority rating from the Civil War Sites Advisory Commission of the National Park Service. According to Section 10.1-1701 of the *Code of Virginia*, DHR must also make a determination that the use of the property as open-space land conforms to the official comprehensive plan for the locality in which the property is located. DHR also considers the current zoning of the property, its designation on the locality's future land use map, as well as its consistency with the VDOT 6-year statewide transportation plan. Section 10.1-1701 of the *Virginia Code* states:

“The use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located.”

Additionally, the following Virginia Counties currently require approval by their Planning Commission of all new open-space easements: Campbell, Floyd, Highland, Orange, Pittsylvania, Pulaski, and Surry. In order to demonstrate that easement staff have consulted with planning officials from the applicable Virginia County/Independent City and verified that the easement conforms to the Comprehensive Plan currently in effect for that locality, the Virginia Board of Historic Resources adopted this policy delineating the process easement staff must follow to obtain such confirmation. This document outlines the standard procedures for notifying locality planning staff about potential new easements within their jurisdiction.

PROCEDURE

For each new easement offer, DHR easement staff shall:

1. Review all relevant sections of the Comprehensive Plan for the applicable County/Independent City, including the following general categories: historic and/or

cultural resources, land use, transportation, natural resources, and water resources. Pertinent sections or pages of the plan shall be printed and kept in the permanent easement file.

2. Send written correspondence in the form of a letter to the locality Planning Department that includes the parcel tax map number, address, acreage, ownership information, and a map of the proposed easement boundaries. Include any conflicts with comprehensive plan if known. Note: The locality may request a copy of the draft easement or easement terms. The proposed easement may be presented to the Planning Commission.
3. If no response is received, contact Planning Department again in writing and follow-up with a phone call.
4. Review all town or other local comprehensive plans as applicable. Note any potential transportation or other infrastructure related issues. Pertinent sections or pages of the plan shall be printed and kept in the permanent easement file.
5. If necessary, written correspondence in the form of a letter to the town or local Planning Department that includes the parcel tax map number, address, acreage, ownership information, and a map of the proposed easement boundaries.
6. Review the VDOT 6-year plan. Note any potential transportation related issues that may impact the property. Pertinent sections or pages of the plan shall be printed and kept in the permanent easement file.
7. If necessary, written correspondence in the form of a letter or email to VDOT that includes the parcel tax map number, address, acreage, ownership information, and a map of the proposed easement boundaries. Include any conflicts with VDOT 6-year plan if known.
8. A record of all written and verbal correspondence with planning staff and VDOT shall be kept in the permanent easement file.

[Adopted by the Virginia Board of Historic Resources on September 30, 2010]