



## **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](#).

*[Adopted by the Virginia Board of Historic Resources on March 8, 2006]*



## **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. It is DHR's policy 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 evaluates proposed easements on battlefield properties for their overall historic significance and integrity, as well as for any historic buildings, structures, and archaeological or cultural sites located on the property. 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, via letter or email communication. All letters, email communication, or other written correspondence recommending approval of a proposed easement will include a sunset clause, or a timeframe within which the easement must be recorded. If the easement is not recorded within the specified timeframe, the property owner must seek new approvals from DHR and the Board. Standard approvals are valid for two calendar years from the date of written approval by DHR easement staff. Prior approval of a proposed easement is not transferable to a new property owner.

Any significant or major changes to the property that occur after the date of written approval by DHR easement staff but prior to recordation of the easement, may necessitate re-evaluation of the proposed easement by DHR and/or the Board. Any such changes should be brought to the attention of DHR easement staff at the onset of the drafting and easement negotiation process.

*[Adopted by the Virginia Board of Historic Resources on March 8, 2006; Revised December 18, 2008; Revised March 17, 2011; Revised September 19, 2013]*



## **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.

*[Adopted by the Virginia Board of Historic Resources on March 8, 2006]*



## **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.

*[Adopted by the Virginia Board of Historic Resources on March 8, 2006]*



## **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 its 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 projects as well as new construction. In addition, there are instances where maintenance and other work are necessary to maintain 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 outline the review and approval process and to provide general guidance as to which types of work require prior written approval. This guidance may not be universally applicable to all deeds, projects, or properties. In all cases, the easement is the governing document and will dictate whether prior written approval is required and how that review and approval will be conducted.

#### **Review and Approval Process**

DHR’s Easement Program staff administers the easements held by the Board. Any work requiring the Board’s (as Grantee) approval will be reviewed by the Easement Program staff according to the terms of the applicable easement and by applying the relevant *Secretary of the Interior’s Standards*, as set forth below. Decisions regarding a request for review and approval made by easement program staff will be provided to the property owner or their designated representative in writing, either by regular U.S. Mail, electronic mail or both. The property owner may appeal any decision or determination made by Easement Program staff in accordance with the process outlined below. Decisions of the Board are final administrative agency decisions and may only be appealed to a court having jurisdiction within the Commonwealth of Virginia.

All written letters or correspondence approving proposed work 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 request re-approval of the

work or seek new approvals if the project has changed in any way from the previously approved proposal. Prior written approval of work is not transferable to a new property owner.

If a property owner wishes to designate a person or entity, such as their attorney or a consultant, to serve as their agent or representative with respect to a project review request or any appeal thereof, they must provide proof of such authorization in writing to DHR's Easement Program. DHR's Easement Program cannot accept project review requests submitted by anyone other than the property owner without such written authorization. Furthermore, all communications regarding such project review request will be directed to the property owner at the address on file with DHR or as listed in the tax assessor's records for the relevant city or county where the property is located. The property owner is responsible for ensuring that DHR's Easement Program has the property owner's accurate contact information. Upon receipt of written authorization, a designated agent or representative may also receive a copy of all communications.

Property owners should be reminded that with limited exceptions, all materials and communications regarding their easement and their property are subject to the Virginia Freedom of Information Act (FOIA). DHR is legally required to provide copies of all documents in its possession in response to a request under FOIA made by the property owner or any third party, whether public or private.

## PROJECT REVIEW PROCESS

A. All requests for review and approval as required by the terms of the easement must be submitted in writing to DHR's Easement Program as follows:

(i) Hard copy requests should be sent to:                   Easement Program  
  Department of Historic Resources  
  2801 Kensington Avenue  
  Richmond, VA 23221

(ii) Electronic format requests should be sent to:  
[EasementProjectProposals@dhr.virginia.gov](mailto:EasementProjectProposals@dhr.virginia.gov)

B. It is the responsibility of the requestor to confirm that the written request for review has been received by DHR's Easement Program.

C. Easement Program staff shall respond to a written request for review within thirty (30) business days of receipt of such request, unless otherwise specified by the terms of the applicable easement.

(i) Approval or denial is not required within that thirty (30) day period. Easement Program staff will endeavor to issue an approval or denial within that thirty (30) day period for a request that includes the necessary information and no other circumstances warrant an extension or delay of that review period.

(ii) The Easement Program staff shall notify the property owner or designated agent or representative of the need for an extension or delay in writing within the initial thirty (30) day review period.

(iii) Circumstances warranting an extension or delay of the review period include, but are not limited to, the following:

- (a) Receipt of additional materials or information requested in writing by the Easement Program staff;
- (b) Archaeological survey and/or investigation as determined by the Easement Program Archaeologist;
- (c) A site visit as determined by Easement Program staff;
- (d) A site visit by other staff within DHR as determined by the Easement Program staff;
- (e) Consultation with the property owner and his/her representatives or consultants regarding the proposed project;
- (f) Review of the existing historic or archaeological resources on the property by DHR's Architecture and/or Archaeology Evaluation Committees to determine historic significance applying the *National Register Criteria for Evaluation* (36 C.F.R. 60);
- (g) Review of the request by DHR's Treatment Committee upon referral by the Easement Program staff;
- (h) Complexity of the request;
- (i) Extent to which the request is consistent with the terms of the easement;
- (j) Extent to which the request is consistent with the applicable *Secretary of the Interior's Standards* as set forth below in Paragraph D.

D. In reviewing a project request, the Easement Program staff person assigned to review that request shall determine whether the proposed project is consistent with the terms of the easement and the applicable *Secretary of the Interior's Standards* (the "Standards").

(i) The *Secretary of the Interior's Standards* shall include:

- (a) *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (National Park Service, as amended).
- (b) *Secretary of the Interior's Professional Qualifications Standards* (48 F.R. 44716 (Sept. 1983, as amended)).
- (c) *Secretary of the Interior's Standards for Rehabilitation* (36 C.F.R. 67, as amended).
- (d) *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 C.F.R. 68, as amended).
- (e) *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (National Park Service, as amended).

- (f) *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service, as amended).
- E. Failure to submit additional materials or information requested by Easement Program staff within thirty (30) days of such written request may result in denial of the request for review submitted by the property owner or his/her agent or representative.
  - (i) To help ensure that the necessary information is provided with the initial request, the requestor should complete the Project Review Request form available online at <http://www.dhr.virginia.gov/easement/easement.htm> or by request with their submission and include all supplemental materials referenced or requested in the Project Review Application.
- F. In the event of a written denial issued by the Easement Program staff, the property owner may appeal such denial to the Treatment Committee.
  - (i) The Treatment Committee is comprised of staff representing different divisions within DHR appointed by the Director and it meets on as-needed basis. The Treatment Committee is not a public body pursuant to Virginia Code § 2.2-3701 and its meetings are not open to the public.
  - (ii) Such appeal must be filed with Easement Program staff within forty-five (45) business days of the date of such written denial.
  - (iii) The reviewer may refer the initial project request to the Treatment Committee for guidance. In the event of prior review by the Treatment Committee, the property owner may appeal such denial directly to the Board at its next regularly scheduled meeting.
  - (iv) The property owner shall be notified in writing within fourteen (14) business days of the Treatment Committee's recommendation.
- G. If the Treatment Committee concurs with the denial, the property owner may appeal such denial to the Board at its next regularly scheduled meeting.
  - (i) Notice of such appeal shall be filed with the Easement Program staff, the Easement Program Manager or the Director of DHR within forty-five (45) business days of the date of written notice of the Treatment Committee's recommendation.
  - (ii) Appeals filed less than fourteen (14) business days in advance of the next regularly scheduled meeting of the Board will be delayed until the following regularly scheduled meeting.
- H. In the event of a tacit denial, the property owner may appeal such denial in writing to the Easement Program Manager or the Director of DHR.
  - (i) Tacit denial is defined as an automatic denial resulting from the failure of the Easement Program staff to respond to a written project review request submitted by the property owner or his designated agent as specified above within the applicable timeframe.
  - (ii) Such appeal shall be filed within forty-five (45) business days of such denial.

- I. Within thirty (30) business days of receipt of a written appeal, the Easement Program Manager or designated staff person shall respond to the appeal in writing and shall approve or deny the review request consistent with the review process set forth in Paragraphs A-E above.
- J. If the Easement Program Manager or designated staff person fails to respond to the written appeal within thirty (30) business days, the property owner shall submit a written appeal to the Board and may appear personally or through a designated agent or representative before the Board at its next regularly scheduled meeting.
  - (i) Appeals filed less than fourteen (14) business days in advance of the next regularly scheduled meeting of the Board will be delayed until the following regularly scheduled meeting.
  - (ii) The property owner will be notified in writing of the Board's decision within ten (10) business days following the Board meeting.

### **Guidance for Determining When Prior Written Approval is Required**

In order to guide a property owner in understanding the type of work that can and cannot be conducted without prior written approval pursuant to the easement, the Easement Program has developed a list of examples of major and minor work, which is provided below. Except as otherwise provided for in the relevant deed of easement, work defined as minor may be conducted without prior written approval by Easement Program staff. Work defined as major requires review and written approval by Easement Program staff before any work may be undertaken.

The term "in-kind" means the replacement of existing historic fabric with the same material of the same dimension, design and workmanship.

### **Examples of Major and Minor Alterations**

Alterations of a minor nature generally do not require review by Easement Program 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 of previously unpainted surfaces or painting over, removing and/or stripping historic decorative surfaces or distinctive and historic stylistic features including murals, stenciling, wallpaper, ornamental woodwork, stone, decorative or historically significant original plaster

## WINDOWS AND DOORS

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

Major – Replacement of windows or doors, including sashes, frames, thresholds, or trim, change in window sash configuration or fenestration patterns (relationship of existing door and window openings), or creation of new window or door openings. .

## MECHANICAL, ELECTRICAL AND CONDITIONING SYSTEMS

Minor – Repair and/or replacement of existing systems and their components, which would have no effect on the historic fabric of the building or structure or would not alter the exterior appearance of nonhistoric buildings or structures. Such work includes the installation of new pumps, units such as a furnace, replacement of valves and pipes within existing chases, rewiring within existing chases, replacement of existing above-ground tanks or fuel storage containers.

Major – Installing new systems or upgrading existing systems which would affect the historic fabric of the building or structure; require significant ground disturbance for a new well, new piping, underground electrical conduit or a geothermal system; require new ducts or chases; result in major appearance changes (i.e. dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping); or require the removal of existing fabric or material such as original plaster or floorboards or affect the exterior appearance of a nonhistoric building or structure.

## EXTERIOR

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

Major – All work to masonry, whether exterior or interior. Extensive repair or replacement of building components such as cladding or roofing or architectural features such as decorative trim, shutters, cupolas or finials. Change involving the removal or addition of materials or building elements (i.e. removal of a porch or shutters or installation of architectural detail, such as moldings, carved porch supports or stained glass windows. ); construction of a new addition, or altering or demolishing building additions. Structural stabilization of an historic building or structure is also considered a major alteration.

## OUTBUILDINGS AND LANDSCAPE

Minor – Routine maintenance of outbuildings and landscape including lawn mowing, pruning, gardening, and routine repair of outbuildings or landscape features, such as walkways, terraces, patios, fountains, etc..

Major –Ground disturbance or grading other than routine gardening, installation of drainage or irrigation systems, , demolition of existing outbuildings, , altering, installing or removing significant landscape features such as gardens, changes to forested cover, view sheds, walks, or

plantings that define the historic setting or create a landscape feature, and ground disturbance affecting archaeological resources.

## NEW CONSTRUCTION

Minor – Installation of a new mailbox; replacement of an existing fence line with the same material; installation or erection of removable exterior furniture such as birdhouses, benches, swing sets, small above-ground pools etc. that are not attached to any historic building, structure or fabric or temporary or seasonal items such as political signs, netting for fruit trees or vines, holiday decorations, etc.

Major – Construction of any new buildings, structures, features or amenities including but not limited to farm buildings, residential outbuildings, garden sheds, pergolas or arbors, in-ground pools or fishponds, terraces, walkways, garden features such as fencing, fountains.

## CHANGES TO LEGAL STATUS OF PROPERTY

Minor – Conveyance to a new owner; execution of a will bequeathing or gifting the property. Note that some easements specifically require that DHR be notified prior to any sale or conveyance.

Major – Subdivision of the property; boundary line adjustments; execution of any easement for any purpose, including access easements, utility easements or overlay easements in favor of any private person or entity or any public utility.

Changes classified as major alterations are not necessarily unacceptable. The intent of the easement is to enable DHR to review proposed alterations and assess their comprehensive impact on the integrity of the protected historic and archaeological resources, not to preclude future change. DHR Easement Program staff will work with property owners to provide technical assistance and to develop mutually satisfactory solutions that are consistent with the *Standards*, the terms of the easement and in the best interests of the property.

**It is the responsibility of the property owner to notify the DHR in writing when any major alterations are contemplated.**

*[Adopted by the Virginia Board of Historic Resources on March 8, 2006; Revised December 18, 2008; Revised March 17, 2011; Revised December 11, 2014]*



## **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 on September 5, 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 (i) any action or event or lack of maintenance that has caused or has the potential to cause harm to the historic resources and features and/or the conservation values of the property that are protected by the easement, or (ii) any action, event or failure to act that conflicts with or contradicts any restriction or covenant contained in the easement. Violations are individually evaluated and classified as follows:

*Technical Violation* – a violation that results when a property owner has made alterations to the protected historic resources, features, or conservation values of the property that are consistent with the historic character of the property, but the property owner did not follow the appropriate notification and approval procedures pursuant to the relevant deed of easement and *Easement Program Policy #5: Review of Applications for Work on Easement Properties*.

*Minor Violation* – a violation that results from inappropriate alterations or lack of proper maintenance where no permanent damage to the protected historic resources, features, or the conservation values of the property have been identified by DHR easement staff. The level of violation may be elevated if the issue is not resolved within the time period specified in the written notice of violation.

*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.

*Willful Violation* – a violation that occurs when the property owner undertakes an action or fails to undertake an action in direct contradiction to a written directive, notice or requirement issued by DHR, acting on behalf of the Board, or the Board. Such violations may include, but are not limited to, failure to perform mitigation or remediation of a major or minor violation as specified

by DHR and/or the Board, implementation of a project previously denied by DHR and/or the Board or repeated refusal to provide access to the easement property upon reasonable advance written request by DHR easement staff. A Willful Violation may be issued separately or in conjunction with a Technical, Minor or Major Violation.

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 to obtain information directly from the property owner. 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. A site visit shall be conducted as soon as practicable by easement staff or regional office staff 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 a DHR staff member discovers a violation during the course of a site visit or other form of visual inspection, DHR easement staff 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, return receipt requested. 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, the corrective action is inappropriate or incomplete 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 and Willful violations will be reported to the Board and to the Office of the Attorney General immediately. DHR, acting on behalf of the Board, and in consultation with the Office of the Attorney General and outside counsel, if appropriate, will seek all available legal remedies to mitigate, remediate or otherwise correct the

violation, including, but not limited to injunctive relief, monetary damages, liens on the property and other equitable and legal remedies.

*[Adopted by the Virginia Board of Historic Resources on September 5, 2007; revised December 18, 2008; revised March 17, 2011; revised September 19, 2013]*



## **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 on December 18, 2008; Revised September 17, 2009; Revised September 30, 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 on December 18, 2008;  
Revised 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]*



## **VIRGINIA DEPARTMENT OF HISTORIC RESOURCES**

### **Historic Preservation Easement Program**

#### ***POLICY #11***

#### ***APPRAISALS***

The Virginia Board of Historic Resources (the “Board”) and the Virginia Department of Historic Resources (“DHR”) will work diligently to ensure that every easement meets federal and state tax law requirements. In accepting an easement, the Board and DHR confirm that the enumerated conservation values are present at the property and are appropriately protected by the restrictions set forth in the conservation easement, and that a public benefit arises from the perpetual protection and preservation of these resources.

The gift of a qualified conservation easement in perpetuity may yield a deduction for federal income tax purposes and a credit for state income tax purposes. Only the Internal Revenue Service (“IRS”) and the Virginia Department of Taxation possess the necessary expertise and responsibility to approve or deny any tax benefits sought or claimed by the donor of a conservation easement as a charitable gift. DHR does not provide tax advice and recommends that donors consult their attorney, accountant, and/or tax advisors regarding the tax implications of a gift of easement. By accepting an easement, the Board and DHR make no claims or representations concerning the tax consequences of that conveyance. Ultimately the donor is responsible for ensuring the transaction meets applicable federal and state requirements for claiming tax benefits.

### **FEDERAL TAX BENEFITS**

A charitable contribution of a conservation easement is not deductible unless properly substantiated in accordance with the Internal Revenue Code (“IRC”) and applicable regulations, which include, among other items, a qualified appraisal. *See* 26 U.S.C. §§ 170(a)(1), 170(f)(8), 170(f)(11) and 170(f)(13) (2011) and Treasury Regulations 26 C.F.R. §§1.170A-13 and 1.170A-14 (2011). The burden is on the taxpayer to demonstrate that the easement donation is a deductible contribution that meets the requirements of the IRC and applicable IRS Regulations.

#### **IRS Form 8283**

The IRS requires donors seeking tax deductions to file IRS Form 8283 for all non-cash charitable contributions valued at greater than \$5,000.00. If a federal tax deduction is sought, the taxpayer

must complete IRS Form 8283 and provide it to DHR for signature on behalf of the Board. In signing Form 8283, DHR acknowledges acceptance of the conveyance of the easement on behalf of the Board and confirms its status as a qualified organization under 26 U.S.C. §170(h). Form 8283 includes a disclaimer provision stating that acknowledgment by the donee (easement holder) does not constitute agreement with the claimed fair market value.

## STATE TAX BENEFITS

To be eligible for state tax credits, the easement must qualify as a charitable deduction under the IRC and applicable IRS regulations and meet additional requirements under the Virginia Land Conservation Incentives Act. Pursuant to Virginia Code § 58.1-512(D)(1), the taxpayer must provide a completed Land Preservation Credit (LPC-1) tax form with supporting documentation to the Virginia Department of Taxation for all donations of land or conservation easements for which tax credits are claimed. A copy of the completed LPC form must also be provided to the Virginia Department of Conservation and Recreation (DCR).

The burden is on the taxpayer to demonstrate that the easement donation is a deductible contribution that meets the requirements of the IRC and applicable IRS Regulations as well as the requirements of the Virginia Department of Taxation. The Board and DHR are not required to sign the LPC tax form.

## APPRAISAL POLICY

To ensure a sound transaction, the Board has adopted the following policy regarding easement appraisals:

- A. The Board and DHR do not participate in or provide recommendations regarding appraisers, the appraisal process, or analysis of the easement valuation. *Property owners are strongly advised to engage an independent qualified appraiser with extensive and credible experience with conservation easements in Virginia to determine the value of the gift.*
- B. In the case of a “qualified conservation contribution,” as defined in 26 U.S.C. §170(h), the donor must complete Form 8283 with all of the required information, including the identification of the property to be conveyed, the physical description of the condition of the property conveyed, the appraised fair market value both before and after conveyance of the easement, the contribution purpose furthered by the conveyance, the declaration of the appraiser and the donor's social security or taxpayer identification number, and provide the completed form to DHR for its review.
- C. DHR will review each 8283 Form for completeness where a charitable donation is being claimed under federal law.
- D. The donor must provide DHR with a copy of the Appraisal Summary (Section B) of Form 8283 at least thirty (30) business days in advance of execution of the easement by

the donee. This requirement may be waived or modified by DHR as deemed appropriate in its discretion.

- E. DHR will assess the appraised values set forth in the appraisal according to the following criteria:
  - a. an easement value of \$2.5 million dollars or more; and/or
  - b. an easement value of 50% or more of the appraised fee simple value of the property; and/or
  - c. an appraised fee simple value of the property of one and one-half (1-1/2) times more than the assessed fee simple value of the property.

DHR in its discretion may bring to the attention of the Virginia Department of Taxation any Form 8283 with claimed values meeting or exceeding any or all of the criteria set forth above.

- F. If the Board or DHR have a concern about the credibility of the charitable donation being claimed, the Board or DHR may disclose those concerns to the donor and may take other steps to evaluate and document the validity and credibility of the appraisal, including the fair market value of the gift of conservation land or easement being made by the donor. These other steps may include, among other activities, consultation with real estate appraisal professionals, consultation with the Virginia Department of Taxation, review of the full Appraisal Report from the donor, and/or comparison of the appraisal to other similarly situated appraisals.
- G. The Board's acceptance of a gift of conservation easement and DHR's subsequent signing of a Form 8283 on behalf of the Board does not represent agreement with the appraisal or any claims made in the appraisal or on the Form 8283 including the fair market value.
- H. The Board reserves the right, in its discretion as the proposed recipient of a gift of conservation easement, to decline to accept the conservation easement due to concerns regarding the appraisal and/or the Form 8283.
- I. The Board hereby authorizes DHR to decline to execute the easement and/or sign the Form 8283 if DHR has concerns regarding the validity or credibility of the appraisal or the information provided on the Form 8283, including but not limited to the claimed fair market value of the easement. The donor may appear before the Board at its next regularly scheduled meeting and request its review and final determination regarding such execution and/or signature.

## SUMMARY

The Board and DHR will not knowingly participate in projects where there are significant concerns about the claimed fair market value or potential federal tax deduction or state tax credit that may be claimed by the donor. As an agency of the Commonwealth of Virginia, the Board and DHR will employ all reasonable measures and effort to avoid participating in fraudulent transactions.

The Board and DHR must seek to protect themselves, landowners, easement donors, and the public from any form of excessive or fraudulent appraisals of conservation easements. Excessive appraisals may lead to tax audits and the disallowance of tax benefits by federal and state tax agencies. DHR will refer any appraisals or claimed deductions or credits that it finds, in its exclusive opinion, to be unusual or suspicious for review by the appropriate state or federal taxing authority.

*[Adopted by the Virginia Board of Historic Resources on December 15, 2011; revised December 11, 2014]*