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:
<u>Section 1. Natural resources and historical sites of the Commonwealth</u>.
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.

<u>Section 2. Conservation and development of natural resources and historical sites</u>.

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

Criteria for Acceptance of Easements

The Virginia Board of Historic Resources (the "Board") and the Virginia Department of Historic Resources ("DHR") recognize the unique responsibility incurred when accepting an easement. All easements held by the Board are administered by the Easement Program at DHR, which serves as staff to the Board. By accepting an offer to place a property under easement, the Board of Historic Resources has determined that the historic character and the public benefit contributed by easing the property warrant its protection—in its approximate current form and condition—in perpetuity. While many properties are historically significant, an easement places permanent restrictions on real property, and should therefore be used to protect only those resources which are of enduring significance. An easement imposes on the Commonwealth the obligation 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 Board and DHR to accept only easements of perpetual duration. Limited circumstances may arise in which the Board may consider, in its sole discretion, whether to accept an easement of more than five years duration, as required by the Open-Space Land Act, but less than perpetual. Such circumstances may include proposed transfer of the title to such property to an appropriate state or federal agency where a perpetual easement would inhibit or prevent such transfer.

When it is the intent of the property owner granting the easement to seek federal and/or state tax incentives for the donation or conveyance of an easement, it is the practice of the Board and DHR to ensure that the easement complies 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 easements affecting the terms of easements, the duration of easements, the process for the acceptance of easements, the stewardship of easement properties, and the overall management of easement programs. Currently, the Virginia tax code requires that these same standards be met when seeking a state tax credit for land preservation. 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 the listing of battlefield properties identified in the Civil War Sites Advisory Commission's *Report on the Nation's Civil War Battlefields* (1993, as amended) ("*CWSAC Report*") or the American Battlefield Protection Program's *Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States* (2007, as amended) ("*ABPP Report*"). Section 10.1-1701 of the Code of Virginia (1950, as amended) requires that the conservation easement be consistent with the official comprehensive plan for the locality in which the property is located.

An offer of easement by a property owner is first considered by DHR's Easement Program staff to ensure that the property meets the Board's legal requirements and that the application includes the information necessary for formal review. A detailed application form is available on DHR's Easement Program webpage and is provided to every prospective grantor with the Easement Information Packet. A complete application must be received by DHR at least thirty (30) calendar days prior to the next scheduled meeting of the Easement Acceptance Committee. Easement Program staff will notify the property owner or their designated agent by electronic mail if the application is incomplete. A complete application received by the deadline is then reviewed by the Easement Acceptance Committee ("EAC"), comprised of senior staff of different professional disciplines from various divisions within DHR. The EAC makes recommendations to the Board regarding the acceptance of an offer of easement. The EAC may take one or more of the following actions: (i) recommend approval of the easement offer as proposed; (ii) recommend that any approval be conditioned on specific requirements or actions; (iii) not recommend acceptance of the easement offer as proposed; or (iii) defer making a recommendation where insufficient information has been provided by the property owner or his/her designated agent, or where conditions affecting the property may require prior resolution. In formulating its recommendation to the Board, the EAC will assess criteria and evaluate various factors including:

1. Whether the property being offered for easement is listed either individually or as a contributing resource to an historic district listed on the VLR, or is within or includes a portion of a battlefield listed in the *CWSAC Report* or the *ABPP Report*.

2. The level of historic and cultural significance of the property, including its status in the VLR or, for battlefield properties, its priority rating in the *CWSAC Report* or the *ABPP Report*, as administered through the American Battlefield Protection Program of the National Park Service. Properties that are not individually listed or listed as contributing to a historic district listed in the VLR or that do not fall within the boundaries of a battlefield identified in the *CWSAC Report* or the *ABPP Report* are not eligible for acceptance by the Board into the Easement Program.

3. The degree to which the public has or will have physical and/or visual access to the resources that are protected by the easement.

4. The ability of DHR, on behalf of the Board, to monitor the conservation values of the property that will be protected through the easement and that contribute to the public benefits associated with the easement. It is DHR's practice to consider the range of public interests in the property (e.g. historic, open space, ecological) and work with other state agencies to develop a deed of conservation easement that best serves those interests. However, if the property has significant resources that DHR does not have the technical expertise to steward or if there are pre-existing rights or land uses that would inhibit the protection that would be provided by the proposed easement, DHR may recommend that the property owner consider another public body as the easement holder.

5. The complexity of the property's conservation issues, including current and proposed land uses, proposed or recent new construction, the level of maintenance of the existing historic buildings, structures, sites, landscapes, or features, whether such resources are vulnerable to deterioration or will otherwise require a high level of monitoring by staff, the need for significant capital investment to maintain or preserve the existing historic resource(s), easements or other legal encumbrances, as set forth in more detail below, that may affect the proposed purposes of the easement, the ability to steward and enforce such easement, and/or the integrity of the Easement Program.

6. Whether reserved rights requested by the property owner, such as the number of subdivisions, allowable new construction, etc. are consistent with the protection of the conservation values of the property.

7. The likelihood of the property remaining economically viable if placed under easement.

8. The degree to which other state goals and the Board's mission are met.

9. Whether the property is adjacent to other protected or eased properties.

10. The degree to which the historic and cultural resources present on the property retain integrity, or the ability of the property to convey its historic significance, in the opinion of DHR staff applying the *National Register Criteria for Evaluation* (36 C.F.R. 60.3 and 60.4, as amended; *see also* 36 C.F.R. Part 63, as amended) and/or the *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).

11. The degree to which the historic integrity of the property has been or will be compromised by prior land uses that likely irreversibly damaged the historic resources sought to be protected by the easement or that irreversibly altered the historic landscape or new construction, incompatible uses, previously conveyed rights held by third parties, topographic changes, etc.

12. Whether the easement will be consistent with the comprehensive plan for the locality in which the property is located, as required by Section 10.1-1701 (Open-Space Land Act) of the Code of Virginia.

13. Current conditions including evidence that the extant historic resources require substantial work and/or significant capital expenditures to stabilize or rehabilitate the resources, existing damage or disturbance to the resource, evidence of relic hunting, looting, unauthorized salvage, or other deleterious actions, etc.

14. Current legal conditions on the property that prevent, inhibit or unreasonably delay the conveyance of the proposed easement or that interfere or conflict with the terms and purposes of the easement. These include, but are not limited to, the following conditions or circumstances: clouds on title; previously conveyed rights, such as mineral rights or covenants; current plats of subdivision of the property including recorded encumbrances or dedications for such subdivision; easements and/or installed infrastructure or improvements for a past, present or future land use that are incompatible with the easement such as roads dedicated to the local government.

15. Title and other legal considerations including the timely provision of a title search and all associated deeds and instruments and a property survey and/or accurate legal description; copies of all current leases, licenses or other rights held by third parties to access or use the property being offered for easement, and information regarding environmental conditions, including an environmental assessment if requested by the EAC.

Easement Program staff will apprise the property owner of the EAC's recommendation in writing, via letter or email communication. If the EAC defers making a recommendation until a subsequent meeting, staff will apprise the property owner of why and whether the EAC has requested additional information. If the EAC does not recommend acceptance of the offer, staff will provide an explanation of the factors considered. The property owner may choose to withdraw the offer or amend the offer for reconsideration by the EAC, or may request that the offer be presented to the Board irrespective of the negative recommendation by EAC.

Easement offers will be considered by the Board at a regularly scheduled public meeting, which are held quarterly, or at a special public meeting. In order for an easement offer to be presented to the Board, any supplemental documentation and information requested by Easement Program staff and/or the EAC must be received by Easement Program staff at least ten (10) business days prior to the date of the Board meeting. If the easement offer has been submitted by a third party and/or a third party is representing the property owner, Easement Program staff must have had direct contact with the property owner via telephone, electronic mail or an in-person meeting at least ten (10) business days prior to presenting the offer to the Board to ensure that the property owner understands and accepts the Board policies and the standard terms of a deed of easement held by the Board. Any third party representing or acting on behalf of a property owner must submit the written authorization of the property owner.

At the public meeting, Easement Program staff will present the offer, describe the property's historic significance and the formal documentation of that significance (e.g. listing in the VLR or within boundaries of a battlefield), highlight any special features of the property, specify any reserved rights and address the EAC's recommendations, including any recommended conditions of approval. Easement Program staff will notify the property owner of the meeting date and location and will provide information regarding the agenda. A property owner whose offer will

be considered at the meeting may attend the meeting and may request permission to address the Board regarding the easement offer and/or the EAC's recommendation. Third parties who are not the property owner or the property owner's agent or designated representative may not address the Board regarding easement offers.

All letters, email communication, or other written correspondence documenting approval of an easement offer by the Board 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 (2) calendar years from the date of the Board meeting at which the offer was approved for acceptance. Any one of the following will require reconsideration by the EAC and the Board at its next regularly scheduled meeting:

1. Any significant changes to the terms of the easement offer made after approval by the Board but prior to recordation of the easement.
2. Any significant or major changes to the property that occur after Board approval but prior to recordation of the easement.

Any such changes should be brought to the attention of Easement Program staff as early in the drafting and easement negotiation process as possible. Board approval of an easement offer is not transferable to a new property owner.

The Board of Historic Resources has full discretion in deciding whether to accept an offer of easement and the applicable conditions for such acceptance. The Board may decline to accept an offer of easement for any reason. The Board may condition its acceptance as it deems appropriate to ensure the protection of the property's cultural resources, to maintain the integrity of the Easement Program and to fulfill its mission.

<u>Special Considerations for Battlefield Resources</u>:

The Board and DHR recognize the historic, archaeological, cultural, and landscape 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 and the EAC utilize the priority rating system developed by the CWSAC and the ABPP as a basic requirement when evaluating easement offers for battlefields. Proposed easements on battlefield properties are evaluated for their overall historic significance and integrity, as well as for any historic buildings, structures, and archaeological or cultural sites located on the property regardless of whether those resources are associated with a battle. Many battlefield properties are working farms and the need to keep them viable for continued agricultural production is an important aspect of their preservation. For each easement offer on a battlefield property, the Board, DHR and the EAC 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, DHR staff will present these resources to the DHR's Architectural and/or Archaeological Evaluation Team(s) 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 and the EAC 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 will make recommendations regarding the protection of historic buildings and structures to the Board.

The Board, the EAC and Easement Program staff may consider documentation provided by the property owner or his/her designated agent, documentation of the property in DHR's Archives, including its cultural resources database, and documentation or information available through federal, state or local governments and nonprofit organizations about the property and its history. For example, Easement Program staff may utilize a historic battlefield map obtained from the Library of Congress to specifically identify the location of the property within the boundaries of a specific battle; or consult historic aerials available from the county where the property is located to better understand prior land use patterns or the location of non-extant buildings and structures. DHR Easement Program staff will provide the property owner or his/her designated agent with copies of or access to any documentation or information obtained from sources other than the easement application and DHR's Archives. DHR's Archives located in Richmond are open to the public during business hours Tuesday through Thursday and property owners are strongly encouraged to research their property prior to submission of an easement application.

[*Adopted by the Virginia Board of Historic Resources on March 8, 2006; Revised December 18, 2008; Revised March 17, 2011; Revised September 19, 2013; Revised September 17, 2015; Revised December 15, 2016*]

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.

Language within the easements held by the Board has evolved over the years. Language in an easement recorded in 1973 will differ markedly from the language of an easement recorded in 2003. These changes are driven by a number of factors including changes in state law, the requirements of the Internal Revenue Service, and recommended best practices within the field of conservation easements. DHR's Easement Program strives to keep its easement templates current and to provide recommended updates to Board policies. Board policies are intended to provide guidance; however, the specific language contained in a recorded deed of easement is always the primary legal authority. Please contact Easement Program staff with any questions regarding how to interpret or apply the specific language contained in an easement.

Easements Recorded After September 2014

The Board voted to approve new easement language regarding review and approval by DHR's Easement Program staff for all activities and projects where prior approval is required by the easement and to approve corresponding changes to this policy in December 2014. The new approvals language in the easement template reads as follows, with minor variations to satisfy grant funding requirements:

APPROVALS:

> (a) Whenever a written request for Grantee's approval is submitted pursuant to the requirements imposed by this Easement and Grantee fails to respond in writing within thirty (30) business days of receipt of such request, then Grantee shall be deemed to

have approved the request, and Grantor may proceed with the action for which approval was requested.

(b) Nothing herein shall be construed, however, to require Grantee to issue a final decision on such request within such thirty (30) business day period, provided that such final decisions are issued as timely as is practicable under the circumstances. Such circumstances may include, but are not limited to, the complexity of the request or proposed project, the adequacy of the information submitted with the request, the degree to which the request or project complies with the Easement, whether the request or project is consistent with the Secretary's Standards as set forth in Section II, Paragraph 2.7 (Standards for Review) above, the need for archaeological investigation pursuant to Section II, Paragraph 2.11 (Archaeology) above, and the need for on-site inspections or consultations.

(c) In the event that Grantor proceeds with the action without having obtained the prior written approval of Grantee, Grantor shall remain obligated to protect and preserve the Preservation and Conservation Values and Grantee may undertake remedial action as set forth in Paragraph 3.1 (Right of Inspection) above and/or pursue any remedies set forth in Section III, Paragraph 3.3 (Enforcement) if such action is in violation of this Easement or diminishes or impairs the Preservation and Conservation Values.

(d) No approval required hereunder shall be unreasonably withheld or delayed by Grantee.

(e) [*if applicable*] Nothing herein shall be construed to affect the authority of the Secretary of the Interior under Section 6(f)(3) of the Land and Water Conservation Act.

(f) Grantee is not liable to Grantor or any third party for any damage, injury, liability or consequence arising out of or resulting from Grantor's failure to obtain Grantee's prior written approval as required under this Easement.

As a general rule, easements recorded after September 2014 would include this new approval language. For any easement containing the above referenced approvals language, the following project review process shall apply:

<u>PROJECT REVIEW PROCESS</u> – For Easements Recorded After September 2014

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

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.

Easements Recorded Prior to September 2014

Prior to September 2014, the majority of easements held by the Board contained the following language, with some minor deviations:

APPROVALS:

Whenever a written request for Grantee's approval is submitted pursuant hereto and Grantee fails to respond in writing within thirty (30) days of receipt of such request, then Grantee shall be deemed to have approved the request, and Grantor may proceed with the action for which approval was requested. Nothing herein shall be construed, however, to require Grantee to issue a final decision on such request within such thirty (30) day period, provided that such final decisions are issued in as timely a fashion as is practicable under the circumstances. Such circumstances shall include, but are not limited to, the complexity of the request or proposed project, the amount of information submitted with the initial request, and the need for on-site

inspections or consultations. No approval required hereunder shall be unreasonably withheld by Grantee.

For easements recorded prior to September 2014, which contain approvals language similar to that listed immediately above, the following project review process shall apply:

PROJECT REVIEW PROCESS - Prior to September 2014

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

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.

Please contact DHR's Easement Program staff with any questions regarding the applicable project review process. Contact information for Easement Program staff is located within the Division of Preservation Incentives at:
http://www.dhr.virginia.gov/homepage_features/staff3.htm

GUIDANCE FOR DETERMING 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; Revised September 17, 2015]

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

Interim Digital Photograph Policy

Portion of Future Amendment of Policy #8: Easement Program Recordkeeping

The Board of Historic Resources (the "Board") has adopted a series of written policies to guide the Department of Historic Resources' Easement Program staff in its administration of the approximately 650 conservation easements held by the Board as of July 1, 2015. Easement Program Policy #8 covers all recordkeeping matters including the document retention schedule adopted by the Library of Virginia for the Easement Program, retention and organization of electronic and paper documents associated with every easement property, the administration of the Easement Program, publications, public outreach, etc. Easement Program staff are in the process of revising that policy for the Board's review.

One component of that policy has reached a more urgent status. Easement Program staff have used black and white film to document new easement properties prior to recordation of the deed of easement since 1969. Digital cameras are used for all subsequent monitoring visits. In recent years it has become increasingly more difficult and expensive to obtain film and have it processed. Currently there are no film processors meeting the state's procurement requirements in Richmond. Easement Program staff developed the following interim digital photograph policy to facilitate the transition from traditional film to digital images for the baseline documentation photographs, which are those taken just prior to the recordation of the deed of easement and which serve as a permanent record of the condition of the property when the easement becomes effective.

At its March 17, 2016 meeting held in Richmond, Virginia, the Board of Historic Resources voted to approve of an extension of this interim revision of Policy #8 pertaining to photography. This Interim Digital Photography Policy shall remain in force until it is officially ratified or a further extension is approved by the Board of Historic Resources at a public meeting for the next calendar year. Staff shall request an extension of such authorization should this portion of Policy #8 not be officially ratified by the Board on or before the official public meeting of the Board of Historic Resources in March 2017. This extension will allow staff an opportunity to gain experience using digital film to ensure that it can fully replace black and white film and meet all of the applicable legal requirements and industry standards for baseline documentation and stewardship monitoring of perpetual conservation easements.

New Easement Applications

Easement Program staff recently updated and revised the Easement Application Form, which is available on the DHR Easement Program homepage at:
http://www.dhr.virginia.gov/easement/easement.htm
The application requires the submission of photographs showing the visible historic resources, nonhistoric improvements and the overall condition of the property. Easement Program staff will, on occasion, conduct a site visit after the Easement Acceptance Committee has reviewed the proposed offer. A visit may be necessary where the historic resources are not well documented, the Committee has questions about the integrity of the historic resources, or the grantor is simply unable to provide adequate documentation. Whether the photographs are submitted as part of the Easement Application or taken by DHR staff, lower resolution photographs are sufficient for purposes of evaluating an easement offer.

Digital Film Requirements:

- Minimum of 400 x 400 pixels per square inch ("PPI")
- Color
- Saved as JPEG files
- Copies may be made for use in presentations, offer summaries and other documentation provided to the Easement Acceptance Committee, the Board of Historic Resources, grant programs or the grantor.
- Original JPEG files shall be saved electronically in an access restricted location on DHR's server with full back-up protection provided by VITA Northrup Grumman or any subsequent vendor employed by the Commonwealth of Virginia to serve its agencies.

Baseline Documentation Reports

Within six (6) months prior to the recordation of a new deed of easement, Easement Program staff conduct a site visit of the property to document the visible historic resources, the historic setting, cultural landscape and all nonhistoric improvements. The documentation consists of photographs, maps, aerial photographs, written descriptions and locational data. This report, called a Baseline Documentation Report, is prepared by an Easement Program staff person. A draft of this report is provided to the grantor of the easement for their review prior to recordation of that easement to ensure its accuracy.

Digital Film Requirements:

- Minimum of 2,000 x 3,000 PPI
- Color
- Saved as original unaltered TIFF files
- Copies may be converted to JPEG format for use in the Baseline Documentation Report.
- Original unaltered TIFF files shall be saved electronically in two locations; one of which must be in an access restricted location on DHR's server with full back-up protection provided by VITA Northrup Grummond or any subsequent vendor employed by the Commonwealth of Virginia to serve its agencies.

- Original unaltered TIFF files shall be retained permanently or until such easement is assigned to another public body or extinguished.

Easement Program staff will endeavor to use traditional black and white film in addition to digital film during this interim period for all Baseline Documentation Reports provided that it can be processed in a timely manner by a company that meets the state's procurement requirements or for which a waiver of such requirements can be obtained and is located within reasonable distance of the Richmond office.

Annual Stewardship Reports

Easement Program staff endeavor to visit every easement property every 12-24 months. When a site visit is conducted, the staff person will take photographs and a new split map will be generated based on current aerials and Geographical Information System (GIS) data provided by the locality in which the property is located. A written report, called an Annual Stewardship Report, is prepared by that staff person describing the condition of the property, addressing any changes that might have occurred since the last visit or that are planned. The photographs are incorporated into the report with a photopoint map and other locational data. A copy of the Annual Stewardship Report is sent to the property owner for their records and a copy is retained in the permanent easement property file in DHR's Richmond office.

Digital Film Requirements:

- Minimum of 1,200 x 1,600 PPI
- Color
- Saved as JPEG files
- Copies may be made for use in the Annual Stewardship Report.
- Original unaltered JPEG files shall be saved electronically in the electronic file for the relevant easement property.
- The electronic file must be access restricted and located on DHR's server with full back-up protection provided by VITA Northrup Grumman or any subsequent vendor employed by the Commonwealth of Virginia to serve its agencies.

Site Visits for Known Violations

Easement Program staff may conduct a site visit when there is a known or suspected minor, major or willful violation as set forth in Policy #7 Violations. Photographic documentation is often critical to understanding the extent of the violation and is necessary to evaluate and document the violation and the extent of the damage for enforcement purposes. Because such photographs may need to be used in a judicial action, heightened requirements, similar to those used for the Baseline Documentation Report, are warranted.

Digital Film Requirements:

- Minimum of 2,000 x 3,000 PPI
- Color
- Saved as original unaltered TIFF files

- Copies may be converted to JPEG format for use in a Notice of Violation Letter or other written documentation.
- Original unaltered TIFF files shall be saved electronically in two locations; one of which must be in an access restricted location on DHR's server with full back-up protection provided by VITA Northrup Grumman or any subsequent vendor employed by the Commonwealth of Virginia to serve its agencies.

Other Site Visits

Easement Program staff often make a site visit as part of a project review to better understand the project and its impact on the resource, to monitor ongoing work, to document removal of nonhistoric improvements subject to a written management plan, to assist with archaeological survey, and to teach interns, students and others how to conduct a site visit. Because these visits are often heavily documented in numerous other ways, no written report is issued but the photographs become part of the record and are retained in the permanent easement property file. The same standards used for an Annual Stewardship Report are appropriate.

Digital Film Requirements:

- Minimum of 1,200 x 1,600 PPI
- Color
- Saved as JPEG files
- Copies may be made for use in a project review letter or other written documentation.
- Original unaltered JPEG files shall be saved electronically in the electronic file for the relevant easement property.
- The electronic file must be access restricted and located on DHR's server with full back-up protection provided by VITA Northrup Grumman or any subsequent vendor employed by the Commonwealth of Virginia to serve its agencies.

This Interim Digital Photograph Policy shall expire at the adjournment of the official public meeting of the Board of Historic Resources held in March 2017 if Board approval for an extension or renewal is not obtained prior.

[*Adopted by the Virginia Board of Historic Resources on September 15, 2015; Revised March 17, 2016*]

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 file 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 (1-½) 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*]

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #12

Administrative Fees

The Board of Historic Resources (the "Board") recognizes that the acquisition and stewardship of perpetual preservation and conservation easements requires a substantial commitment of resources on behalf of the Commonwealth, which vary depending on numerous factors including the number and complexity of the historic resources protected, additional restrictions necessary to meet the requirements of grant funding, the property's proximity to areas experiencing substantial growth and development, and relationships with grant funding entities and co-holders. In order to have the capacity to accept new easements while sustaining its commitment to the protection of the Commonwealth's unique historic resources already under easement, the Board has adopted the following administrative fee schedule.

The Department of Historic Resources ("DHR"), specifically, the Easement Program within the Division of Preservation Incentives, will be responsible for assessing and administering these fees on behalf of the Board. The Director of DHR is hereby authorized to promulgate any additional rules necessary for the administration of these fees provided that such rules comply with the terms of this Policy.

Administrative Fee Schedule

Fee	Amount	Due
Easement Application Fee	$500	At the time of application
Grant Funded Easements Requiring Additional Restrictions	2% of grant award	At disbursement of grant
Reconsideration of Easement Offer	$1,000	At time of re-application
Update or Revision of Baseline Documentation	$1,500	Prior to DHR conducting work
Amendment of Existing Easement	$2,000	At the time of application
Conversion/Diversion (Under Section 10.1-1704 of the Open Space Land Act) Review Fee	$1,600	At the time of application
Conversion/Diversion (Under Section 6(f)(3) of the Land and Water Conservation Fund Act) Review Fee[1]	$1,600	At the time of application
Conversion/Diversion Processing Fee	$1,600 for first 40 hours with potential for additional fees if staff time extends beyond 40 hours	At the time of application
Boundary Line Adjustment Review	$1,600	At the time of application
Expedited Project Review	$500	Prior to submission of application

[1] Land and Water Conservation Fund Act (54 U.S.C. §§ 200301 - 200310 (2016, as amended)), specifically Section 200305(f)(3), commonly known and hereinafter referred to as "Section 6(f)(3)."

I. New Easement Offers

A. Easement Application Fee

A fee of five hundred dollars ($500) shall be paid at the time a new easement application is submitted for review and consideration by DHR and the Board. This fee will go toward DHR's due diligence review and analysis of the proposed offer.

B. Grant Funded Easements Requiring Additional Restrictions

An administrative fee equal to two percent (2%) of the total grant award will be assessed against the grant recipient for any new easement offer where (i) the conveyance of the preservation and conservation easement is required by a federal or state grant program (with the exception of the Virginia Battlefield Preservation Fund administered by DHR), and (ii) such grant requires the inclusion of additional restrictions beyond the standard easement template, modification of standard restrictions, inclusion of a co-holder, and/or interests granted to a third party. Such fee is intended to offset the increased costs to DHR resulting from negotiations, communications, modifications of the deed of conservation easement prior to recordation, and the increased stewardship burden of additional restrictions, non-standard restrictions, and communications and coordination with any co-holder or third party that has an interest through the conservation easement.

This fee will be due when the grant award is disbursed. If multiple grants are awarded to the subject of an easement offer, the fee will be charged for each grant that meets the criteria above.

Examples of applicable grants include without limitation:

- American Battlefield Protection Program Battlefield Land Acquisition Grants
- USDA Agricultural Conservation Easement Program - Agricultural Land Easement Program (formerly Federal Farm & Ranchland Protection Program)
- Virginia Land Conservation Foundation Grants

C. Reconsideration of an Offer

A fee of one thousand dollars ($1,000) will be required for reconsideration by the Board of any previously approved offer of easement where such reconsideration is a result of: (i) the expiration of the Board's prior approval, or (ii) a change in the terms of the easement offer due to an act or omission of or a modification made or proposed by the applicant and/or landowner.[2] This fee must be received by DHR with the new application.

Examples of a change of terms of the easement offer by an applicant or landowner may include, but are not limited to, the following:

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[2] **Board Policy #2: Criteria for Acceptance of Easements**, states that the Board's standard approval to accept a new offer of easement expires two (2) calendar years from the date of the Board meeting at which the offer was approved for acceptance. Similarly, if any significant changes to the terms of the easement offer or significant or major changes to the property occur following the Board's approval, the revised offer must be brought back to the Board for its reconsideration.

- Failure to accurately and/or completely identify all existing buildings, structures, amenities, and features on the real property being offered for easement in the Easement Application.

- A lease, or extension or renewal of a lease or license granted to a third party to use the real property, e.g. a residential lease, being offered for easement beyond the term provided to and/or approved by the Board.

- Granting of rights to third parties, such as conveyance of an access easement or utility right-of-way, after approval of the offer by the Board and without providing notice of the intent to convey such rights prior to the Board's approval to accept.

- Significant change(s) in the structure of the proposed transaction, such as new or different sources of grant funding, loss of grant funding, intent to seek federal and/or state tax benefits.

- Change(s) in the fundamental terms of the offer, such as inclusion of new or additional reserved rights such as an increase in the square footage allowance for new construction or allowances for additional buildings or structures.

The applicability of this fee and any determination of whether this fee applies shall in no way affect the requirements for reconsideration pursuant to **Board Policy #2: Criteria for Acceptance of Easements**.

D. Baseline Documentation

A fee of one thousand five hundred dollars ($1,500) will be assessed against the landowner in each instance where a baseline documentation report ("BDR")[3] is required to be updated or revised because (i) the terms of the easement have changed or (ii) the easement is not recorded within six months of completion of the BDR. Such fee is due prior to DHR conducting the work to update or revise the BDR.

Because the BDR reflects the condition of the property at the time of easement recordation and serves as the basis for enforcement and stewardship it is imperative that the information and documentation contained therein is accurate. A BDR generally includes: (i) a brief written description of the current condition, character, and features of the property; (ii) a brief written description outlining the historic, archaeological, and cultural significance of the property as well as other conservation values; (iii) a list of existing historic and non-historic buildings, structures, and sites with a detailed description of existing architectural features of primary built historic resources that are specifically protected by the easement; (iv) the specific conservation purposes protected by the easement; (v) a brief written description of the current condition, character, features, and use of the property; (vi) historic documentation, survey plat, and maps of the

[3] **Board Policy #4: Documentation of Easement Properties** requires that documentation of the condition of the resources and conservation values protected by the easement be conducted as close as possible prior to recordation of the easement. This documentation is essential in the administration of the easement as it serves as the basis for enforcement of the terms of the easement and stewardship of the resources protected.

property; and (vii) photos of the property and protected resources with an accompanying photo-point map.

II. Existing Easements

A. Amendment

With the exception of amendments initiated at the request of DHR and/or the Board, a fee of two thousand dollars ($2,000) shall be paid by the landowner at the time of application and prior to the Board's consideration of a proposed amendment of an existing easement held by the Board.

DHR may, in the discretion of the Director of DHR, decrease the fee if the proposed amendment requires minimal revision to the existing easement or requires minimal revision to correct scrivener's (clerical) or other technical errors. All amendments must be consistent with **Board Policy #6: Easement Amendments.**

If a new or updated BDR is necessary to document the conditions of the property at the time of the amendment, an additional BDR fee of one thousand dollars ($1000) will apply.

B. Conversion / Diversion

1. Review Fee

A fee of one thousand six hundred dollars ($1,600) shall be assessed for the Board's review and determination of whether a project or activity proposed by an entity or organization other than the landowner or a state or local government agency affecting an easement property constitutes a conversion or diversion of all or a portion of such property. This fee will serve to offset the significant resources required of DHR to gather information, communicate with the project proponent and landowner, and prepare the matter for presentation to the Board. This fee will apply regardless of the Board's determination and must be paid when the Project Review Request form is submitted.

If the project proponent is unaware of the terms of the conservation easement, DHR Easement Program staff will notify the project proponent in writing that the proposed project or activity requires review under Section 10.1-1704 of the Open-Space Land Act. In such event, the fee will be due within ten (10) business days of the date of the written notice by DHR. DHR Easement Program staff may suspend review of the project until the fee is received by DHR. It is the project proponent's responsibility to ensure that payment has been received by DHR.

2. Processing Fee

If the Board determines that the project or activity proposed by an entity or organization other than the landowner or a state or local government agency constitutes conversion or diversion, and the project proponent chooses to move forward with the project or activity, an additional fee of one thousand six hundred dollars ($1,600) will be assessed for staff time required to process the project. If the total staff time required to process the project exceeds forty (40) hours, the project proponent will be charged for each additional hour of staff time at the hourly rate or combined hourly rates of the staff members processing the project. The initial processing fee will

be due within ten (10) business days after the public meeting at which the Board determined that the project or activity constitutes conversion or diversion. Additional charges shall be due within ten (10) business days after notice thereof by DHR.

If the project or activity determined to constitute conversion or diversion must be reviewed a second time by the Board, an additional fee of five hundred dollars ($500) will be assessed against the project proponent. The additional fee will offset the cost of staff time necessary to prepare for and present the matter to the Board. Second reviews may be necessary for the Board to review proposals regarding additional mitigation or substitute property.

3. Additional Fee for Federal Grant Funded Battlefield Easements

A fee of one thousand six hundred dollars ($1,600) will be assessed when DHR Easement Program staff, on behalf of the Board, is required to prepare and provide to the American Battlefield Protection Program ("ABPP") an evaluation of whether a project or activity proposed by an entity or organization other than the landowner or a state or local government agency will impact or directly affect a battlefield easement property and may constitute conversion or diversion of conserved land subject to Section 6(f)(3) (defined below) and any proposed mitigation or substitution.[4] This fee must be submitted with the Project Review Request and is in addition to the fee assessed under Section II.A.1.

If the project proponent submits a Project Review Request and is not aware that the affected property is subject to Section 6(f)(3), DHR Easement Program staff will notify the project proponent in writing that the proposed project or activity requires review under Section 6(f)(3). The fee is due within ten (10) business days of the date of written notice by DHR. DHR Easement Program staff may suspend review of the project until the fee is received by DHR. It is the project proponent's responsibility to ensure that payment has been received by DHR.

C. Boundary Line Adjustments

A fee of one thousand six hundred dollars ($1,600) will be assessed for consideration by the Board of a request for a boundary line adjustment ("BLA"). This fee will offset the extensive staff time and resources to review the request and prepare and present the matter to the Board. The fee must accompany the Project Review Request form or be paid within ten (10) business days of submission to DHR of the request for a BLA. DHR Easement Program staff may suspend review of the BLA request until the fee is received by DHR. It is the project proponent's responsibility to ensure that payment has been received by DHR.

[4] A significant number of easements held by the Board over battlefield properties were acquired using or conveyed as a condition of grant funding provided by the ABPP, a federal program within the National Park Service under the Department of the Interior. The properties benefitting from ABPP's grant program are subject to the Land and Water Conservation Fund Act (54 U.S.C. §§ 200301 - 200310 (2016, as amended)), specifically Section 200305(f)(3), commonly known and hereinafter referred to as "Section 6(f)(3)." Section 6(f)(3) imposes a similar conversion/diversion standard on the land and requires that the ABPP make determinations regarding projects or activities that have the potential to constitute conversion or diversion. The deeds of conservation easement for those ABPP-funded battlefield properties include provisions requiring DHR Easement Program staff, on behalf of the Board, to prepare and provide to ABPP an evaluation of the project or activity and any proposed mitigation or substitution. As such, ABPP-funded battlefield easements impose additional responsibilities on DHR's Easement Program.

D. Expedited Project Review

A flat fee of five hundred ($500) will be assessed against an applicant or landowner for an expedited review of a submitted Project Review Request. For purposes of this Policy, the expedited review period is ten (10) business days. This fee applies to each individual project, therefore, projects involving more than one building or phased projects may require additional fees.

Expedited reviews shall only be available with respect to existing easements and to (1) current landowners and (2) third parties such as contract purchasers, utility companies, and other agents of the landowner, provided the prior written approval of the landowner has been received by DHR. DHR's Director, in coordination with the Director of the Division of Preservation Incentives (hereinafter "Division Director") has the authorization of and full discretion enjoyed by the Board to agree or decline to conduct an expedited review. In determining whether to agree or decline to conduct an expedited review, the Director may consider factors such as the complexity of the project, the amount of information available in DHR's records about the property, the extent and complexity of the deed of conservation easement and the applicable restrictions, the existence of co-holders who may share in review responsibilities, and the schedules and workloads of staff involved in such reviews. The Director may assign all authority and responsibility under this Section II.D to the Division Director.

Notwithstanding the foregoing, no expedited review shall be available for (1) reconsiderations by DHR's Treatment Committee, or (2) appeals brought to the Board pursuant to **Board Policy # 5: Review of Applications for Work on Easement Properties**.

[*Adopted by the Virginia Board of Historic Resources, June 15, 2017; Effective July 1, 2018; Revised March 21, 2018; Revised April 17, 2019.*]