



# 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**

<b>Fee</b>	<b>Amount</b>	<b>Due</b>
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 <sup>1</sup>	\$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

<sup>1</sup> 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.<sup>2</sup> 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:

- 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.

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<sup>2</sup> **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.

- 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”)<sup>3</sup> 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 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**.

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<sup>3</sup> **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.

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.<sup>4</sup> This fee must be submitted with the Project Review Request and is in addition to the fee assessed under Section II.A.1.

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<sup>4</sup> 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

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.

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.]*

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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.