



## 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 has 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 Violation*, *Minor Violation*, 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.

1. Violations Observed by Third Parties. When notified of a potential violation by a third party, easement staff will 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.
2. Violations Observed by DHR Staff. 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 Director of the Division of Preservation Incentives, who will follow-up on the Violation Report or assign it to individual staff members for resolution. The Division Director will notify the Agency Director about any *Major Violation*.
3. Procedure Once Violation Is Observed.
  - a. When a violation has been observed, a letter outlining the nature of the violation and recommendations to correct the violation, if possible, (the “Violation Letter”) will be sent to the property owner by certified carrier (e.g. UPS or Federal Express). Staff will use the carrier’s tracking service to confirm delivery. After the Violation Letter is mailed, a .pdf copy will be forwarded electronically to the property owner with a request for confirmation of receipt. Copies of all documentation, including shipping documents, tracking confirmation, and outgoing email, will be saved to DHR’s electronic and hardcopy master file. The recommendation made by 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.
    - (i) When a *Minor Violation* has occurred, staff will work with the property owner to remedy the situation.

- (ii) 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.
  - (iii) *Major Violations* and *Willful Violations* will be reported to the Chair of the Board and to the Office of the Attorney General at the same time a Violation Letter is sent to the property owner and communicated to the entire Board at the next Board meeting.
- b. 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 Chair of the Board and the Office of the Attorney General. 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 and equitable remedies to mitigate, remediate, or otherwise correct the violation, including, but not limited to injunctive relief and monetary damages.

*[Adopted by the Virginia Board of Historic Resources on September 5, 2007; revised December 18, 2008; revised March 17, 2011; revised September 19, 2013; revised September 19, 2019.]*