



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #5

Review of Applications for Work on Easement Properties

The historic preservation and open-space easements held by the Virginia Board of Historic Resources (“Board”) are administered by staff at the Virginia Department of Historic Resources (“DHR”). These easements are real property interests of the Board and are legally binding contractual agreements that contain specific reserved rights and restrictions unique to an individual property. The majority of easements held by the Board require prior written approval by DHR Easement Program staff for construction, alteration, rehabilitation, restoration, renovation, replacement, extension, demolition, or removal of historic *and* non-historic buildings and structures on the property, whether existing or new. They also typically prohibit an owner from engaging in certain ground disturbing activities without prior review, and require the maintenance of properties to established standards.

In determining what changes are appropriate for each easement property, DHR consults *The Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards)*, published by the National Park Service, as guidance. The Secretary’s *Standards* are intended to be flexible, apply to a wide variety of building types, and accommodate different project goals. However, because the terms of each easement are different, the specific restrictions on alterations and requirements for review will vary by property.

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. Importantly, the language of easements held by the Board has evolved over time. Language in an easement recorded in 1970 will differ markedly from the language of an easement recorded in 2022. It is the responsibility of the property owner to notify DHR Easement Program staff when any alterations covered by the easement are contemplated. This policy outlines the review and approval process for such changes.

This guidance may not be universally applicable to all easement deeds, projects, or properties. For this reason, DHR considers each project individually. In all cases, the recorded easement is the governing document and will dictate whether prior written approval is required and how that

review and approval will be conducted. DHR always appreciates the opportunity to provide technical assistance to property owners and update the easement property file, regardless of whether formal review is required. Please contact Easement Program staff with any questions regarding how to interpret or apply the specific language contained in an easement.

REVIEW AND APPROVAL PROCESS

DHR's Easement Program staff administer 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 *Secretary of the Interior's Standards*, as set forth below. Decisions regarding a project review request will be provided to the property owner or their designated representative in writing via U.S. or electronic mail.

All written communication approving proposed work on an easement property will include a sunset clause, or a timeframe within which the work must be completed. If the commencement of work exceeds this timeframe, the property owner must request re-approval of the work in writing prior to the expiration of the approval. A property owner must seek new approval for any change in project scope. Prior written approval of incomplete work is not transferable to a new property owner.

If a property owner wishes to designate a person or entity, such as an architect, attorney or consultant, to serve as their representative with respect to a project review request, they must provide written authorization 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 limited to the property owner and any designated representative(s).

In the event that a property is cited with an easement violation (Easement Program Policy #7: *Easement Violations*), no additional project review requests will be considered until the violation is addressed to the satisfaction of DHR and the Board (if applicable).

Property owners are 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.

PROJECT REVIEW PROCESS

- a. All requests for review and approval as required by the terms of the easement must be submitted in writing to DHR's Easement Program as follows:
 - (i) Hard copy requests should be sent to:

Easement Program Director
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

- (ii) Electronic format requests should be sent to the attention of the Easement Program Director: [first name.last name]@dhr.virginia.gov
 - (iii) Easement property owners seeking to utilize the rehabilitation tax credit program must file all project review requests according to tax credit program policies (see <https://www.dhr.virginia.gov/tax-credits/rehabilitation-tax-credits-forms/>). An additional copy of all required materials must be submitted for inclusion in the easement property file. Once submitted to the Tax Credit Specialist, Easement Program staff may elect to complete a single review on behalf of both program areas.
- 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. 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 the submission and include all applicable supplemental materials.
- d. DHR shall endeavor to respond to a written request for review within 30 business days of receipt of such request, unless otherwise specified by the terms of the applicable easement. However, DHR is not required to issue an approval or denial within that 30 business day period. Circumstances warranting a delay to DHR's review include, but are not limited to, the following:
 - (i) Receipt of additional materials or information requested in writing by the Easement Program staff;
 - (ii) Archaeological survey and/or investigation as determined by Easement Program staff archaeologists;
 - (iii) A site visit as determined by Easement Program staff;
 - (iv) Consultation with the property owner and his/her representatives or consultants regarding the proposed project;
 - (v) 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);
 - (vi) Complexity of the request;
 - (vii) Extent to which the request is consistent with the terms of the easement; and
 - (viii) Extent to which the request is consistent with the applicable *Secretary of the Interior's Standards* as set forth below in Paragraph e.
- e. Any work requiring the Board's approval will be reviewed by the Easement Program staff according to the terms of the applicable easement and by applying the *Secretary of the Interior's Standards*. The *Secretary of the Interior's Standards* 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).
- f. In the event of a written denial issued by DHR, the property owner may request that the Board review the application. The Board, however, is not obligated to review any application.

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 Preservation Incentives Division at: <https://www.dhr.virginia.gov/easements/easement-stewardship/>

Electronic mail addresses for staff are as follows: first name.last name@dhr.virginia.gov

[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; Revised December 8, 2022.]