



PRESERVATION
MARYLAND

Preservation Maryland Easement Program

Goals and Policies

Approved by the Board of Directors: February 21, 2007

Mission and Purpose

Preservation Maryland is dedicated to preserving Maryland's historic buildings, neighborhoods, landscapes, and archaeological sites through outreach, funding, and advocacy. The Preservation Maryland Easements Program will further that mission through the carefully considered acceptance of easements when such an action provides necessary and permanent protection of an historic resource. Easement donations will serve as a tool for preservation as well as an important component of Preservation Maryland's planned giving and "gifts of heritage" efforts.

Policies

I. Administration

- a. The Easements Program is administered by the standing Easements Committee of the Preservation Maryland Board of Directors.
- b. Day-to-day administration of the Easements Program is performed by Preservation Maryland Staff.
- c. Preservation Maryland shall annually review its capacity to administer, monitor, and enforce its current easement holdings in order to responsibly accept new easement donations.
- d. Preservation Maryland may, at its discretion, enter into co-holding arrangements with other qualified easement holding organizations including but not limited to the Maryland Historical Trust, the Maryland Environmental Trust, and the Eastern Shore Land Conservancy.

II. Conflict of Interest

- a. All decisions regarding the acceptance, monitoring, and enforcement of easements shall be made in accordance with Preservation Maryland's Conflict of Interest Policy.

III. Project Selection and Criteria

- a. All proposed easements shall be individually planned and evaluated.
 - i. Before accepting any easement Preservation Maryland will determine if the proposed easement would be more appropriately held by another qualified organization.
- b. All accepted easements shall:
 - i. be consistent with Preservation Maryland's Mission Statement.
 1. All accepted easements will protect properties listed in or eligible for the National Register of Historic Places;
 - ii. be evaluated in terms of Preservation Maryland's capacity to administer, monitor, and enforce the proposed easement;
 - iii. be evaluated in terms of the relative significance of the resource;
 - iv. demonstrate a clear public benefit, which shall be documented at the time of easement donation;
 - v. be reflective of a demonstrable preservation goal, i.e., a response to a risk to an historically important structure or site, land area, or archaeological site such as pending change of ownership, development, or local planning decision;
 - vi. be legally enforceable; and
 - vii. conform with §170(h) of the Internal Revenue Code.
- c. Proposed easements will be evaluated for risk based upon:
 - i. the current condition of the property;
 - ii. the future use and probability of future maintenance of the property;
 - iii. the probability of litigation; and
 - iv. the probability of extinguishment.
- d. Preservation easements will not be marketed to property owners based upon their tax benefits.
- e. The Heritage Fund Committee may require easement donation as a condition of a grant award only if such an easement is accepted by the Easements Committee.

IV. Practices

- a. Each easement shall be individually drafted, documenting the purposes of the easement, the responsibilities of the donor and donee, and the uses and activities permitted by the easement.
- b. Each easement shall be reviewed by legal counsel.
 - i. Preservation Maryland shall secure financial, real estate, and tax expertise when necessary.
- c. Preservation Maryland shall not provide legal advice to property owners.
- d. The donor shall demonstrate clear title and secure a complete property description for each property.
 - i. The donor shall ensure proper mortgage subordination to prevent extinguishment.

- e. Prior to the acceptance of any easement, Preservation Maryland shall document the condition of the property, the characteristics that make the property eligible for the National Register of Historic Places, and the preservation goals that will be achieved by the acceptance of the easement.
 - i. Documentation shall be performed by Preservation Maryland staff or a qualified consultant selected at Preservation Maryland's discretion.
 - ii. Baseline documentation shall include but not be limited to:
 - 1. Digital and film photographs of all exterior elevations, significant details, environmental setting, and outbuildings.
 - 2. Site plan.
 - 3. Detailed written building description and its condition.
- f. All documentation regarding easements will be retained in conformance with the Preservation Maryland Record Retention Policy.
- g. Fees
 - i. Preservation Maryland will adopt a fee structure, to be defined in its procedures and made available to potential easement donors, that includes but is not limited to costs associated with baseline documentation, monitoring, and legal fees.
 - ii. Fees may be modified or waived at the discretion of the Easements Committee.
- h. The donor shall be responsible for the acquisition of a qualified appraisal.
 - i. The donor shall demonstrate that the appraiser meets any standards or requirements established by the Internal Revenue Service.
- i. Preservation Maryland and the donor shall sign a letter of agreement certifying that Preservation Maryland is a qualified easement holding organization.
- j. Preservation Maryland shall be prepared to enforce the easement by:
 - i. annually inspecting each easement property for violations of the terms of the easement, and taking steps to correct those violations.
 - ii. reviewing any proposed alterations to those portions of the property protected by the easement, in accordance with the Secretary of the Interior's Standards for Archaeology and Historic Preservation, as amended and annotated (48 FR 44716).
 - iii. pursuing litigation as necessary to uphold the terms of the easement.
 - 1. Preservation Maryland shall not initiate a lawsuit or legal action without formal approval by the board of directors.
 - 2. Potential legal action will be evaluated on a case by case basis in terms of likelihood of success, risk, costs, and benefits.
- k. After entering into an easement agreement, Preservation Maryland and the donor may agree to amendments or discretionary consents provided that such a modification is not inconsistent with the purposes of the easement.