

# Maryland Historical Trust Historic Preservation Easement Program

Report to the Chairmen of the  
Senate Budget and Taxation Committee  
and  
House Appropriations Committee

December 1, 2018



*James Drane House  
Garrett County*



*Sandy Point Shoal Lighthouse  
Anne Arundel County*



*Lloyd Street Synagogue  
Baltimore City*



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## Message from the Chairman

Maryland has always been a national leader in the development and use of historic preservation and conservation easements. The Maryland Historical Trust (MHT) was an early adopter of this stewardship tool and began soliciting easements on historic properties soon after its inception in 1961. While our easement program has grown and changed over time, the MHT Board of Trustees continues to recognize the importance and value of this mechanism for protecting buildings, sites, and landscapes over the long term.

The following report provides a snapshot of where MHT's easement program stands today, documents where the program has been, and charts a new path for the future. Development of the report would not have been possible without the thoughtful counsel provided by a working group of MHT Board members. Thank you to Joshua D. Brown, Dr. Julie Hevener Ernstein, Sarah Kunkel Filkins, G. Bernard Callan, and Kirsti Uunila who worked in concert with MHT staff to craft easement program policy and process changes designed to establish a sustainable future for the program.

Thanks are also due to the MHT and Office of the Attorney General staff who spent considerable time on background research, data

analysis, outreach, and drafting and design of the final report document, including Kate Bolasky, Paul Cucuzzella, Michael Day, Rieyn DeLony, Margaret Drake, Elizabeth Hughes, Collin Ingraham, Allison Luthern, and Anne Raines.

Finally, I would like to recognize the many preservation partners from across the state who provided input regarding the role of historic preservation easements as a stewardship tool in their communities. Our work in preserving Maryland's irreplaceable heritage would not be possible without their support.

Brien J. Poffenberger  
Chairman  
Maryland Historical Trust Board of Trustees

# Executive Summary

In the *2018 Joint Chairmen's Report on the Fiscal 2019 State Operating Budget (SB 185) and the State Capital Budget (SB 186) and Related Recommendations* (pages 25-26), the General Assembly directed the Maryland Department of Planning to work with the Maryland Department of Budget and Management and preservation advocates to identify a sustainable strategy for the long term administration of the Maryland Historical Trust's historic preservation easement program. This strategy is to address recommendations regarding new easement acceptance policies, changes to program staffing, and the potential dissolution or modification of existing easements. In addition, the General Assembly requested that the final report include background information on the history of the program, detailed data on the number of properties protected under easement, vacancy rates of properties under easement, funding history, staffing history, and the experience of neighboring states in administering similar programs.

The Maryland Historical Trust (MHT), Maryland's State Historic Preservation Office (SHPO) and a division of the Maryland Department of Planning, has managed the historic preservation easement program for over 50 years. The program has evolved over time

in response to changing Internal Revenue Service (IRS) rules, the increasing sophistication of preservation best practices, and experience gained over time. Reconsideration of easement program policies and staffing needs provides an opportunity to improve efficiency and overall performance. Feedback received from MHT's preservation partners in response to this report requirement and as part of the 2018 state historic preservation plan update have shaped the policy changes put forward here and will continue to inform changes to the easement program beyond the boundaries and time constraints of this report.

Changes to the MHT historic preservation easement program outlined in this report include two main shifts in easement acceptance policy going forward. One, applicable to recipients of State funding, is a move away from perpetual historic preservation easements to term limited easements based on the amount of State funding received. The second is that for most programs and sources, MHT will restrict the properties on which it accepts historic preservation easements to those that are individually eligible for or listed on the National Register of Historic Places. In this way, MHT will seek to reduce the number of properties on which MHT takes a historic

preservation easement and focus its stewardship efforts more strategically.

Recommendations included in this report are forward-looking and will impact how MHT carries out the program in the future. The rebalancing of the existing portfolio of preservation easements will be undertaken in a manner that is fair, reasonable, and consistent with MHT's historic preservation mission.

## Maryland Historical Trust

### Mission Statement

The Maryland Historical Trust (MHT) is the state agency dedicated to preserving and interpreting the legacy of Maryland's past. Through research, conservation, and education, the Maryland Historical Trust assists the people of Maryland in understanding their historical and cultural heritage. Part of the Maryland Department of Planning, the Maryland Historical Trust serves as Maryland's State Historic Preservation Office (SHPO) pursuant to the National Historic Preservation Act of 1966. In addition to its administrative office in Crownsville, the Maryland Historical Trust includes the Jefferson Patterson Park & Museum in St. Leonard, Maryland, which houses the Maryland Archaeological Conservation Laboratory.

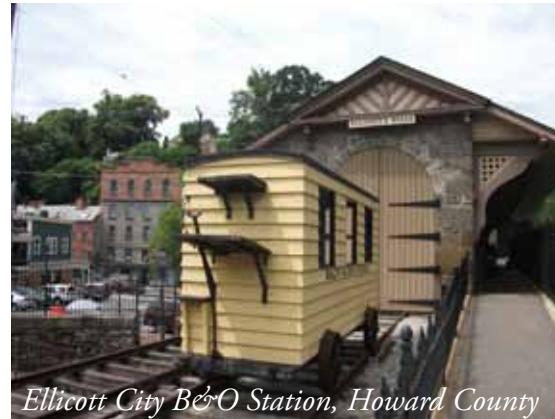


*West St. Mary's Manor, St. Mary's County*

## Introduction

The Maryland Historical Trust holds 706 perpetual historic preservation easements and similar preservation instruments, which collectively protect over 924 properties and 7,720 acres of land. These properties are a sample of the many types of historic structures that populate Maryland's cities, towns, waterfronts, and rural landscapes, including train stations, lighthouses, bridges, skipjacks, barns, schools, churches, houses, industrial buildings, and more. Since these 706 properties are protected by easements, they will be preserved in perpetuity through the stewardship of their owners in collaboration with MHT. This legal vehicle, the perpetual preservation easement, is the highest possible level of protection for a historic property.

Many MHT easement properties are National Historic Landmarks, reflecting their pivotal role in the history and development of our nation. These include the Ellicott City B&O Railroad Station, the first railroad station built in the United States; the house where Mary Young Pickersgill and her daughter finished sewing an American flag that would soon fly over Fort McHenry, inspiring Francis Scott Key to pen "The Star-Spangled Banner"; and the Kennedy Farmhouse, the headquarters from which John Brown and his associates planned and launched their raid



*Ellicott City B&O Station, Howard County*



*Kennedy Farm, Washington County*



*Flag House, Baltimore City*



*Third Haven Meeting House, Talbot County*

on Harpers Ferry in 1859. MHT holds easements on some of Maryland's oldest treasures, such as the Third Haven Meeting House in Easton, built by the Quakers in the 1680s and enlarged before 1800; Sotterley in St. Mary's County, the only tidewater plantation in the state open to the public, which is dated definitively to the first quarter of the 18th century; and Schifferstadt in Frederick, built in the 1740s and embodying the traditions of our

state's early German immigrants. Still other protected properties are Maryland icons, instantly recognizable to locals and visitors alike as symbols of our state: Baltimore's Washington Monument, the nation's first formal monument to George Washington; the Thomas Point Shoal Lighthouse, the only screwpile lighthouse on the Chesapeake Bay remaining on its original site; and the William B. Tennison, representing the log-hulled sailing vessels



*Sotterley, St. Mary's County*

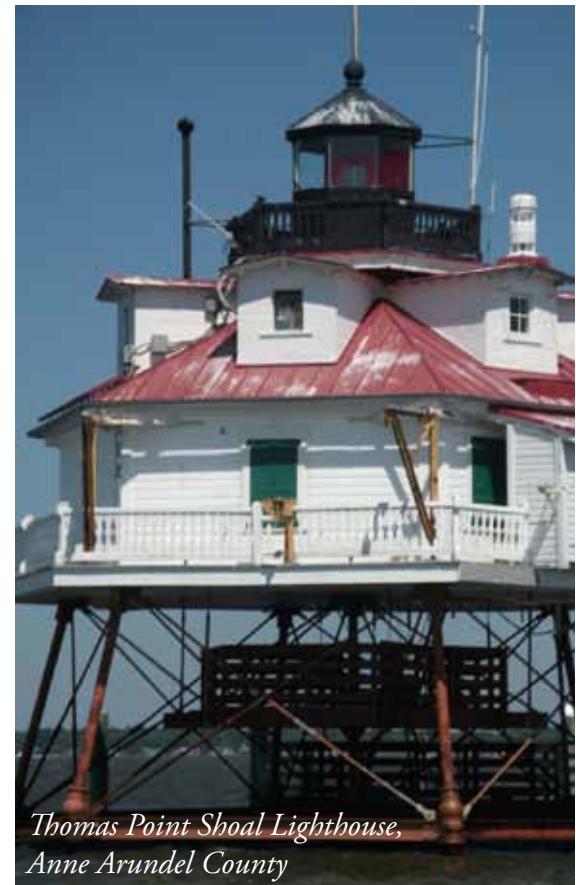
known as “bugeyes” which were long used for oyster dredging on the Bay. These widely revered historic properties are authentic pieces of our past. They are among our most precious non-renewable resources: once they are lost, they are lost forever.

Holding preservation easements is one way that MHT fulfills its mission to protect Maryland’s heritage. Easements provide a public



*Washington Monument, Baltimore City*

benefit by ensuring that significant historic properties are preserved and are accessible to the public even though they are privately owned. Easements encourage private stewardship, assisted by MHT’s oversight and technical assistance - working together to ensure that properties maintain their authenticity and integrity, and thereby their designation on or eligibility for the National Register of Historic Places. In some cases, MHT’s



*Thomas Point Shoal Lighthouse,  
Anne Arundel County*

easements also assist the State in safeguarding investments - often substantial - in historic properties over the long term.

## I. What are historic preservation easements?

Many types of easements are defined in property law. In the most general terms, an easement is a right to use a property held by an entity who is not the property owner (a “non-possessory interest”). Utility or access easements are perhaps the most familiar form of easement: the power company may hold an easement over private property for the purpose of running power lines, or a homeowner may have an access easement on her neighbor’s property to allow her to walk across the neighbor’s property to the beach. Other easements might allow a non-owner the right to develop air space over a building, might restrict a property to a particular use, or might allow a telecommunications company the right to install equipment on a rooftop they do not own.

Historic preservation easements, such as those held by MHT, are often identified with conservation easements since they are addressed together under tax law. Conservation easements may protect and preserve open space, natural areas, recreational areas, farmland, scenic viewsheds, or historic lands or buildings. In Maryland, several State agencies hold these sorts of preservation easements. The Maryland Environmental Trust (MET) and the Maryland Agricultural Land Preservation

Foundation (MALPF) hold “conservation easements” (further addressed in Appendix I), while MHT holds historic preservation easements, which are more narrowly defined to specifically protect buildings, sites, structures, and landscapes of significance to the history or prehistory of our state.

An easement is granted by the property owner to the easement holder via a legal agreement - generally a Deed of Easement - that is recorded in the land records of the jurisdiction in which the property is located. In the case of MHT’s preservation easements, these are written to be perpetual in nature, which means that the easement survives all changes in ownership and all subsequent property owners are bound by the terms of the easement. However, a preservation easement can be drafted to be time-limited. “Term” easements are enforceable for a fixed period of time and thereafter have no encumbering effect on the property. Like a perpetual easement, a term easement is recorded in the land records. Also like a perpetual easement, a term easement is enforceable against subsequent owners, but only for the term of the easement.

Since MHT’s easements focus on preservation, the easement language focuses on ensuring that the historic character and integrity of the property is preserved. A Deed of Easement may only be recorded on real property, which accounts for the vast majority of the

preservation instruments held by MHT. For properties that are not real property but which require protection, such as ships, lighthouses, and bridges, other types of instruments may be employed, including preservation agreements, ships’ mortgages, and covenants. These contracts are not able to be recorded in the land records, but are nonetheless legally enforceable and are administered through MHT’s easement program. MHT administers 27 such instruments.

MHT’s first easement was recorded in 1969. Over the years, the standard language of MHT’s Deeds of Easement has evolved to keep up with changes in tax law and accepted legal best practices. The current standard easement language was drafted by MHT’s legal counsel with the Office of the Attorney General and was approved by MHT’s Board of Trustees. The current standard easement language contains the following major provisions:

- The property owner must maintain the property in good condition.
- The property owner must apply to MHT for permission to make changes to the property; requests are reviewed by the Director for adherence to the Secretary of the United States Department of the Interior’s *Standards for the Treatment of Historic Properties* (see pages 46-47).
- The property owner must maintain insur-

ance on the property.

- The property owner must provide some level of public access to the property.
- MHT must review proposed changes to the property and communicate the Director's decision within a specified period of time (current standard is 45 days).
- MHT has the right to inspect the property.
- MHT has the right to enforce the easement.
- The property owner must inform MHT of any transfer of the property prior to the closing and inform potential purchasers of the existence of the easement.

In addition, the easement will specify if there are any construction activities that are specifically permitted. MHT's easements do not specifically restrict the types of uses that may occur on the property.

An MHT Deed of Easement also defines the area of property and the specific resources protected under the easement. MHT's easements may, at MHT's discretion, protect both the exterior and interior of all buildings on a property as well as any archeological resources, and the specific coverage is stated in each easement. To this end, the Deed of Easement generally contains three exhibits: a property map, a written metes-and-bounds description, and photographic documentation of specifically protected structures and features.



*MHT's first easement, recorded in 1969, protects the John Brewer Tavern at 37 Cornhill Street in Annapolis. Dating from the 1770s, this proud brick rowhouse exemplifies the colonial-era architecture of the capital's historic center and retains a remarkably intact period interior.*

## II. History of MHT's historic preservation easement program

MHT was established in 1961 by the Maryland General Assembly. From its inception, MHT was given the power to accept from the State transfers of real property and monies to carry out the purposes of the Trust which were to "acquire, preserve, and maintain historic, aesthetic and cultural properties." Responsibility for carrying out this authority rested with the MHT Board of Trustees, as it does today.

As early as 1962, property owners sought to donate historic property to MHT as a protection strategy for historic sites threatened by development. By 1964, MHT supported capital improvement of historic properties either through purchases with funds released by the Board of Public Works or by providing support and advice to property owners or local preservation partners. Then, the State budget for fiscal year 1967 created a three year "revolving fund" which permitted MHT to select, purchase, and restore historic buildings to be re-sold to responsible purchasers with protective covenants. This marked the beginning of the MHT easement program, albeit in a different form than it exists today.

In 1971, Chapter 433 of the Laws of Maryland established that MHT's purview express-

ly included holding historic preservation easements. Throughout the 1970s, MHT actively purchased easements on historic properties, contingent upon the approval of the Board of Public Works. In some cases, these purchases were designed to protect threatened historic properties. In others, private individuals sold easements to MHT in exchange for funds used to make improvements to their properties.

The concept of extracting a historic preservation easement as a condition of the award of State funds was addressed in 1968 by MHT Board member Louise Gore, a Senator from Montgomery County, who stated that MHT should have some control over State funds such that use of funds will "assure authentic and worthwhile projects." Conveyance of an easement as a condition of State grant and loan awards became a standard practice in the 1970s in order to ensure that MHT may "protect the State's investment in ... property."

Various iterations of a standard easement document were reviewed and approved by the Board of Trustees throughout the 1970s, as drafted with the assistance of the Office of the Attorney General. Provisions requiring public access, subordination of mortgages and prior liens, title documentation, and insurance all evolved over time. In 1975, the Board delegated to the MHT Director the authority to enforce easements and covenants held by



*River House, also known as the Denton-Weeks House, is located within Chestertown's National Historic Landmark District. It was deeded to MHT by Marion Weeks in 1967, shortly before her death. MHT restored the house before selling it, under easement, to private owners in 1993. This handsomely constructed dwelling was built for a well-to-do merchant in the 1780s during the peak of Chestertown's prosperity as a port town.*



*The interiors of River House illustrate the transition between Georgian and Federal styles. In the 1920s Henry Francis du Pont purchased and removed the wood paneling and decorative elements from one of the second floor rooms for installation as the "Chestertown Room" at Winterthur, his estate near Wilmington, Delaware, which is now a major museum of American decorative arts. Today, MHT's preservation easement helps to ensure that the remaining interiors are protected in place.*

MHT; thereafter, statewide promotion of the MHT easement program began.

While MHT gift and extracted easements were typically perpetual in nature, exceptions were made for small grants on a case by case basis. For example, the Board approved a 20-year maintenance covenant in lieu of a perpetual preservation easement in conjunction with a fiscal year 1976 grant of \$2,500 to Godlington Manor. At the time, federal grant funds for historic preservation activities required the conveyance of easements with a specified term. In an effort to ensure consistency with State grant programs, the MHT Board resolved to require that easements for National Park Service grants be perpetual in nature, with the exception that term easements could be considered by the Board in cases of modest grants.

By 1981, concerns began to be raised about how federal tax law - specifically, the Tax Treatment Extension Act of 1980 - might affect easements gifted to MHT. In particular, to qualify for the applicable federal tax deduction, a gift easement had to: (i) be in perpetuity; (ii) be given to an government agency or publicly supported charity organization; and (iii) encumber a property either listed on the National Register of Historic Places or located in a registered district and certified by the Secretary of the Interior as being of significance to the district. By 1982, the Department of

Justice and the IRS were investigating charitable donations of term easements, a practice which conflicted with the provisions of the 1980 Tax Act and which would lead to the recapture of tax deductions by the IRS. In response, MHT sought to convert its term easements (then about 10% of the overall portfolio) to perpetual easements. In this context, the acquisition of term easements by MHT was subsequently abandoned.

Throughout the 1980s, the MHT Board and Director considered and acted upon various improvements to the easement program, including the establishment of an in-house easement committee. An Ad Hoc Committee on Easements was established by the Chairman in 1983 with the purpose of conducting a comprehensive review of MHT's easement policy and procedure. As a result of the Committee's work, minimum standards of acceptance were adopted, the standard easement document was revised and updated, monitoring and inspection practices were developed, easement amendment policies and procedures were created, and easement breach enforcement strategies were established.

A new mechanism by which MHT began to acquire historic preservation easements was introduced by Senator John "Jack" Cade in the 1980s. A Senator from Anne Arundel County and an MHT Board member, Senator Cade served for many years as a member

# Charlestown, Cecil County: Local Preservation Efforts Bolstered by MHT Easements

## by Ron Edwards, Chairman, Historic District Commission, Town of Charlestown

### I. 107 (Tory) House (Circa 1810)

*In the 1970's as a result of a group of Charlestown citizens who formed the organization "Colonial Charlestown Inc." and the help of MHT, this deteriorated historic house was saved. Colonial Charlestown, Inc. is a 501(c)(3) organization of local resident members, none of whom were professional preservationists. The building was preserved successfully with the help of the MHT Easement Program and guidance of MHT personnel. The structure is now used as the town museum and educational events and tours, especially for school children.*

107 (Tory) House



*tors would have purchased it at a low cost, torn it down due to its deteriorated condition, and built a new structure. In 1995 the property was purchased and a restoration project was initiated under the guidelines and requirements of the MHT Easement Program. Although neglected, the mid 18th century architectural features were still intact. Today several tours and educational groups visit each year. This to a large part was made possible by the MHT Easement Program.*

### II. Indian Queen (Circa 1740– 1750)

*The Indian Queen is another preserved historic structure under the MHT Easement Program. It is well maintained as a private residence and is a historic asset to the town and the State of Maryland.*

### III. Red Lyon Tavern (Circa 1740—1750)

*The Red Lyon Tavern was one of the first properties purchased by MHT in the formation of the MHT Easement Program. Had MHT not purchased the property, this most important historic property would have been lost. Real estate inves-*



Red Lyon Tavern

### IV. Cecil Hotel (Circa 1810)

*Through a loan with MHT for the Town of Charlestown's purchase of the property, it was placed under easement to MHT. Unfortunately, after organizing a project scope the economic downturn occurred and funds became unavailable to continue with the preservation. Shortly after this, the town elected not to retain ownership and sold the property at a depressed price, albeit with the easement protections in place. Today, the property is again being put on the market and a young couple is very interested in purchasing it. They are aware of the effort required, but they will need the help and support currently available through the MHT Easement Program.*

of the Senate Budget and Taxation Committee (1981-1996) and as the Senate Minority Leader (1984-1996). In 1983, he introduced an amendment to the capital budget bill that would require the donation of a historic preservation easement to MHT on eleven historic properties that were awarded funding through that year's capital bond bill. Thereafter, this requirement became standard consideration for all capital bond bills impacting historic properties.

As the inventory of MHT easements grew, the workload associated with inspection of these properties also grew. Inspections in the 1980s and 1990s were conducted by MHT staff and by volunteers serving as members of the MHT Board's County Committees and local Historic Preservation Commissions. Use of volunteer inspectors initially appeared to be an effective strategy, but over time it became apparent to MHT for varied reasons that the practice should be discontinued. Volunteers prepared incomplete and inconsistent easement inspection reports which compromised MHT's ability to enforce breach findings. The inability of volunteers to provide on-site technical assistance limited their ability to identify symptoms of, or solutions to, building failures. The ultimate dissolution of the County Committee system and the difficulty of recruiting Historic Preservation Commission members to perform a service - for which they received no financial support from the



*The Babe Ruth Birthplace and Museum, located in the Ridgely's Delight neighborhood near Oriole Park at Camden Yards, was one of MHT's earliest bond bill easements, recorded in 1986.*

State - limited the volunteer pool.

In 2001, creation of the Preservation Incentives for Local Governments (PILG) Program seemed to offer a solution to MHT's challenges in effectively conducting easement property inspections. Under this program, MHT was able to launch several initiatives thanks

to a \$2.5 million appropriation in support of Non-Capital Historic Preservation grants and related programs. The PILG initiative funded county-sponsored preservation efforts and staffing. In exchange, participating jurisdictions developed local historic sites survey and evaluation plans, conducted inspections of easement properties located within the ju-

risdiction, and prepared new and updated existing Maryland Inventory of Historic Properties forms. State funding for the program was not sustained, however, and within three years the PILG program ceased to exist. The short-lived nature of the program provided insufficient time to fully evaluate the success of the initiative.

By 2003, it became clear that MHT needed a permanent, full-time easement inspector with professional qualifications to support the program. State support for this position was secured in 2006, but was ended after the position became vacant in 2008; the vacant position was eliminated in the second round of fiscal year 2009 budget reductions. Funding for a contractual easement inspector position was provided by the MHT Board of Trustees in 2009 as an interim measure, pending reinstatement of a permanent easement inspector position. The MHT Board continues to support this contractual position today.

Also in 2009, the MHT Board began funding a part-time easement processor position. The purpose of this position, typically filled by a paralegal, is to process new and modify existing easements. The need for the position had been exacerbated by the decrease in legal support available to MHT resulting from its transfer from the Department of Housing and Community Development to the Department of Planning in 2005. Cre-

ation of a dedicated easement processor position at MHT, who works in concert with the Office of the Attorney General, significantly improved turn-around times for the creation and modification of easements.

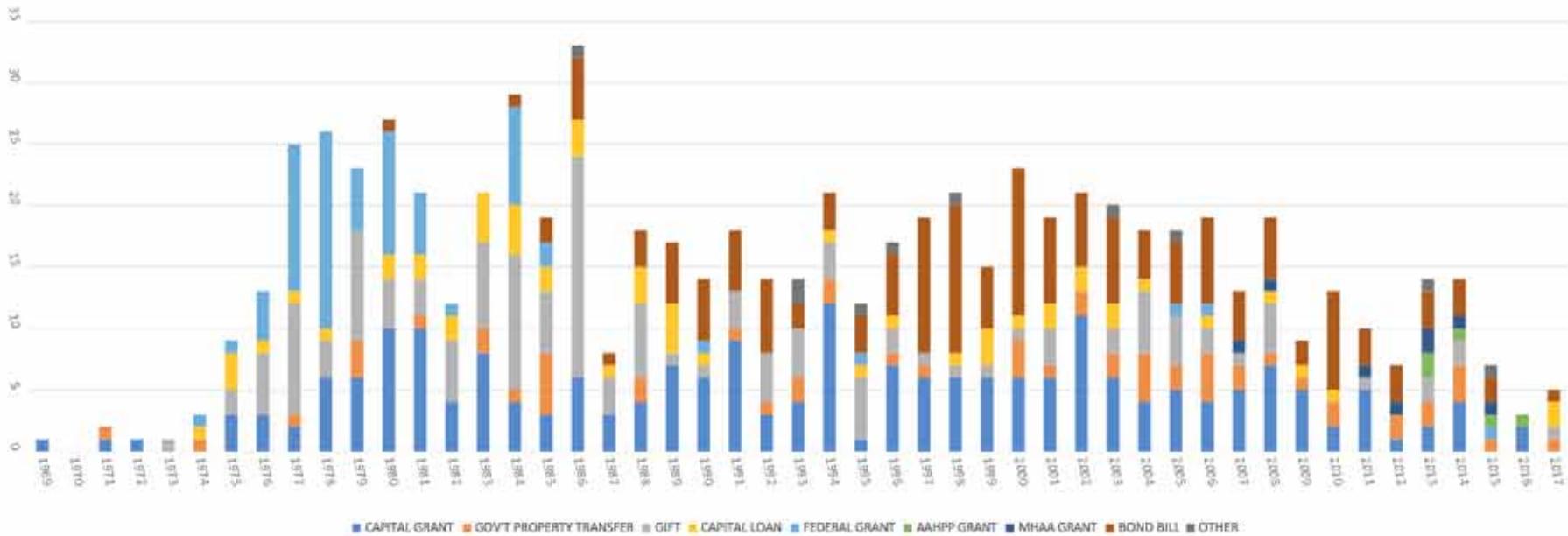
Faced with staffing challenges, and finding itself statutorily required to take easements in many situations, MHT advocated for more flexibility in the acceptance of easements on historic properties in the early 2000s. During the 2009 legislative session, MHT requested the inclusion of language in the Capital Budget Bill that would limit the conveyance of easements to MHT. This language stipulated that MHT would not take an easement on a property if MHT determined that the property “is not significant, is significant only as a contributing property to a historic district listed in the Maryland register of historic properties, is a type that is already adequately represented among the Trust’s existing easement properties, or is already subject to a perpetual historic preservation easement acceptable to the Trust.”

Five years later, in 2014, MHT sought to further refine the Capital Budget Bill language, adding that MHT would decline to take an easement on a property in those cases when “conditions peculiar to the property make an easement impractical.” Also at this time, language was added to the Capital Budget Bill clarifying that appeals to a perpetual preser-

vation easement determination made by the MHT may be made to the MHT Board of Trustees. These changes, initiated by MHT, resulted in a significant decrease after 2011 in the number of easements acquired as a result of bond bill awards, as evident in the chart at right.

In the spring of 2017, at the request of the Director, MHT staff began meeting with the Office of the Attorney General to review MHT’s approach to its historic preservation easement program. Staff began rebuilding and updating the easement database, consulted with other State Historic Preservation Offices with similar programs, and brainstormed policy and process changes. After the publication of the 2018 Joint Chairmen’s Report which directed MHT to undertake this study, an Ad Hoc Committee of MHT’s Board of Trustees was formed in order to assist the staff working group in examining easement program policies and preparing the JCR report.

## MHT Easements Conveyed by Year, 1967-2017



The chart above shows the number of easements recorded each calendar year since the inception of the easement program, with colored bars indicating the source of the easements. The chart illustrates a few key trends:

- A significant decrease in the total number of easements recorded each year over the past decade, due to program changes initiated by MHT.
- Federal grants resulting in a large number of easements in the 1970s and early 1980s, but dropping off since then.
- Bond bill easements representing a large proportion of new easements in the late 1980s through 2000s.
- MHT Capital Grant easements creating a substantial baseline of new easements during the years in which the program was funded.
- Number of new donated easements dwindling over time from a peak in 1986.
- A modest number of easements obtained via relatively new funding mechanisms: African American Heritage Preservation Program (AAHPP) grants and Maryland Heritage Areas Authority (MHA) grants.

### III. How does MHT acquire historic preservation easements?

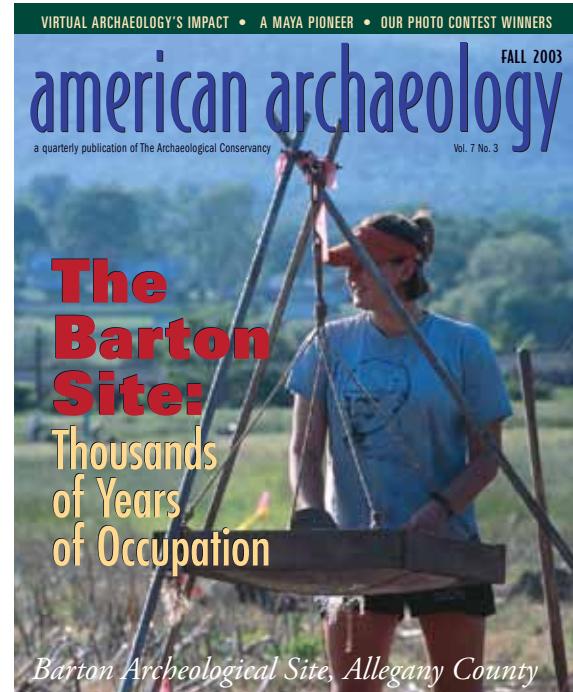
MHT acquires easements in a variety of ways including: (1) private owner donations; (2) as mitigation for effects of State or federally funded projects (“Section 106” review); (3) through State or federal property transfers; and (4) as a requirement of State grant, bond bill, or loan funding. All decisions regarding the acceptance of an easement donated by a private owner are made by the MHT Board of Trustees. The authority to accept all other types of easements has been delegated by the Board to the MHT Director.

MHT’s approach to easement acceptance has evolved over time. In the early years of the easement program, members of the Board’s County Committees would identify priority properties and would approach property owners to discuss and negotiate easements. In some cases, MHT would purchase easements, or in other cases would purchase a historic property in order to re-sell it with a preservation easement in place.

In recent decades, opportunities for MHT to accept easements have been determined by the awarding of State or federal funding to property owners, or the transfer of properties out of State or federal ownership. Since these opportunities are usually not MHT-

driven, MHT has limited opportunities to actively pursue a specifically defined easement portfolio. Nonetheless, MHT has continued to adhere to the minimum standards guiding decision-making on easement acceptance that were established by the Board in 1983. These standards are intended “to ensure that the Trust’s efforts are targeted to a consistently high quality of historical, aesthetic, and cultural property, and not diluted through the administration of easements on properties of marginal preservation value”.

In addition, MHT has discretion to determine the easement coverage (exterior, interior, and / or archeological resources) appropriate to each property. The significance and integrity of a specific property inform the decision about the extent of easement coverage, with the goal of protecting the characteristics that cause it to be listed on or eligible for the National Register. For example, if a building has an intact historic exterior but its interior has been greatly compromised, MHT would be unlikely to require an easement on the interior. The regulations and policies guiding easement acceptance at the time of publication of the Joint Chairmen’s Report for the 2018 session of the General Assembly (March 27, 2018), are described on the following pages.



*Barton Archeological Site, Allegany County*

*Interior features of a building and archeological remains on a site are often protected under easement, since they contribute to the historical and cultural significance of the property.*



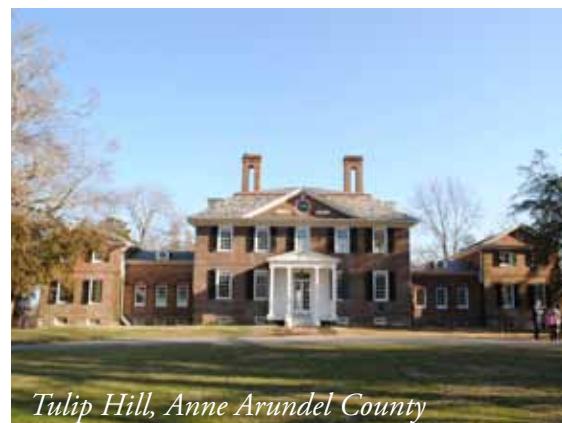
*Peabody Library, Baltimore City*

## A. Gift easements

MHT will consider the acceptance of a privately donated easement provided that the property, building, or structure is listed or eligible for listing in the National Register of Historic Places, or is located in and contributes to a locally designated or National Register listed historic district. MHT may, at its discretion, decline to accept an easement if a property is not individually eligible for listing, if it is of a type that is already adequately represented in MHT's current easement portfolio, or if certain other exclusions apply. If certain criteria, as established by the IRS (see Appendix II), are met, the property owner may be eligible for a Federal income tax deduction equal to the value of the easement.



*Captains' Houses, Centreville, Queen Anne's County*



*Tulip Hill, Anne Arundel County*



*Weaver-Fox House, Carroll County*

## B. Easements as conditions of grants and loans administered by MHT

In general, conveyance of an easement is a requirement for receipt of State funding that benefits historic properties, as a means to protect the State's investment and ensure historic preservation.

*MHT Capital Grants have funded over 500 critical preservation projects since 1978. All assisted properties, including those shown here, are now protected with MHT easements.*

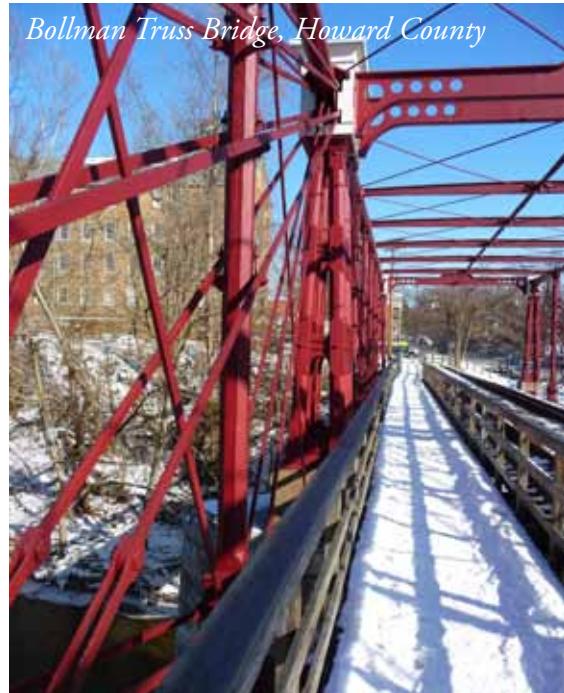
*Aberdeen B&O Station, Harford County*



### 1. MHT Historic Preservation Capital Grants.

MHT's Capital Grant Program was funded nearly every year from 1978 to 2009; funding was restored to the program in 2018. Only projects at properties listed in or eligible for the National Register of Historic Places can be funded through the program. MHT regulations require conveyance of a perpetual preservation easement on all properties assisted under the program. See Code of Maryland Regulation (COMAR) 34.04.01.09D(1).

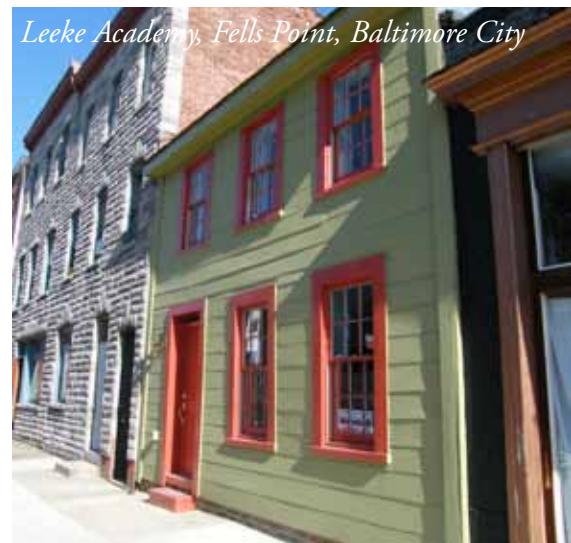
*Bollman Truss Bridge, Howard County*



*Bromo Seltzer Tower, Baltimore City*



*First National Bank, Allegany County*



*Leeke Academy, Fells Point, Baltimore City*



*Whitehaven Hotel, Wicomico County*

## *2. MHT Historic Preservation Capital Loans.*

Established in 1973, property eligibility and easement conveyance requirements for loans funded by MHT's Capital Loan Program are the same as for MHT Capital Grants. See COMAR 34.04.02.08C(4).



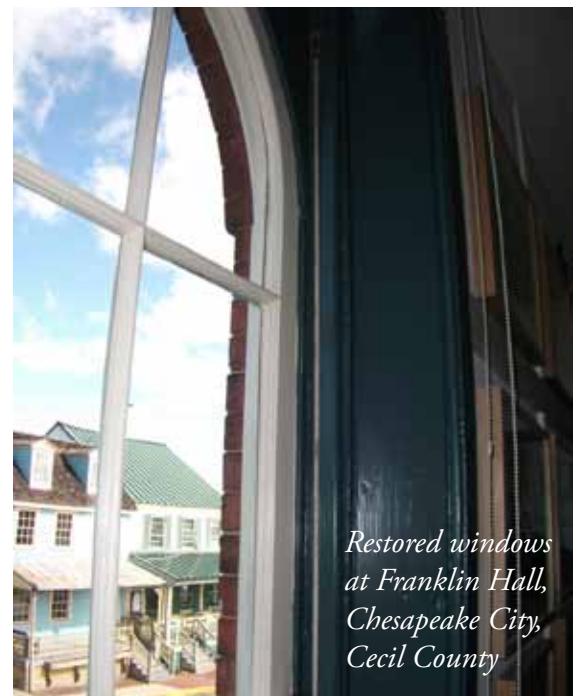
*Franklin Hall's windows at Howard & Dean Millwork, Chesapeake City*



*Junior No. 3 Firehouse, Allegany County*



*Junior No. 3 Firehouse, Allegany County*



*Restored windows at Franklin Hall, Chesapeake City, Cecil County*

## Charles H. Chipman Cultural Center, Salisbury, Wicomico County: Saved with MHT loan funds, protected in perpetuity with an MHT easement

The John Wesley Methodist Episcopal Church, now the Chipman Cultural Center is the oldest African American Congregation site in the region, and the oldest standing African-American church on Delmarva. The building dates to 1837, when five local freedmen purchased property and then built a structure for use as a church, school and meeting place. It is historically significant due to its 1800s period architecture and because it was a center of life of the local African American community for over a century. The building was used as a church until the 1960s, at which time local educators Charles and Jeanette Chipman purchased the property to prevent its destruction. In 1985 Mrs. Chipman deeded it to the Newtown Association of the Newtown Historic District. Then the Newtown Association deeded the property to the newly formed Chipman Foundation. This is where the Maryland Historical Trust came first came in. The building had been condemned because it had fallen into such disrepair. With support from MHT the building was extensively renovated, and it reopened as the Chipman Cultural Center in 1994.

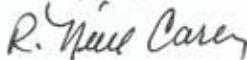
Thanks to MHT funding, visitors can enjoy the variety of educational displays and cultural events highlighting our area's rich African-American Heritage. The building is now a cultural center and small museum honoring the history of African-Americans of the Eastern Shore region.

The Center pays for its regular expenses through income from its rental for nominal amounts as a meeting hall and for social events. However, these rentals and local financial donations cannot generate sufficient funds for the capital projects that a building of its construction and age requires on an ongoing basis, such as replacement of wooden siding, renovation of the stained-glass windows, replacement of the wooden roof, etc. Funding from MHT for these capital projects has kept the building from falling into serious disrepair again. MHT Staff has assisted us extensively in accomplishing these projects, from helping with technical language, protocols, and documentation when we are writing RFPs to helping make sure the work is done properly in accord with historical guidelines.

MHT is a bureaucracy, but the Staff make it easy to know what needs to be done and how to navigate the system. We e-mail and telephone them frequently for advice. We recently had a break-in that included damage to an exterior door and an interior door. Since there is an easement on the interior and exterior of the building, we needed rapid MHT approval to make repairs. We received approval rapidly, and received advice about how to repair the damage to the exterior door trim in a manner that made it more in fitting with the style of the building than it was before the break-in. This is just one example of how MHT Staff are a real resource for us.

In addition to the MHT easements on the Chipman Center, MHT easements protect at least two other properties in the Newtown Historic District. MHT easements are important incentives for the owners to make sure the properties are properly maintained in accordance with historical guidelines.

Sincerely yours,

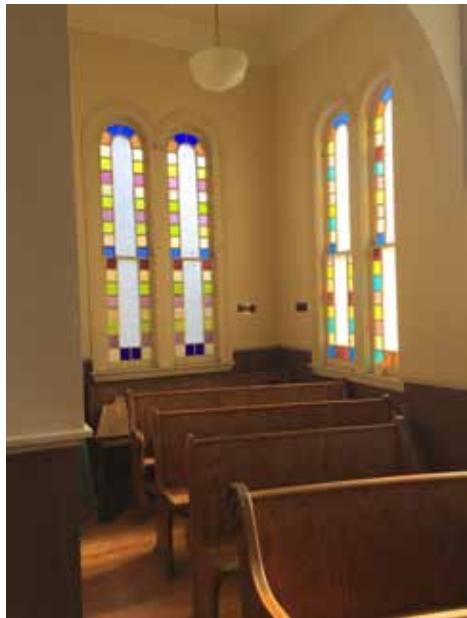


R. Neill Carey  
Secretary, Chipman Foundation  
Former President, Newtown Association



**MHT easements are important incentives for the owners to make sure the properties are properly maintained in accordance with historical guidelines.**

**-R. Neill Carey**  
**Secretary, Chipman Foundation**



**It is not simply a preservation of a building,  
it is a preservation of what happened there.**

**-Pat Vorus  
Former volunteer, Chipman Foundation**

How does MHT acquire historic preservation easements?

I am writing to offer my very positive experience in working with the MHT and the Easement Committee. I volunteered for several years with the Chipman Foundation in Salisbury, Maryland, the non-profit entity that manages the Charles H. Chipman Cultural Center, in its application for the African American Heritage Preservation Program (AAHPP) grants sponsored by the Maryland Historical Trust and the Maryland Commission on African American History and Culture. The Chipman Center is of great significance to African American history on the Eastern Shore, and thus the entire community. The Chipman Foundation operates the Center totally through volunteers. The Board is rich in its talents and its extraordinary commitment to ensuring the preservation and maintenance of this historically significant structure. Their love for this community treasure is clear by the fact that the center has been preserved for many years while severely challenged by limited financial resources to maintain the Center. Without the financial support of MHT and the expertise of the MHT and Easement Committee staff, the Chipman Center likely would have fallen into disrepair and not survived. It would be but a memory.

The expertise of the MHT Easement Committee has been invaluable. In my grant writing role, I had no prior experience working with preservation of historic structures. The knowledge of the Easement Committee members who came out of their offices and personally visited the Chipman Center was both educational and inspiring. We would probably not have sought their consultation if it had not been for the Easement. Their guidance was essential to ensure that the restoration elements were accomplished in a way that stabilizes the physical structure while preserving the historic elements of the building. They guided us in fidelity to both the design and materials used. The Committee also assisted us in learning what elements were original to the building and which might have been changed prior to the easement. The Easement provides a record of the structural elements and changes over time, which is often lost as individuals involved in managing the facility change.

The Easement Committee members also helped us to appreciate how the restoration activities are built on and integral to the history of the structure and the historic activities that took place there. It is not simply a preservation of a building, it is a preservation of what happened there. When discussing the importance of saving original wooden boards that are below the floors and cannot be seen, I will never forget the comment of one of the Easement Committee members who reminded us to remember who walked on these floors and were supported by those boards. One of those individuals was Frederick Douglass! We learned that we can safely rehabilitate a building and make it work for today while preserving it as a visible memory of the historic activities that took place there. The expertise of the Easement Committee and other MHT staff allowed the Chipman Foundation to make sure that the contractors selected had the requisite skills and conducted the restoration activities in a manner consistent with the requirements for historic preservation.

I would like to express my thanks to the staff of MHT and the Easement Committee for their support, encouragement and commitment and the Maryland Legislature for placing value on providing funds to those on the local level, to make sure that structures so important in African American history are preserved for future generations. I hope that these funding sources will continue to support the work of those at the local level involved in this work, many of whom are volunteers in communities with limited time and financial resources.

Sincerely,

  
Pat Vorus

### *3. African American Heritage Preservation Program (AAHPP) Grants.*

MHT regulations require conveyance of a perpetual preservation easement as a condition of funding under an AAHPP grant only if the property is individually listed on or individually eligible for the National Register, unless a waiver is granted. See COMAR 34.040.09.09D(1). (The program was first funded in FY2012, and the current easement requirements were adopted by MHT after the program was reauthorized in 2015. Previously, the conditions were more restrictive and required MHT to take an easement even if the property was only a contributing property within a listed historic district.)



*Basement window restoration is in progress as part of a larger AAHPP-funded restoration project at Mt. Gilboa AME Church in Oella, Baltimore County.*

**The restoration project at the 160-year old edifice, Mt. Gilboa AME (Chapel), is being brought to reality under multiple-year MHT grants. We are extremely appreciative for the rapport which the Easement Staff has worked diligently to establish and maintain with our restoration committee. The consistently high level of promptness and expert technical assistance they provide allows us to move through this process with informed confidence...The fine work of the Easement Staff allows the site work to proceed at a steady pace which in turn keeps a rise in excitement within the congregation and a healthy curiosity of the neighbors in the community as they watch the progress in each phase of the restoration of our walls and windows. The future of this site as the oldest active African American congregation in Baltimore County is secure because of our partnership with MHT for AAHPP funding and the fine work of the MHT Easement Staff.**

**-Reverend Dr. Anita J. Gould  
Pastor and Lead for Mt. Gilboa AME Church Restoration Committee**



*Loving & Charity Hall, Montgomery County (before)*



*Loving & Charity Hall, Montgomery County (after)*

The power of the perpetual conservation easement program administered by the Maryland Historical Trust is without question the most important tool for preserving Maryland's significant historic, archeological and cultural resources. As an architect working in Maryland on historic preservation projects for the past thirty years I have seen firsthand many of the State's historic resources saved and restored by this program. A recent success of the easement program, Loving and Charity Hall at Warren Historic Site in Dickerson, utilized AAHPP and bond bill funding and exemplified the cooperation and collaboration between owners and local, county and State agencies. MHT staff have always provided the technical guidance to navigate the complex process of funding, preservation, design and construction. Their assistance and the importance of the easement program cannot be overstated.

**-Thomas J. Taltavull, AIA  
Architect**

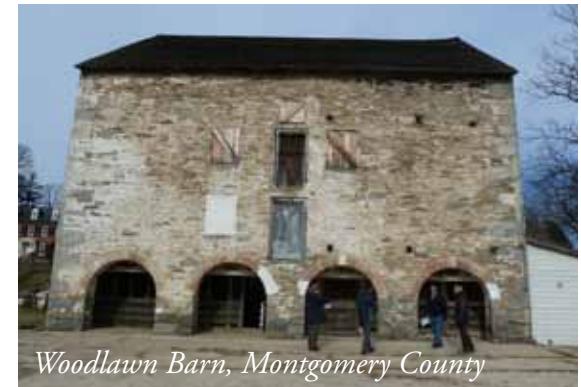
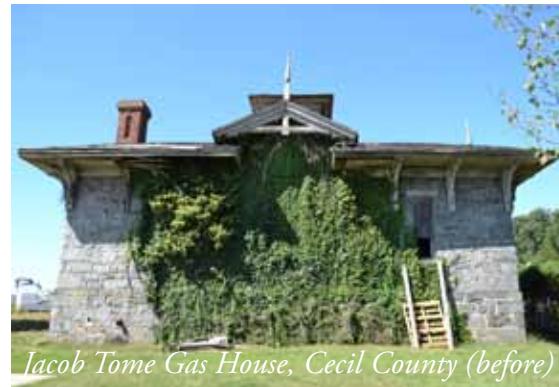
#### *4. Maryland Heritage Areas Authority (MHA) Grant Program.*

Created in 1996, the Maryland Heritage Areas Authority awarded its first capital grants in FY2002. If determined appropriate and requested by MHT, MHT will require the conveyance of an easement to MHT as a condition of a grant; ordinarily, this will occur if the property, building, or structure that benefits from the grant is listed or eligible for listing in the National Register, or located in a locally designated or National Register listed historic district. MHT ordinarily does not request that MHA require an easement if the property that benefits from the grant is not individually eligible for listing, is of a type that is already adequately represented in MHT's current easement portfolio, or if certain other exclusions apply.

#### *5. Maryland Heritage Areas Authority (MHA) Loan Program.*

This program includes the same easement requirements as the MHA Grant Program.

*MHA funds both capital and non-capital projects which are located within a designated heritage area and are related to heritage tourism, including those pictured at right, which resulted in the conveyance of easements to MHT.*





The Washington County Museum of Fine Arts (MFA) in Hagerstown is very proud to be a designated historic property under the Maryland Historical Trust.

The Easement is a distinction for the MFA that we consistently mention in seeking grant funding. Our MHT designation assisted the MFA in its successful application to participate in the national Conservation Assessment Program, formerly administered by Heritage Preservation. MHT's Easement program has assisted the MFA by reviewing and subsequently approving plans for recent facilities improvement projects including the complete reroofing of the building with energy-saving white membrane, repair of the historic 1930 skylights, refurbishment of two historic galleries, and the complete upgrade of the MFA's HVAC system, another energy savings project and one that will enable the MFA to achieve targeted museum climate control temperatures and humidity levels. Further, MHT and MHAA have aided the MFA through a grant to refurbish three galleries in its 1930 building. We are very grateful for the partnership we have enjoyed with MHT and MHAA; it has greatly enhanced the MFA's capacity to serve citizens from all Maryland counties, and beyond.

-Rebecca Massie Lane  
Director, Washington County Museum of Fine Arts

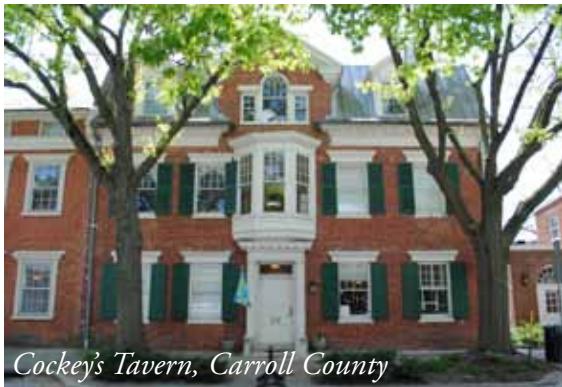
## C. Easements as conditions of bond bills

Many historic properties receive a direct appropriation of capital funds for construction, rehabilitation, or restoration projects within the State's capital budget via "bond bills", which may be either grants or loans. MHT began acquiring easements on properties assisted in this way in 1983.

Over time, MHT found that the statutory language crafted for bond bills was too broad, in that it required the agency to take easements on a large number of historic properties without providing MHT the opportunity to evaluate the relative historic value of the property or merits of taking the easement. As noted earlier, in 2009, and again in 2014, MHT sought revisions to the statutory language that enabled a more limited and selective approach to easements acquired in this way. The current bond bill language permits MHT to decline an easement when the assisted property:

- is significant only as a contributing property to a historic district listed in the Maryland Register / National Register
- is a type that is already adequately represented among MHT's existing easement properties
- is already subject to adequate protections of historic preservation law or instrument; or
- has conditions peculiar to it that make requiring an easement impractical.

*Bond bill funding has resulted in MHT acquiring easements on approximately 150 historic properties statewide, including those pictured at right. Since these projects received a substantial investment of State funds to undertake bricks-and-mortar repairs, MHT was often able to work with property owners during the early phases of their projects, providing guidance on preservation best practice.*



*Cockey's Tavern, Carroll County*



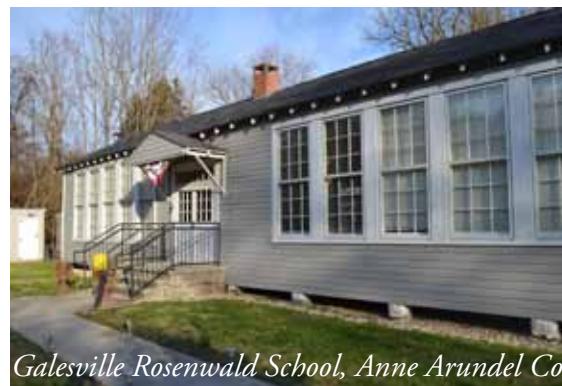
*Clifton Mansion, Baltimore City*



*WB&A Terminal, Baltimore City*



*Druid Hill Park Conservatory, Baltimore City*



*Galesville Rosenwald School, Anne Arundel Co.*



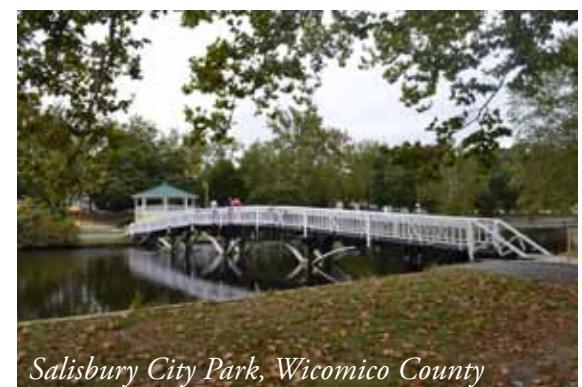
*Linden, Calvert County*



*Snow Hill Manor, Prince George's County*



*Greenbelt Community Center,  
Prince George's County*



*Salisbury City Park, Wicomico County*

## Ladew Topiary Gardens, Harford County: State bond bill funding and MHT easement protections: A non-profit perspective

*“Ladew has been well-served as an easement property holder with the MHT. The Trust’s guidelines and available resources provide a helpful channel through which proposed changes travel. Budget challenges and ambitious plans can leave non-profits vulnerable to quick-fix options. The system of checks and balances and the oversight provided by the Trust has created an atmosphere of thoughtful and informed restoration which has helped to maintain the historical integrity and value of Ladew.”*

*Emily Emerick  
Executive Director  
Ladew Topiary Gardens*



*Dating from the 1930s, Ladew Topiary Gardens are significant not only for plantings, but also for the lead statuary, which was recently restored. Ladew House, part of which dates from the 18th century, and a cafe in a converted barn are also part of the visitor experience.*

## D. Easements as conditions of State or federal “Section 106” action

### *1. Mitigation of a State or federally funded project.*

MHT, as Maryland’s State Historic Preservation Office, must review projects that entail federal and/or State agency involvement (including funds, permits, or licenses) to assess effects on historic properties, pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, and the Maryland Historical Trust Act of 1985, as amended, State Finance and Procurement Article §§ 5A-325 and 5A-326, Annotated Code of Maryland (collectively, known as “Section 106 review”). Both historic preservation laws require the involved federal or State agency to consider the effects of a proposed project on significant historic properties, including architectural and archeological resources.



The conveyance of an easement is one possible means to avoid or mitigate an adverse effect on historic property that is impacted by a State or federally funded or permitted project. Since MHT does not take easements on State or federally owned properties, this applies only to projects affecting property owned by local governments or private parties. Through the late 1990s, MHT had received a limited number of easements through Section 106 mitigation, and discontinued the practice thereafter. Today, MHT employs other means of mitigating or avoiding an adverse effect.

### *2. State or federal property transfer.*

In order to mitigate the adverse effect of exchanging/transferring a historic property from State or federal ownership to a non-State and non-federal owner - thereby removing the protections afforded by the Maryland Historical Trust Act and NHPA - MHT may request, but not require, that the new property owner grant a perpetual easement to MHT at the time of transfer to ensure the ongoing protection of any historic site. Conveyance of an easement, however, is just one possible means to mitigate an adverse effect; if an easement cannot be negotiated, other means of mitigating the effect are explored.



## E. Easements as conditions of federal funding

As discussed in Section II, federal grant awards historically required that grant recipients convey either a perpetual or term easement to MHT, the SHPO, as a condition of the award. Federal funding for grants was at its highest levels in the 1970s and 1980s, and resulted in the conveyance of several dozen perpetual preservation easements to MHT during this time.

*Federal funding, often from the National Park Service, assisted G. Krug & Son, the nation's oldest continuously operating blacksmith shop; Mt. Royal Station, an early adaptive reuse project now housing art studios for MICA; the USS Constellation, launched in 1854 and used to capture slave ships off the African coast; and Ebenezer AME Church, built in 1848 by one of the nation's oldest AME congregations.*



*Susquehanna Lock House, Harford County*



*G. Krug & Son, Baltimore City*



*Mt. Royal Station, Baltimore City*

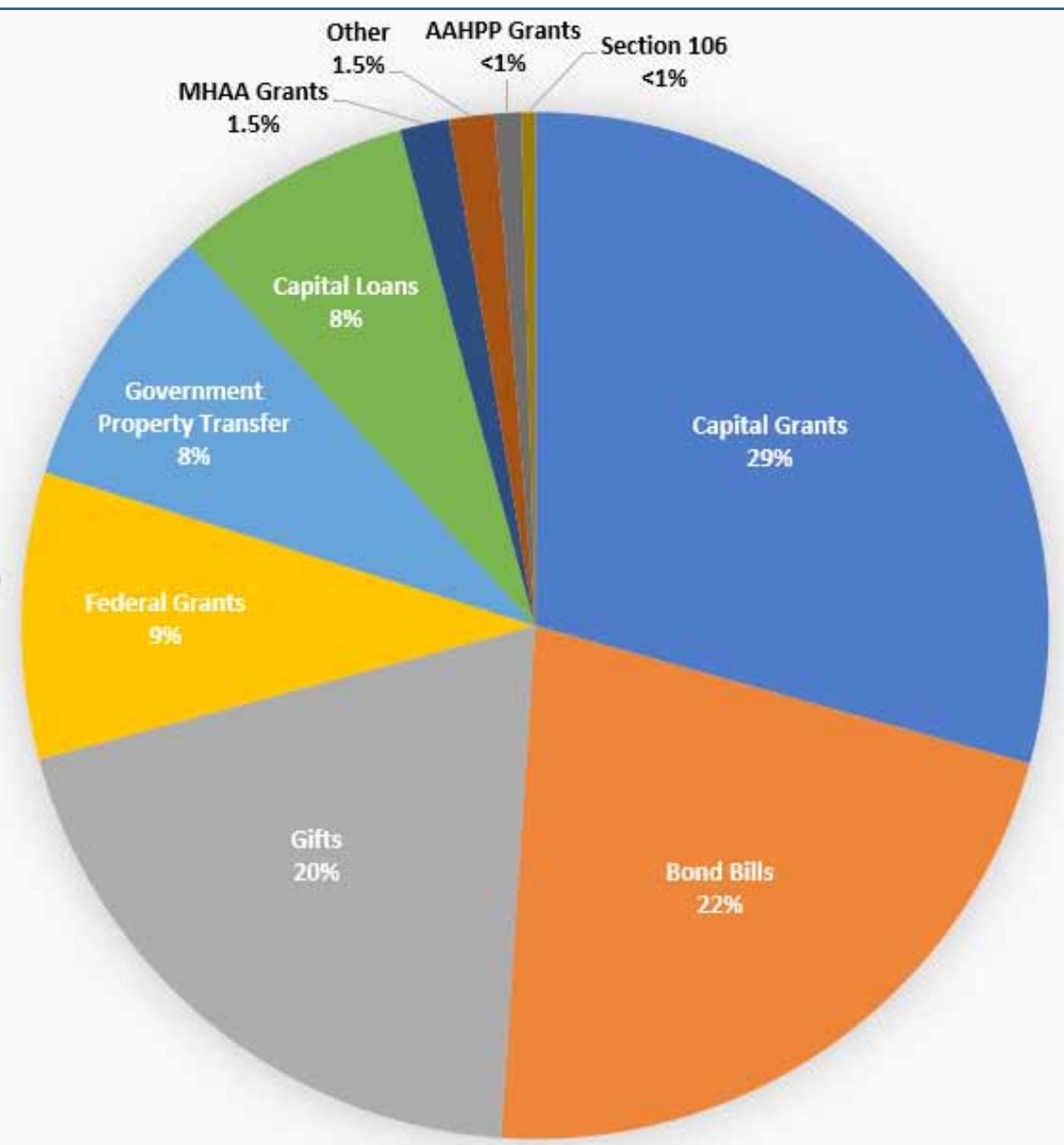


*Ebenezer AME Church, Baltimore City*



*USS Constellation, Baltimore City*

## MHT Easement Properties by Source



*The chart at left illustrates the breakdown, by original source, of MHT's approximately 700 easements and similar preservation instruments.*

## National Park Seminary, Silver Spring, Montgomery County: From finishing school to Army hospital to thriving neighborhood

*In 1894, a private school for young women, National Park Seminary, opened on an idyllic site near Rock Creek Park in Silver Spring. The founders, John and Vesta Cassedy, believed that art and culture should be integral to the new school's curriculum; they used architecture, landscaping, sculpture, painting, and stained glass to create a uniquely beautiful educational environment. Successive owners expanded the campus and added new buildings. Following the outbreak of World War II, the property was sold to the U.S. Army and became an annex to Walter Reed Army Hospital, serving soldiers wounded in World War II, the Korean Conflict, and the Vietnam War. In later years it was used for research, military housing, and administrative purposes. The campus was listed on the National Register in 1972.*

*In the late 1980s, the deteriorating condition of the remarkable structures on the campus had begun to attract attention, and MHT, in cooperation with the federal Advisory Council on Historic Preservation, the National Trust for Historic Preservation, and the local non-profit organization Save Our Seminary, put pressure on the Army to act to arrest further decline. Ultimately, the federal government decided to dispose of the property. In order to ensure the protection of the property once transferred out*

*of government ownership, and hence out of the preservation protections of Section 106 of the National Historic Preservation Act, MHT required a perpetual preservation easement as mitigation. After an aggressive marketing campaign, the campus was transferred to a partnership of The Alexander Company, a development company with experience in adapting historic properties to new uses, and EYA, a developer of new homes in established neighborhoods. Their plan included saving all of the historic buildings, adding new townhouses in compatible styles, and transforming the Seminary into a unique residential community of apartments, condominiums, and single-family homes.*

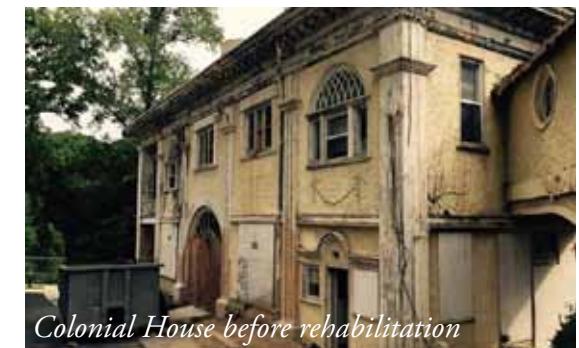
*The first phase of the redevelopment project was completed in 2009. All rehabilitation projects completed on the campus have received substantial assistance from the federal Historic Preservation Rehabilitation Tax Credit Program and the commercial and residential components of Maryland's Heritage Structure Rehabilitation Program. As a result, the historic district has been transformed from a rapidly decaying national treasure which generated no tax revenue to one that is home to hundreds of individuals and families and generates significant tax revenue for both Montgomery County and the State of Maryland.*



*Gymnasium before rehabilitation*



*Dutch Windmill before rehabilitation*



*Colonial House before rehabilitation*



*Gymnasium after rehabilitation*



*Dutch Windmill after rehabilitation*



*Colonial House after rehabilitation*

I have no doubt that the MHT easement is what saved the National Park Seminary. Even though this unique site is a National Register Historic District, that wouldn't protect it from possible demolition, and that was our greatest fear. As we fought the Army to maintain the increasingly abandoned and deteriorating buildings, the threat of demolition by neglect—and actual arson and vandalism—loomed large. In gathering all the stakeholders together to find a solution for this property, MHT came forward and placed an easement on the historic district when it transferred to a new owner. This action was critical to maintaining the historic integrity of this unusual historic site. Without the easement, it would have been easy for the new owner to argue for some demolition here and there, or greatly modify historic elements. It is the campus as a whole, however, with its mix of architectural styles and sizes and significant landscape, that makes the Seminary the important, enchanting place that it is.



*Japanese Pagoda after rehabilitation*

**-Bonnie Rosenthal  
Executive Director  
Save Our Seminary**

## IV. Overview of MHT easement portfolio

MHT holds 706 preservation instruments, of which 679 are perpetual preservation easements and 27 are other instruments which are administered within MHT's overall easement portfolio. These instruments cover over 924 properties and 7,720 acres of land.

The difference between the number of easements held by MHT (706) and the number of properties protected under easement (924) is due to the fact that in a number of instances a single instrument encompasses several individual parcels. Often, the easement as originally conveyed covered a single large parcel which was subsequently subdivided. Since subdivided lots remain within the easement boundary, MHT counts each lot as a separate protected property. Ultimately, the number of properties protected under MHT easements, rather than the number of easements, is a more accurate indication of the workload associated with the program on account of MHT's responsibility to build relationships with each individual property owner whose property is subject to the terms of the easement.

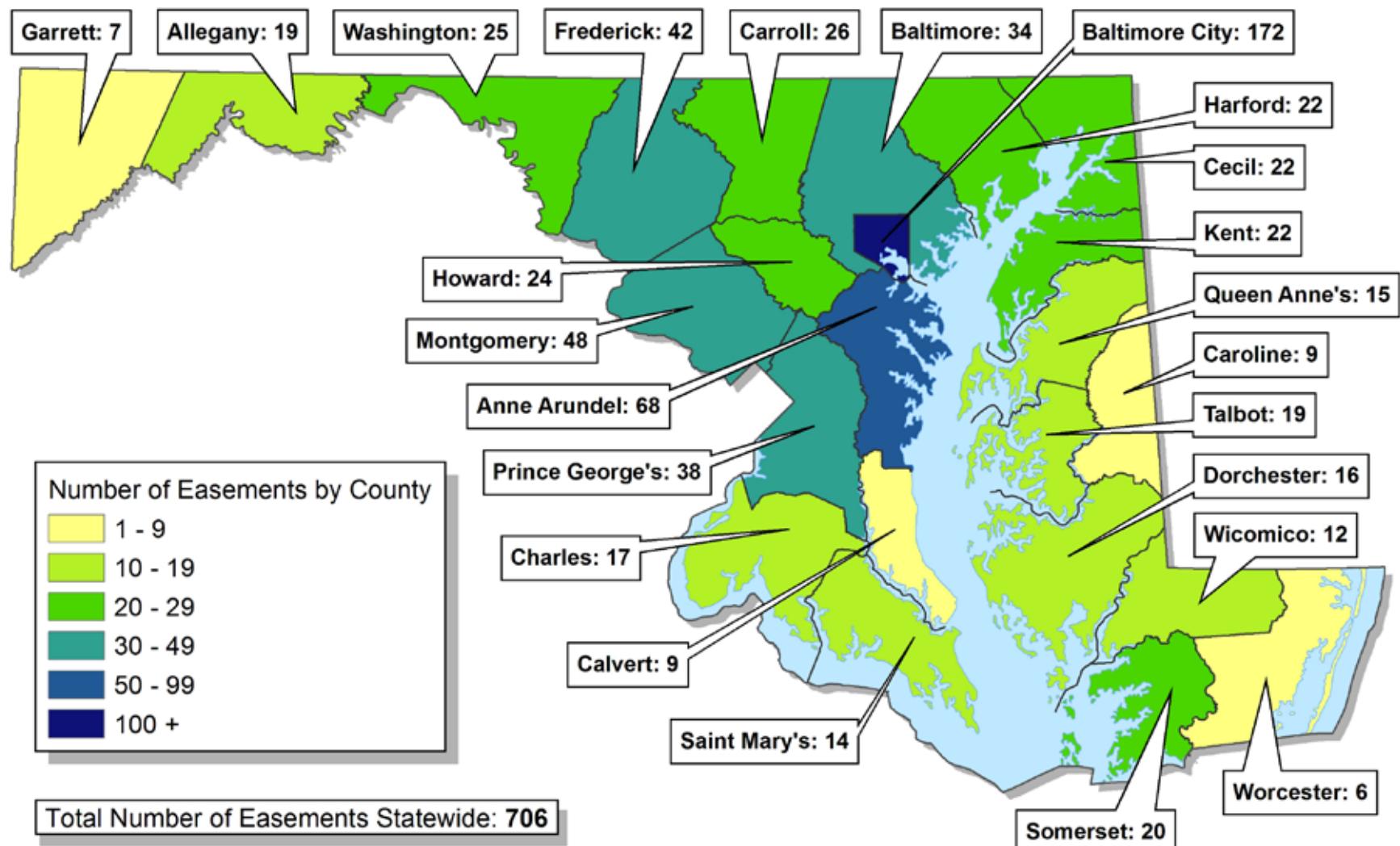
Properties within MHT's easement portfolio rank among the most historically and architecturally significant in the state. MHT holds

easements on 27 of Maryland's 68 individual National Historic Landmarks, and on 52 properties that contribute to four of Maryland's five National Historic Landmark Districts. These properties are recognized with the nation's highest level of historic designation because of their superlative role in defining and illustrating our nation's past. In addition, nearly 250 easement properties are individually listed on the National Register of Historic Places, and many more are listed within National Register Historic Districts, in recognition of their integrity, design and craftsmanship, associations with historical events or significant people, or potential to yield significant information about our past. Still other properties may not yet be National Register listed, but have been determined eligible for listing.

*The Hopkins House in Bel Air is an example of an easement property which is not listed on the National Register, either individually or within a historic district. However, it would be eligible for listing because of its design and construction, which retain their integrity.*



## MHT Easements by County



# MHT Easements and Acreage by County

COUNTY	NUMBER OF EASEMENTS	PROTECTED ACRES
Allegany	19	42.36
Anne Arundel	68	924.42
Baltimore City	172	143.94
Baltimore County	34	217.97
Calvert	9	35.13
Caroline	9	21.96
Carroll	26	190.95
Cecil	22	1278.54
Charles	17	257.93
Dorchester	16	13.55
Frederick	42	1045.28
Garrett	7	9.00
Harford	22	556.52
Howard	24	310.12
Kent	22	305.43
Montgomery	48	256.98
Prince George's	38	358.77
Queen Anne's	15	64.72
Somerset	20	104.13
St. Mary's	14	900.97
Talbot	19	302.02
Washington	25	329.07
Wicomico	12	36.16
Worcester	6	14.08
<b>TOTAL</b>	<b>706</b>	<b>7720.00</b>

## A. Easement property owners and uses

MHT's easement portfolio includes an incredible variety of significant historic resources. A closer look at how the breakdown of easement property owners and uses have changed over time demonstrates a variety of trends. (*Refer to charts on pages 38-39.*)

First, it should be noted that the largest percentage of easement properties - nearly half, or 316 - were constructed as single-family residences. Of those, 176 remain single-family residences today. MHT acquired easements on single-family residences primarily as the result of donations, with smaller numbers arising from MHT Capital Loans, federal grants, and other sources. As properties built for uses such as mills, churches, or schools, are adaptively reused for condominium housing, the percentage of properties in the easement portfolio defined as having a single family residential use can be expected to grow even as the number of easements remains the same. Today, 362 of 924 easement properties in the easement portfolio are occupied as single-family residences.

Secondly, while only three easement properties were constructed as museums, today museums represent the second-largest use group in the easement portfolio, which illustrate how many properties have been converted to museum use over time. For example, within

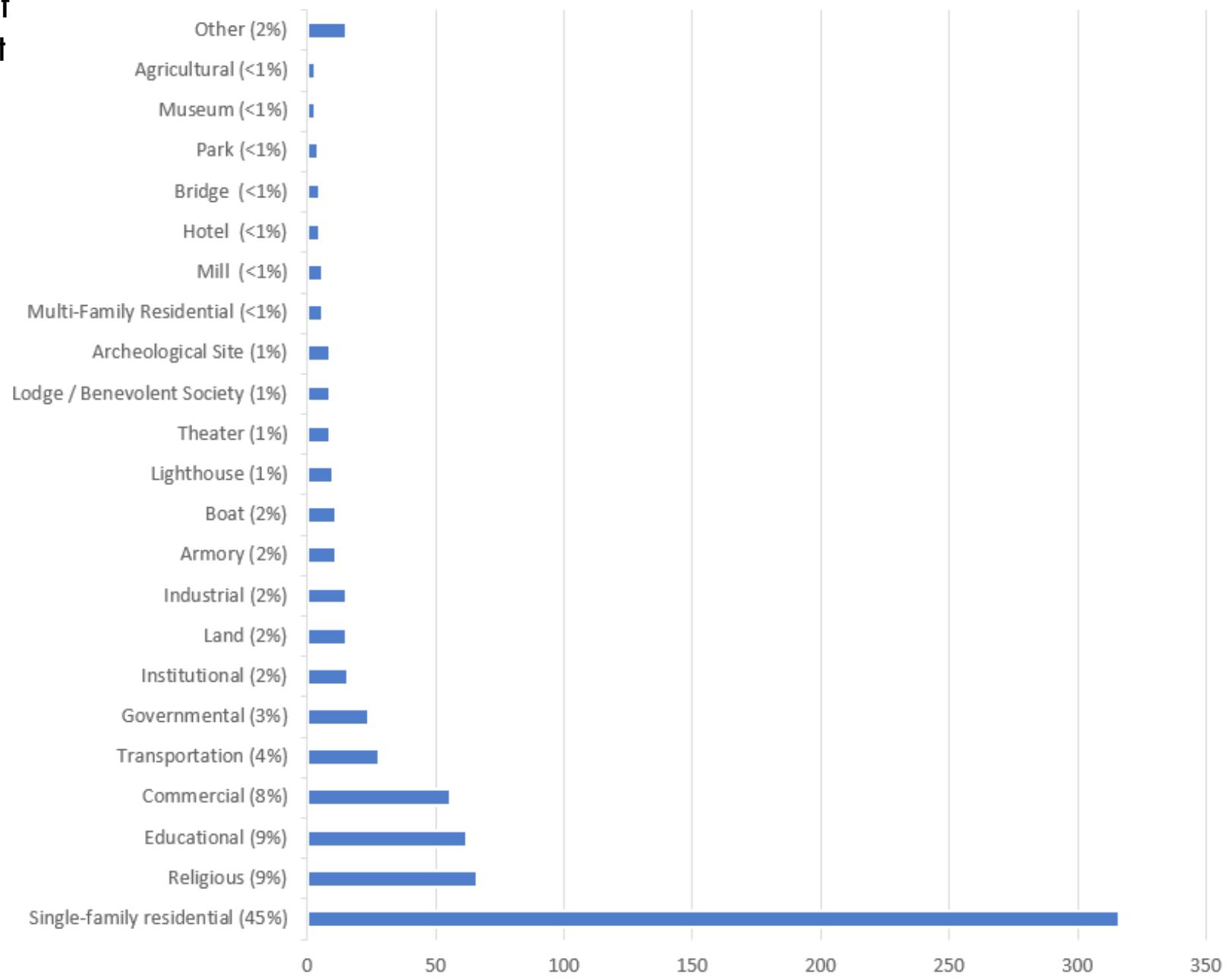
MHT's portfolio are 15 originally commercial buildings, 18 originally educational buildings, and 15 originally religious buildings that all now serve as museums. These include, for example, Port Discovery Children's Museum, which adaptively reused Baltimore's former Fish Market as its new home in the 1990s. The Baltimore Museum of Industry occupies and preserves the former Platt & Company Oyster Packing plant, dating from the 1860s, as well as the 1946 offices of the Hercules Company, a shipbuilding firm, buildings which are directly related to its mission and interpretation. Today, there are 160 museums in MHT's easement portfolio, which over time have received at least \$62 million in State funding. While the museums are operated privately, or by local governments, State support is provided through funding in the short term coupled with MHT easement protection in the long term.

In contrast, uses that have decreased over time include religious and industrial functions. Of 66 structures in MHT's portfolio that were originally constructed for religious purposes, 38 continue to serve in that capacity. Both churches and industrial properties have seen new uses as museums, cultural, recreational or event venues. School uses have remained the most stable over time, as 21 out of 23 properties in the portfolio that were historically owned by educational institutions are still in educational use today.

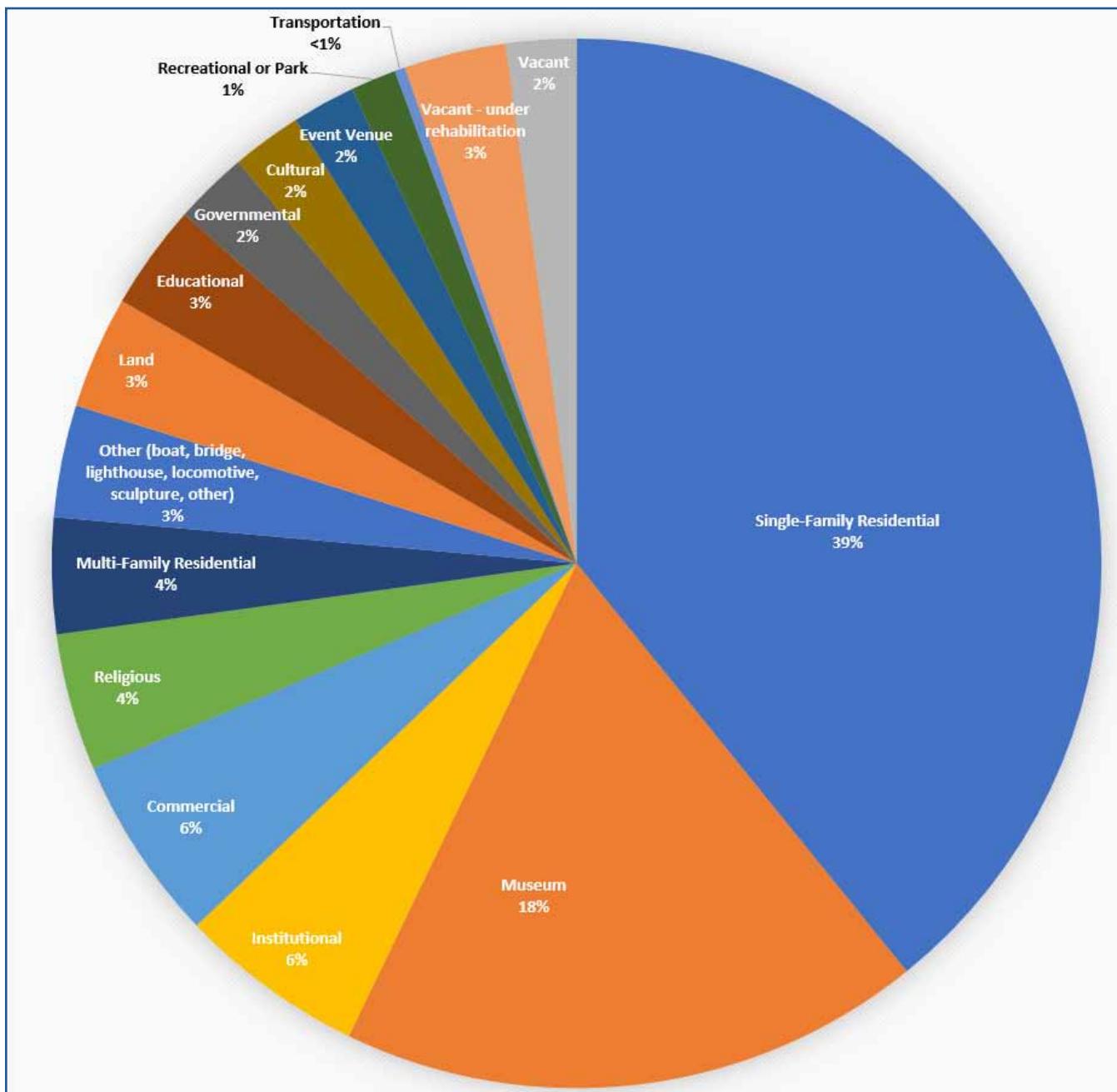


*While many easement properties demonstrate continuity of use (above right), others, including former industrial properties, have been converted to new uses. Adaptive reuse of these properties ensures they can remain as physical reminders of our past while ensuring a relevant new use and a revenue stream for their upkeep. Those shown (column at left) are currently open as museums.*

# Original Use of MHT Easement Properties



## Current Use of MHT Easement Properties



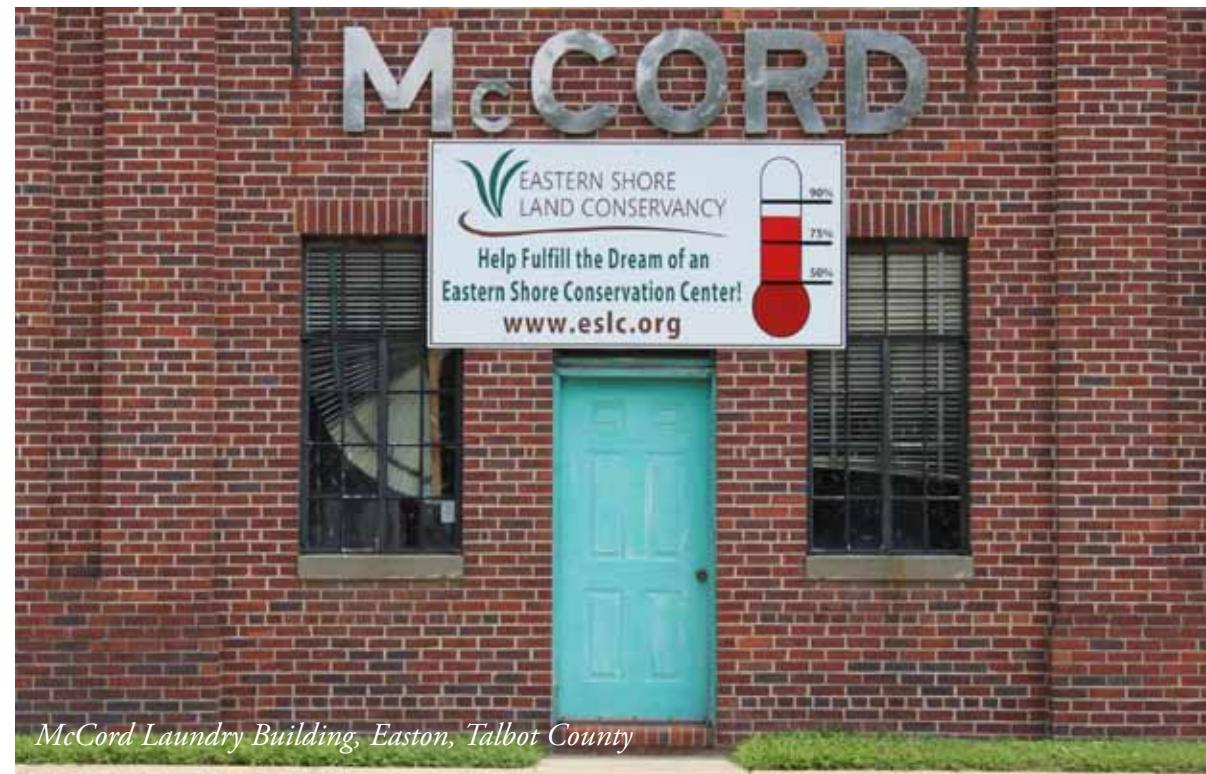
In terms of ownership types, individuals own the majority of MHT's easement properties. Of the 364 properties owned by individuals, 172 are single family residences. Non-profit organizations (not including religious and educational institutions) own the second largest share of easement properties. Of nearly 200 properties owned by non-profits, 108 are museums, cultural venues, or historic vessels, which all serve a community purpose. The third largest number of easement properties are in local government ownership. Of 177 easement properties owned by local governments, 66 are museums; 19 are parks, recreational facilities, or open space; 6 are bridges; and 18 are cultural or event venues.

Different easement property ownership groups have access to different types of financial assistance from State and federal sources. While local governments and non-profit organizations typically seek grant funding, private individuals and business entities, and in some cases non-profit organizations, have benefited from State and federal rehabilitation tax credits. In competitive grant and tax credit reviews, easement properties rank more highly due to their status as protected properties.

Since 1997 a total of 229 tax credit projects have been approved for rehabilitation and restoration work on easement properties. This has included 142 projects for owner occupied residences, representing over \$22 million in

private expenditures and approximately \$4.5 million in State tax credits. Commercial and non-profit owners have been approved for over \$40 million in State tax credits based on \$243 million in rehabilitation expenditures. Together, this represents a commitment by the State to leverage over \$265 million in private investment with potential tax credit awards of nearly \$45 million. Work on properties as-

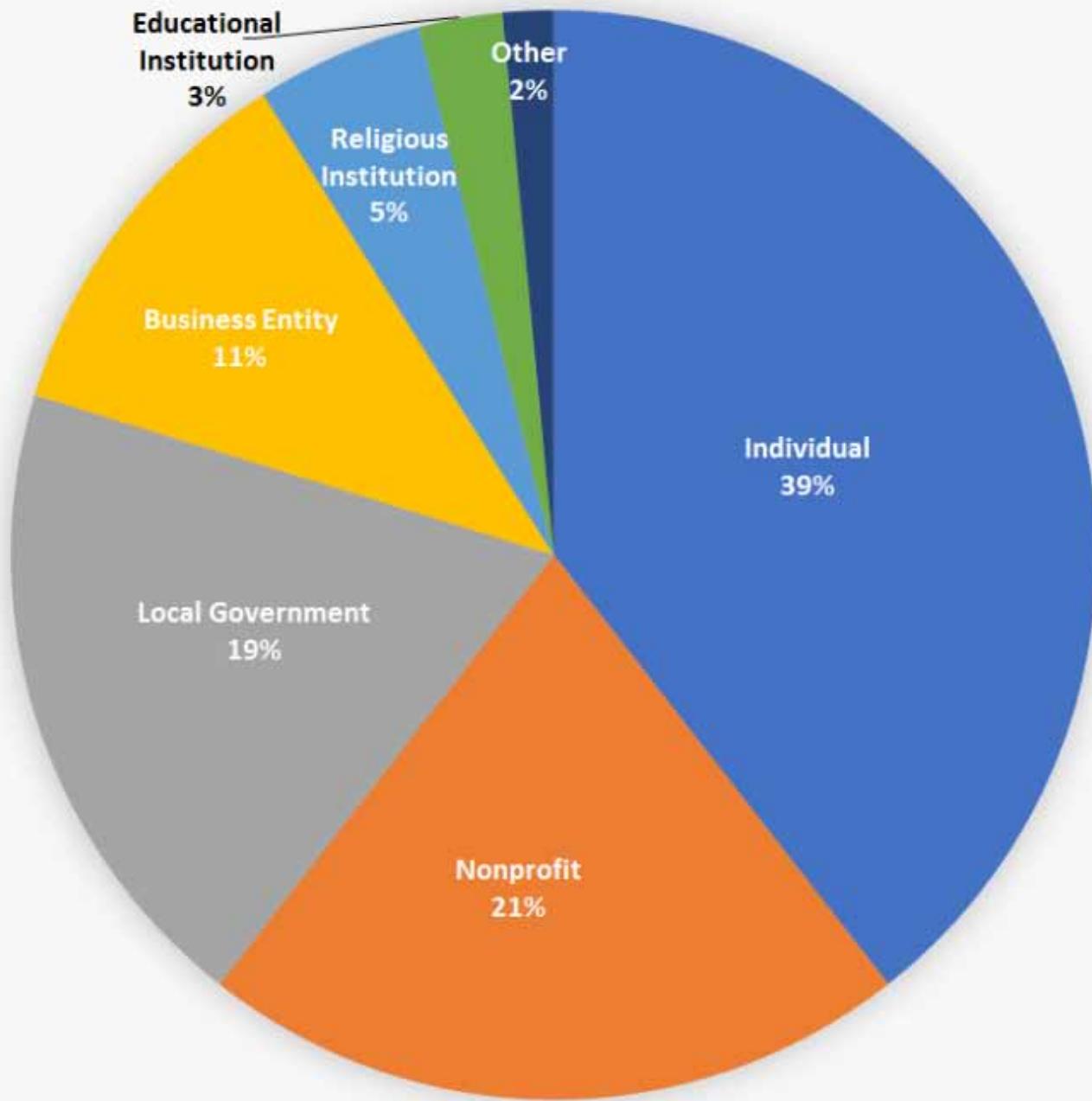
sisted through State and federal rehabilitation tax credits must conform to the Secretary of the Interior's *Standards* (the national guidelines for preservation best practice; see discussion on pages 46-47), the same *Standards* that apply to work to easement properties. In these cases, MHT's easement and tax credit programs work together to provide property owners with a streamlined review process.



McCord Laundry Building, Easton, Talbot County

*The former McCord Laundry is now home to the Eastern Shore Land Conservancy, Chesapeake Bay Foundation, Ducks Unlimited, The Nature Conservancy, and Town Creek Foundation. The project utilized State bond bill funds, which resulted in an easement, and rehabilitation tax credits.*

## MHT Easement Properties by Current Owner Type



## Easements: The local government perspective

*“Without question, preservation easements have emerged as a valuable tool to further the protection of cultural resources in Prince George’s County. Since protection through our local ordinance cannot be assured in perpetuity, the use of preservation easements is employed where public funds are used to assist in the rehabilitation of private properties. The utilization of this private legal mechanism serves as a valuable complement to the County’s public land-use policies. Preservation easements given in perpetuity possess a far greater potential for ensuring the protection of a site or structure forever, whereas our local county preservation ordinance is always subject to repeal. Our easements are drafted with flexibility in mind and reflect the specific needs and desires of both the property owner and easement holder.”*

*Frederick C. Stachura, J.D.  
Planning Supervisor  
Community Planning Division  
The Maryland-National Capital Park and  
Planning Commission*



*Pleasant Prospect, Prince George’s County  
(M-NCPPC and MHT easements)*



*Earleigh Heights Station, Anne Arundel Co.*



*Hancock's Resolution, Anne Arundel County*

*“The Maryland Historical Trust holds preservation easements on several County-owned properties, including Hancock’s Resolution, the Earleigh Heights Station / B & A Ranger Station, and Linthicum Walks. MHT and their technical staff have proven to be important partners in the County’s stewardship of these resources, offering technical advice that ensures these significant historic sites are maintained and rehabilitated in a sensitive manner and to the highest of standards. MHT’s engagement in the long term protection of these important historical assets encourages consideration of archaeological resources, when many counties might not have that protection through their local codes. The easement program offers valuable oversight and support to local government agencies and to the Friends of groups that are key partners in the preservation of these publicly-owned buildings.”*

*C. Jane Cox  
Chief, Cultural Resources Division  
Anne Arundel County Planning and Zoning*

## B. Vacancy rates

Approximately 20 out of approximately 924 properties protected by MHT easements are currently vacant; this corresponds to a 2.2% vacancy rate. While it is difficult to find a relevant point of comparison, the following statistics provide some context:

- Baltimore City's downtown retail vacancy rate for the third quarter of 2017 was 3.5%.<sup>1</sup>
- Baltimore City's downtown office vacancy rate for the third quarter of 2017 was 11.3%.<sup>2</sup>
- The vacancy rate in the rental housing market in Montgomery and Frederick Counties was 5.7% as of January 1, 2018.<sup>3</sup>

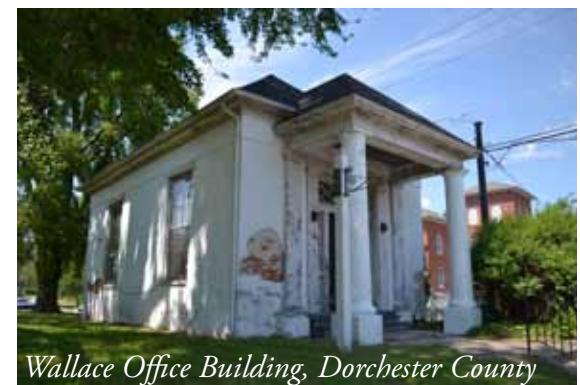
The 20 vacant properties are not neatly categorizable. They represent a variety of uses, although nearly all were built as single family houses. Seven are owned by non-profits, six by local governments, six by businesses, and three by individuals. Design and planning are currently underway for the rehabilitation of three of these properties. Several buildings lack an active use or occupant but are nonetheless properly maintained and monitored by their owners, who in many cases own adjoining or nearby properties. A few are on the market or are in ownership transitions, situations in which a period of vacancy is understandable.

In addition, about 29 easement properties are currently vacant because they are under active restoration or rehabilitation. Those properties can be expected to be placed back into service when construction is complete.

These numbers help dispel the notion that properties under preservation protections are more difficult to redevelop than those without restrictions. That said, there is no avoiding the reality that there will always be important historic properties that are difficult to pair with the right use or owner, or that are subject to particular external pressures, some of which may be temporary. Such properties embody a significant part of Maryland's story and are worthy of protection, especially when they are the most vulnerable. In these cases a perpetual preservation easement can be the right tool - and in some cases the only tool - that will save a stressed or neglected property from demolition.



*East New Market Depot, Dorchester County*



*Wallace Office Building, Dorchester County*

## MHT Co-Held Easements

Name	County	Co-holding Organization
Whitaker's Mill	Harford	Maryland Environmental Trust
Blunt Farm / Hall Property	Baltimore County	Maryland Environmental Trust
Pennterra	Frederick	Maryland Environmental Trust
Shisler Farm (Power-Miller)	Frederick	Maryland Environmental Trust
Ventnor Lodge & Hammond Hall	Baltimore City	Maryland Environmental Trust
Moore Farm (Parcel 26) and (Parcel 161)	Washington	Maryland Environmental Trust
Mulberry Fields	St. Mary's	Maryland Environmental Trust
Sotterly (land & outbuildings)	St. Mary's	Maryland Environmental Trust
Christopher's Camp	Harford	Maryland Environmental Trust
Sheffer-Keller Farm	Frederick	Maryland Environmental Trust
Woodside	Harford	Maryland Environmental Trust
Preston on the Patuxent	Calvert	Maryland Environmental Trust
White House Inn	Frederick	Maryland Environmental Trust
Saleuado	Frederick	Maryland Environmental Trust
Quigley Property	Anne Arundel	Maryland Environmental Trust
The Exchange	Charles	Maryland Environmental Trust
Farm Content	Carroll	Maryland Environmental Trust, Carroll County Land Trust
Piscataway House	Prince George's	Maryland Environmental Trust, Broad Creek Conservancy
Rich Neck Farm, Main House, Tract 1, Parcel 1, Tract 2, Parcel 2	Talbot	Maryland Environmental Trust, The Nature Conservancy
Rose Hill	Cecil	Maryland Environmental Trust, Chester-Sassafras Foundation, Chesapeake Bay Foundation
Robert Llewellyn Wright House	Montgomery	Frank Lloyd Wright Building Conservancy
West St. Mary's Manor	St. Mary's	St. Mary's City Commission
Belmont	Howard	Preservation Maryland

### C. Co-held easements

When, in addition to architectural, historical, or cultural significance, a property holds conservation values such as farmland, open space, or habitat value, preservation may be best served through protections of a co-held easement. Partnering is the best way to ensure the protection of multiple values in land and to enable the best preservation and conservation outcome. MHT co-holds easements with a range of organizations including other State agencies, conservation groups, land trusts, and non-profit organizations. MHT currently co-holds 23 easements, as shown in the chart at left.

The administration of co-held easements, and the nature of the partnership between MHT and co-holding entities, will be discussed in later sections.



*Robert L. Wright House, Montgomery County*

## V. How are easements administered by MHT?

### A. Duties and Responsibilities

#### 1. Drafting and recording easements

Once MHT determines that conveyance of a historic preservation easement is desired or required (refer to Section III), easement program staff send the property owner a notification letter and packet of information. The packet includes information on the process for conveying the easement, a sample MHT Deed of Easement, a checklist of required documentation, and an overview of MHT's process for approval of changes to a property under easement.

It is the property owner's responsibility to provide MHT with the documents needed for drafting the Deed of Easement; however, MHT's Easement Processor and Office of the Attorney General staff - not the property owner or their legal counsel - draft the easement document. MHT does not charge any administrative fees for processing or administering easements. The property owner is responsible for costs associated with the legal documentation that the owner is required to provide, such as property title work or survey/site plan work. In addition, any existing interests in the property (mortgages, liens, etc.)

must be subordinated to the easement to ensure that the easement will survive any potential foreclosures.

After review and signature by the property owner, the completed and executed Deed of Easement is recorded in the land records of the county in which the property is located. Generally, State grant or loan funds may be released upon easement recordation.

Once an easement is recorded in the land records, any subsequent purchaser of the property is made aware of the easement's existence during a legal and ethical transfer of property. Pursuant to Maryland law, a licensed real estate agent or broker must disclose to prospective buyers all material facts, such as the existence of a preservation easement, regarding the real property listed for sale. (See Md. Code Ann., Bus. Occ. & Prof. §17-322(b)(4).) This includes material facts that the licensed real estate agent or broker knows or should know. While legal and professional codes of ethics regarding real estate prohibit an agent or broker from being misleading or untruthful in any advertising, a standard title search - always conducted for the buyer before any real property transfer - will identify the existence of the easement. This is significant because, by the terms of MHT's easement, a buyer is responsible for any outstanding violation of an easement in existence at the time the property transfers.

### 2. Review of Proposed Work

MHT's easements require the preservation of a property's historic features and characteristics. Individual easements stipulate the extent of coverage; they may protect the exterior, interior, and/or archeological resources on the site, and often protect multiple structures on the property. Any alterations to the portion of the property protected under the easement - construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of structures, as well as any ground disturbance - require the prior written approval of MHT's Director.

All work on easement properties must comply with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68) (the "*Standards*"), published by the National Park Service (see discussion on pages 46-47). The *Standards* are nationally accepted guidelines for the appropriate treatment of historic buildings. The purpose of the *Standards* is to preserve those elements that contribute to a building's historic character and significance and to require that new additions or alterations be compatible with the historic structure. Compliance with the *Standards* ensures that a building or site maintains its National Register listing or eligibility status. Since each historic property is different, and significance can be embodied in different ways, the *Standards* are intended to

## Background: Secretary of the Interior's Standards for the Treatment of Historic Property

"The Secretary of the Interior's Standards for the Treatment of Historic Properties are common sense historic preservation principles in non-technical language. They promote historic preservation best practices that will help to protect our nation's irreplaceable cultural resources."<sup>1</sup>

"There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties—preservation, rehabilitation, restoration, and reconstruction.

- Preservation focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time.
- Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.
- Restoration depicts a property at a particular period of time in its history, while removing evidence of other periods.
- Reconstruction re-creates vanished or non-surviving portions of a property for interpretive purposes.

"The choice of treatment depends on a variety of factors, including the property's historical significance, physical condition, proposed use, and intended interpretation."<sup>2</sup>

The Standards are set forth by the National Park Service's Technical Preservation Services branch, which also administers the federal rehabilitation tax credit program. The Standards for Rehabilitation are the set of Standards most commonly used to evaluate most proposed projects subject to MHT review, including properties under easement, projects subject to Section 106, or projects utilizing MHT's or NPS's financial incentives, such as tax credits and grants. The Standards guide changes to a property so that they do not jeopardize its historic integrity or significance, and so that the building maintains its National Register listing or eligibility status.

<sup>1</sup> <https://www.nps.gov/tps/standards.htm>

<sup>2</sup> <https://www.nps.gov/tps/standards/four-treatments.htm>

## Secretary of the Interior's Standards for Rehabilitation<sup>1</sup>

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

<sup>1</sup><https://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm>

be flexible, apply to a wide variety of building types, and accommodate different project goals. The *Standards* are also applied in MHT's review of State and federal rehabilitation tax credit projects and in Section 106 review and consultation.

MHT review of proposed changes or alterations to properties under easement is governed by standard procedures developed with guidance provided by MHT's Board of Trustees. With limited exceptions, all proposed work requires the written approval of MHT's Director. Review follows four basic steps:

1. The property owner, tenant, or authorized representative provides a full description of the nature and scope of the work, using a standard form provided by MHT on its website. The written description on the form is typically accompanied by drawings, photographs, sketches, product specifications, or contractors' proposals as needed to fully describe the proposed work. Often, property owners will reach out to the Easement Administrator with questions before filling out the form or while assembling the documentation, and the Administrator will provide technical assistance and guidance.

2. The Easement Administrator performs an initial review of applications for clarity and completeness and may reach out to property owners for additional information. For in-

stance, a property owner may propose replacing deteriorated siding on a building, but may not have specified the type of replacement siding. In this case, the Administrator will contact the property owner to assist in determining whether the siding is a historic feature, whether repair is an option, and if not, what an appropriate replacement would be. Based on this technical assistance, the property owner may, if necessary, submit a new or revised application for MHT review.

3. The application is reviewed by MHT's in-house Easement Committee, which consists of MHT staff with knowledge of architectural history, archeology, architecture, conservation, and rehabilitation. The Committee meets approximately every three weeks to review proposed modifications to easement properties and to make recommendations to the Director regarding these proposals. The Administrator presents the projects to the Committee, answers questions, takes minutes, and drafts correspondence. In determining what changes are appropriate for each easement property, the Committee consults:

- the requirements of the specific Deed of Easement for the property;
- the integrity and significance of the property;
- the details of the proposed project; and,
- The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36



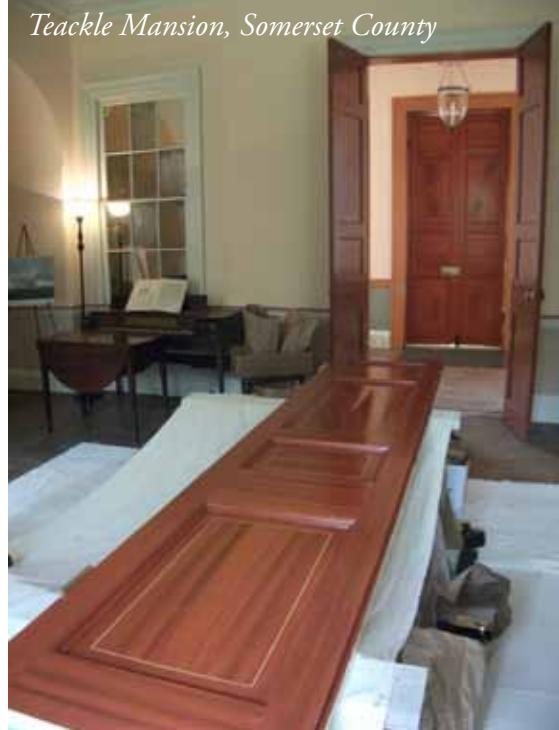
Clifton Mansion, Baltimore City

*Easement program review of proposed work ensures that historic building elements are not lost and that missing or deteriorated elements are replaced to match, as shown above. Where railing components were missing, the new balusters (at left) were fabricated to exactly match the existing historic balusters (at right).*

Teackle Mansion, Somerset County



Teackle Mansion, Somerset County



*Research into the physical fabric of a historic building is an important component of any restoration or rehabilitation project, helping to establish what specific elements or treatments are original and how the building evolved over time. A recent restoration project at Teackle Mansion reinstated the finishes to their appearance in the early 1800s. Careful removal and scientific testing of accumulated layers of paint revealed the original treatment of interior doors to be faux wood graining. Talented artisans were able to replicate the finish as part of the restoration of the historic doors.*

CFR Part 68) (the “*Standards*”), published by the National Park Service (see discussion on pages 46-47).

4. The Administrator forwards the Committee’s recommendation to the Director, who makes the final decision. The decision, which may be approval, approval with conditions, or denial, is communicated to the property owner/applicant by letter. In certain instances, a conceptual approval may be issued. This is typically done when a project is in the early planning phases (e.g. development of a master plan) or as a way of performing a courtesy review for a potential buyer.

In certain limited instances, the Administrator may review and approve work at a staff level without the review of the Committee or the Director.

The timeframe for MHT’s review of an application is specified in each Deed of Easement, most of which require response within 45 days. As with MHT’s other programs, the response period begins when a complete application is received. The Director’s approval of a property owner’s application is deemed to be given if the Director does not provide written notice of the Director’s determination within the required 45 day review period.

In calendar year 2017, MHT received 93 applications for proposed work to 69 properties

under easement. MHT's average response time was 30 days, well within the 45 day response time specified in most easements, and similar to MHT's review period for other programs, including Section 106 and rehabilitation tax credit reviews. Of the 93 applications, 29% (27 applications) were fully approved, and an additional 45% (42 applications) were conditionally approved or conceptually approved. Only 9% (8 applications) were denied in their entirety. The remaining 17% of applications (16 applications) received a "mixed" decision, with individual components approved, denied, or determined incomplete. In addition, during the same time period, 28 applications were reviewed at staff level, without Committee review, and approved or conditionally approved, with an average response time of 19 days. These applications often involved final approval of work that had been previously approved with conditions by the Director.

Early consultation between property owners and MHT staff about proposed projects is desirable and encouraged so that easement staff may provide technical assistance and guidance before funds are expended. Easement staff often perform site visits or meet with property owners to discuss needs and concerns prior to or during the preparation of project proposals.

#### *Co-held easements - review of work*

When an application is received for proposed work to a co-held easement property, easement staff will, as a courtesy, inform the co-holding agency or agencies that an application has been received. It is the responsibility of the property owner to provide the submission to any other co-holding agency. MHT will follow typical review procedures as detailed above and will copy the co-holding agency on the Director's decision letter.

#### *Appeal of Director's Determination*

An applicant may appeal the Director's denial of a change or alteration request to the MHT Board of Trustees. In considering the appeal, the Board will apply the Secretary of the Interior's *Standards* (see discussion on pages 46-47). The decision of the Board of Trustees on an appeal is final and not subject to further appeal. Once the Director has denied an application, a request for approval of work that is substantially identical to the denied request may not be submitted by the property owner within one year following the denial, unless the property owner is able to present significant new information.

### 3. Inspections

An MHT Deed of Easement does not require MHT to conduct inspections of properties. Rather, with only a few exceptions, the easement gives MHT the right to inspect. Nonetheless, MHT recognizes that the monitoring and evaluation of properties upon which MHT holds an easement is key to ensuring the property's long-term protection. Inspections provide a vehicle for MHT to assess the overall condition of the property and document changes over time. At the same time, these visits provide property owners with the opportunity to seek technical assistance and guidance from MHT staff regarding proposed alterations or potential repairs.

The Easement Inspector is responsible for conducting routine inspections of easement properties. The Inspector will contact the property owner in advance of the site visit so that the owner may be present for the inspection if they so choose and any tenants or occupants may be given appropriate notice. Prior to the inspection, the Inspector reviews the property's site plans, maps, photographs, and the Deed of Easement to become familiar with the property and the specific protections afforded by the easement.

The purpose of the inspection is to assess compliance with the terms of the easement, particularly as it relates to the requirements for

(1) prior MHT approval of any changes to the property, and (2) maintenance of the property in good, clean, and safe condition. While on site, the Inspector looks for any changes or alterations that have occurred to the property since the easement was executed or since the last inspection and, additionally, for any signs of deterioration or deferred maintenance. The Inspector views the entire portion of the property protected by the easement, documents the property with photographs, and completes a standard inspection form. During the site visit, the Inspector answers property owner questions about the easement and provides technical advice regarding preservation best practices.

After the inspection, the Inspector reviews the property file to verify that any changes to the property noted during the inspection had received MHT's approval. The Inspector then sends a follow-up letter to the property owner that may recommend necessary maintenance work and may request additional information about noted unapproved changes. The requested information helps MHT assess the appropriateness of the work as part of a retroactive review.

*Basements, attics, and roofs are all part of a typical easement inspection, particularly since it is important to keep the building envelope watertight. An inspection by MHT staff can help identify deterioration and its likely causes.*



*Red Lyon Inn, Cecil County*



*Melwood Park, Prince George's County*



*Hammond-Harwood House, Anne Arundel Co.*



Oyster Schooner Kathryn M. Lee, Talbot Co.



Indian Queen Tavern, Cecil County



Glenn L. Martin Plant #2, Baltimore County

MHT conducts joint easement inspections with co-holders, namely with the Maryland Environmental Trust. In such cases, each agency is responsible for its respective scope of the easement, and separate inspection letters will be sent to the property owner by each agency.

In addition to routine inspections, MHT endeavors to ensure that properties are inspected when ownership transfers. If MHT is informed of the listing of an easement property, the Easement Inspector will typically request to schedule an inspection. This inspection serves to provide both the owner and any potential buyers peace of mind that the property is in full compliance with the easement. After requesting an inspection with the property owner, MHT will also contact the listing agent to ensure that the easement's requirements and restrictions are being communicated to any interested buyers (see also section V.A.1 above). MHT has found that this provides an opportunity for the agent and potential purchasers to ask questions regarding the easement prior to a sale. At this time, MHT can also conduct courtesy reviews of

*Discussing concerns with property owners, making careful notes, and taking photographs are all part of routine easement inspections undertaken by MHT staff.*

proposed changes/alterations to an easement property for a potential purchaser.

The chart on the facing page illustrates the total number by year of inspections conducted by MHT since 1993 and illustrates several key trends in easement program administration and staffing. In the 1980s, volunteer preservation organizations known as County Committees of the MHT Board of Trustees received a small annual stipend and the support of a dedicated MHT staff member. In exchange, many assisted with easement inspections, among other activities. Funding and staffing of these County Committees ceased in the early 1990s. While a few incorporated as private non-profit organizations, many became moribund or dissolved and their role in the inspection of easement properties stopped by the middle of the decade. Later, in the early 1990s, MHT was able to conduct a high number of inspections because many staff members within the unit, including grant administrators and project review and compliance staff, performed inspections during their travels across the state. In addition, every MHT Capital Grant project resulted in a completed easement inspection form. As staffing declined and work pressures increased, non-easement staff could not continue to perform inspections as an addition to their regular duties.

## MHT Easement Inspections

<b>Easement Inspections Conducted Per Year</b>	
<u>Year</u>	<u># of Properties</u>
2018 (to date)	85
2017	68
2016	20
2015	8
2014	86
2013	106
2012	141
2011	134
2010	39
2009	46
2008	61
2007	129
2006	149
2005	46
2004	85
2003	129
2002	93
2001	53
2000	79
1999	53
1998	70
1997	135
1996	148
1995	179
1994	171
1993	179
2492 total inspections since 1993	

The most notable trend revealed by this chart is that MHT is able to perform more inspections when there is stability in the Easement Inspector position. First created in 2006, the position was filled for most of each year between 2006-7 and 2011-2013. During these years a high number of properties were inspected. In 2015, the inspection numbers were extremely low because the Inspector position was vacant from September 2014 to May 2015, and in June 2015 the Easement Administrator resigned, which required the new Inspector to temporarily take on the Administrator's duties.

Since 2016, the MHT Easement Program has worked to establish more thorough standard inspection procedures. This has become necessary as some properties have been under easement for nearly fifty years and have undergone many changes since the easement was first executed. Neither conducting inspections quickly or in a cursory manner, nor having as a goal the completion of a high number of inspections per year, is beneficial to the easement program in the long run. A more comprehensive approach to easement inspections ensures that property owners will receive better advice about maintenance and preservation issues and will lead to improved outcomes for properties under their care.

### 4. Easement modifications

Once recorded in the land records, Deeds of Easement may only be modified with the consent of the property owner, MHT, and, in certain cases, other parties to the original easement. For example, MHT may request to modify an easement to increase protections if additional funding is awarded to the property, or a property owner may wish to add acreage to the land area already protected. In other cases, the property owner and MHT may agree to modify an older easement to conform to MHT's newer standard document, or to update baseline documentation such as photographs or maps.

A request to modify an easement is reviewed by the Easement Committee, in conjunction with legal counsel, a recommendation is made to the Director, and final action is taken by the MHT Board of Trustees. To maintain an easement donor's intent in donating an easement, requests to amend gift easements are strongly discouraged. A proposal for an amendment to an easement will not be considered if the amendment would increase the permitted density of construction on the land subject to the easement, unless the proposal includes new preservation benefits on historic property. The Easement Committee may recommend that the Director approve a request if the following additional standards are met:

1. The requested amendment is permitted under current law;
2. The request is consistent and compatible with the intent and purposes of the original easement terms;
3. The request is in conformance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68); and
4. The owner can demonstrate to the satisfaction of the Easement Committee that the

amendment will increase or prolong the protection, maintenance, and useful life of the property.

An easement modification may require the property owner to submit legal documentation, but the modification itself is drafted by MHT and the Office of the Attorney General. As with an original Deed of Easement, the modification is recorded in the land records once executed.



B&O Passenger Car Shops, Baltimore City

The B&O Railroad Museum received generous funding from the Maryland Historical Trust for our North and South Passenger Car Shops. The easement we have accepted as part of this partnership has helped ensure that these beautiful structures will be preserved and maintained as a testament to our community's industrial history as the birthplace of American railroading.

-James W. Smolinski  
Director of Grants  
B&O Railroad Museum

## B. Staffing

### 1. Easement Administrator

The Easement Administrator, a permanent, full-time position, is responsible for all aspects of MHT's easement program and supervises both the Easement Inspector and the Easement Processor. The Administrator provides ongoing, intensive technical assistance to easement property owners and their representatives regarding activities that will impact easement properties; assistance is provided on-site as well as via e-mail and telephone. As staff support to the in-house Easement Committee, the Administrator conducts an initial review of all applications for changes; contacts property owners for additional information and to advise on review status; presents all proposed property changes; prepares agendas, minutes, and decision letters; and maintains both digital and paper files. The Administrator coordinates on a daily basis with the Director, Deputy Director, and Easement Committee members, as well as staff of other programs at MHT that interface with the easement program, including grants, loans, GIS, and project review and compliance, and the Office of the Attorney General. The position requires, at a minimum, a Bachelor's degree from an accredited college or university, generally in historic preservation or architectural history, and four years of experience.

### 2. Easement Inspector

The Easement Inspector is a contractual, full-time position with responsibility for monitoring and evaluating the condition of all properties under easement and coordinating such activities with the Office of the Attorney General and co-holding agencies. This work entails scheduling site inspections with property owners and co-holding agencies, documenting property conditions in photographs and notes while on-site, completing formal inspection forms, evaluating the maintenance needs of the property, notifying property owners of inspection results, and identifying any potential easement violations. The Inspector serves as staff support to the in-house Breach Subcommittee by presenting to the Subcommittee all potential easement violations and by drafting related correspondence. The Inspector also serves as secondary staff support for the Easement Committee and provides technical assistance to property owners during site visits as well as via phone and e-mail regarding potential alterations to easement properties or resolution of violations of the easement. The Inspector coordinates on a daily basis with the Easement Administrator, Deputy Director, Breach Subcommittee members, and the Office of the Attorney General. The position requires, at a minimum, a Bachelor's degree from an accredited college or university, generally in historic preservation or architectural history, and two years of experience.

### 3. Easement Processor

The Easement Processor is a contractual, part-time position primarily responsible for working with property owners, real estate attorneys, property surveyors, and the Office of the Attorney General to collect, assemble, and ensure the accuracy of all information required for the drafting of easements. This information includes, but is not limited to, certificates of title, title insurance, legal site plans, and property descriptions. The processor ensures that the Deed of Easement is properly executed, recorded, and returned to MHT to ensure legal sufficiency of the easement and protection of the State's interests. In drafting the easements, the processor conducts site visits, takes easement exhibit photographs, assembles easement documents and exhibits, reviews property surveys and boundary descriptions, and creates easement files. The processor coordinates on a regular basis with the Easement Administrator, the Office of the Attorney General, and with staff of all units at MHT that require the conveyance of easements, including grants, loans, and project review and compliance. The position requires, at a minimum, a Bachelor's degree from an accredited college or university and four years of experience; legal experience with an emphasis on real estate is preferred.

## VI. Recommendations

This section of the report addresses the three areas of consideration requested by the JCR:

- (1) new policies on when to accept easements and for what period of time;
- (2) recommendations for staffing of the program and / or administration of the program in partnership with non-profit partners or easement holding sister agencies (e.g., Maryland Environmental Trust, Maryland Agricultural Land Preservation Foundation, and others) in order to reduce State expense; and,
- (3) recommendations for the potential dissolution or modification of easements that no longer are in the best interest of the state or historic preservation.

### A. New easement acceptance policies

As outlined in Section III, MHT obtains easements in a variety of ways. The easement portfolio has grown substantially over the five decades since MHT took its first easement in 1969. In recent years, MHT has limited the number of new easements, chiefly by crafting more restrictive criteria for acceptance of new easements arising from bond bill easement requirements, and by changing MHT's African American Heritage Preservation Program (AAHPP) statute and regulations to limit new easements required through that grant program. Currently, MHT takes 10 or fewer easements per year.

Nonetheless, current statute, regulations, and policies still result in MHT being required to take more perpetual easements than may be sustainable, particularly given the substantial workload associated with responsible easement administration. While MHT remains committed to protecting Maryland's heritage through its easement program, perpetual easements are only one of many tools which may be used to accomplish this goal. MHT needs greater flexibility in deciding when an easement is the appropriate preservation instrument, in determining what the term of the easement should be, and in bringing our

future easements more in line with the practices of other easement-holding State Historic Preservation Offices (SHPOs).

In response to the JCR request, a working group of MHT's Board of Trustees collaborated with MHT staff over the summer and fall of 2018 to examine the statutory, regulatory, and policy context through which MHT accepts easements. In addition, the working group reviewed the practices of other easement holding entities, including other State agencies, non-profit organizations, and SHPOs across the country. The result of this analysis was a recommendation to the full Board, which was ratified at the Board's October 2018 meeting. In accordance with that action, MHT is implementing the following changes to its easement program policies, grant and loan regulations, and bond bill easement requirement policies, with the goal of reducing the number of perpetual easements accepted by MHT while maintaining a standard of ongoing protection of State investments comparable to practices followed by other easement-holding SHPOs:

#### *1. Gift easements.*

MHT's new policy is to accept donated easements only on properties that are: (1) individ-

ually listed, or individually eligible for listing, in the National Register of Historic Places; and (2) of a type not adequately represented in MHT's easement portfolio. Donated easements are no longer accepted on properties that are only listed as contributing to a local or National Register historic district. Any new gift easements will be perpetual, in conformance with IRS requirements on donated easements.

## *2. Easements as conditions of grants and loans administered by MHT.*

The following changes will be implemented:

*(i) MHT Historic Preservation Capital Grants.* Rather than requiring a perpetual easement on all bond-funded capital projects assisted by an MHT Capital Grant, MHT will change the grant program's regulations to require term easements only. The easement term will be tied to the amount of funding received: each \$5,000, or portion thereof, in funding will result in one year of easement term, with a minimum easement term of fifteen years. This will ensure (a) minimum protection of properties beyond the performance period of the grant and (b) protection for the minimum required useful life expectancy of the bond-funded capital improvements.

*(ii) MHT Historic Preservation Capital Loans.* Rather than requiring a perpetual easement on all loan assisted properties, MHT will change the loan program's regulations to require term easements only. An easement term will end five years after the date of loan payoff or fifteen years from recordation, whichever is longer.

*(iii) African American Heritage Preservation Program (AAHPP) Grants.*

Rather than requiring a perpetual easement on all assisted properties that are easement-eligible, MHT will change the grant program's regulations to require term easements only. The easement term requirements for AAHPP grants will be the same as those for MHT Capital Grants, as discussed above.

*(iv) Maryland Heritage Areas Authority (MHAA) Grant Program.*

MHT proposes adopting a policy on the conveyance of easements under this program that parallels the existing policy for accepting easements as a condition of bond bill funding (see section III.C above). The new policy will recommend the conveyance of term easements when, with certain exceptions mirroring those in the bond bill requirements, the assisted property is individually listed, or individually eligible for listing, in the National

Register. The easement term requirements for MHAA grants will be the same as those for MHT Capital Grants, as discussed above.

*(v) Maryland Heritage Areas Authority (MHAA) Loan Program.*

The same easement acceptance policy described above for the MHAA grant program will apply to the MHAA loan program. The easement term requirements for MHAA loans will be the same as those for MHT Historic Preservation Loans, as discussed above.

## *3. Easements as conditions of Bond Bills:*

MHT will propose changes to the easement requirement language in the bond bill to permit acceptance by MHT of a term easement, rather than mandating a perpetual easement in all instances. The easement term requirements for bond bill easements will be the same as those for MHT Capital Grants, as discussed above.

## *4. Easements as conditions of State or Federal Section 106 Action*

*(i) Mitigation of a State or federally funded project.*

It is no longer our practice to accept easements for mitigation of an adverse effect; oth-

er means of mitigating or avoiding an adverse effect are employed.

*(ii) State or federal property transfer.*

MHT will continue to request perpetual easements as mitigation for the adverse effect of transfer out of State or federal government ownership only when, with certain exceptions mirroring those in the bond bill requirements, the historic property being transferred out of State or federal ownership is individually listed, or individually eligible for listing, in the National Register. If an easement is not agreed to, other means to mitigate adverse effects will be explored.

*5. Easements as conditions of federal funding.*

MHT will require either term or perpetual easements per the requirements of the federal funding source.

## B. Staffing

The chart below illustrates the current staffing and funding levels for the MHT Historic Preservation Easement Program.

The Easement Administrator position, a full-time, permanent position, has had five incumbents since 2000. From January of 2000 to June of 2016 (186 months) the position has been vacant for a total of 15 months, or

Position	State Funding	Non-State Funding
Easement Administrator (permanent full-time)		
Base salary	\$22,820.50 (General Funds)	\$22,820.50 (Federal Funds)
Benefits	\$14,290.50 (General Funds)	\$14,290.50 (Federal Funds)
Easement Inspector (contractual full-time)	\$0	\$40,298 (Special Funds - MHT Board of Trustees)
Base salary		
Benefits	\$0	\$3,224 (Special Funds - MHT Board of Trustees)
Easement Processor (contractual part-time)	\$0	\$23,667 (Special Funds - MHT Board of Trustees)
Base salary		
Benefits	\$0	\$1,893 (Special Funds - MHT Board of Trustees)
TOTAL	\$37,111.00 State Funding	\$106,193.00 Non-State Funding

8% of the time. The position was vacant during January 2000, October 2004 to February 2005, March 2010 to August 2010, and September 2015 to February 2016.

The Easement Inspector position was created as a full-time, permanent position in 2006. When the incumbent resigned in August of 2008 the position was cut from the State's budget; it was next filled two years later, in September of 2010, as a contractual full-time position funded by MHT's Board of Trustees (Special Funds). From the time it became a contractual, special funded position in September of 2010 until June of 2018 (94 months) the position has been vacant for a total of 19 months, or 20% of the time. The position was vacant from October 2011 to March 2012, September 2014 to May 2015, and February 2016 to August 2016. Due to the contractual nature of this position it has experienced significant turnover as qualified staff have left to pursue more stable positions.

The Easement Processor position was created as a part-time, contractual position in 2009 utilizing funds from MHT's Board of Trustees (Special Funds). Prior to 2009 the processing of easements was handled by grant program administrators, who lacked the expertise or knowledge necessary to review property sur-

veys, certificates of title, and prior deeds as is needed to support the Office of the Attorney General in drafting easements in a timely manner; this resulted in extensive delays in the release of grant funds. The creation of a dedicated position, which now has a paralegal as its incumbent, has substantially reduced the processing time for new easements. However, from the creation of the position in 2009 until June of 2018 (105 months), the position has been vacant for a total of 20 months, or 19% of the time.

Notably, due to the workload associated with both the Easement Administrator and Easement Inspector positions, incumbents in those positions regularly accrue significant overtime in order to maintain service. As a full-time permanent employee, the Easement Administrator is offered compensatory time, which may be lost if it is not used within one year. As a full-time contractual employee, the Easement Inspector may elect either to earn compensatory time or cash overtime.

All told, the easement program operates at a significantly low cost to the State. A reduction in turnover of these positions has the potential to improve the program significantly. Consistent and sustainable staffing of the program with individuals who possess the

appropriate qualifications, education, and experience would sustain the program's performance overall.

## C. Administration of the easement program as a partnership

While MHT, the Maryland Environmental Trust (MET), and the Maryland Agricultural Land Preservation Foundation (MALPF) have a common conservation ethic, the focus of each agency's efforts and the resources required to carry out their respective missions vary significantly. MHT's easements are directed at preserving the integrity of historic building fabric, the structures themselves, and archeological sites. In contrast, MET and MALPF are primarily concerned with the protection of farmland and woodland from development, retaining open space, and protecting natural features.

These differences in agency mission are reflected in the training and expertise of each agency's staff. For example, MET easement program staff are classified as Natural Resources Planners and may have degrees in environmental science or natural resources planning, management, or development, or in some cases in planning, engineering, or geography. MHT staff, on the other hand, have expertise and degrees in historic preservation, archeology, architectural history, or architecture, with many required to meet or exceed the Secretary of the Interior's Profes-

sional Qualifications Standards. In the same way that MHT staff cannot advise on the impact of development runoff on habitat integrity, MET staff cannot advise on solutions to spalling masonry. The corresponding skills that staff of these agencies bring to easement administration are not interchangeable.

Protecting a property's environmental qualities, guarding against its development, and ensuring its use or intensity of use does not change are important goals which can be attained hand-in-hand with historic preservation interests. However, the work of conservation easement entities, such as MET and MALPF, should be seen as complementary rather than overlapping with or supplanting the work of MHT. MHT and MET already cooperate on co-held easements and will continue to seek opportunities to streamline easement administration and inspection practices as our programs evolve. Beyond that, seeking new partnerships between MHT and MET or MALPF is not likely to result in greater efficiencies for these programs.

Similarly, partnerships with non-profit preservation organizations hold limited promise. MHT's easement program is interconnected with other programs at MHT, including the rehabilitation tax credit and grant programs

(which often fund work on easement properties), as well as bond bills and State and federal property transfers, both of which are the purview of Section 106 review and often result in new easements. When multiple programs are being accessed for a single project, MHT endeavors to provide property owners with a seamless single review process. These connections would preclude outsourcing easement administration tasks to third parties.

Furthermore, the review of proposed work, provision of technical assistance, and guidance on the resolution of breaches and removal of inappropriate work rely on professionally qualified staff in a range of disciplines. Guidance from MHT's professional staff focuses on the application of the Secretary of the Interior's *Standards*, with the Administrator, Inspector, and Easement Committee members routinely considering questions such as:

- What makes this property significant?
- Is this particular building element original? Is it historic but not original? Is it a modern replacement?
- Is this building element deteriorated beyond the ability to repair it, or can it be repaired?
- What is an appropriate treatment for this type of material failure?

- What is the visual, material, and archeological impact of this proposed addition, and is it acceptable in this historic context?
- What archeological investigations have been done at this site, and what may they imply for its archeological potential?

Review of proposed work to easement properties requires the expertise of a range of professionals with expertise in architectural history, archeology, architecture, rehabilitation, and materials conservation. Non-profit preservation organizations, which focus primarily on advocacy, fundraising, and educational outreach, do not have this expertise in house.

In addition, on a daily basis, MHT staff relies upon the legal advice and assistance of Assistant Attorneys General with the Office of the Attorney General (OAG) on all matters related to drafting of new easements, existing easement application and interpretation, and enforcement in instances of easement breaches. Staff enjoys the benefits of attorney-client relations with the OAG, including applicable privileges. By law, third party agents do not have the same relationship with the OAG.

Unlike the execution of new easements and the review of property alterations, inspection

of properties protected under easement is a responsibility that many other entities and agencies have devolved to volunteers. As described in Section II of this report, MHT experimented with this approach in the 1980s-1990s (County Committee volunteers) and again in the early 2000s (PILG Program). Ultimately, MHT found that this method of inspection was not effective and ultimately failed for two main reasons: (1) the inability to perpetually fund these efforts; and (2) the lack of experience and qualifications among the volunteers who had no specific knowledge of architecture, construction, or building technology.

Easement inspections consist of more than just taking photographs of easement properties, and there is no easy “checklist” for compliance with the easement. The inspector must undertake a careful review of MHT’s digital and paper files on the easement property and diligently compare the condition and appearance of the property at inspection against previous documentation. The inspector must possess knowledge of building materials and construction technology and be able to identify decay and deterioration as well as advise on probable causes and possible treatments. As in all aspects of the easement program, the gap in expertise between a preservation pro-

fessional and a volunteer cannot be overcome with on-site or in-office training.

Continuing through the present, MHT easement staff routinely uncover inaccurate inspection reports prepared by volunteers over the years - a poor record that resulted from lack of expertise, failure to understand the basic maintenance needs of historic properties, and a lack of awareness of the history of the property. An inaccurate or incomplete inspection years ago may mean that a property owner’s violations of an easement went uncorrected - contrary to the preservation goals of the easement program - or that a violation inequitably passed on to subsequent owners rather than be corrected by the owner who committed the violation. In addition, a poorly executed inspection report or follow-up letter may leave the owner with the impression that everything is in order with their property, when in fact there may be areas of physical deterioration that need urgent attention - issues that a preservation professional would be able to point out and provide additional technical assistance. Finally, inspections form the basis for identifying and pursuing violations of easements; since MHT has the option to pursue remedies for the violations as specified in the easement, it is important that the inspection and all follow-up be con-

ducted by MHT's own staff, in a thorough and complete manner, and within a set process. Inspections, when done well, form the backbone of the easement program's documentation and enforcement and should not be compromised.

Although MHT should not delegate its easement inspection responsibilities solely to volunteers, untapped opportunities to improve the program's partnerships with local historic preservation commissions do exist. Commissions, particularly those supported by professional preservation staff, can be an important resource to MHT staff, providing timely information regarding easement property concerns and needs, joining staff on site visits where appropriate, and coordinating on reviews of properties that are both locally designated and under easement. MHT will work with the Maryland Association of Historic District Commissions (MAHDC) to explore new ways to strengthen communication and cooperation between the MHT easement program and local preservation commissions. Although this partnership is not expected to impact the State's current investment in the easement program, it has the capacity to benefit statewide preservation interests overall.



*MHT staff routinely make site visits, attend meetings, and provide inspections for properties protected under easement. These in-person meetings often involve property owners, architects, engineers, contractors, and craftsmen and provide a good opportunity for issues and questions to be discussed face-to-face. Meetings may occur while a project is in the design phase, during construction, or both.*

#### **D. Dissolution or modification of existing easements**

A Deed of Easement is a contract between the grantor - the property owner at the time the easement is recorded - and the grantee - the Maryland Historical Trust. The easement document makes clear who has the authority to administer the easements, which in most instances is the Director of MHT. The Director is charged with: (1) approving or denying all changes to the property proposed by the property owners, and (2) addressing violations of easement provisions (breaches). Certain decisions of the Director may be appealed to the MHT Board of Trustees. Since the document is recorded in the land records, it can only be modified with the permission of the owner and the approval of the MHT Director and the MHT Board of Trustees.

MHT is committed to rebalancing its easement portfolio to ensure the long term sustainability of the program. Considerations will include the extent to which properties may already be adequately protected, the mechanism by which easements were acquired, the relationship between easement coverage and property significance, and other factors. MHT will begin this process of evaluation immediately following publication

of this report and will seek to fine tune its easement holdings in a manner that is lawful, fair, reasonable, and consistent with MHT's historic preservation mission. Any dissolution or modification of existing easements will be determined on a case-by-case basis.

## Preservation in Perpetuity:

### Charles Sumner Grand Army of the Republic Post #25 ("Sumner Hall"), Chestertown, Kent County

*In Chestertown, Maryland, resides one of only two remaining veterans' halls for black Civil War troops in the United States. Fifteen years ago, local citizens joined as an organization named Preservation, Inc. to save this historical edifice that was literally being swallowed by the surrounding earth. Over a decade, it was uncovered, elevated, structurally stabilized, and lowered onto a new foundation.*

*About five years ago, we moved into the last stage of reconstructing that shell into a museum, gathering center, historical education exhibit, and center for social justice that would strive to awaken the area to its past and present practices. We made an application to MHT for a reconstruction grant through the AAHPP and were accepted. Over a period of two years, we used this and other grants to reconstruct the "saved" building into a vibrant, active, "alive" building that brought all its private and public financial supporters along with it into its new life.*

*This was not just a "save" of a declining structure into a dusty museum. This building now functions as an example of what funding from Maryland Historical Trust*

*can do to not merely restore, but also rebirth a building into new and useful life, tie old history to living history, and let it serve another long set of decades as a center for social cohesiveness.*

*It is highly likely that without the direction and funding from MHT, Sumner Hall would still be either sitting atop aging concrete waiting for future funding, or turned into a small residence like its two abutting neighbors.*

*In that thought, resides a question. What happens if the area around Sumner Hall changes, and pressure builds to change the neighborhood to all residential, as the large parking lot behind it calls for economic development? Luckily, MHT has a historic easement on Sumner Hall, and no changes of any significance can be made without their written permission. This guarantees that in the future, the ground under Sumner will not be the new home of a McMansion, or a modern parking garage. Her life is safe as long as the easement is enforced by MHT. As a museum, Sumner Hall is open but four hours a week. But any given week she may see from two to four events, meetings, concerts, films, lectures, or other func-*

*tions which small or large groups of people from near and far attend. This is the importance of the building, and if buildings had feelings, it would be extremely happy to be here, functioning again, and protected by her protective easement far into the future.*

*Bob Ingersoll  
Board Member  
Sumner Hall*



*Sumner Hall as it appeared in 2004 (top left) and in 2016, after its restoration was complete (above and bottom left). Exhibits inside tell the story of the Grand Army of the Republic, a fraternal organization for Union veterans of the Civil War that had both white and black posts across the country. Chestertown's black veterans formed Post #25 in 1882 and built the hall in the early 20th century. The interior paint scheme - red, white, and blue - is a reproduction of the original.*

**[MHT's easement] guarantees that in the future, the ground under Sumner will not be the new home of a McMansion, or a modern parking garage. Her life is safe as long as the easement is enforced by MHT.**

**-Bob Ingersoll  
Board Member  
Sumner Hall**

## Preservation in Perpetuity: Christ Rock Church and Stanley Institute, Dorchester County

THE FRIENDS OF STANLEY INSTITUTE, INC.  
P.O. BOX 1199  
CAMBRIDGE, MD. 21613-5119

November 19, 2018

Anne Raines  
Deputy Director/Deputy State  
Historic Preservation Officer  
100 Community Place  
Crownsville, MD 21032

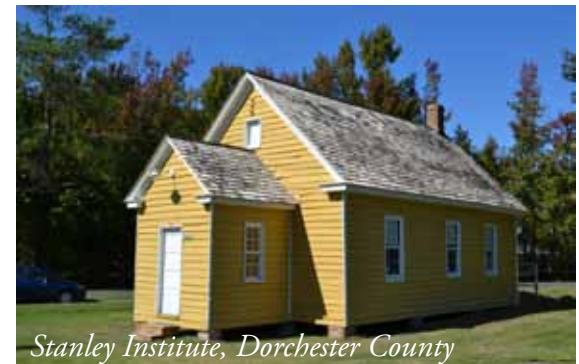
Ms. Raines

The Friends of Stanley Institute, Inc. have two properties, that have easements under the Maryland Historical Trust program. We have no regrets of being in the easement program, because having these easements will protect the properties long after the members of our organization are gone. With that said, we are secure that the work that we have done to the Stanley Institute school and the Christ Rock United Methodist Church and Community Hall, will remain under the protection of the Maryland Historical Trust. Thank You for your support.

Best Regards,  
*Herschel*  
Herschel Johnson  
President



*Christ Rock Church, Dorchester County:  
raised for installation of new foundation*



*Stanley Institute, Dorchester County*



*Christ Rock Church, Dorchester County*



*Christ Rock Church, Dorchester County*

*The Friends of Stanley Institute, a local non-profit organization, have restored both the Stanley Institute school building and Christ Rock Church over the course of fifteen years. At immediate left, members of the Friends meet with architect Michael Dowling during the restoration of the church's interior. Above, members of the Friends join contractor Victor MacSorley and finishes restoration expert Suzanne McKibbin of River Run Studio in the nearly finished sanctuary. Both the school and the church are open to the public for museum and community use.*

## Appendix I: Profiles of other easement-holding entities

### MARYLAND STATE AGENCIES

#### *Maryland Environmental Trust*

The Natural Resources Article of the Maryland Annotated Code (Sections 3-203 and 3-203.1) authorizes the Maryland Environmental Trust to accept gifts of real property, including conservation easements. MET began accepting land conservation easements as early as 1972 with the primary goal of preserving open space. MET accepts gift easements and occasionally purchases easements with funding provided by the DNR's Rural Legacy Program and Program Open Space, or with federal funds through the Federal Highway Administration (SAFETELU), U.S. Department of Agriculture (FRPP), or Department of Defense (ACUB or REPI). Easements granted to MET are accepted by the MET Board of Trustees and then presented to the Board of Public Works for ratification. The conservation easement is then recorded with the clerk of the Circuit Court in the local jurisdiction where the property is located.

MET currently holds 1,095 easements, the vast majority of which are perpetual in nature. MET aspires to monitor easement properties

annually, in accordance with the Land Trust Alliance's Land Trust Standards and Practices. In those cases where easements are co-held with local land trusts, MET often delegates easement monitoring to these partners. MET has hired two contractual staff members to coordinate monitoring with local land trusts, carry out easement inspections, and train and supervise volunteers who will assist with easement monitoring tasks. MET inspections seek to identify gross changes in land use and instances of encroachment, dumping, unpermitted new construction, and tillage in stream buffers, as well as to maintain contact and relationships with landowners, to head off future issues.

MET's Stewardship Fund provides limited supplementary funding for all facets of easement stewardship, including monitoring (e.g. developing online tools to compare multiple dates of high resolution aerial photography), tracking land tenure, managing relationships with landowners, and defending in legal proceedings (e.g. transcription fees). Fund sources have included the donation of personal estates of two easement donors and individual donations from numerous easement donors.

#### *Maryland Agricultural Land Preservation Foundation*

The Agriculture Article of the Maryland Annotated Code (Subtitle 5) creates the Maryland Agricultural Land Preservation Foundation (MALPF) and lists among its powers the authority to acquire easements to restrict the use of agricultural land and woodland. MALPF began purchasing easements in 1977 with the goal of preserving sufficient agricultural land to maintain a viable local base of food and fiber production for present and future Marylanders. All MALPF easements are intended to be perpetual.

MALPF works closely with local government partners, including local Departments of Planning and Zoning and Agricultural Advisory Boards, when acquiring and monitoring easements. Landowners who wish to offer agricultural easements for sale must first submit their application at the local government level. These applications must be approved by the local Planning and Zoning authority, Agricultural Advisory Board, and governing body before applications are forwarded to MALPF for consideration. Once received by MALPF, the applications undergo staff review, appraisal by the Department of General Services, and consideration by the MALPF Board. After the application is approved by MALPF, an option contract is sent to the landowner for signature. The final step in the process is approval

by the Board of Public Works. According to MALPF's FY2017 annual report, by the end of FY2017, 2,242 properties totalling nearly 305,000 acres have been preserved, representing public investment of almost \$700 million.

The MALPF Board has adopted a policy of monitoring 10% of their easement portfolio per year. Monitoring is conducted by county program administrators who are required to monitor at least 10% of properties in their jurisdiction annually as well as all easement properties acquired with any federal funds. This monitoring is coordinated by the MALPF Monitoring and Enforcement Coordinator, who follows up with property owners when there are violations. Violations include actions that are injurious to the land, including new construction not otherwise permitted by the easement. While MALPF has the statutory ability to partner with non-profits, they have not yet done so.

## **OTHER AGENCIES - NATIONALLY AND STATEWIDE**

### *Non-Profit Organizations*

The National Trust for Historic Preservation (NTHP), a national non-profit preservation organization, began accepting gift easements in the early 1970s. Today, the NTHP only accepts gift easements on very exceptional historic properties. Most new easements are in-

stead acquired as a result of gifts of real estate. In such cases, a property is gifted to NTHP, encumbered with an easement, and then resold. A portion of the sales proceeds is used to cover easement administration costs going forward.

The NTHP easement portfolio includes approximately 130 properties across the United States. All easements are perpetual and have requirements that are individually tailored to each property. The NTHP inspects all properties within an 18 month period. The NTHP has found it most effective to conduct easement inspections using in-house staff to ensure consistency. Two staff members are dedicated to this task.

The Archeological Conservancy, a national non-profit organization dedicated to acquiring and preserving archaeological sites discovered on private land, oversees 550 preserves in 46 states. The Conservancy prefers to acquire property in fee simple rather than take easements. Gift easements are accepted on only the most important properties and on properties for which easements are the only preservation option. The Conservancy currently holds about 8 easements and conducts regular monitoring. Since many of their properties are in rugged environments, they have begun to use drone technology to establish baseline inspection data. Drone and on-site inspections seek to identify activities such as

looting, trash dumping, trail construction, and impacts created by fire or invasive plant growth that could adversely affect archeological resources. Regional office staff are responsible for conducting monitoring of easements in their area.

While the NTHP and the Archeological Conservancy hold easements across the country, Preservation Maryland (PM) is a non-profit historic preservation organization that operates statewide. PM currently holds one perpetual historic preservation easement on the Wye Orangery, which was gifted to the organization in 1980. PM conducts annual easement inspections which are supported by a funding agreement paid for by the donor. PM also co-holds an easement on Belmont, in Howard County, with MHT and holds two term easements on the Mount Vernon Club and the Maryland Club, both in Baltimore City. Known as "club agreements", these term easements require monitoring of building interiors and exteriors and renew every 10 years unless one party objects. PM bills the clubs directly for costs associated with monitoring the easements and reviewing proposed alterations.

At the local level, the L'Enfant Trust is a non-profit organization that holds 1,144 historic preservation easements located in the District of Columbia and Alexandria, Virginia. All easements held by the L'Enfant Trust are

donated by property owners, are perpetual in nature, and are limited to building exteriors. Properties must be listed on the National Register of Historic Places or contributing to a National Register district in order to be considered by the L'Enfant Trust. All easement properties are marked with a plaque and inspected annually, with inspections consisting of exterior photography of the buildings that are then reviewed by staff in the office. The organization consists of three full time staff as well as rotating interns and a photographer. Easement donors provide a "fair share contribution" to the organization at the time of the easement donation, which usually consists of less than one-half of one percent of the fair market value of the property. This income assists the L'Enfant Trust with the costs associated with easement monitoring and enforcement.

Unlike the L'Enfant Trust, whose mission focuses exclusively on easement administration and historic property redevelopment, the Historic Annapolis Foundation (HAF) is a local non-profit that holds easements as one component of a diverse historic preservation and interpretation program. HAF holds easements on approximately 50 properties, most of which are in perpetuity and have been gifted to the organization. HAF easement provisions vary and can govern both interior, exterior, and landscape elements. Easement monitoring occurs on a regular basis and is

one of the responsibilities of an existing staff member. Development of a stewardship fee for future easement donations is under consideration now.

#### *State Historic Preservation Offices*

Easement practices of neighboring State Historic Preservation Offices vary widely. Virginia, like Maryland, holds only perpetual easements. Delaware holds none. West Virginia and Pennsylvania hold term easements; the easement term in years is determined by the

amount of funding received.

#### *Local Governments in Maryland*

In Maryland, State enabling legislation permits local governments to hold historic preservation easements. A successful example of this practice is a program administered by the Maryland National Capital Park and Planning Commission (M-NCPPC), which holds easements on approximately 60 properties in Prince George's County. Conveyance of a historic preservation easement to M-NCPPC is a

<b>State</b>	<b># Easements Held</b>	<b>Easement/Covenant Duration</b>
Delaware SHPO	0	Not applicable
Pennsylvania SHPO	Over 500	Grant awards over \$25,000 – 15 year covenant
Virginia SHPO	612	Grant Award – Perpetual Gift – Perpetual
West Virginia SHPO	11	<u>State Grant Awards</u> \$0 to \$10,000 = 5 years \$10,001 to \$20,000 = 10 years \$20,001 to \$50,000 = 15 years \$50,001 to \$100,000 = 20 years \$100,001 and over = 25 years

requirement for property owners who receive assistance from the Prince George's County Historic Property Grant Program, currently funded at about \$300,000 per year. These easements are perpetual, and most protect exteriors of historic properties, although some protect interiors and landscapes as well. The M-NCPPC program is supported by one full time staff member and contractual legal support that assists with recordation. Easement properties are inspected annually.

To cite another example, the Anne Arundel County Office of Planning and Zoning's Cultural Resources Division currently holds approximately 70 easements and covenants on historic buildings, cemeteries, and archeological sites. Easements are accepted by the County through the development review process and when county preservation tax credits are utilized; the County may also accept gift easements. As staffing levels allow, Cultural Resources Division staff inspect covered properties every two years. In addition, staff provide technical assistance and guidance to property owners, reach out to new owners of covered properties, and enforce remedies of violations.

Please also refer to the feature on local governments on page 42.

## Appendix II: Tax implications of conservation easements

“Conservation easement” is the generic term for easements granted for preservation of land areas for outdoor recreation, protection of a relatively natural habitat for fish, wildlife, or plants, or a similar ecosystem, preservation of open space for the scenic enjoyment of the public or pursuant to a Federal, State, or local governmental conservation policy, and preservation of a historically important land area or historic building.”

“Conservation easements permanently restrict how land or buildings are used. The “deed of conservation easement” describes the conservation purpose, the restrictions and the permissible uses of the property. The deed must be recorded in the public record and must contain legally binding restrictions enforceable by the donee organization.”

“The donor gives up certain rights specified in the Deed of Conservation Easement, but retains ownership of the underlying property. The extent and nature of the donee organization’s control depends on the terms of the conservation easement deed. The organization has an interest in the encumbered property that runs with the land, which means that its restrictions are binding not only on the landowner who grants the easement but

also on all future owners of the property.”

“Qualified organizations that accept conservation easements must have a commitment to protect the conservation purposes of the donation in perpetuity and must have sufficient resources to enforce compliance with the terms of the easement deed.”

The Internal Revenue Code specifies a conservation easement that results in “preservation of a historically important land area or a certified historic structure” as one of several easement types that can qualify as deductible.

“Historically important land includes:

- An independently significant land area that meets the National Register Criteria for Evaluation
- Land where the physical or environmental features contribute to the historic or cultural importance and continuing integrity of certified historic structures.”

“A certified historic structure is:

- Any building, structure, or land area listed on the National Register, or
- Any building located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district.”

Additional restrictions apply to buildings in registered historic districts, particularly in dis-

tricts which already have preservation or zoning controls in place.

The Internal Revenue Code (IRC) § 170(h) and Treasury regulations determine whether a donated easement is tax deductible as a charitable contribution. Among other requirements, the donation must be voluntary (made with no “expectation of a direct or indirect benefit”), the easement must be permanent and legally binding, and substantial and regular public access is generally required. The value of the easement / contribution is determined through an appraisal.<sup>1</sup>

In Maryland, easements donated to MET and MALPF may be eligible for tax credits under certain circumstances.<sup>2</sup>

<sup>1</sup> [https://www.irs.gov/pub/irs-utl/conservation\\_easement.pdf](https://www.irs.gov/pub/irs-utl/conservation_easement.pdf)

<sup>2</sup> [http://taxes.marylandtaxes.gov/Individual\\_Taxes/Individual\\_Tax\\_Types/Income\\_Tax/Filing\\_Information/Determine\\_Tax\\_Credits\\_and\\_Deductions/Preservation\\_and\\_Conservation\\_Easement\\_Credit.shtml](http://taxes.marylandtaxes.gov/Individual_Taxes/Individual_Tax_Types/Income_Tax/Filing_Information/Determine_Tax_Credits_and_Deductions/Preservation_and_Conservation_Easement_Credit.shtml)



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