

# **Easement Committee of the Maryland Historical Trust**

## **Policy and Rules of Procedure**

**I. Establishment and Purpose.** The Easement Committee of the Maryland Historical Trust (the “Committee”) is an advisory committee appointed by the Director of MHT (the “Director”). This Policy and Rules of Procedure (the “Policy”) is intended to guide the Committee’s exercise of authority granted hereunder. The Committee’s role and purpose is to:

- A. Advise and make recommendations to the Director on requests made to the Director for the approval of proposed changes or alterations to properties encumbered by historic preservation easements held by MHT (an “easement” or “easements”), and similar preservation agreements<sup>1</sup>;
- B. Advise and make recommendations to the Director and, as may be necessary, to the Board of Trustees of MHT (the “Board”), on the acceptance of new easements;
- C. Advise and make recommendations to the Director and, as may be necessary, to the Board on proposals to amend easements; and
- D. Provide advice and recommendations to the Director on appropriate methods and means to cure or mitigate breaches of easements.

## **II. MHT Easement Committee.**

- A. Membership. The Committee shall consist of the Deputy Director of MHT (the “Deputy Director”) and at least four at-large members. Each at-large member shall be employed by MHT and appointed to the Committee by the Director. The MHT Easement Administrator (the “Administrator”) shall staff the Committee and shall not serve as a member of the Committee.
- B. Eligibility. An MHT employee is eligible for appointment as an at-large member if the employee has consistently demonstrated expertise in the field of: (i) historical architecture; (ii) architectural history; (iii) history; (iv) archaeology; (v) landscape history; or (vi) other closely related discipline.
- C. Special Designee. If the Committee’s review of a specific project proposal or action requires additional expertise, as determined by the membership, the Director may designate someone with pertinent expertise to serve on the Committee on an ad hoc basis with respect to a specific project or action (the “Special Designee”). Only one non-MHT employee may serve as a Special Designee at any one time.

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<sup>1</sup> A small number of easements held by MHT place approval authority over proposed changes and alteration with the State Historic Preservation Officer (the “SHPO”). In those instances, the SHPO’s role in reviewing a change or alteration request shall, to the extent consistent with the terms of the easement, be consistent with the role of Director as established in this policy.

- D. Chair of the Committee. The Deputy Director shall serve as the Chair of the Committee. The Chair's duties include:
1. Presiding over meetings of the Committee;
  2. Coordinating with the Administrator to set and prepare meeting agenda;
  3. Coordinating with the Administrator on scheduling meetings;
  4. Participating in Committee discussions;
  5. In the event of a tie in a vote of the Committee, casting the deciding vote; and
  6. Performing other actions and functions necessary for the efficient conduct of the Committee's business.
- E. Meetings. The Committee shall hold such regular and special meetings as are necessary to discharge its duties subject to the following procedures:
1. The Chair, or the Chair's designee in the Chair's absence, shall preside over all meetings of the Committee.
  2. The Committee is not a "public body" for purposes of Maryland's Open Meetings Act—Title 3 of the General Provisions Article of the Code of Maryland—and therefore the general public is not entitled by law to attend meetings of the Committee. The Committee may, at its discretion, invite guests to attend a Committee meeting; guest attendance at Committee meetings shall generally be limited to those instances when the Chair determines that a guest might be able to provide information relevant to a matter before the Committee that is convenient to provide in person, or that cannot be provided in writing.
  3. A MHT staff member who is not a member of the Committee may be invited to attend a Committee meeting if the Committee is considering a matter that is pertinent to the staff member's duties. If requested by the Chair, the staff member may present information to the Committee that is relevant to the matter.
  4. A quorum of the Committee consists of three members of the Committee; the Chair, or the Chair's designee, shall not be counted towards a quorum.
  5. All questions voted upon by the Committee shall be decided by a majority of members present and voting. No question shall be put to a vote in the absence of a quorum.

6. The Administrator shall make a summarized record of each Committee meeting which shall reflect the actions taken by the Committee at the meeting.

### III. Review of Applications for Easement Property Changes or Alterations

- A. Standards. Only the Director may approve a request to change or alter property encumbered by an MHT Easement. For each such request, the Committee will review the request, apply the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, 36 CFR Part 68 (the "Secretary of the Interior's Standards"), in its review, and make a recommendation to the Director on what action the Director should take on the request.
- B. Application Form. The Administrator will post and maintain on MHT's website a form, approved by the Director, to be utilized for all requests to change or alter properties encumbered by an MHT Easement (the "Change/Alteration Form," also referred to herein as an "application").
- C. Application Procedures.
  1. *Submission*. All requests to change or alter a property encumbered by an MHT Easement (other than alterations required to mitigate a breach of easement) shall be submitted to MHT on a Change/Alteration Form and include, to the maximum extent practicable, all information concerning the proposed change or alteration as called for on the Change/Alteration Form.
  2. *Determination of Completeness*. Upon receipt by MHT, the Administrator shall review a Change/Alteration Form and make a determination as to whether the information and materials included in the application are adequate for the Committee to conduct a review of the application. If the Administrator determines that the application is inadequate and therefore incomplete, the Director will send written notice to the applicant no later than 45 days from MHT's receipt of the application informing: (i) that the application is denied for being incomplete; and (ii) of additional information necessary to complete the application. Such written notice shall be prepared by the Administrator for the Director's signature. If the Administrator determines that a site visit by MHT staff is necessary to complete an application, the written notice should state as much. If the applicant subsequently submits new or additional information that completes the application, such submission shall be treated as a new application for purposes of applicable deadlines established either in this policy or by the easement.
  3. *Repeat Applications*. If the Administrator determines upon receipt of an application that the requested change or alteration is substantially the same as an application previously submitted by the same applicant during the preceding twelve months that was denied by the Director for any reason other than incompleteness, the Director will send written notice to the applicant no

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later than 45 days from MHT's receipt of the second application informing that the change or alteration request is denied. Such written notice shall be prepared by the Administrator for the Director's signature. This policy to deny without review, requests made in repeat applications shall not apply if the second application contains significant new information which, as determined by the Committee, substantially changes the context of the request. In such instances, the Committee will proceed with its review of the second application in accordance with paragraph D of this section.

4. *Certain Minor Changes or Alterations.*

- a. By adoption of this Policy, the Director delegates to the Administrator the Director's authority under an easement to approve or conditionally approve an application for a proposed change or alteration that meets the Secretary of the Interior's Standards and: (i) does not affect or impact historic material or archaeological resources; (ii) is a repair to historic material utilizing standards and best practices for materials, treatments, and techniques that are recognized as compliant with the Secretary of the Interior's Standards by MHT; (iii) is an in-kind replacement of a single component of a structure or feature that the Administrator determines is deteriorated beyond repair; or (iv) is a request that has been conditionally approved by the Director and involves final approval of the applicant's selection of options or choices from a list of options or choices provided in the conditional approval.
- b. If, upon receipt of a Change/Alteration Form, the Administrator determines to approve or conditionally approve a proposed change or alteration that falls within the approval authority delegated under this section C.4, the Administrator shall send written notice of the Administrator's determination to the applicant no later than 45 days from MHT's receipt of the application.

D. Application Review.

1. *Referral to Committee.* An application not approved or denied under Article III.C of this Policy shall be referred by the Administrator to the Committee and scheduled for review at the first regularly scheduled meeting of the Committee following MHT's receipt of the application, unless the application is received less than 7 calendar days prior to such meeting, in which case the Administrator may, at the Administrator's discretion, schedule the Committee's review of the application at its next regular meeting. Applications referred to the Committee will generally be reviewed by the Committee in the order in which they were received by MHT.

2. *Determination of Completeness.* Notwithstanding a determination by the Administrator under Article III.C.2 of this Policy that an application is adequate, if upon review of an application the Committee determines that the information and materials including in the application are inadequate for the Committee to conduct its review, the Director will send written notice to the applicant no later than 45 days from MHT's receipt of the application informing: (i) that the application is denied for being incomplete; and (ii) of additional information necessary to complete the application. Such written notice shall be prepared by the Administrator for the Director's signature. If the Committee determines that a site visit by MHT staff is necessary to complete an application, the written notice should state as much. If the applicant subsequently submits new or additional information that completes the application, such submission shall be treated as a new application for purposes of applicable deadlines established either in this policy or by the easement.
3. *Committee Review.* When reviewing the substance of a change or alteration request included in a complete application, the Committee:
  - a. Shall consider the request under the terms of the MHT Easement;
  - b. Shall give due consideration to the historic, archeological, and architectural significance of the property; relationships to the historic, archeological, and architectural significance of the surrounding area; the relationship of the site or structure's exterior architectural features to the remainder of the site or structure and to the surrounding area; the general compatibility of the proposed change or alteration in exterior design, scale, proportion, arrangement, texture, and materials to the property and to the surrounding area; and any other factors that the Committee deems pertinent;
  - c. Shall apply the Secretary of the Interior's Standards;
  - d. May consider any information received from a third party that the Committee determines is relevant to the easement issue under consideration;
  - e. Shall strictly apply all applicable standards to proposals to change or alter sites or structures of historic, archeological, or architectural significance;
  - f. May be lenient in its application of applicable standards to: (i) proposals to change or alter sites or structures of little historic, archeological, or architectural significance; or (ii) plans involving new construction, unless in the Committee's judgment such proposals or plans would seriously impair the historic, archeological, or architectural significance of surrounding sites or structures; and

- g. If it recommends an architectural or archeological investigation and documentation of historic property, include in the recommendation a requirement that the investigation be completed in compliance with the *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (MHT, 2000) or the *Standards and Guidelines for Archeological Investigations in Maryland* (Shafer and Cole, 1994).
- E. Committee Recommendation. Following its review of a change or alteration application under Article III.D.3 of this Policy, the Committee shall make a recommendation to the Director that the Director either approve, conditionally approve, or deny the application.
- F. Director's Action.
- 1. *Notice to Applicant*. Following the Director's review of a change or alteration request and the Committee's recommendation, the Administrator will prepare a written notice to the applicant for the Director's signature that includes the Director's decision on the application. The Administrator shall consult with Committee members, as may be necessary, to review the contents of the letter for conformity with the Director's decision.
  - 2. *Approval Timeframe*. For any approval or conditional approval, the Director will include in the written notice a timeframe within which the approval or conditional approval will remain valid and effective. Ordinarily, this timeframe will not exceed six (6) months from the date of the written notice.
  - 3. *Extension of Approval*. By this policy, the Director delegates to the Administrator the authority to extend the timeframe within which an approval or conditional approval is valid and effective, provided that the scope of the change or alteration remains unchanged from that which was approved by the Director and the applicant is diligently pursuing completion of the approved alteration. A request to extend an approval timeframe must be submitted to MHT in writing; an approval of an extension by the Administrator shall be communicated to the applicant in writing.
- G. Appeal of Director's Denial. An applicant may appeal to the Board of Trustees an action of the Director denying an application, or whole or in part, by sending written notice of the appeal to the Director within 45 days of the applicant's receipt of the Director's action. Any appeal received by the Director shall be processed and reviewed in accordance with the Board's "Guidelines and Procedures for Review and Disposition of Determinations of the Director on Requests Made Pursuant to Historic Preservation Easements."

#### IV. Standards for Review of Potential Acceptance of New Easements

*Adopted [DATE]*

- A. Authority. MHT has certain discretion, unique to each program, in deciding whether to accept an historic preservation easement on properties: (i) that benefit from State funding through the annual Consolidated Capital Bond Loan (“Bond Bill”); (ii) that benefit from grant or loan programs administered by MHT or the Maryland Heritage Areas Authority (MHAA); (iii) that are impacted by State or federal compliance actions; or (iv) on which the owner proposes to donate an easement to MHT.
- B. Committee Role. The Committee will review all potential acceptances of easements by MHT and make recommendations on each to the Director. When reviewing a potential easement acceptance, the Committee shall apply and be guided by the Historic Preservation Easement Acceptance Policy of the Maryland Historical Trust, dated 11/20/18.

**V. Standards for Review of Proposed Amendments to Easements**

- A. Procedure. MHT will only consider requests to amend existing historic preservation easements held by MHT if the request is made in writing by the easement property’s current property owner or by one who has ownership control of the property. All such requests will be reviewed, with the advice of the Office of the Attorney General, by the Committee, which will make a recommendation on the request to the Director.
- B. Guiding Principles. MHT is principally obligated to maintain the intent of the original donor of an easement and will be guided by this obligation when reviewing a request to amend an easement. The burden is on the requester to establish to MHT’s satisfaction that a proposed amendment is compatible with, and will not compromise or conflict with, the donor’s intent.
- C. Standards for Acceptance. The Committee may recommend approval of a request to amend an existing easement if:
1. The proposed amendment is permitted under current law;
  2. The proposed amendment is consistent and compatible with the intent and purposes of the original easement;
  3. The proposed amendment is in conformance with the Secretary of the Interior’s Standards; and
  4. The owner can satisfactorily demonstrate that the amendment will increase or prolong the protection, maintenance, and useful life of the historic property protected by the easement.
- D. Amendments Impacting Density. A proposal to amend an easement that would increase the permitted density of construction on the land subject to the easement will be denied unless, as determined by the Director, the proposal would substantially increase preservation benefits on historic property.

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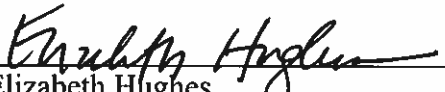
## VI. Breaches of Easements

- A. General. It is MHT's policy to routinely inspect properties encumbered by an easement and to rigorously enforce MHT's rights under an easement in those instances where a property owner has breached an easement by violating one of its terms.
- C. Breach Subcommittee. There is a Breach Subcommittee (the "Subcommittee") of the Committee. It is the role of the Subcommittee to review and evaluate the facts and circumstances of potential easement breaches and to provide guidance and recommendations to the Administrator, the Easement Inspector, and the Director on appropriate and necessary actions to resolve such circumstances. Each meeting of the Subcommittee shall be attended by the Chair, or the Chair's designee, and not less than three additional members of the Committee.
- D. Subcommittee Review and Recommendations.
1. *Meetings and Agenda*. The Administrator shall coordinate with the Chair to schedule meetings of the Subcommittee and to set the agenda for each meeting. Agenda items will generally include: (i) review of potential breaches of easements discovered or learned by MHT staff; (ii) review of mitigation plans offered or proposed to cure an outstanding breach of an easement; and (iii) matters concerning which the Administrator or Easement Inspector require guidance from the Subcommittee.
  2. *Unapproved Work*. In those instances where the Subcommittee reviews work that amounts to a breach of an easement due to being undertaken on an easement property that occurred without the prior review and approval by the Director, the Subcommittee will make recommendations to the Director on issues including: (i) whether the work can be approved after the fact as consistent with the Secretary of the Interior's Standards; (ii) what mitigation should be required to cure the breach; (iii) whether no mitigation/no further action is required; (iv) whether delayed mitigation is required to cure a breach; (v) whether further information is necessary to make a recommendation; and (vi) any other course of action that might help resolve the breach.
  3. *Action Letter*. For any recommendation made by the Subcommittee that requires communication from the Director to a property owner, the Administrator shall draft—with assistance as necessary from the Chair, the Subcommittee, or the Office of the Attorney General—a letter to the property owner for the Director's signature.
- E. Director's Action. For each breach of easement, the Director will review and consider the Subcommittee's determinations and recommendations and take action as the Director deems necessary and appropriate. An action taken by the Director with regards to a breach of an easement is not subject to appeal to the Board.

*Adopted [DATE]*



WHEREFORE, this Policy is adopted this 20<sup>th</sup> day of November, 2018. This adoption abrogates and replaces the "MHT Easement Committee Rules of Procedure," dated January 25, 2011.

  
Elizabeth Hughes  
Director, Maryland Historical Trust

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