

MHT Easement Committee Rules of Procedure

I. Authority

The MHT Easement Committee is an advisory committee appointed by the Director of the Maryland Historical Trust.

II. Purpose

It is the purpose of the Easement Committee to:

- advise the Director of the Maryland Historical Trust/State Historic Preservation Officer on specific requests for approval of changes or alterations to MHT/SHPO easement properties;
- advise MHT staff on the acceptance of gift easements, easements recommended under Section 106 of the National Historic Preservation Act and State Finance Article § 5A-325 and 5A-326 reviews, easements required under federal funding or programming, and easements required for State bond bill and capital historic preservation grant projects; and,
- recommend to the Director appropriate methods to cure or mitigate easement breaches.

III. MHT Easement Committee

A. Membership. The MHT Easement Committee is composed of at least five MHT staff members appointed by the Director who consistently demonstrate expertise in one or more of the following fields:

1. Historical Architecture
2. Architectural History
3. History
4. Archeology
5. Landscape History; or
6. a closely related field

If in the review of a particular project proposal specific additional expertise is necessary, the Director may appoint a non-staff person in that discipline, or appoint an additional staff person in one of the other disciplines as an ad hoc member of the Committee. In the event that a committee member is unable to attend a meeting, he/she must designate an MHT staff member to attend the meeting in his/her place.

B. Committee Chair. The Committee appoints a Committee member as Chairperson. The duties of the Chair include: presiding at all meetings of the Committee; participating in

discussions; voting on motions in the event of a tie; working with staff to prepare the agenda for all meetings of the Committee; and canceling and postponing meetings for good cause. The Chair may perform any other action permitted to any other Committee member.

C. Meetings. The Committee holds such regular and special meetings as are necessary to discharge its duties.

1. The Easement Committee is not a “public body” as defined under the State Open Meetings Act (State Government Article, § 10-502(h), Annotated Code of Maryland). Its meetings are not open sessions and the Open Meetings Act does not entitle the general public to attend.
2. The Committee may, at its discretion, invite any guest to attend Committee meetings in order to discuss a proposal when the Committee Chair determines the guest may provide information that is relevant to the project and that cannot be provided in advance in writing.
3. MHT staff who are not members of the Easement Committee may attend Easement Committee meetings during Committee consideration of an agenda item that their job duties involve. At the Committee Chair’s request, these staff members may present information relevant to their projects.
4. A quorum consists of three members of the Committee.
5. Questions put to a vote are decided by a majority of members present and voting. No decision will be made in absence of a quorum.
6. The MHT Easement Administrator will keep a record of all proceedings.

IV. Application for Easement Property Changes or Alterations

A. Application Procedure. Before any request for approval of construction, alteration, reconstruction, relocation or demolition on an easement property is approved or denied, the MHT Easement Administrator will refer the request to the Committee for review and recommendation to the Director of MHT. A request for approval of work which is substantially identical to a previously rejected request may not be resubmitted within a period of one year after the rejection, except in cases where the applicant is able to present significant new information, as determined by the Committee.

1. In order to be considered at a regularly scheduled Committee meeting, requests for approval must be submitted to the MHT Easement Administrator in writing on the current change/alteration project application form at least one (1) week in advance of a regularly scheduled meeting. The Committee Chair may waive the one week requirement when the Chair determines that a complete request is received in sufficient time for Easement Committee staff and Easement Committee members to review the request before the meeting. Requests will be reviewed in the order that they are received. A request will not be deemed received until it is complete, as determined by the Committee. At the time a complete request is received for review, the review period begins. Requests determined incomplete will be

referred back to the applicant as soon as possible with a detailed list of all required information.

2. While a request is pending with the Easement Committee for MHT approval as required by the easement, the easement property owner should only discuss the request with the MHT Easement Administrator, the Easement Committee as a whole, or representatives designated by the Easement Committee.

B. Application Review. To the extent permitted under the easement, the Committee, in reviewing property owners' requests, shall give consideration to the historic, archeological, and architectural significance of the property and its relationship to the historic, archeological, and architectural significance of the surrounding area; the relationship of the exterior architectural features of a landmark or structure to the remainder of the landmark or structure and to the surrounding area; the general compatibility of proposed exterior design, scale, proportion, arrangement, texture, and materials to the property and to the surrounding area; and any other factors including aesthetic factors which the Committee deems pertinent.

1. Generally, the Committee will apply the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68) in its review of requests.
2. On individual cases, the Committee may seek advice from professionals outside of its membership whose particular areas of expertise are not represented on the Committee.
3. The Committee may, at its discretion, consider third party information the Committee deems relevant to the Deed of Easement issue under consideration by the Committee.
4. The Committee will be strict in its judgment of plans for sites or structures of historic, archeological, or architectural significance. The Committee will be lenient in its judgment of plans for sites or structures of little historic, archeological, or architectural significance, or of plans involving new construction, unless in the Committee's judgment such plans would seriously impair the historic, archeological, or architectural significance of surrounding sites or structures. The Committee is not required to limit construction, reconstruction, or alteration proposals to the architectural style of any one (1) period.
5. If the Committee recommends architectural or archeological investigation and documentation of historic properties, that work shall be completed in compliance with the *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (MHT, 2000) and the *Standards and Guidelines for Archeological Investigations in Maryland* (Shafer and Cole, 1994).

C. Committee Recommendation. The Committee will recommend approval, approval with modifications, or denial of each request submitted to it for review. Each easement establishes a time frame in which the applicant is to receive notice of the Director's decision after submitting a complete application. Approval by the Director is effective for a period of six (6) months from the date of approval. Should an extension of the approval period be necessary, a request must be submitted in writing to the Director.

1. Should the Committee determine that a request is incomplete, the MHT Easement Administrator will promptly notify the applicant in writing. The timeframe for review set out in the easement will not commence until the requested additional information is submitted in writing to the MHT Easement Administrator.
2. If the Committee determines that the request is incomplete and that a site visit is required to gather additional information about the project, the timeframe for review set out in the easement will not commence until the application and the site visit are complete.

D. Staff Action. When the Director accepts, accepts with modifications, or rejects the Committee's recommendation, the MHT Easement Administrator will prepare a letter to the applicant for the Director's signature, outlining the Director's decision. The Committee Chair or any other Committee member, as appropriate, may be consulted to review the letter for conformity with the Director's action on the recommendation.

V. Standards for Review of Requests to Accept or Amend Easements

A. Standards for Recommending Acceptance. In order to ensure that the Trust's efforts are targeted to a consistently high quality of historical, aesthetic, and cultural property, and not diluted through administration of easements on properties of marginal preservation value, the Committee will recommend acceptance or refusal of easements based on the minimum eligibility standards outlined below. The determination of the area of land to be included under easement protection shall be consistent with National Register criteria.

Properties may be considered eligible if they are:

1. Individually listed on the National Register of Historic Places;
2. Certified by the Director of MHT as contributing resources located within National Register districts;
3. Certified by the Director of MHT as contributing resources located within locally designated historic districts; or
4. Determined by the Director to be otherwise eligible for listing on the Maryland Register of Historic Properties.

B. Standards for Recommending Denial. MHT may use its discretion in recommending acceptance or denial of easements on properties receiving State funding via State Bond Bills and Maryland Heritage Areas Authority (MHAA) grants, on properties impacted by MHT State and federal compliance actions, as well as for proposed donated (gift) easements.

Properties may be considered ineligible if they are:

1. not individually eligible for listing in the Maryland Register of Historic Properties;
2. significant only as a contributing property to a historic district eligible for listing in the Maryland Register of Historic Properties;
3. a type that is already adequately represented among the Trust's existing easement properties;
4. already subject to a perpetual historic preservation easement with the Trust or another "Easement-Holding Organization" qualified under Internal Revenue Code (26 USC §170(h)(3)) and the easement is deemed acceptable to the Trust in form and content; or
5. already subject to review by the local historic preservation commission of a Certified Local Government, provided that the property:
 - a. is eligible for listing in the Maryland Register of Historic Properties only for the significance of the property's exterior; and
 - b. is not listed as a National Historic Landmark by the National Park Service.

C. Standards for Recommending Amendment. The Easement Committee, in conjunction with the Assistant Attorney General, shall conduct a preliminary review of requests to amend easements once such requests have been made, in writing, to the Director of MHT. To maintain an easement donor's intent in donating an easement, requests to amend donated easements are strongly discouraged. No proposal for an amendment will be considered which increases the permitted density of construction on the land subject to the easement, unless the proposal includes new preservation benefits on historic property owned or controlled by the owner of the easement property which the Trust determines to be of at least equivalent value to the increased density to be permitted. The Easement Committee may recommend approval of 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.

VI. Role of Committee in Breach Proceedings

The Easement Administrator may consult the Easement Committee to determine whether sufficient evidence exists for the Director to conclude that a breach of easement exists. Once the Easement Administrator has reported that a breach exists, the Committee shall consider whether any changes or alterations made without the Director's approval meet the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68), and, if not, shall recommend methods to cure the breach to the Director. If the Committee concludes that the breach cannot be cured, the Committee shall recommend appropriate mitigation measures to the Director.

The Easement Committee may establish a "Breach Subcommittee" of the Easement Committee to provide advice to the Easement Administrator regarding current and potential breaches of MHT easements. The Breach Subcommittee must have a minimum of three Easement Committee members in attendance at each meeting. The Breach Subcommittee may be tasked with all the responsibilities listed in Section VI above. The Breach Subcommittee must report its activities to the full Easement Committee at the Easement Committee's next scheduled meeting.

VII. Role of Committee in Providing Recommendations to Historic District Commissions

As allowed for under Article 66B, §8.03 (b), Annotated Code of Maryland, a local historic district or preservation commission (Commission) may request that MHT analyze and make recommendations concerning the preservation of sites, structures, or districts of historic, archeological, architectural, or cultural significance within the area served by the Commission. The Director may ask that the Easement Committee review the Commission's request and make recommendations to the Director in response to the request. The Administrator of Local Preservation Programs shall prepare the request for Easement Committee review at a special meeting. The Administrator of Local Preservation Programs is responsible for communicating the Easement Committee's recommendations to the local historic district or preservation commission.