



Maryland Department of Planning
Maryland Historical Trust

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

**Conveyance of a Preservation Easement
To the Maryland Historical Trust**

Packet of Information

Includes:

- What is a Historic Preservation Easement?
- Procedures for Developing a Preservation Easement
- Procedures for reviewing changes & modifications to an easement property
 - Certificate of Title form
 - Deed of Preservation Easement (sample)
- The Secretary of the Interior's *Standards for the Treatment of Historic Properties*

Should you have any questions please contact:

Elizabeth Schminke
Administrator
Preservation Easement Program
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032
Phone: (410) 514-7632
Email: bschminke@mdp.state.md.us

Historic Preservation Easements

A Preservation Tool

What is a Historic Preservation Easement?

A preservation easement is a type of conservation easement designed to protect a significant historic, archaeological, or cultural resource. It is a private legal contract between the property owner and a chosen governmental entity or qualified organization for the purpose of protection of a property's historic value. It is one of the most effective legal tools available for historic preservation. An easement provides assurance to the owner that their property's intrinsic values will be preserved with all successive ownerships. Historic preservation easements may also be used to protect a historic landscape, battlefield, traditional cultural place, or archaeological site.

A conservation easement is used to protect land for recreation, the natural environment, open space, or land that has an historic, architectural, or archeological significance. A preservation easement is type of conservation easement designed to protect a property with historic, architectural, or archeological significance. A preservation easement may also protect the open space or natural environmental through its restrictions.

The donation of an easement conveys partial interest in the real property to the chosen organization. While the owner maintains full ownership of the property, he or she has conveyed a specific set of development rights through the easement. Each easement is created specifically for that property, however they share the same objective to protect against changes that are inconsistent with the preservation of the property. Inconsistent changes can include the construction of additions, demolition of buildings, construction of new structures, and inappropriate alterations. The easement may also require that certain levels of physical and safe conditions are maintained.

An easement gives the organization to which it is conveyed the legal authority and responsibility to enforce its terms. This often includes the right to inspect the property to ensure that the owner is in compliance with the conditions of the easement. Changes to the property are also monitored through a review and approval process. The Easement typically prohibits the owner from demolishing or making alterations to the property without prior review and approval by the easement holder. For example, an easement might prohibit facade alterations or construction of an addition without first obtaining approval. Restrictions on subdividing and development of the property are also common. Many easements will specify the historic and character defining features of the property, especially if the property has been altered over time.

Sometimes, the easement holding organization can require that certain positive work requirements are carried out within a specified amount of time after the easement is conveyed. If upon inspection the easement holding organization finds that the terms of the easement have not been upheld, the owner may be held responsible for covering the costs of reversing an unacceptable treatment or face other penalties.

❖ *The primary reason for donating an easement is to protect the historic integrity of the property; all other considerations should be secondary.*

Benefits of Donating an Easement to the Maryland Historical Trust

An easement is a useful historic preservation tool in several respects:

1. It allows an individual to retain private ownership of the property and obtain potential financial benefits, through grants, loans, or tax benefits.
2. An easement binds not only the current owner, but future owners as well, ensuring that the property will be well maintained and properly preserved by all future owners.
3. Easements are tailored to meet the needs of the property owner, the individual resource, and the mission of the preservation organization.

Summary: The Maryland Historical Trust Preservation Easement Program

The Trust began acquiring easements in 1969. We now hold nearly 600 easements on approximately 9,000 acres. In addition to donated gift easements, the Trust obtains easements through federal grants, state loans, state grants and bond bills, and through the sale of a state or federally owned property. We hold easements on a variety of buildings and properties, including Native American archaeological sites, homes and farms of Maryland's earliest families, churches of

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all denominations, schools, commercial buildings, factories, a WWII bomber factory, a furnace, lighthouses, bridges, railroad stations, mills, museums, parks, and monuments. Our easements can cover the interior as well as the exterior.

The Trust created an Easement Committee, consisting of architectural historians, archeologists, technical, and material specialists, to review and make recommendations to the Director. The Committee meets regularly to review proposed modifications to easement properties and to make recommendations to the Director. In determining what changes are appropriate for each easement property, the Trust consults the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68), published by the National Park Services. They serve as a guideline for proper preservation practice. The Trust is also available to provide advice or technical assistance to historic properties. The Standards are intended to preserve those elements that will contribute to a buildings historic character and require that new additions or exterior alterations be compatible in mass, size, scale, and design of the historical structure.

Although there are likely to be associated costs with the donation of an easement, such as fees paid to lawyers, appraisers, and banks, we do not require an administrative fee. As a state agency our easements can not be foreclosed upon except by Federal Action. Furthermore, we have the office of the Attorney General to enforce the contract if necessary.

“Qualified Properties”

A “certified historic structure” is a building, structure, or land area that is individually listed by the National Park Service on the National Register of Historic Places or a building (but not a structure or land area) located in a National Register historic district and certified by the Secretary of the Interior as contributing to the historic significance to the district.

The Maryland Historical Trust will consider the acceptance of an easement provided they are:

- Listed in the National Register of Historic Places, or
- Located in a registered historic district and certified by the U.S. Department of the Interior as being historically significant to the district.

The IRS definition of historically important land areas include:

- Independently significant areas, including any related historic resources that meet National Register Criteria for Evaluation, or
- Land areas within registered historic districts, including buildings, that contribute to the significance of the historic district; or
- Land areas adjacent to a property individually listed in the National Register of Historic Places (but not within a historic district) where physical or environmental features of the land contribute to the historic or cultural integrity of the historic property. Common examples of historically important land areas include traditional cultural places, archaeological sites, battlefields, and historic cultural and designed landscapes.

The degree of access is tailored according to the historic resource under protection. When a historic structure or land area is not visible from a public way, certain steps must be taken to ensure that the public has the opportunity to view the property preserved by the easement “to the extent consistent with the nature and condition of the property.” Often, the easement-holding organization can assist the owner in finding a balance between protecting the owner's privacy and providing a public benefit.



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PROCEDURES FOR DEVELOPING A PERPETUAL DEED OF EASEMENT

To develop a mutually acceptable final draft easement for your review, we will need the following items:

1. A Certificate of Title, following the enclosed outline, to which are attached liens, encumbrances, rights-of-way upon the property.
 2. A copy of the most recent recorded deed(s) for the property by which the present owner(s) acquired title to the property.
 3. A legal (metes and bounds) property description (if not in the deed) for the easement property in paragraph form.
 4. A scaled site plan or plat locating the building(s) footprint(s) and identifying the metes and bounds on it, as described in the written legal property description.
 5. The appropriate contact person(s), their address and daytime telephone number for us to work with on the preparation of the easement.
 6. Any plans that you might have for the land or the improvements, now and in the future. For instance, let us know that you do not want to allow any construction on the property, or that you might want to construct an addition or a new building on the property. If agreeable to both parties such conditions may be written into the easement.
- ✓ The Trust will prepare all photographic exhibits for the easement. A site visit will be necessary for the photograph and will be arranged at a time and date most convenient for you.
 - ✓ Both your and our attorneys will need to review and approve of the draft easement prior to the preparation of a final easement.

For more information, please contact Elizabeth Schminke, Administrator of Preservation Easement Program, at (410) 514-7632 or by email at bschminke@mdp.state.md.us.



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Procedures for Reviewing Alterations to Easement Properties

1. Complete the Checklist and Change/Alteration Project Proposal Application and submit to the Maryland Historical Trust, Administrator, Preservation Easement Programs [Ms. Elizabeth Schminke] at 100 Community Place, Crownsville, MD 21032, listing (in detail) each of the proposed alteration(s) to the easement property. All applications must be submitted at least one week prior to the scheduled meeting date. They should include any information that would assist the Easement Committee and the Director in their review, such as photos, architectural plans, drawings, etc.
 2. Maryland Historical Trust Easement Committee will review the request at its regularly scheduled meeting, every three weeks. The schedule is available on the website [<http://mht.maryland.gov/>] or by contacting Ms. Schminke at (410) 514-7632. If the request does not include sufficient information needed for the Committee to make a decision, the Committee will consider the request incomplete and direct staff to obtain the required information from the applicant. For some projects, a site visit by staff or the Committee may be necessary.
 3. If the application is complete, the Committee will make a recommendation to the Maryland Historical Trust Director [J. Rodney Little]. Generally, the Committee and the Director will apply the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68) in their review of requests. A copy of the *Standards* is available on the website under Forms and Documents.
 4. The Director will approve, approve with conditions, or deny the request based upon the Committee's recommendation.
 5. A letter detailing the Director's decision will be sent to the applicant within the length of time specified within the easement. Approval by the Director is effective for a period of six (6) months from the date of approval. If an extension of the approval period is necessary, a written request must be submitted to the Director.
- ✓ *Please note: Applicants who will provide information that is relevant to the project may be permitted to attend the meetings. Please indicate your request in your application letter. 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.*

REQUIRED FORMAT FOR TITLE CERTIFICATE; ACTUAL DOCUMENT NEED NOT BE USED

TO: Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032

Project Name: _____

CERTIFICATE OF TITLE

The undersigned Attorney at Law, authorized to practice in the State of Maryland, having an established office at _____; being familiar with the Land Records, Circuit Court Records, Orphans Court Records and other records of _____ County, has examined the foregoing records, or such of them that may relate to the title and encumbrances thereon of the land herein described, [for a period covering at least 60 years][as a bring to date to a certificate of title dated _____], and certifies that said records disclose the following:

LOCATION AND GENERAL DESCRIPTION OF LAND *Provide street address, historical name of AS APPEARING FROM LAND RECORDS: property, if any, and recite deed references and attach copy. (Do Not Leave Blank)*

OWNER OF LAND AS APPEARING FROM THE ASSESSMENT RECORDS: *Give name, even if shortened form as found on deed; e.g. "John Smith et ux."*

FEE SIMPLE TITLE VESTED IN: *Provide name, even if shortened form, as found on deed*

OTHER TITLE INTERESTS OF RECORD: *Recite deed references & Attach Copies or state "None"*

REFERENCE TO DEEDS AND OTHER INSTRUMENTS BY WHICH TITLE WAS ACQUIRED: *Recite deed references & Attach Copies or state "None"*

EASEMENTS: *Recite document references & Attach Copies, or state "None"*

RESTRICTIONS OR OTHER COVENANTS: *Recite document references & Attach Copies, or state "None"*

MORTGAGE LIENS: *Recite document references & Attach Copies, or state "None"*

OTHER LIENS AND ENCUMBRANCES: *Recite document references & Attach Copies, or state "None"*

Also attached are copies of all other deeds in the chain of title for [at least a 60 year period] [the period covered by this bring to date].

It is the opinion of the undersigned that good and merchantable title vests in the aforementioned title holders of record, subject only to such easements, restrictions, covenants, and liens and encumbrances as are above mentioned and the following: (add additional comments as appropriate)

Attorney Signature

Address

(Printed Name) (Date)

Telephone Number

DEED OF

PRESERVATION EASEMENT

THIS DEED OF PRESERVATION EASEMENT is made as of this ____ day of _____, 20____ by and between _____ (the "Grantor"), and the MARYLAND HISTORICAL TRUST, an instrumentality of the State of Maryland (the "Grantee").

WHEREAS, Grantee is a body corporate and instrumentality of the State of Maryland created for the purpose generally of preserving and maintaining historic, aesthetic and cultural properties, all as is more particularly provided for by law; and

WHEREAS, the real property as hereinafter described (the "Property") has substantial historic, aesthetic and cultural character and this Deed of Preservation Easement (this "Deed") will promote the preservation and maintenance of the Property and its historic, cultural, scenic and aesthetic character; and

WHEREAS, Grantee is possessed with the power and duty to accept, hold and administer this Deed; and

WHEREAS, Grantee has determined that the easement contained within this Deed is exclusively for conservation purposes; and

WHEREAS, in accordance with Chapter ____ of the Laws of Maryland _____ [as amended by Chapter of the Laws of Maryland ____] ([collectively,] the "Act") and the terms and conditions of a letter of approval from the Department of General Services on behalf of the Board of Public Works ("BPW") to the [Grantor] [if different than the Grantor] (the "BPW Grant Recipient") dated _____, and further pursuant to a Capital Project Grant Application submitted by the [Grantor] [BPW Grant Recipient [if different than the Grantor]], BPW has approved a grant in the amount of DOLLARS (\$_____) (the "BPW Grant"), to be made to the [Grantor] [BPW Grant Recipient [if different than the Grantor]] for the purpose of financing, in part, **[insert description of project]**; and

WHEREAS, the Act requires as a condition precedent to the making of the BPW Grant that the [Grantor] [BPW Grant Recipient [if different than Grantor]] shall submit evidence satisfactory to BPW of matching funds at least equal to the amount of the BPW Grant, which condition has been satisfied; and

WHEREAS, the Act requires as a condition precedent to the making of the BPW Grant that the Grantor, as owner of the Property, convey a perpetual preservation easement in form and substance acceptable to the Maryland Historical Trust.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor hereby grants and conveys to Grantee, with Special Warranty of Title, an easement (the "Easement") in all of that lot or parcel of land known as the property, together with all of the improvements thereon, and appurtenances, rights and interests thereunto

belonging, which is located in _____ County, Maryland and is more particularly described in Exhibit B, attached hereto and incorporated herein.

2. Exhibit A consists of ____ pages and includes as page 1 a schedule (which is recorded with this Deed) describing the documents, photographs of selected portions of the Property, and other things that are not recorded herewith but are nonetheless as fully and completely incorporated by reference into this Deed as though recorded herewith. **Grantor acknowledges that Exhibit A may be modified and updated upon the conclusion of the restoration of the Property.**

3. The terms of the Easement are as follows:

(A) Duration and Nature of the Easement. The Easement shall be perpetual in duration. The parties agree that it is and shall be considered an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal property interest in the Property, enforceable by Grantee and its successors, transferees and assigns with respect to the Property and against Grantor and Grantor's heirs, successors, transferees and assigns, all of whom are collectively referred to herein as "Grantee" and "Grantor", respectively. The Easement is subject to any presently existing valid encumbrances, easements and rights-of-way upon the Property.

(B) Public Access. Grantor shall make the Property open to the public on a minimum of 5 days per year from 10 a.m. to 5 p.m., **or the equivalent of 35 hours a year**, and at other times by appointment as may be determined by Grantor.

(C) Maintenance and Administration. Grantor shall keep and maintain the Property, including the [Exterior] [Interior] [Exterior and Interior] (as hereinafter defined) of the improvements thereon, in good, clean and safe condition. Grantor shall maintain, repair and administer the Property and the [Exterior] [Interior] [Exterior and Interior] of the improvements thereon in a manner to preserve the historic, aesthetic and cultural character and appearance of the Property and the improvements thereon as described in Exhibit A. The maintenance, repair and administration of the Property and the [Exterior] [Interior] [Exterior and Interior] of the improvements thereon shall further conform to the requirements of Paragraph D below. This covenant does not require reconstruction of any improvements which are destroyed in whole or in part by casualty loss unless insurance proceeds are available for such purposes.

(D) Changes and Alterations.

(i) Without the express written consent of the Director of the Maryland Historical Trust (the "Director"), Grantor shall not cause, permit or suffer any construction which would alter or change the Property or the [Exterior] [Interior] [Exterior or Interior] of any improvements thereon as described in Exhibit A, provided, however, that if damage has resulted to said [Exterior] [Interior] [Exterior or Interior] from casualty loss, deterioration or wear and tear, then the maintenance, repair, repainting or refinishing to correct the damage shall be permitted without such written permission of the Director, provided that such maintenance, repair, repainting or refinishing is performed in a manner that will not alter the appearance of such improvements upon conclusion of the restoration of the Property.

(ii) The term[s] [Exterior] [Interior] [Exterior and Interior] mean[s] the [exterior] [interior] [exterior and interior] surface[s] of an improvement on the Property including the architectural style, the general design and arrangement, the color, the kind and texture of the building materials and the type and style of all windows, doors, light fixtures, signs and other similar [exterior] [interior] [exterior and interior] features. The

term construction shall include all construction, reconstruction, improvement, enlargement, painting and decorating, alteration, demolition, maintenance or repair of any structure or works.

(iii) **Without the express written consent of the Director, [or as provided in paragraph 3(D)(iv) below,]** no building, structure, or improvement may be constructed or erected on the Property other than those buildings, structures, or improvements which are as of the date of this Deed located on the Property, as described and depicted in Exhibit A.

[(iv) INSERT PERMISSIBLE CONSTRUCTION ACTIVITIES]

(E) Archeological Resources. Without the express written consent of the Director, Grantor shall not cause, permit or suffer any grading, excavation, plowing over 12 inches in depth, subsoiling, drainage improvement, or other undertaking which would materially disturb the surface or subsurface of the ground. Prior to granting such consent, the Director may require the Grantor to perform a survey in order to identify and determine the significance of archeological deposits. If subsequently deemed necessary by the Director, the Grantor shall conduct data recovery, excavation, curation, documentation and reporting of the affected deposits, all in a form and substance satisfactory to the Director.

(F) Inspection. Grantee shall have the right to enter the Property on reasonable notice to Grantor for the purpose of inspecting the Property to determine whether there is compliance by the Grantor with the terms of this Deed. [Grantor's representatives shall have the right to be present at all such inspections.]

(G) Breach by Grantor. Upon any breach of the terms of this Deed by Grantor, Grantee may, after reasonable notice to Grantor, exercise any or all of the following remedies:

(i) institute suit(s) to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction;

(ii) demand that the Property be restored promptly to the condition required by this Deed; and

(iii) enter upon the Property, correct any breach, and hold Grantor responsible for the resulting cost.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If Grantor is found to have breached any of Grantor's obligations under this Deed, Grantor shall reimburse Grantee for any costs or expenses incurred by Grantee, including court costs and reasonable attorneys fees. **[(OR) The parties' remedies shall be cumulative and shall be in addition to any other rights and remedies available to them at law or equity. Each party shall be responsible for its own costs of litigation and attorney fees. (THIS LANGUAGE MAY BE USED WHEN GRANTOR IS A LOCAL GOVERNMENT OR LOCAL GOVERNMENT AGENCY)]**

(H) Waiver. No waiver of any term or condition of this Deed shall have any force or effect unless it is in writing and approved by the parties hereto. No failure on the part of Grantee to enforce any covenant or provision herein nor the waiver of any right thereunder by Grantee shall discharge or invalidate such covenant or provision of any other covenant, condition, or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

(I) Consent, Disapproval and Appeal. If the terms of this Deed require the consent of the Director, such consent shall be requested by notice to the Director and shall be deemed to have been given within 45 days after receipt of notice by the Director unless the Director gives notice to the Grantor of specific reason for disapproval. If the Director gives a notice of disapproval, Grantor may appeal the disapproval to the Board of Trustees of the Maryland Historical Trust for review by it or by any person or agency that it designates to make the review. Appeal shall be made by notice to the Director given within 45 days of receipt of notice of disapproval from the Director.

(J) Notice. Any notice required to be given by this Deed shall be in writing and may be given by certified or registered mail, with postage prepaid and return receipt requested, if to the Grantor, addressed to the Grantor as follows:

or to the Grantor at such other address as the Grantor may from time to time designate by notice to the Director, or, if to the Grantee or the Director, addressed to the Grantee or Director as follows:

Director
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032-2023

or to the Grantee or the Director at such other address as the Director may from time to time designate by notice to the Grantor. Any notice given in the foregoing manner shall be deemed to have been given upon receipt thereof, which shall be presumed to be two days after the day notice has been deposited with the United States Post Office.

(K) Construction. The Easement is for the purpose of promoting and shall be construed to promote the purposes of the statutes creating and governing Grantee and of Section 2-118 of the Real Property Article of the Annotated Code of Maryland and to preserve the historic, cultural, scenic and aesthetic character of the Property.

(L) Subsequent Conveyance. Grantor agrees that the restrictions of the Easement will be inserted, verbatim or by express reference, in any subsequent deed or other legal instrument by which the Grantor's fee simple title to the Property or any other possessory interest in the Property, or any part thereof, is divested or conveyed.

(M) Transfer of Ownership. The Grantor agrees for itself, its personal representatives, heirs, successors, transferees and assigns, to notify the Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is being transferred before or within 45 days of the time the transfer is consummated.

(N) Conservation Purposes. Grantee agrees that it will hold this Deed exclusively for conservation purposes i.e., that it will not transfer this Deed whether or not for consideration. However, subject to the provisions of any applicable federal law, Grantee may assign or transfer its interest in this Deed to a

governmental unit or organization which qualifies at the time of the transfer as an eligible donee of this Deed under any pertinent provisions of federal law.

(O) Governing Law. This Deed is made in, and shall be governed by, the laws of the State of Maryland.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

WITNESS/ATTEST:

GRANTOR:

By: _____(SEAL)
Name:
Title:

WITNESS:

**ACCEPTED BY THE
MARYLAND HISTORICAL TRUST**

By: _____(SEAL)
J. Rodney Little, Director

Exhibit A Schedule
Exhibit B Property Description

Approved as to form and legal
sufficiency this ____ day of
_____, 20__.

Assistant Attorney General

STATE OF MARYLAND, _____ CITY/COUNTY, to wit:

I HEREBY CERTIFY, that on this ____ day of _____, in the year 20__, before the
subscriber, personally appeared _____, who acknowledged that (s)he executed the

foregoing instrument for the purposes therein contained as the duly authorized _____ of

Notary Public

My Commission Expires:

STATE OF MARYLAND, _____ COUNTY, to wit:

I HEREBY CERTIFY, that on this ____ day of _____, in the year 20__, before the subscriber, personally appeared J. Rodney Little, and acknowledged that he executed the foregoing instrument for the purposes therein contained as the fully authorized Director of the Maryland Historical Trust.

Notary Public

My Commission Expires:

CERTIFICATION

I hereby certify that this instrument was prepared by me or under my supervision and that I am an attorney admitted to practice before the Court of Appeals of Maryland.

_____(SEAL)
[Signature over Typed Name of Attorney]

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

CODE OF FEDERAL REGULATIONS

Title 36. Parks, Forests, and Public Property

Part 68. The Secretary of the Interior's Standards for the Treatment of Historic Properties

§ 68.1 Intent.

The intent of this part is to set forth standards for the treatment of historic properties containing standards for preservation, rehabilitation, restoration and reconstruction. These standards apply to all proposed grant-in-aid development projects assisted through the National Historic Preservation Fund. 36 CFR part 67 focuses on "certified historic structures" as defined by the IRS Code of 1986. Those regulations are used in the Preservation Tax Incentives Program. 36 CFR part 67 should continue to be used when property owners are seeking certification for Federal tax benefits.

§ 68.2 Definitions.

The standards for the treatment of historic properties will be used by the National Park Service and State historic preservation officers and their staff members in planning, undertaking and supervising grant-assisted projects for preservation, rehabilitation, restoration and reconstruction. For the purposes of this part:

(a) Preservation means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

(b) Rehabilitation means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

(c) Restoration means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

(d) Reconstruction means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

§ 68.3 Standards.

One set of standards--preservation, rehabilitation, restoration or reconstruction--will apply to a property undergoing treatment, depending upon the property's significance, existing physical condition, the extent of documentation available and interpretive goals, when applicable. The standards will be applied taking into consideration the economic and technical feasibility of each project.

(a) Preservation.

(1) A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

(2) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic 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. Work needed to stabilize, consolidate and

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conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(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) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

(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.

(b) Rehabilitation.

(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.

(c) Restoration.

(1) A property will be used as it was historically or be given a new use that interprets the property and its restoration period.

(2) Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of

features, spaces and spatial relationships that characterize the period will not be undertaken.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Materials, features, spaces and finishes that characterize other historical periods will be documented prior to their alteration or removal.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

(6) Deteriorated features from the restoration period 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.

(7) Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(8) 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.

(9) Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(10) Designs that were never executed historically will not be constructed.

(d) Reconstruction.

(1) Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property.

(2) Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

(3) Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

(4) Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.

(5) A reconstruction will be clearly identified as a contemporary re-creation.

(6) Designs that were never executed historically will not be constructed.

[§ 68.4 Specific standards for acquisition, protection, stabilization, preservation, rehabilitation, restoration, and reconstruction projects.](#)

In addition to the general standards set forth in [§ 68.3](#) the following specific standards shall be applied as appropriate:

(a) Acquisition.

(1) Careful consideration shall be given to the type and extent of property rights that are required to assure the preservation of the historic resource. The preservation objective shall determine the exact property rights to be acquired.

(2) Properties shall be acquired in fee simple when absolute ownership is required to insure their preservation.

(3) The purchase of less-than-fee-simple interests, such as open space or facade easements, shall be undertaken when a limited interest achieves the preservation objective.

(4) Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archeological, architectural, or cultural significance.

(b) Protection.

(1) Before applying protective measures, which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.

(2) Protection shall safeguard the physical condition or environment of a property or archeological site from further deterioration or damage caused by weather or other natural, animal, or human intrusions.

(3) If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

(c) Stabilization.

(1) Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting material deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.

(2) Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the esthetic and historical quality of the property, except where concealment would result in the alteration or destruction of historically significant material or spaces.

(d) Preservation.

(1) Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Substantial reconstruction or restoration of lost features generally are not included in a preservation undertaking.

(2) Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of ongoing maintenance.

(e) Rehabilitation.

(1) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

(2) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(f) Restoration.

(1) Every reasonable effort shall be made to use a property for its originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.

(2) Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed whenever possible so as not to intrude or detract from the property's esthetic and historic qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.

(3) When archeological resources must be disturbed by restoration work, recovery of archeological material shall be undertaken in conformance with current professional practices.

(g) Reconstruction.

(1) Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable.

(2) Reconstruction of all or a part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building, structure, object, or landscape feature with the same associative value has survived and sufficient historical documentation exists to insure an accurate reproduction of the original.

(3) The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural features shall be based upon accurate duplication of original features, substantiated by historical, physical, or pictorial evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.

(4) Reconstruction of a building or structure on an original site shall be preceded by a thorough archeological investigation to locate and identify all subsurface features and artifacts.

(5) Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface, and ancillary elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

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