



Historic Preservation Easement Program Model Standard Operating Procedures

These model Standard Operating Procedures (SOPs) were prepared by the Law Division of the National Trust for Historic Preservation. This document illustrates the type of SOPs and the general content of SOPs that should be implemented by easement-holding organizations. ***It is essential to understand that each organization's standard operating procedures must be specifically tailored to address the characteristics of an individual organization and the legal standards and requirements of the applicable jurisdiction as well as to address additional requirements necessary if the easement is to result in federal or state tax benefits.*** Please note this publication does not, and is not intended to, constitute legal, accounting, or tax planning advice; instead, this publication is made available solely for general informational purposes only. Passages and sections of this document are drawn from templates provided by the Land Trust Alliance and were developed in accordance with the February 3, 2017 *Land Trust Standards and Practices*.

Additional information on preservation easements is available on the National Trust's website, at <https://forum.savingplaces.org/easements>. To receive a Microsoft Word version of this document, email law@savingplaces.org

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A. Overview

1. The following Standard Operating Procedures address the [organization]'s Easement Program¹ and provide guidance to the organization's staff on the procedures for administering the program.
2. The Standard Operating Procedures are supplemented by Easement Program Guidelines that provide additional detail on day-to-day program management topics.²
3. The Easement Program Standard Operating Procedures address the following topics:
 - a. Transactions
 - b. Recordkeeping
 - c. Inspections
 - d. Requests for Approval
 - e. Amendments
 - f. Violations
 - g. Applicability

¹ This SOP utilizes the term 'Easement Program' as a term to indicate your organization's program for using easements. Adjust this terminology as needed.

² Organizations should develop supplemental guidelines that go into specific detail on day-to-day program management topics, such as the procedures for completing inspections or recordkeeping guidance. Due to the fact those procedures may change frequently, it provides flexibility to the staff to update those guidelines as needed.

B. Transactions

1. Overview. The [organization] will generally consider accepting and holding preservation and conservation easements on properties in accordance with the [organization]'s Easement Policy.³
2. Property Evaluation. Easement Program staff will make an independent evaluation to determine whether a property warrants protection with a preservation and conservation easement held by the [organization].
 - a. Easement Program staff will apply standard selection criteria to determine if the property meets the [organization]'s Easement Policy, the conservation purpose of such an easement, and the feasibility of protecting the property through an easement.
 - b. After applying the selection criteria, Easement Program staff will make an initial recommendation whether to place a preservation and conservation easement on a property.
 - c. The [Executive]⁴ or their designee will make the final determination regarding whether the [organization] will proceed to the due diligence period to pursue an easement to protect the property.
3. Due Diligence. Easement Program staff, working with other [organization] staff, will investigate and document a property prior to acceptance of the easement. In certain situations, parts of this due diligence may occur prior to Easement Program making a recommendation regarding accepting the easement.
 - a. *Expenses*. For an easement donation, the [organization] will generally require that all expenses associated with the evaluation and preparation of the easement are covered by the donor or relevant [organization] program budget.
 - b. *Site Visit*. Easement Program staff must visually inspect the property to document the preservation and conservation values. Easement Program staff will document the public benefit of each easement transaction.
 - c. *Title Investigation*. Early in the process, a title company or local counsel will be retained to review title and issue a preliminary commitment for title insurance. The [organization] will evaluate title exceptions and document how they will not result in extinguishment of the easement or significantly undermine the property's important conservation values. The [organization] will update the title at or just prior to closing.

³ The organization should adopt a Board or other similar level policy that discusses the organization's goals for its Easement Program, including the types of properties the organization will accept/hold easements, stewardship requirements, and amendment/extinguishment procedures.

⁴ The organization should determine who has decision-making authority for easements, such as the President, Executive Director, Board Committee, or other delegated person/authority.

- d. *Environmental Assessment.* The [organization] will conduct a Phase I Environment Site Assessment (ESA) except in circumstances where the risk for potential environmental issues is low (e.g., for many single-family residential properties in urban or suburban areas).
 - i. The [Executive] or their designee will make the final determination regarding whether an ESA is required.
 - ii. In cases where a Phase I ESA is not completed, the property owner or representative will document and disclose known environmental risks and uses to the [organization]. The [organization] will evaluate these risks and take steps to address any significant concerns.
 - iii. If the Phase I ESA reveals a recognized environmental condition, the [organization] may conduct a Phase II ESA if the environmental condition will significantly impair the conservation values of the property or expose the [organization] to excessive liability.
 - e. *Property Boundaries.* If a current survey is not available, then a survey must be commissioned.
 - f. *Additional Assessments.* The [organization], in determining the conservation values of the property, may require additional third-party assessment of the natural, historic, cultural, and architectural values.
4. Tax-Deductible Transactions. The [organization] will review each potentially tax-deductible conservation easement for consistency with Section 170 of the Internal Revenue Code and the accompanying Treasury Department Regulations (U.S.C. §1.170A-14).
- a. The [organization] will inform potential easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that:
 - i. The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements.
 - ii. The donor is responsible for any determination of the value of the donation.
 - iii. The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000.
 - iv. The [organization] must receive a draft and final copy of the appraisal.
 - v. The [organization] is not providing individualized legal or tax advice. The [organization] will inform donors they should seek

- legal counsel knowledgeable about conservation easements in the state where the contribution will be made.
- vi. The [organization] provides no representation or warranty that an easement will result in a charitable contribution.
 - b. The donor will be responsible for obtaining an independent qualified appraisal prepared by a qualified appraiser.
 - c. The [organization] will independently or with assistance from outside counsel evaluate each transaction for consistency with federal and state income tax deduction or credit requirements.
 - d. Prior to signing IRS Form 8283, the [organization] must review a draft copy, and receive a final copy, of the appraisal. If the [organization] has substantial concerns about the appraised value or the appraisal, the [organization] will convey these concerns to the donor in writing.
 - e. The [Executive] or their designee will make the final determination regarding whether or not to sign IRS Form 8283.
5. Easement Drafting. For every preservation and conservation easement, the [organization] will individually tailor the easement language to the specific property. The [organization] will update the standard template language to be included in easements as necessary to reflect changes in federal and state law and historic preservation practices.
- a. The [organization] will take all available measures to include all necessary and appropriate provisions to ensure it is legally enforceable in the applicable jurisdiction.
 - b. Easement Program staff will recommend restrictions based upon the property's conservation values, significance, integrity, and the [organization]'s ability to responsibly monitor and enforce the easement.
 - c. Easements with historic or architectural conservation values will restrict the entire exterior (all elevations) and the roof of the primary historic resource(s) on the protected property. The easement will prohibit any change to the exterior of the primary historic resource(s) that would be inconsistent with its historic character. As appropriate, specific interior architectural features will be restricted similarly.
 - d. Permitted uses will be limited to those that are not inconsistent with the purposes of the easement and will not significantly impair the protected architectural features.
 - e. Easements will reference *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 C.F.R. 68) and *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (referred to as the "Secretary's Standards"), as they may be amended from time to time.

- f. Each easement will provide for public access in order to ensure public benefit of the easement. The level of public access will be determined on a case-by-case basis.
 - g. Each easement will require that the property be adequately insured for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage.
 - h. Each easement will require that, with appropriate notice, the [organization] will be permitted at all reasonable times to inspect the Property's protected features.
 - i. Each easement will include stipulations regarding extinguishment and the process for making amendments to the easement.
6. Endowment. As a condition of accepting an easement, the [organization] generally requires an acceptable easement endowment to fund the ongoing monitoring and enforcement of the easement into perpetuity.
- a. The [organization]'s easement endowment model is based on the annual monitoring and enforcement costs for a specific property that are then capitalized to an amount that will generate those funds annually from an endowment draw.⁵
7. Internal Approval. For easement donations, once the easement is drafted but prior to execution, a memo will be prepared outlining the proposed easement donation and its obligation to the [organization]. The memo will require concurrences by the [Executive]. Other approvals may be requested by the [Executive] if appropriate.⁶
- a. If at any point during the transaction process, the proposed easement donation is unable to meet any of the requirements of this Standard Operating Procedure, Easement Program staff will seek concurrence from the [Executive] to proceed with the easement transaction. Any exemptions from this Standard Operating Procedure approved by the [Executive] shall be noted in the concurrence memo to the [Executive].
8. Baseline Documentation. The [organization] will prepare baseline documentation on easement properties documenting the conservation values that are the subject of the easement. The baseline will document the conditions of the protected features sufficiently to effectively monitor and enforce the easement in perpetuity.
- a. *Timing*. Baseline documentation shall be prepared after the easement restrictions have been generally finalized.

⁵ Insert general details on how your organization addresses its stewardship contribution. For more information on funding easement stewardship, see: <https://forum.savingplaces.org/blogs/raina-regan/2019/12/03/funding-easement-stewardship>

⁶ Outline your organization's general process for seeking approval for accepting new easements prior to the execution/recording.

- b. *Contents*. Baseline documentation will include maps, photographs, and other relevant information to document the conservation values protected by the easement.
 - c. *Signatures*. In all cases, the baseline documentation will be reviewed by the donor prior to closing. The [organization] and the Grantor must acknowledge and concur with the accuracy and completeness of the baseline documentation in writing.
 - d. *Pre-Recording Updates*. If there are significant alterations to the property after the baseline documentation has been prepared and the easement has yet to be recorded, Easement Program staff will update the documentation accordingly. If the easement has not been recorded a year after the preparation of the baseline documentation, it should be updated to reflect the current conditions prior to closing.
 - e. *Anticipated Supplements*. In the event a major rehabilitation is ongoing or anticipated at the time of the easement, the [organization] should reserve the right to update or supplement the baseline documentation after the completion of the rehabilitation project.
9. Recording. The [organization]'s title company or legal counsel will promptly record preservation and conservation easement transaction documents at the appropriate records office.

C. Recordkeeping

1. Overview. The [organization] Easement Program maintains well-organized archival, paper, and digital records for each easement property. This ensures that authentic, reliable, and complete information and documentation relevant to the easement is properly managed and maintained in an effective and secure manner.
2. Types of Records. The [organization] creates and maintains files for each easement property. Each easement property will have off-site archival records, non-archival paper records, and digital records.⁷
 - a. *Off-site archival records*. The [organization] will place all originals of all documents essential to the defense of each transaction (e.g. deeds, easements, baseline documentation, amendments) in off-site archival storage along with other permanently retained real estate documents. The location of the archived files shall be protected from daily use and is secure from fire, floods, and other damage. A fireproof cabinet is located at [organization] Headquarters for recent transaction documents.

⁷ Your organization's records may be different than described in this passage. Detail how your organization keeps records related to its easement properties.

- b. *Non-archival paper records.* The Easement Program will retain limited non-archival paper records. These records include working copies of baseline documentation, slides, printed photographs, and history reports.
 - c. *Digital records.* Digital records saved on the Easement Drive are for daily use and reference. The Easement Program's file naming guidelines allow for easy and navigable access to the digital records. All digital records on the Easement Drive are automatically backed-up at least once a day to an offsite server.
 - i. Generally after [date], records are primarily digital. Any paper records received by the Easement Program are scanned and saved to a property's digital file.
 - ii. All existing paper records were digitized in [date] and sent to permanent storage.
3. Records Retention and Destruction. All recordkeeping by the Easement Program will be in accordance with the [organization]'s Records Retention Policy and Standard Operating Procedures.

D. Inspections

1. Overview. The [organization] Easement Program regularly conducts inspections of easement properties in order to ensure compliance with easement restrictions and to track progress of any ongoing projects.
2. Frequency. Easement inspections should occur annually or at least once every [insert] months.
3. Consultants. Inspections undertaken by consultants on behalf of the [organization] should follow this Standard Operating Procedure, Inspection Guidelines, or any other requirements to ensure they are consistent with all [organization] Easement Program practices.
4. Initial Notice. Initial notice of easement inspection will be sent using primary contact information in the Easement Program records.
5. Scheduling. Easement inspections should generally be scheduled during regular business hours. Except in limited situations, the owner or their representative should meet with the Easement Program staff person during the inspection.
6. On-Site Inspection. The Easement Program staff should only inspect areas protected under the Easement, unless invited to view other areas or features by the owner/representative. Notes should be recorded during the inspection, as well as photographs that capture overall views of the property, each elevation of protected buildings, any structures or landscape features, and more detailed views of any specific conditions noted.

7. Inspection Follow-Up. It is important to create a digital or paper record of the inspection visit to show that the [organization] has fulfilled the monitoring obligation, to save a record of the property condition, and to indicate a general summary of any information received or conveyed during the time of the on-site visit.

E. Requests for Approval

1. Overview. The [organization] Easement Program regularly receives requests from easement property owners or representatives to review and approve actions as permitted in the property's easement. Easement Program staff reviews and responds to these requests in a timely and consistent manner.
2. Receiving Requests. The [organization] accepts requests on a rolling basis from property owners and representatives. The [organization] requires property owners to submit in writing a request for its review and approval; requests are typically communicated through e-mail. On occasion, the [organization] may request that the property owner or representative provide architectural plans, sample materials, or other items through postal mail.
 - a. *Required information.* The information required to evaluate requests depends on the scope of the project. Minor projects may only require a written general explanation of the project and an estimate from a contractor or specification sheets, while major projects may require architectural plans and more detailed information. Photographs of the feature(s) to be altered should be provided if the Easement Program staff have not visited within the past three months.
 - b. *Receipt of request.* Easement Program staff will confirm receipt of the request, generally within 1-2 business days, indicating that additional information may be required to complete the review.
 - c. *Verify response deadline.* Within one week, Easement Program staff will verify if the property's easement includes a response deadline. While most easements do not prescribe a response deadline, a limited number of easements do, and a failure to respond by the deadline may result in the request being automatically approved. If a response deadline exists in the property's easement, staff will provide a response within that timeframe.⁸
2. Initial Review. Within one week of an initial request, Easement Program staff will review the request for sufficiency of materials. This review will (i) determine if any additional information is needed to review and approve the

⁸ In *Hoffman Properties II v Commissioner*, the U.S. Tax Court determined that automatic approval clauses are inconsistent with protecting the preservation and conservation values and are inconsistent with the perpetuity requirements of Section 170 of the Internal Revenue Code. New preservation easements should not allow for a conditional rights approval if the easement-holder does not reply within a certain timeframe (e.g. 45 days), but instead should utilize a constructive denial. However, legacy easements that include these terms and should be administered appropriately by the organization in consultation with its legal counsel.

- request and (ii) determine if the project needs to be referred to the Easement Program Project Review Committee. If more information or Committee review are required, staff will contact the property owner and request the information.
3. Standards. At all times, Easement Program staff will review requests applying the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. In the event an easement document utilizes different standards for review, the standards required by the easement shall govern.
 4. Minor Projects. Minor projects are defined as having limited or no impact on protected features; minor projects can include alterations to protected features that are more extensive than routine maintenance, but adhere to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.
 - a. *Review*. Once staff has received adequate information from the property owner or representative to review the request, staff will issue an approval or denial within four weeks.
 5. Major Projects. Major projects are defined as having a significant impact to the property; major projects might include new construction of a primary or secondary building, a major addition to an existing protected building, demolition of any protected feature, or any potentially precedent-setting alteration.
 - a. *Review*. Major projects require longer staff review due to the complexity of the project. Staff may request a phone call with the owner, estimates for alternative materials or approaches, or additional information that might delay the review process. As with minor projects, staff will issue an approval or denial within four weeks of receiving sufficient information to complete the review.
 - b. *Easement Program Project Review Committee*.⁹ Easement Program staff may consult with the Easement Program Project Review Committee while reviewing major projects. The Easement Program Project Review Committee is an informal group of [organization] staff that have expertise in historic preservation, law, historic sites, or related disciplines. The Committee's primary purpose is to provide input on requests to easement staff when requested. Easement Program staff will elevate requests for approval to the Committee for projects that include, but are not limited to:
 - i. any project that does not appear to meet the *Secretary of the Interior's Standards for the Treatment of Historic Properties*;
 - ii. reconstruction of features no longer extant at the property;

⁹ Your organization's easement committee may review additional items not included. Ensure there is a clear understanding what activities are approvable by staff versus what requires review by another organizational committee.

- iii. projects that may be potentially controversial or precedent setting;
 - iv. proposed amendments to recorded easements in accordance with the [organization]'s Easement Policy;
 - v. complex projects that may benefit from the expertise of the Committee;
 - vi. any projects that the Easement Program staff determines require additional review; and
 - vii. requests denied by Easement Program staff and the owner asks for an appeal of the decision.
6. Communicating Approvals/Denials. Approvals and denials will be issued by Easement Program staff through e-mail, unless the property owner explicitly requests delivery through postal mail. Approvals for major projects should be written on [organization] letterhead and attached as a PDF document to an e-mail.
- a. All approvals or denials must be made in writing. Easement Program staff are discouraged from verbally communicating any type of approval, particularly during an easement inspection.
7. Archiving Communications. All approvals will be saved as PDF files to the easement property's digital file.

F. Amendments

1. Overview. The [organization] holds preservation and conservation easements with the intent to hold the easements in perpetuity and enforce their terms and provisions as they are originally written. The [organization] recognizes that it may be necessary on rare occasions to modify the terms of its easements but will only do so in accordance with applicable law and only for changes that will have a beneficial or neutral effect on the Property's conservation values or to correct an obvious error or oversight.
2. Policy. The [organization]'s Easement Policy outlines the following circumstances that would permit the amendment of an easement:
 - a. To correct an obvious error or oversight made at the time the easement was executed;
 - b. To implement a prior agreement allowing modification of the restrictions at a future date under specified circumstances; or
 - c. To provide for a minor modification of the easement where the modification is consistent and compatible with the intent and purpose of the original preservation and conservation easement, and where: (a) the amended agreement will have a net beneficial or neutral effect on the preservation goals of the original agreement and the protection of the easement property; or (b) the owner offers additional preservation

measures on the same property sufficient to offset entirely any reduction of preservation values.

3. Additional Principles. In addition to the policy above, the following guidance is recommended:
 - a. The amendment should be consistent with federal, state, and local laws and regulations governing:
 - i. the amendment of preservation and conservation easements;
and
 - ii. charitable organizations.
 - b. The amendment will not jeopardize the [organization]'s tax-exempt status or status as a charitable organization under federal or state law.
 - c. The amendment does not result in private inurement or confer impermissible private benefit.
 - d. The amendment is consistent with the documented intent of the donor, grantor, and any direct funding source.
 - e. The amendment will not impair the [organization]'s ability to steward, defend, or enforce the easement.
 - f. No amendment shall result in the termination of the existing easement unless the terminated easement is immediately replaced by an amended or substituted easement consistent with this policy. No amendment shall alter the perpetual duration of an existing easement.
 - g. The amendment will not undermine the public's confidence in the [organization] to protect conservation values in perpetuity.
 - h. For easement donations that received a charitable contribution, no amendment shall be approved by the [organization] that is likely to result in the conservation easement failing to qualify as a valid conservation easement under the Internal Revenue Code.
4. Internal Procedures. The following procedures will be followed when amending an easement.
 - a. Amendments may be initiated by the landowner or the [organization].
 - b. Amendment requests must be submitted in writing. The request should include a description of the change being requested, the reasons why it is warranted, a map of the property showing areas affected by the proposed amendment and any other information that justifies the request.
 - c. Each request by a landowner must be accompanied by a down payment to cover anticipated costs in reviewing the amendment request, regardless of whether the request is approved. If the amendment request is approved then the landowner will be responsible for covering any costs exceeding the initial fee, as billed by the [organization],

- including legal fees, staff time, and recording costs along with cost for any required documentation, such as a survey or updated baseline documentation.
- d. Easement Program staff and/or the Easement Program Project Review Committee will review the amendment request for consistency with the original preservation and conservation easement deed, the Easement Policy, the [organization]'s Conflict of Interest Policy and any related documentation. Preservation professionals such as State Historic Preservation Officers and state and local partners may be consulted at the [organization]'s discretion. A site visit and meeting with the current property owner and/or original donor may also be conducted.
 - e. If an amendment requested by a landowner will increase the administrative burden on the [organization] for future monitoring and/or enforcement of the easement, the [organization] will advise the property owner of the amount of additional funding needed for the easement endowment. The amendment will not be recommended for approval until the property owner agrees to fund an increased easement endowment.
 - f. A written summary of the proposed amendment and the reasons why it is being requested will be presented to the [Committee/Board of Directors] of the [organization] for preliminary approval. Such approval will be granted or withheld using the criteria listed in section 2, above.
 - g. If the [Executive] grants preliminary approval, Easement Program staff will communicate the preliminary approval to the property owner. The amendment will be drafted by the [organization] and may be reviewed by outside legal counsel. The property owner, their legal counsel, or state and local partners may review the draft amendment.
 - h. The final draft of the amendment and a written summary of the reasons for its request will be presented to the [Committee/Board of Directors] for final approval.
 - i. If the terms of the amendment are approved, the [organization] will notify the property owner and prepare the amended easement document for recording. The original amendment document will be sent to the off-site archival records storage. A scanned, recorded copy will be stored in the property's digital file on the Easement Drive.
5. External Approvals. Easement Program staff will identify early in the amendment process as to whether consultation with a court, state agency, attorney general, or other public official is required or desirable under the applicable state laws including the state's easement enabling act.¹⁰

¹⁰ Certain state enabling laws require approval for amendments by state government entities. Consult with your legal counsel to ensure that any applicable requirements are outlined in your standard operating procedures.

- a. *State Approval.* [organization] legal counsel will determine whether the relevant state authority that proves oversight of conservation interests, preservation interests, and/or charitable organizations has an interest in or legal obligation to review the proposed amendment. If the state authority does express an interest, then the approval or acquiescence of the state authority must be requested and obtained.
 - b. *Judicial Approval.* [organization] legal counsel will determine whether the [organization] has a legal obligation to obtain a judicial order approving the proposed amendment. If such a legal obligation exists, the [organization] will obtain a judicial order before amending the easement.
6. Extinguishment. In the rare cases that it is necessary to extinguish an easement in whole or in part, the [organization] will follow the terms of the easement with respect to taking appropriate action and obtaining judicial or regulatory review when required by law or specified in the easement.
- a. In addition to the internal procedures outlined above for amendments, Easement Program staff shall consult with the [organization]'s Board of Trustees or its designated committee to ensure the action will not have a negative impact on the [organization]'s reputation and its impact on the preservation community at large.
 - b. The [organization] will ensure there is no private inurement or impermissible private benefit.
 - c. The [organization] will take steps to avoid or mitigate harm to conservation and preservation values. Any proceeds from the extinguishment will be used in a manner consistent with the easement.

G. Violations

1. Overview. The [organization] takes seriously the obligation to uphold and enforce the terms of each easement to ensure that the resources they have committed to protect are not lost through deterioration, neglect, irresponsible management, or inappropriate changes.
2. Policy. The [organization] monitors each easement it holds on a periodic basis to ensure that the property is preserved in accordance with the restrictions set forth in the easement. When the [organization] suspects that an activity or alteration that violates the terms of an easement has occurred, is ongoing, or may occur in the future, the [organization] will follow a systematic approach to document and address the perceived violation.
3. Objectives. Each easement violation presents a unique situation and requires a tailored approach. The [organization] will seek to address each violation and to develop a strategy to remedy the situation in accordance with the following general objectives:

- a. To maintain the conservation and preservation purposes of the easement.
 - b. To maintain the most constructive working relationship possible with the property owner.
 - c. To maintain public confidence in the [organization]'s ability to enforce easement restrictions generally and in part as a deterrent to other potential violators.
 - d. To protect the [organization]'s legal rights and economic investment in the easement.
 - e. To evaluate each suspected violation thoroughly prior to formulating a response strategy.
 - f. To ensure that communication with a property owner regarding a violation reflects the only official position of the organization.
 - g. Where consistent with the foregoing objectives, to balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
 - h. To maintain consistent responses to similar easement violations.
 - i. To enter into litigation as a last resort and only when there is a sound legal basis for judicial action.
4. Defining Violations. In determining whether a violation has occurred and the severity of any violation, the [organization] will primarily consider: (1) the purpose of the preservation and conservation easement, and (2) the conservation and preservation values of the property. Secondary considerations may include the identity of the violator (e.g. property owner or third party) and the intent of the violator (e.g. accidental, deliberate, or repeated). Violations may fall into one of the following categories:
- a. *Technical Violation.* A procedural violation that has no impact upon or consequence to the preservation easement's purpose or the protected architectural features. Examples of "technical" violations:
 - i. Failure to provide notice of proposed sale;
 - ii. Failure to provide a certificate of insurance annually or when coverage is renewed, when required by the easement;
 - iii. Failure to maintain public access; and
 - iv. Failure to insert the Easement, either verbatim or by express reference, in any subsequent deed or other legal instrument by which the property is transferred, including a lease of all or a portion of the property.
 - b. *Minor Violation.* A violation that has negligible impact upon or consequence to the preservation and conservation easement's intent,

purpose, and/or protected architectural features. Examples of “minor” violations may include:

- i. Minor deferred maintenance that begins to compromise the integrity of architectural features;
 - ii. Unapproved alterations to protected architectural features that in the [organization]’s discretionary review are consistent with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*;
 - iii. Minor topographical and hardscape changes (e.g. sidewalk, installation of permanent raised flower beds);
 - iv. Minor tree cutting of protected trees;
 - v. Installation of small signs with limited impact to protected architectural features; and
 - vi. Unwillingness to schedule easement inspection, particularly with interior protections.
- c. *Moderate Violation*. A violation that has moderate impact upon or consequences to the preservation and conservation easement’s intent, purpose, and/or protected architectural features. Examples of “moderate” violations may include:
- i. Substantial deferred maintenance that has been identified for several inspections and affects multiple protected features;
 - ii. Unapproved construction of an ancillary building;
 - iii. Alterations to protected architectural features that under the [organization]’s discretionary review are not in accordance with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*;
 - iv. Demolition of structures when such demolition is a permitted activity under an easement either with [organization]’s discretionary approval or a reserved right with [organization] notification;
 - v. Larger topographical changes (e.g. driveway);
 - vi. Major tree cutting of protected trees (e.g. clearing of areas, removal of trees that significantly contribute to the setting of the property);
 - vii. Minor dumping (e.g. one or two piles, unobtrusive);
 - viii. Decreased visibility of the property from the right-of-way which impacts its public access;
 - ix. Installation of larger signs that impact protected architectural features; and
 - x. Unapproved change of use.

- d. *Major Violation.* A violation that has significant impact upon or consequences to the preservation and conservation easement's intent, purpose, and/or protected architectural features. Examples of "major" violation may include:
 - i. Prohibited activities including demolition or partial demolition (e.g. Main House), subdivision, and major dumping;
 - ii. Unapproved addition on principal structure; and
 - iii. Substantial deferred maintenance that has been identified for several inspections that has resulted in demolition by neglect of certain protected features at the property.
5. Procedures. The [organization] will adhere to the following general procedures when managing violations and potential enforcement properties.
- a. *Review Easement Restrictions.* When a violation is suspected, the staff member will first review all pertinent documentation, including the easement, baseline documentation and available inspection reports, to determine if an easement violation has occurred, its exact nature and when it likely took place. The staff member should consult the [organization]'s legal counsel for interpretation if necessary.
 - b. *Document the Violation.* An Easement Program staff member who discovers a potential violation during an inspection visit will thoroughly document the current conditions at the property. The Easement Program staff member will notify the [organization]'s legal counsel of the suspected violation. Easement Program staff have the discretion to determine an appropriate approach to addressing the violation, which may start by seeking voluntary compliance from the property owner before defining the activity as a violation and/or issuing a formal notice of violation.
 - c. *Retroactive Approvals.* Easement Program staff may choose to issue a retroactive approval for unapproved alterations or activities. Easement Program staff can include affirmative conditions on retroactive approvals to resolve the unapproved activity.
 - d. *Technical and Minor Violations.* If the Easement Program staff determines a technical or minor violation has occurred, designated staff will send the property owner an email outlining the nature of violation and recommendations to correct the violation within two weeks of identifying the violation. The exact recommendation made by the [organization] will vary depending on the circumstances. Multiple or repeated technical and minor violations may escalate the proposed approach.

- e. *Moderate Violations.* Depending on the scale of the moderate violation, Easement Program staff will work with the property owner to identify a reasonable timeline to address the violation. If the violation has not been addressed in a timely manner, Easement Program staff will consult with the [organization]'s legal counsel to determine an appropriate course of action, which may include, but is not limited to, issuing a formal notice of violation.
- f. *Major Violations.* If the Easement Program staff determines a major violation has occurred, designated staff will send the property owner a certified letter with a notice of violation and recommendations to correct the violations. If the Easement Program staff identifies a major violation that cannot be voluntarily corrected by the property owner (e.g. demolition), legal means may be the only method to address the violation. The exact recommendation made by the [organization] will vary depending on the circumstances.
- g. *Voluntary Remediation.* If the property owner agrees to a corrective action, the [organization] will develop a follow-up letter reflecting the nature and extent of the restoration work or other follow-up actions and the agreed-upon timetable for completion. A [organization] Easement Program staff member should visit the property near the deadline date to document any restoration work. A follow-up e-mail will be sent to the property owner (or via certified mail with return receipt requested) attesting to the satisfactory completion of the work or otherwise, as appropriate.
- h. *Noncooperation.* The [organization] Easement Program staff will attempt to work with the property owner to voluntarily correct violations. If the property owner refuses to voluntarily restore the property or otherwise correct a violation within a reasonable time period for the scope of the violation, the Easement Program staff will discuss the violation and determine an appropriate enforcement strategy with the [organization]'s legal counsel.
- i. *Litigation.* As a course of last resort, the [organization] will use litigation or other legal means to address an easement violation. Enforcement through court action is expensive and time consuming and may produce an undesirable outcome. Litigation may cause irreparable damage to the relationship between the property owner and the [organization]. Nevertheless, court enforcement may be necessary to defend an easement, prevent or stop damaging activities or obtain restoration of a property. [organization] legal counsel will retain outside counsel when

necessary and work closely with outside counsel to prepare and present the strongest possible case.

H. Applicability

1. If in any scenario the Easement Program is unable to substantively meet any requirement of this Standard Operating Procedure, Easement Program staff will seek a waiver from the [Executive]. If the requested waiver will pose significant reputational or organizational risk, the [Executive] may seek concurrence from the [Committee/Board of Trustees].
2. This Standard Operating Procedure is for the internal management of the [organization]'s Easement Program. No third party is entitled to rely on this Standard Operating Procedure for the administration and enforcement of the [organization]'s easement properties.