

**PRINCE GEORGE'S COUNTY**  
**HISTORIC PROPERTY GRANT PROGRAM**  
**PRESERVATION EASEMENT REQUIREMENTS AND GUIDELINES**  
**Adopted by the Prince George's County Planning Board – April 29, 2010**

I. Background

The historic preservation easement required as part of the Prince George's County Historic Property Grant Program (Grant Program) administered by The Maryland-National Capital Park and Planning Commission (M-NCPPC), provides an advantageous means by which an owner protects an architecturally or historically significant property. The Grant Program encourages private real estate investment and requires the conveyance of a preservation easement. The owner may benefit from an IRS deduction through the granting of the easement.

A preservation easement constitutes a legal mechanism whereby a property owner (grantor) transfers a partial, non-possessory, interest in real estate to a qualified organization or governmental entity (grantee). The grantee secures the right to control the historic integrity and appearance of a site or structure (in accordance with the scope of the easement) in perpetuity and enforces the easement terms. A preservation easement may protect the entire property, or specific buildings, from unauthorized alterations, demolition, or new construction, and may include the interior of any structure. The historic preservation easement does not necessarily suspend a building in its present appearance and the property's use is not necessarily affected.

To be a qualified easement holding organization for conservation purposes according to IRS rules, the easement holder must have the capacity to monitor easement properties and enforce their terms. Enforcing the provisions of the easement associated with the Historic Property Grant Program is a long-term, ongoing responsibility for M-NCPPC.

Pursuant to Article 28, M-NCPPC requires the donation of a preservation easement in return for an award under the Grant Program as a means of protecting architecturally, culturally, and historically significant properties in a manner that encourages appropriate rehabilitation, maintenance, and stewardship. Although all preservation easement deeds share common provisions, each easement deed constitutes a singular document specifically addressing the unique features of the subject property, as set forth in the historic preservation easement deed.

## II. General Requirements

Article 28, Annotated Code of Maryland, §5-306, the enabling legislation that allows M-NCPPC to administer a historic property grant program, requires that the grant recipient shall convey a perpetual preservation easement to M-NCPPC at the time the grant is awarded.

The historic preservation easement grantor is required to follow the Prince George's County Historic Property Grant Program Guidelines (adopted on May 8, 2008 by the Prince George's County Planning Board) in effect at the time the easement is conveyed. The Grant Program Guidelines state that: (1) Successful applicants will be required to sign a Historic Preservation Grant and Easement Contract (substantially in the form included with the application) agreeing to the conditions of the Program prior to the award of the grant; (2) Grant recipients shall convey a perpetual Historic Preservation Easement (substantially in the form included with the application) to The Maryland-National Capital Park and Planning Commission at the time the grant is awarded and before any funds are disbursed.

The historic preservation easement is a permanent encumbrance on the title to the property that passes from owner to owner. In order for the property owner to be eligible for an award under the Grant Program and for possible federal IRS income tax deductions, the preservation easement must run with the land and remain in effect in perpetuity.

As a private contractual agreement between M-NCPPC and the property owner, the preservation easement and its associated terms and conditions are separate and apart from the regulations established by Subtitle 29, the Prince George's County Historic Preservation Ordinance, and may be more restrictive than the regulations established by Subtitle 29. M-NCPPC shall accept only those preservation easement deeds in the form provided and approved by M-NCPPC.

### A. Conditions

At the time the Historic Property Grant award is made, M-NCPPC may agree to accept an easement on the condition that work carried out in part by the grant award to rehabilitate or restore a property is in accordance with the *Secretary of the Interior's Standards for Rehabilitation*. M-NCPPC can impose other conditions as may be necessary to preserve a property's significant features. Such matters are determined on a case-by-case basis, and are based on the unique characteristics of each structure or property as well as the individual concerns of each property owner. Such conditions shall be approved by the Planning Board.

## B. Costs

1. There is no cost associated with application for grant awards under the Grant Program. Moreover, unlike many easement programs, there is no monetary contribution required to cover expenses associated with the administration (review for acceptability, monitoring, and enforcement) and recording of the preservation easement associated with the Grant Program.
2. The property owner is responsible for any legal fees, such as for the owner's attorney, as well as costs associated with the professional services of a tax advisor and appraiser.
3. Costs for surveying the property as necessary to draft the easement are reimbursable from grant funds after the easement is recorded.
4. Title abstracts, title certification, and the obtaining of mortgage subordinations (as applicable) are undertaken by a settlement attorney engaged by M-NCPPC. The individual award amount is reduced by the costs to produce this documentation, any bank charges incurred, and attorney's fees, up to the amount of \$3,000. Authorization to pay any legal fees exceeding \$3,000.00 per easement conveyance must be obtained from the Planning Board. As set forth in the terms of the Grant and Easement Contract, the grantor remains solely responsible for the costs associated with correcting defects in title. The easement exhibits are incorporated into and made a part of the fully documented historic preservation deed of easement. Easement exhibits and baseline documentation including but not limited to plot plans, legal description of the property, mortgage subordinations (if applicable), and title certifications, shall be subject to M-NCPPC's acceptance in its sole and absolute discretion.

## C. Preparation of Legal Documents

1. M-NCPPC is responsible for drafting the Preservation Grant and Easement Contract, easement deed, and other appropriate documents related to the easement provisions, and easement recordation.
2. The property owner is responsible for obtaining a property survey, subject to the approval of M-NCPPC in its sole and absolute discretion.
3. As described in Section B: "Costs," legal counsel engaged by M-NCPPC will issue title certifications, obtain mortgage subordinations, and record the deed of easement.

4. Upon receipt of the executed Preservation Grant and Easement Contract (which confirms the grantor's commitment to the grant and intention to convey a historic preservation easement), M-NCPPC proceeds with the drafting of a preservation easement deed and other appropriate documentation. The easement shall address substantive provisions, such as building/site features and any maintenance issues deemed important by M-NCPPC Historic Preservation Section staff or other certified professionals who meet qualifications established in 36 CFR 861.5.
5. The historic preservation easement is reviewed by M-NCPPC Planning Department staff, M-NCPPC legal counsel, and the M-NCPPC Planning Department Budget Coordinator, before it is presented to the grantor. M-NCPPC recommends that the grantor, and/or the grantor's attorney review the prepared documents and discuss any issues with M-NCPPC. Documentation may be revised to fully reflect the parties' intent and wishes, subject to the intent and purposes of the Grant Program.
6. When a mortgaged property is involved, mortgagee assent and subordination of its interests to the easement shall be required to assure M-NCPPC's right to enforce the restrictions of the easement in perpetuity. The mortgagee shall execute a Subordination Agreement, in the form provided and/or approved by M-NCPPC. The Subordination Agreement will constitute an integral part of the historic preservation easement so that the easement cannot be extinguished in the event of foreclosure.
7. Once the documents accurately reflect the parties' intent and the purposes of the Grant Program, M-NCPPC Planning Department staff will arrange for a closing by a settlement attorney whereby the conveyancing documents are executed and the easement rights transferred.
8. M-NCPPC's settlement attorney is responsible for promptly recording the preservation easement deed, attached exhibits, and/or other legal documents in the land records for Prince George's County. The recording of the preservation easement documentation shall take place as soon as reasonably possible to protect M-NCPPC's preservation easement. Prior to recordation, the settlement attorney shall conduct a forty (40) year title rundown to ensure that no title defects or encumbrances which are unacceptable to M-NCPPC exist in the property's chain of title.

9. Prior to the Grant award, the property owner shall execute three (3) original copies of the Historic Preservation Grant and Easement Contract. At the time of closing, three (3) original copies of the preservation easement deed shall be executed and an original will be returned after recording to M-NCPPC Department of Finance. Fully-executed copies of the preservation easement documents shall be forwarded to: M-NCPPC Planning Department and to the M-NCPPC Department of Finance.
10. The preservation easement deeds must be signed by the grantor in the presence of a notary public. Countersigned exhibits may include specified photographs, written descriptions, legal property description, mortgagee subordination, specified blueprints, and site plans or maps.
11. Prior to the commencement of work specified under the Grant Program award, M-NCPPC Planning Department staff may undertake a visual survey with photographs and notes as an update to its documentation on the physical appearance and existing conditions of the subject property, including the description of important features, monitoring concerns, and prospective enforcement problems.

D. Grantor Responsibilities

1. The grantor of a preservation easement generally relinquishes the right to alter a structure or property in a manner that would constitute inappropriate changes to those architectural or visual features that contribute to the property's historic significance. These elements are unique for each property and each individual easement specifies the architectural and landscape elements that are to be protected. Any proposed repairs or alterations that could affect that portion of the property protected by the easement must be approved in writing by M-NCPPC's Executive Director or duly authorized agent. In addition to the restrictions set forth in the preservation easement deed, the property owner must comply with all applicable building codes and zoning laws, including but not limited to, the regulations set forth in the Prince George's County Historic Preservation Ordinance, (Prince George's County Code, Subtitle 29: Preservation of Historic Resources).
2. The grantor retains all property rights which are not restricted in the easement deed. Any property may be freely sold, subject to the provisions of the easement.

3. No easement will be accepted on mortgaged properties unless the mortgagee agrees and subordinates its lien(s) to the terms of the easement. M-NCPPC's settlement attorney will inform the mortgagee of the easement proceedings.
4. It is the responsibility of the easement grantor to obtain an appraisal of the value of the easement to be considered as a donation for the grantor's income tax purposes. Although M-NCPPC is legally qualified to accept preservation easements, acceptance of an easement does not ensure a tax deduction or other financial benefits.

E. Administration

1. Applications for activities covered by the preservation easement, such as alterations, demolition, or new construction, must be made in writing with sufficient documentation to represent the proposal. Such activities may be separate and apart and in addition to the activities specifically authorized in the Grant Program award. Following a preliminary review by the M-NCPPC Historic Property Grant Program Administrator, the Easement Committee will review and vote on the application.
2. The Easement Committee will consist of three staff members from the M-NCPPC Planning Department and the Department of Parks and Recreation. The Planning Department shall provide the staff services of the "Easement Administrator." The Easement Administrator and the Easement Committee members shall meet the requirements under 36 CFR 861.5 professional standards. The Easement Committee may call upon the expertise of a staff archeologist to advise the Easement Committee for matters concerning archeological issues. At the time the Easement Committee is organized, a committee chairperson shall be designated.

A representative from M-NCPPC Legal Department shall serve as counsel to the Easement Committee. The attorney's participation shall be in an advisory (non-voting) capacity only.

3. The Easement Committee shall review the property owner's request and, given a quorum, shall vote to make a written recommendation to the Commission's Executive Director or designee. This recommendation shall be made in accordance with the time specified in the deed of easement and after consideration of the written recommendation of the Easement Administrator. The Easement Committee may delay a vote on a specific application pending

more detailed information. The recommendations may include suggested modifications to a proposal based on the unique circumstances established in the historic preservation easement.

4. The Executive Director, or designee, shall send written notice to the grantor affirming or denying the Easement Committee's recommendation within five (5) business days of receipt of the Committee's recommendation. Rejection of the application by the Executive Director, or designee, shall effectively foreclose any further considerations. To the extent that any action taken by the Grantee pursuant to the easement gives rise to a claim of breach of contract, the Grantor and the Grantee shall have available all legal and equitable remedies to enforce the obligation under the easement.

F. General Monitoring and Work Inspection

1. M-NCPPC Planning Department historic preservation professional staff or a 36 CFR 861.5 qualified historic preservation professional under contract with M-NCPPC will conduct formal inspections of each easement property on an annual basis. These parties are referred to as "the inspector." This inspection is referred to as "easement monitoring." In some cases, easement monitoring may occur on a more frequent basis than annually.
2. M-NCPPC has the right to inspect both the exterior and the interior of the property. Reasonable notice of the proposed inspection must be given to the property owner to be conducted at a mutually convenient time. The owner cannot unreasonably withhold consent in determining dates and time for inspections. Interior inspection is an important right provided in the easement document whether or not the easement protects interior as well as exterior features. Such problems as termite infestation, dry rot, flooding or seepage, or foundation settling can eventually threaten not only the interior structural integrity but also a protected facade.
3. Where an easement property is undergoing rehabilitation, the M-NCPPC inspector has the right to inspect all related work on a weekly, or as needed basis until at such time the property owner has completed the approved work. All alterations may be photographically recorded by the inspector. This inspection is referred to as the "work inspection."
4. During the easement monitoring site visit for general compliance purposes, the inspector will review the property to assure that unauthorized improvements or alterations to the site or structures, and major defects or deterioration have not occurred.

5. The inspector's findings are recorded in an Easement Inspection Report. Each report shall be completed and signed by the inspector within thirty (30) days of the inspection and shall contain: (1) a statement of current conditions; (2) recommendations for remediation; and (3) photographs of significant conditions and alterations. The inspector shall retain a copy of every inspection report.
6. As part of its easement monitoring commitment, M-NCPPC will inspect the subject property at least annually, to ensure that the owner is in compliance with the easement restrictions. The failure of M-NCPPC to exercise this right of inspection for any period of time shall under no circumstances be construed as a waiver of such right.

#### G. Enforcement

1. Where the inspector finds changes, deterioration, or any breach of the easement requirements, the Easement Administrator shall inform the property owner in writing of such conditions and shall suggest a cure and require its completion within a specified period of time. The property owner is obligated to respond to such notice within the number of days specified in the easement.
2. Where a property owner fails to reply or refuses to comply with a request for repair, or disregards the Easement Committee's instructions regarding a proper repair method, M-NCPPC shall be empowered to institute legal or other remedial action in accordance with the terms of the easement deed governing enforcement procedures. M-NCPPC retains all legal and equitable remedies provided in law. Suits to enjoin violation of any term or provision of the easement may be filed, and restoration of the altered or damaged feature to the condition prior to the violation can be sought.

#### H. Tax Considerations

Federal tax law has recognized the validity of a charitable contribution deduction for the value of a preservation easement donated in perpetuity to a qualified holder. The donation of a preservation easement may result in significant tax deductions. Thus, if an owner wishes to minimize taxable income, a preservation easement gift may represent a preferable choice.

Grantors of preservation easements who wish to take a federal charitable contribution deduction for the appraised value of the easement must comply with requirements delineated in Internal Revenue Code (I.R.C.) §170(h). Properties that are listed in the National Register of Historic Places or certified by the



Secretary of the Interior as contributing to a historic district will qualify for favorable income tax treatment.

Easement documents must be carefully prepared to conform with applicable federal income, estate, and gift tax requirements. If an easement merely complies with state and local real estate law, it may be valid and enforceable. However, it may not qualify as a charitable contribution deduction for federal purposes if it does not meet requirements set out at Treasury Regulation Section 1.170A-14 and I.R.C. Section 170(h).

The grantor of the easement is responsible for securing competent legal and financial advice and for securing a professional property and easement appraisal.

The IRS regulations for charitable contribution deductions for preservation easements are highly technical. Any property owner considering this type of deduction is strongly encouraged to consult a qualified tax advisor relative to the possible tax consideration involved. M-NCPPC is not responsible for providing tax advice or assuring the availability of financial benefits.

In the event that the property owner elects to pursue possible tax benefits associated with the easement donation, the property owner is responsible for any required IRS filing fee.