



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #6

Easement Amendments

It is the policy of the Board of Historic Resources that every easement be carefully and thoughtfully negotiated, and that the terms of each easement reflect the mutual expectations and desires of both the Grantor and the Grantee. Easement documents shall be drafted with the expectation that amendment will not be necessary. To that end, Department staff members are expected to work closely with property owners, appropriate counsel, and advisors to ensure that, to the greatest extent practicable, foreseeable future circumstances are considered at the time the easement document is drafted.

Because all future events cannot be anticipated, easements may need to be amended in certain exigent circumstances. Therefore, it is the policy of the Board to allow for consideration of appropriate amendments as circumstances dictate.

An amendment should strengthen the protection afforded by the original easement to the resource(s) on the property. For example, a property owner may wish to include additional acreage or more restrictive provisions concerning new construction to the existing easement. An amendment should not compromise the historic, architectural, archaeological, open space, cultural, or other environmental resources which the easement was intended to protect.

When determined to be appropriate by the Board, an amendment may be accepted that does not affirmatively strengthen protection of the resource, but which maintains the original easement protections in place. Such an amendment is judged to be "preservation neutral" because it neither strengthens nor weakens the protections to the resource(s) established in the original easement agreement. Circumstances when a "preservation-neutral" amendment may be considered include but are not necessarily limited to:

- Boundary adjustments which result in a *de minimus* change in the protected acreage;
- Changes in the location, configuration, or size of permitted subdivision parcels which do not result in expanded development rights, new construction closer to the manor house or other primary resource(s) than would otherwise be permitted, or other significant diminution in the protection afforded by the original easement; and

- New subdivision rights which do not result in expanded development rights or new construction greater than that which would otherwise be permitted.

“Technical” amendments may be executed to address:

- Errors or omissions in the original easement, or to make other technical adjustments to the easement language;
- Changes which are understood by all parties, based on clear evidence, to be consistent with the original intent of the Grantor and the Grantee.
- Changes that have occurred by act of nature that affect the physical nature of the resource and the accuracy of the easement.

Under very unusual circumstances, the Board may consider an amendment which is not preservation-neutral. Any amendment which diminishes the protection afforded to the resource is not favored, and should be considered only as a last resort to prevent the resource itself from being compromised by neglect, deterioration, inappropriate changes or other circumstances.

[Adopted by the Board of Historic Resources on September 5, 2007]