



*COMMONWEALTH of VIRGINIA*

**Department of Historic Resources**

2801 Kensington Avenue, Richmond, Virginia 23221

**JOINT MEETING**

**STATE REVIEW BOARD and BOARD OF HISTORIC RESOURCES**

Maymont, 1000 Westover Road, Richmond

March 20, 2025, 10:00 a.m.

**EASEMENT PROGRAM**  
**BOARD PACKET**

**PROJECT SUMMARIES**

**Provided to the  
Virginia Board of Historic Resources**

**March 6, 2025**

**CULPEPER BATTLEFIELDS STATE PARK:  
PHASE II  
CEDAR MOUNTAIN BATTLEFIELD**

# Easement Summary

## Culpeper Battlefields State Park

### Phase II – Cedar Mountain Battlefield

<b>BHR Meeting Date:</b> March 20, 2025	<b>Staff:</b> Wendy Musumeci	<b>DHR File No.</b> TBD
<b>Applicant:</b> N/A	<b>County:</b> Culpeper	<b>Acres:</b> ±307.626

#### Property Features and Current Use:

Located southwest of the town of Culpeper, the ±307.626-acre Culpeper Battlefields State Park (“CBSP”) Phase II Cedar Mountain Battlefield property (the “Property”) is comprised of multiple tax parcels. James Madison Highway (Route 15), a National Scenic Byway, bisects the Property creating two distinct areas of land north and south of the road. Dove Hill Road (Route 642), General Winder Road (Route 657), and Crittenden Lane cross the Property in a north-south axis. All these roads are public rights-of-way. Access is via General Winder Road to a parking area and trailhead on what is currently known as the Broomfield Tract. Characterized by a gently rolling topography, the Property is a mix of open grass meadow, wooded cover, and agricultural fields. Portions of the Property are also improved for residential use or with multiple structures and amenities associated with its use as a publicly accessible battlefield park. Interpretative structures and amenities generally include a trailhead and parking area, monuments, trails, foot bridges, fencing, wayfinding signs, markers, cannons, and interpretative signs. The Property also contains the following residential buildings and structures: four non-historic dwellings, one concrete block workshop, one frame barn, one frame shed, three metal sheds, one concrete block shed, a collapsed frame building, one above ground storage tank, two paved asphalt driveways, a concrete parking area, two ponds, three wells, various types of fencing, one billboard, one large sign mounted on a metal post, one concrete foundation, and one gravel driveway. Over the past 20-25 years, the American Battlefield Trust (the “Trust”) has acquired the Property as individual parcels, utilizing American Battlefield Protection Program (“ABPP”), Virginia Battlefield Preservation Fund (“VBPF”), Virginia Land Conservation Fund (“VLCF”), and Transportation Enhancement grants among other funding sources. The Trust acquired the Property for the purpose of preserving it as a Civil War battlefield and a historic, scenic, and open-space resource for the benefit of the public. On or before August 9, 2025, the Trust intends to transfer ownership of the Property to the Virginia Department of Conservation and Recreation (“DCR”) for incorporation into the Cedar Mountain Unit (Phase II) of CBSP. As part of this project, and similarly to the process for the Brandy Station Unit (Phase I) of the park, DCR and the Board of Historic Resources (“BHR” or “Board”) will subsequently co-hold one consolidated easement over the Property. DCR plans to retain some of the existing non-historic buildings and structures for associated park use.

#### Project Background:

1. Virginia Budget Item C-51.10 (FY23-FY24) established the framework for development of CBSP. Per the budget language, DCR shall accept donation of at least 1,700 acres of real property in Culpeper County to create the park. The park will be comprised of discontinuous areas associated with multiple Civil War battlefields and sites in Culpeper County, including Brandy Station (1863), Cedar Mountain (1862), Rappahannock Station I (1862), Rappahannock Station II (1863), Kelly’s Ford (1863) and the Hansbrough Ridge Winter Encampment (1863-1864). The Department of Historic Resources (“DHR”) and the Virginia Outdoors Foundation (“VOF”) must assign any easements held on associated acreage to DCR.
2. DCR’s acquisition of lands for CBSP will occur over multiple phases and years. The Brandy Station Unit (Phase I) opened on June 8, 2024. Phase II (Cedar Mountain) will be completed on August 9, 2025 and incorporates the following properties subject to BHR-held easements: Hulvey Tract (±2.0461 acres), Broomfield Tract (±4.467 acres), Proctor I Tract (±6.0 acres), Cedar Run/Trimble Tract (±86.539 acres), and Pegram’s Battery Tract (±44.752 acres), as well as the Proctor II Tract (±8.095 acres; easement in process) and the Wiseman Tract (±155.7199 acres; easement to be assigned to BHR).
3. DCR and BHR will co-hold one consolidated easement over the Cedar Mountain Phase II properties. This will be accomplished in a recorded *Deed of Acceptance, Assignment, Restatement, Amendment, and Consolidation of Historic Preservation and Open-Space Easements*.

#### Conservation Values of the Property:

##### Historical/Landscape:

1. The Property is entirely within the core and study areas of the Cedar Mountain Battlefield, which has been given a Preservation Priority Rating of II.2 Class B by the Civil War Sites Advisory Commission (“CWSAC”). Sites with a priority rating of II are those in relatively good condition with opportunities for “comprehensive preservation”. Class B sites had a direct and decisive influence on their campaign, in this instance, the Northern Virginia Campaign from June to September 1862.
  - In early August 1862, the Union Army of Virginia commanded by Major General John Pope marched to the town of Culpeper on its way to capture the Gordonsville rail depot. While the Union forces awaited reinforcements from McClellan, Major General Thomas J. “Stonewall” Jackson saw an opportunity to attack an isolated Union corps of 8,000 men at Cedar Mountain. On the hot afternoon of August 9, Jackson’s forces engaged with the Union artillery under the command of Nathaniel Banks. Union artillery and infantry appeared to be making headway when a strong counterattack led by General A. P. Hill caused the Union forces to fall back. The two armies remained on the battlefield until the

Confederate army moved towards Orange on August 11. The result of the battle was a Confederate victory with estimated total casualties of 2,707 men. The Battle of Cedar Mountain changed the focus of fighting in Virginia from the Peninsula to Northern Virginia.

2. The Property contains multiple historic monuments, stone markers, and a Virginia Highway Marker, all erected in the early 20<sup>th</sup> century.
3. The Property is within the Journey Through Hallowed Ground National Heritage Area (“NHA”), a 180-mile corridor from Gettysburg, Pennsylvania to Monticello, near Charlottesville, Virginia that was designated a NHA by Congress in 2008.

**Archaeological:** The Property contains two historic family cemeteries. Although the Property has not been subjected to professional archaeological survey, in the opinion of DHR, the Property has the potential to contain other archaeological sites, features and or deposits associated with the Battle of Cedar Mountain and domestic and agricultural use and occupation of the Property.

**Open Space:** The Property includes ±307.62 acres of land, in a combination of forested cover, agricultural fields, meadow, and interpretative /recreational use (e.g. trails).

**Water Quality:** The Property contains two ponds, at least one of which has intermittent outflow, multiple intermittent streams and is within the Chesapeake Bay watershed.

**ConserveVirginia:** The Property intersects with multiple ConserveVirginia layers, including the “Water Quality Improvement,” “Scenic Preservation,” and “Cultural and Historic Preservation” categories. ConserveVirginia is Virginia’s land conservation strategy that identifies high value lands and conservation sites across the Commonwealth of Virginia

**National Scenic Byway:** The Property fronts James Madison Highway (Route 15), a designated National Scenic Byway.

### **Proposed Acceptance, Assignment, Restatement, Amendment, and Consolidation of Easements:**

#### **1. Assignment of Wiseman Tract Easement to BHR:**

- VOF currently holds an open-space easement over the Wiseman Tract. At its 09/19/24 meeting, the BHR voted to accept assignment of the Wiseman Tract easement. The assignment will be recorded prior to the consolidated easement. DHR is currently working with counsel and VOF to draft the assignment.

#### **2. Deed of Acceptance, Assignment, Restatement, Amendment, and Consolidation of Easements:**

The acceptance of one new easement, assignment of seven easements to DCR, and amendment/restatement of seven easements to include both DCR and BHR as co-holders will be completed in one consolidated deed as follows:

##### **A. BHR Acceptance of Easement on the Proctor II Tract**

- The Proctor II Tract is entirely within the core and study areas of the Cedar Mountain Battlefield. This property saw significant fighting during the August 19, 1862 battle. Confederate forces under Brig. Gen. William Taliaferro and Jubal Early initially fought over the property, and Confederate artillery fired northward toward Union forces. Later in the afternoon, Confederate Brig. Gen. Charles S. Winder was mortally wounded nearby. A Union counterattack soon drove the Confederates back across the property.
- The Proctor II Tract contains ±8.095 acres of open land in mixture of grass lawn and wooded cover. It is improved for residential use and contains the following non-historic buildings and structures: two brick dwellings, one frame barn, one concrete block workshop, one frame shed, two wells, fencing, one billboard, one large sign mounted on a metal post, one concrete foundation, one concrete parking area, and one gravel driveway. An inground pool with concrete patio and underground storage tank were removed in 2024. DCR intends to keep most of the buildings and structures for park-related uses.
- By email dated January 13, 2023, Culpeper County confirmed that a historic preservation and open-space easement placed the Proctor II Tract was consistent with their current comprehensive plan and the draft 2023 plan (which was approved by the Board of Supervisors on March 7, 2023).

##### **B. Assignment of Easements from BHR to DCR**

- Wiseman Tract, ±155.7199 acres
- Hulvey Tract, ±2.0461 acres
- Broomfield Tract, ±4.467 acres
- Proctor I Tract, ±6.0 acres
- Cedar Run/Trimble Tract, ±86.539 acres
- Pegram’s Battery Tract, ±44.752 acres; and
- Proctor II Tract, ± 8.095 acres.

##### **C. Amendment, Restatement, and Consolidation of Easements with BHR & DCR as Co-Holders**

- Seven easements identified in 2(B) above will be amended, restated, and consolidated into a single historic preservation and open-space easement co-held by BHR and DCR under each agency’s enabling legislation and the Open-Space Land Act. The restrictions and preservation and conservation purposes from the



existing easements will be continued in perpetuity.

### Applicable Easement Language--Fee Merger

Easements provide that if any agency or entity of the Commonwealth of Virginia acquires a fee interest in a property that is subject to a BHR easement, the Easement shall not merge into the fee interest but shall continue to encumber the Property.

### Applicable Easement Language--Assignments

1. Assignment of Easements to DCR is required per the FY23-FY24 Budget Bill.
2. The text of the existing easements varies, but generally provides for BHR to assign the easement in its discretion and in consultation with the Grantor, if:
  - Assignment is to a qualified easement holder; and
  - Assignment is consistent with Open-Space Land Act; and
  - All restrictions and covenants and preservation and conservation purposes set forth in the easement are continued in perpetuity; and/or
  - [As applicable] Assignee qualifies as an eligible holder as defined in Section 170(h)(3) of Internal Revenue Code and Treasury Regulations; and/or
  - [As applicable] Assignment is approved by the Secretary of the Interior, through the ABPP; or
  - [As applicable] Notice of assignment must be provided to ABPP at least 30 days in advance of recordation.

### Applicable Easement Language and Policy--Amendments:

1. The text of the existing easements varies. In general, the easements are:
  - Silent on amendments; or
  - Permit amendments, provided that a given amendment shall not:
    - Affect the easement's perpetual duration;
    - Conflict with, be contrary to, or inconsistent with the purposes of the easement;
    - Reduce the protection of the preservation and conservation values;
    - Affect the qualification of the easement as an "open-space easement;"
    - Affect the status of Grantee as a "public body."
  - Required notice of amendment must be provided to ABPP at least 30 days in advance of recordation.
2. Consideration of BHR adopted *Easement Program Policy #6: Amendments*
  - An amendment should strengthen the protection afforded by the original easement to the resource(s) on the property.
  - An amendment should not compromise the historic, architectural, archaeological, open space, cultural, or other environmental resources which the easement was intended to protect.
  - The BHR may also approve a "preservation neutral" amendment that neither strengthens nor weakens protections to the resource(s) established in the original easement agreement.

### Documentation Information for Phase II Easements:

#### Cedar Mountain Battlefield Properties Proposed for Deed of Assignment, Restatement, Amendment, and Consolidation of Historic Preservation and Open-Space Easements

DHR File No.	Property Name	Acres	Tax Map No.	Recorded Date	Instrument Number
023-0045-0002	Hulvey Tract	2.0461	61-26	6/7/2013	130003888
023-0045-0003	Broomfield Tract	4.467	61-23	7/1/2013	130004462
023-0045-0004	Proctor I Tract	6.000	61-40 (portion)	7/1/2013	130004463
023-0045-0005	Cedar Run/Trimble Tract	86.539	61-34. 61-34C, 61-34L, 61-34M	8/25/2021	210007579
023-0045-0006	Pegram's Battery Tract	44.752	61-34F	3/19/2024	240001078
023-0045-0008	Wiseman Tract	155.7199	61-25	11/9/2000	000005928
023-0045-0007	Proctor II Tract	8.102	61-40, 61-40B	Not yet recorded	Not yet recorded

### General:

- 01/21/25: DHR notified ABPP of its intent to (i) accept an easement on the Proctor II Tract, (ii) assign a total of seven BHR easements on the Cedar Mountain Battlefield to DCR, and (iii) join with DCR as co-holder of an amended, restated, and consolidated easement that incorporates all seven properties. On 01/22/25, ABPP acknowledged receipt of DHR's letter and approved assignment of the Broomfield Tract easement as required under Section 5.11 of the existing recorded easement.

- 02/18/25: DHR's Easement Acceptance Committee reviewed and recommended approval of the acceptance, assignment, amendment, restatement, and consolidation of seven Cedar Mountain battlefield easements. DHR provided written notice to all project partners.

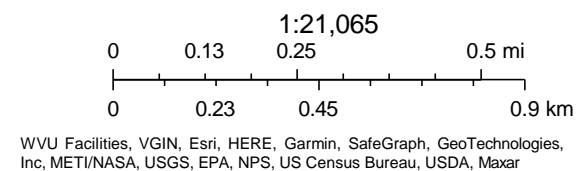
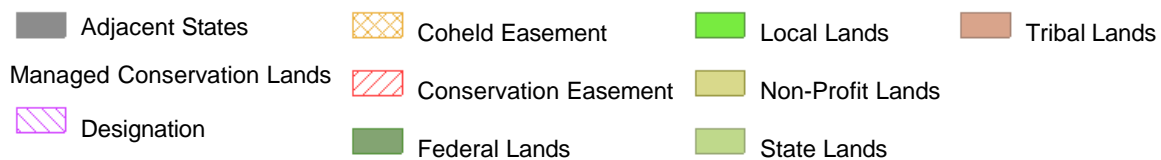
#### **Easement Acceptance Committee Recommendation:**

As part of Phase II: Cedar Mountain for Culpeper Battlefields State Park, the Easement Acceptance Committee recommends:

1. Acceptance of an easement on the ±8.095-acre Proctor II Tract.
2. Assignment of the following easements to the Department of Conservation and Recreation (DCR):
  - a. Wiseman Tract, ±155.7199 acres
  - b. Hulvey Tract, ±2.0461 acres
  - c. Broomfield Tract, ±4.467 acres
  - d. Proctor I Tract, ±6.0 acres
  - e. Cedar Run/Trimble Tract, ±86.539 acres
  - f. Pegram's Battery Tract, ±44.752 acres; and
  - g. Proctor II Tract, ± 8.095 acres.
3. BHR and DCR co-hold a *Deed of Acceptance, Assignment, Restatement, Amendment, and Consolidation of Historic Preservation and Open-Space Easements* for properties 2(a) through 2(g) above. The restrictions and preservation and conservation purposes are to be continued in perpetuity.
4. The Board's approval is subject to the following condition:
  - a. Final review of the title work, title commitment, survey, draft easement and other recorded and unrecorded documents affecting title to the property by the Office of the Attorney General. Per this review, counsel may identify additional issues that require documentation or action.



# Cedar Mountain Battlefield Easements



**NEW  
EASEMENT OFFERS**



<b>BHR Meeting Date:</b> March 20, 2025	<b>Staff:</b> Kyle Edwards	<b>DHR File No.</b> 034-0303-0011
<b>Applicant:</b> Shenandoah Valley Battlefields Foundation (“SVBF”)	<b>County:</b> Warren	<b>Acres:</b> ±45.563

Property Features and Current Use:

The ±45.563-acre Funk Tract (the “Property”) is located approximately three miles east of Strasburg and just south of the Interstate 81-Interstate 66 interchange in the northeastern corner of Warren County. The Property fronts on Long Meadow Road (Route 611) and Water Plant Road (Route 840) and features a rolling topography which slopes to the southeast. The Property is characterized by forested lands in the northwest and open space agricultural lands, currently used for hay production, to the south and east. The Funk Tract is improved with single-story brick dwelling (ca. 1997) and six agricultural buildings (ca. 1950 to 2004), all located in the northeastern corner of the Property. The current dwelling replaced an early 1900’s dwelling which was partially demolished in the 1990’s (only the root cellar and a former kitchen wing, now used as a shed, are still extant). Since the Civil War, the Property has been in agricultural, open space and residential use. SVBF has contracted with the current owners, Daniel Funk as Executor of the Estate of Dorsey A. Funk, Daniel Funk as Trustee for the Steven Funk Trust, Joan Marie Funk and Teresa Elise Funk Harris, to acquire the Property in fee-simple by October 2025. SVBF will use the Property for open space, agricultural, residential and battlefield interpretation purposes. SVBF plans to install a permeable parking area and trail for year-round public access. SVBF will apply for American Battlefield Protection Program (“ABPP”) and was awarded a Virginia Land Conservation Foundation (“VLCF”) grant in 2024. Conveyance of an easement to the Board of Historic Resources (“BHR”) is a condition of these grants.

Conservation Values:

Historic/Landscape:

- The Funk Tract is entirely within the core and study areas of the Cedar Creek Battlefield, which has been given a Preservation Priority Rating of I.1 Class A by the Civil War Sites Advisory Commission (“CWSAC”). Sites with a priority rating of I are those with a critical need for action. Battlefield sites rated Class A are those that had a direct and decisive influence on their campaigns, in this case Sheridan’s Shenandoah Valley Campaign from August to December 1864.
  - Reeling from devastating losses at Fisher’s Hill and Tom’s Brook and witnessing the burning of the Shenandoah Valley by Union troops, Confederate forces under Lt. General Jubal A. Early launched a surprise attack on the Federal army camped near Middletown in the early morning hours of October 19th, 1964. Confederates under the command of Major General John B. Gordon crossed the Shenandoah River at Bowman’s Ford, south of the Funk Tract. They advanced north in the fog, stopping to assemble in battle formation at or near the Funk Tract before sweeping northwest towards the Valley Pike and the Federal encampments. Surprised by the early morning attack and confused with the heavy fog, the Federal forces were forced into a hasty retreat northeast just outside of Middletown. Later in the day, Union Major General Philip H. Sheridan returned from Winchester to find his battered troops forming a defensive line across the Valley. Sheridan heroically rallied the Army of the Shenandoah as they moved southwest along the Pike to engage Early’s Army of the Valley. Early’s forces were stretched thin in a three-mile battle line and Union forces were able to take advantage of the weak line and overrun the Confederate flanks before attacking the center and forcing a Confederate retreat. The result was a decisive Union victory with a combined total of 8,575 casualties.
- The Property is entirely within the Shenandoah Valley Battlefields National Historic District, an eight-county region in the Shenandoah Valley of Virginia designated by Congress in the 1996 “Shenandoah Valley Battlefields National Historic District and Commission Act” (P.L. 104-333). The purpose of this district is to preserve, conserve and interpret the region’s significant Civil War battlefields and related historic sites.

**Archaeological:** Although the Property has not been subjected to professional archaeological survey, in the opinion of DHR, the Property has the potential to contain archaeological sites, deposits and features associated with the Civil War, specifically the Battle of Cedar Creek, based on the concentration of troop movements and engagement of the opposing armies across or on the Property. The Property may also include archaeological sites, deposits and features associated with its previous residential and/or agricultural uses.

**Conserved Lands:** The Property is adjacent to a 190-acre property under easement to the BHR and will be part of a 2,000-acre corridor of conserved lands in Shenandoah and Warren Counties.

**Agricultural:** As identified in the Natural Resources Conservation Service (“NRCS”) Web Soil Survey of the United States Department of Agriculture, the Property contains ±3.6 acres of Prime Farmland.

**Open Space:** The Property includes ±45.563 acres of open space land, of which ±18.8 acres is under forested cover.

**Wetlands:** The Property includes ±1,566.03 feet of frontage along an unnamed intermittent stream that drains to Cedar Creek and 0.94 acre of freshwater ponds. The Property is located within the Chesapeake Bay watershed.

**ConserveVirginia:** The Property lies entirely within the “Cultural and Historic Preservation” layer and partially within the “Water Quality Improvement” layer of ConserveVirginia, Virginia’s land conservation strategy that identifies high value lands and conservation sites across the Commonwealth of Virginia.

#### Other Supporting Governmental Policy:

**Federal:** (i) “The Report on the Nation’s Civil War Battlefields,” issued by the CWSAC in 1993, authorized under 54 U.S.C. § 100507; (ii) Battlefield Land Acquisition Grant Program administered by ABPP (54 U.S.C. §§ 30801 – 308103); (iii) The Land and Water Conservation Fund Act, 54 U.S.C. §§ 200301 – 200310; (iv) 1996 “Shenandoah Valley Battlefields National Historic District and Commission Act” (P.L. 104-333); and (v) NRCS Web Soil Survey, and (vi) the National Wetlands Inventory as published by the USFWS.

**State:** (i) Section 1 of Article XI of the Constitution of Virginia; (ii) Chapter 22 of Title 10.1, Sections 10.1-2200 through 10.1-2214 of the Code of Virginia; (iii) Chapter 22 of Title 10.1, Sections 10.1-2200 through 10.1-2214 of the Code of Virginia; (iii) The Open-Space Land Act, Chapter 17 of Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia; (iv) BHR practices in reviewing and accepting an easement over this Property, which include review by VDHR’s Easement Program staff, review by a committee comprised of VDHR staff from different divisions and review and acceptance by the BHR at a public meeting, as set forth in the Board’s written adopted policies; (v) Virginia Outdoors Plan (2024) Region 2, Section 3.2 (vi) ConserveVirginia; and (vii) Virginia Land Conservation Foundation.

**Local:** Warren County’s 2013 Comprehensive Plan (adopted July 16, 2013) provides support for historic preservation and the placement of conservation easements at Chapter 1, page 1-9, Chapter 3, pages 3-39 to 3-40, 3-42. Chapter 4, 4-6 to 4-7, 4-19 to 4-20 and Chapter 5, pages 5-2 and 5-3. By email dated January 28, 2025, Warren County confirmed that a historic preservation and open-space easement placed on the Property would be consistent with its current comprehensive plan.

#### Existing Buildings and Structures:

Brick Dwelling (ca. 1997)	Concrete Block Building – East (ca. 1950)
Shed/Former Kitchen Wing (ca. 1976)	Concrete Block Buildings – West (ca. 1952)
Metal Shed (ca. 2004)	Quonset Hut (ca. 1994)
Metal Barn (ca. 1950)	

#### General Easement Terms:

**Maintenance and Preservation:** Property shall be maintained, preserved, and protected in same or better condition.

**Division:** no subdivision or division permitted.

**New Buildings Structures and Amenities:** walking trails, footpaths, parking facilities, signs, for interpretation of the Property as a Civil War battlefield.

**New Construction:** construction of new buildings, structures, and amenities, requires prior written approval; use *Secretary of the Interior’s Standards for Treatment of Historic Properties* as standard for review.

**Archaeology:** ground disturbance may require professional archaeological survey; owner must take reasonable precautions to protect archaeological sites; no relic hunting.

**Impervious Surface Coverage:** cap at 1% or less for all new construction.

**Activities:** prohibits activities inconsistent or incompatible with the Conservation Values protected by easement.

**Ground Disturbance:** (i) grading, blasting, earth removal, or other ground disturbing activities shall not alter topographic aspects of property, except as for construction of permitted buildings, structures, and roads; (ii) mining by any method, dredging on or from the property, or drilling for oil, gas or any natural resource (excluding fresh water), is prohibited.

**Agricultural Resource Management:** agricultural activities conducted in accordance with a written agricultural conservation plan that requires the use of appropriate Best Management Practices.

**Forest Resource Management:** easement shall address forest management including timbering, replanting, landscape rehabilitation and land conversion consistent with the current standard easement template; review and approval required prior to battlefield landscape rehabilitation.

**Water Resources/Riparian Buffer:** minimum 35’ wide forested or vegetated buffer along the along the unnamed intermittent stream. Protections for wetland habitats included.

**Trash:** accumulation or dumping of trash/refuse/junk, or hazardous/toxic material is prohibited.

**Signs:** restrictions on size and location of signs on property; interpretative signage permitted.

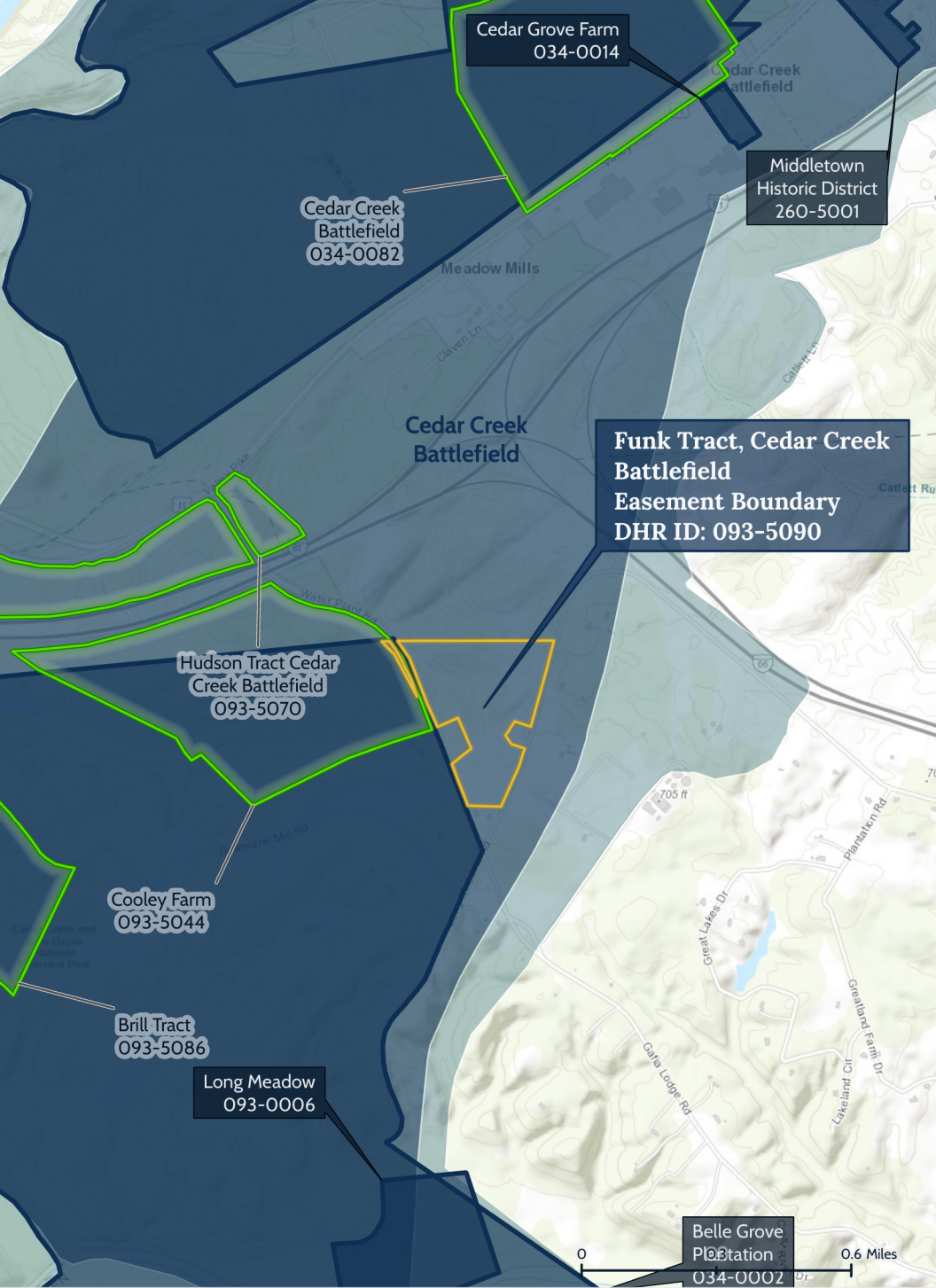
**Public Access:** easement requires 2 days minimum public access and Property is also visible from a public-right-of way.

**Grant Funding:** ABPP grant requires specific easement language for Section 6(f)3 of Land and Water Conservation Fund Act. VLCF grant requires specific language per Virginia Code Section 10.1-1017 et. seq.

#### Documentation Information:

<b>Tax Map Number:</b> 1-4		
<b>Property Address:</b> 2997 Long Meadow Road, Strasburg, VA 22645		<b>USGS Quad:</b> Middletown/Strasburg
<b>Statement of Public Benefit:</b>		
<p>The Funk Tract is of historic and archaeological significance and is within the boundary of a battlefield with a preservation priority rating from the CWSAC. Restrictions on ground disturbance, and protections for archaeological and historic resources in the easement will ensure the Property retains its integrity as a Civil War battlefield landscape. Preservation of the Property will augment efforts to preserve historic properties in Warren County, including ±661.858 acres of land already subject to perpetual easements held by the BHR. Preservation of the open space, wooded and agricultural character of the Property preserves a local landscape that attracts tourism and commerce to the area and enhances the quality of life for area residents. Additionally, restrictions on development, new construction, and ground disturbing activities and requirements for forest management in the easement will protect the forested landscape, forest and ecological resources on the Property and the natural benefits associated with forest conservation such as clean air and water. The Property includes frontage on an unnamed intermittent stream, two freshwater ponds and is within the Chesapeake Bay watershed. Limiting new construction, timbering, ground disturbing activities and uses of the Property in the Easement will support protection of water quality in the Chesapeake Bay. The Property is visible from Long Meadow Road and Water Plant Road, both public rights-of-way. In addition to visibility from these public rights-of-way, the easement will require physical public access at least two calendar days per year. The protection of the Property by the easement will also fulfill the intent of the 2024 Virginia Outdoors Plan to protect Virginia’s historic and cultural resources, including Civil War battlefield landscapes and resources, and to place historic preservation and open-space easements on historic properties.</p>		
<b>Easement Acceptance Committee Recommendation:</b>		
<p>The Easement Acceptance Committee recommends approval of the Funk Tract easement offer subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. SVBF is required to work with Shenandoah Valley Electric Cooperative (“SVEC”) to locate any existing recorded or unrecorded easements for the undocumented utility line along Long Meadow Road. If the utility easement is unrecorded or does not exist, SVBF will work with SVEC to record a new utility easement prior to recordation of DHR’s easement, if possible.</li> <li>2. Final review of the title work, title commitment, survey, draft easements, and other recorded and unrecorded documents affecting title to the property by the Office of the Attorney General. Per this review, counsel may identify additional issues that require documentation or action.</li> </ol>		





# Funk Tract, Cedar Creek Battlefield Warren County, Middletown/Strasburg Quads DHR ID: 093-5090

- 093-5090
- VBHR Easements
- Listed Resources
- ABPP Core Areas (2014)
- ABPP Study Areas (2014)





<b>BHR Meeting Date:</b> March 20, 2025	<b>Staff:</b> Wendy Musumeci	<b>DHR File No.</b> 043-5077-0006
<b>Applicant:</b> American Battlefield Trust (the “Trust”)	<b>County:</b> Henrico	<b>Acres:</b> ±13.58

<b>Property Features and Current Use:</b>
<p>Located at the intersection of Darbytown Road and Carters Mill Road in eastern Henrico County, the Welch-Penden Tract (the “Property”) is comprised of ±13.58 acres over two parcels. The Property is entirely forested and features gently sloping topography. The Property has a small area of frontage along Darbytown Road, significant frontage along Carters Mill Road, and is bounded by residential parcels to the south and east. The Property includes a former dwelling site which was constructed prior to 1943 and consisted of a small single-story frame dwelling and four outbuildings, all of which were demolished before 2002. Aside from the former dwelling site, the Property has been in open space use since the Civil War and is believed to have been under forested cover during the Civil War. The Trust acquired the Property on March 31, 2024 and may install a small pull-off area and 0.25-mile trail at or near the location of the former dwelling site. The Trust will apply for an American Battlefield Protection Program (“ABPP”) grant and was awarded a Virginia Battlefield Preservation Fund (“VBPF”) grant in 2023 to assist with the fee-simple acquisition of the Property. Conveyance of an easement to the Virginia Board of Historic Resources (“BHR”) is a condition of these grants.</p>

<b>Conservation Values:</b>
<p><b>Historic/Landscape:</b></p> <ol style="list-style-type: none"> <li>The Property is entirely within the core and study areas of the Glendale Battlefield, which has been given a Preservation Priority Rating of I.3 Class B by the Civil War Sites Advisory Commission (“CWSAC”). Sites with a priority rating of I are those that have a critical need for action. Battlefield sites rated Class B are those that had a decisive influence on their campaign, in this case the Peninsula Campaign (March – September 1862). <ul style="list-style-type: none"> <li>Glendale, also known as the Battle of Frayser’s Farm, occurred on June 30, 1862, and was the fifth of the Seven Days’ Battles. The Union Army was in full retreat toward the James River in the face of an offensive by Confederate General Robert E. Lee. On June 30, as Confederate divisions under Lieutenant General James Longstreet and Lieutenant General A.P. Hill converged on the retreating Union Army in the vicinity of Glendale (located east of the Property). The northern extremity of the fortified battle line of Union Brigadier General John C. Robinson’s brigade (Brigadier General Phillip Kearny’s division, 3rd Corps) situated just east of the Property. Confederate Brigadier General Pryor’s brigade advanced from west to east across the Property three times while trying to drive back Kearny’s division. Union forces held their ground and inflicted heavy casualties on the Confederates but continued their retreat south to Malvern Hill that evening. The Battle of Glendale represented Lee’s best chance to trap the Union Army and prevent its retreat to the James River. The Battle of Glendale ended in a stalemate with 6,500 casualties.</li> </ul> </li> <li>The Property is partially within the core (0.41 acres or 3.5%) and entirely within the study areas of the Deep Bottom I Battlefield which has been given a Preservation Priority Rating of II.3 Class C by the CWSAC. Sites with a priority rating of II are those that are in relatively good condition with opportunities for “comprehensive preservation.” Battlefield sites rated Class C are those that had an “observable influence on the outcome of their campaign, in this case the Richmond-Petersburg Campaign (June 1864 – March 1865).</li> <li>The Property is entirely within the study area of the Deep Bottom II Battlefield, which has been given a Preservation Priority Rating of I.3 Class B by the CWSAC. Sites with a priority rating of I are those that have a critical need for action. Battlefield sites rated Class B are those that had a decisive influence on their campaign, in this case the Richmond-Petersburg Campaign (June 1864 – March 1865).</li> </ol> <p><b>Archaeological:</b> Although the Property has not been subjected to professional archaeological survey, in the opinion of DHR, the Property has the potential to contain archaeological sites, deposits and features associated with the Civil War, specifically the Battles of Glendale, Deep Bottom I and Deep Bottom II, based on the concentration of troop movements and engagement of the opposing armies across or on the Property.</p> <p><b>Open Space:</b> The Property contains ±13.58 acres of land which is entirely under forested cover.</p> <p><b>Water Quality:</b> The Property is within the Chesapeake Bay watershed.</p> <p><b>Conserve Virginia:</b> The Property lies entirely within the “Cultural and Historic Preservation Category” in ConserveVirginia, Virginia’s land conservation strategy that identifies high value lands and conservation sites across the Commonwealth of Virginia.</p>

### Other Supporting Governmental Policy:

**Federal:** (i) “The Report on the Nation’s Civil War Battlefields,” issued by the CWSAC in 1993, authorized under 54 U.S.C. § 100507; (ii) Battlefield Land Acquisition Grant Program administered by ABPP (54 U.S.C. §§ 30801 – 308103; (iii) The Land and Water Conservation Fund Act, 54 U.S.C. §§ 200301 – 200310.

**State:** (i) Section 1 of Article XI of the Constitution of Virginia; (ii) Chapter 22 of Title 10.1, Sections 10.1-2200 through 10.1-2214 of the Code of Virginia; (iii) The Open-Space Land Act, Chapter 17 of Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia; (iv) Virginia Code § 10.1-1017 *et. seq.*; (v) the Board’s practices in reviewing and accepting an easement over this Property, which include review by VDHR’s Easement Program staff, review by a committee comprised of VDHR staff from different divisions and review and acceptance by the Board at a public meeting, as set forth in the Board’s written adopted policies; (vi) Virginia Outdoors Plan (2024) Region 4, Section 3.2; (vii) ConserveVirginia (2018); and (viii) Chesapeake Bay Program for permanent land conservation in Bay watershed.

**Local:** The Property is currently zoned Agricultural District (A-1); the future land use designation is Prime Agriculture (PA) in the *Henrico County 2026 Comprehensive Plan* (adopted August 11, 2009). The *Henrico County 2026 Comprehensive Plan* provides support for the use of conservation and open space easements at General Development Policy 12 (page 282), provided the easements do not adversely impact planned infrastructure or the pattern of development in the area. Other objectives in support of conservation easements include Land Use and Community Character Objective 38, Natural, Cultural and Historic Resource Objectives 8 and 22 and Rural Keystone Policy 1. By letter dated August 28, 2023, Henrico County confirmed future plans to widen Darbytown Road to 75 feet as part of its Major Thoroughfare Plan and requested that language allowing for this widening be included in the historic preservation easement.

### Existing Buildings and Structures:

None

### General Easement Terms:

**Note:** *provisions in italics below indicate non-standard easement template language.*

**Maintenance and Preservation:** Property shall be maintained, preserved, and protected in same or better condition.

**Division:** no subdivision or division permitted.

**Permitted New Buildings, Structures and Amenities:** (i) reconstructions of documented historic buildings/structures; (ii) pervious roads/drives; (iii) pervious paths/trails; (iv) utilities that serve the Property (v) fences, gates, mailboxes; and (vi) outbuildings/structures ancillary to use as a historic site or battlefield park, not to exceed 300 square feet in collective footprint.

**New Construction & Alterations:** all new construction and alterations to existing buildings/structures requires prior written approval; use Secretary of the Interior’s Standards for Treatment of Historic Properties as standard for review.

**Public Infrastructure Expansion:** *easement permits future widening/improvement of Darbytown Road subject to conditions regarding archaeological survey and avoidance of known archaeological sites; acquisition of land for such purpose shall not be considered a division of the Property.*

**Archaeology:** ground disturbance may require professional archaeological survey; owner must take precautions to protect archaeological sites; no relic hunting.

**Impervious Surface Coverage:** cap at 1% or less for collective footprint.

**Activities:** prohibits activities inconsistent or incompatible with the Conservation Values protected by easement.

**Ground Disturbance:** (i) any Ground Disturbing Activities are subject to prior written approval; (ii) mining by any method, dredging on or from the Property, or drilling for oil, gas or any natural resource (excluding fresh water), is prohibited.

**Forest Management:** trees and vegetation shall be managed according to established arboreal and horticultural practices; easement shall address land conversion consistent with current easement template; review and approval required prior to battlefield landscape rehabilitation.

**Trash:** accumulation or dumping of trash/refuse/junk, or hazardous/toxic material is prohibited.

**Signs:** restrictions on size and number of signs permitted; interpretive signage permitted.

**Public Access:** Two days of public access required by the easement terms.

**Grant Funding:** ABPP grant requires specific easement language for Section 6(f)3 of Land and Water Conservation Fund Act.

### Documentation Information:

Tax Map Number: 844-687-1178 and 843-687-9473

Property Address: 5421 Darbytown Road, Henrico VA 23231

USGS Quad: Dutch Gap

### **Statement of Public Benefit:**

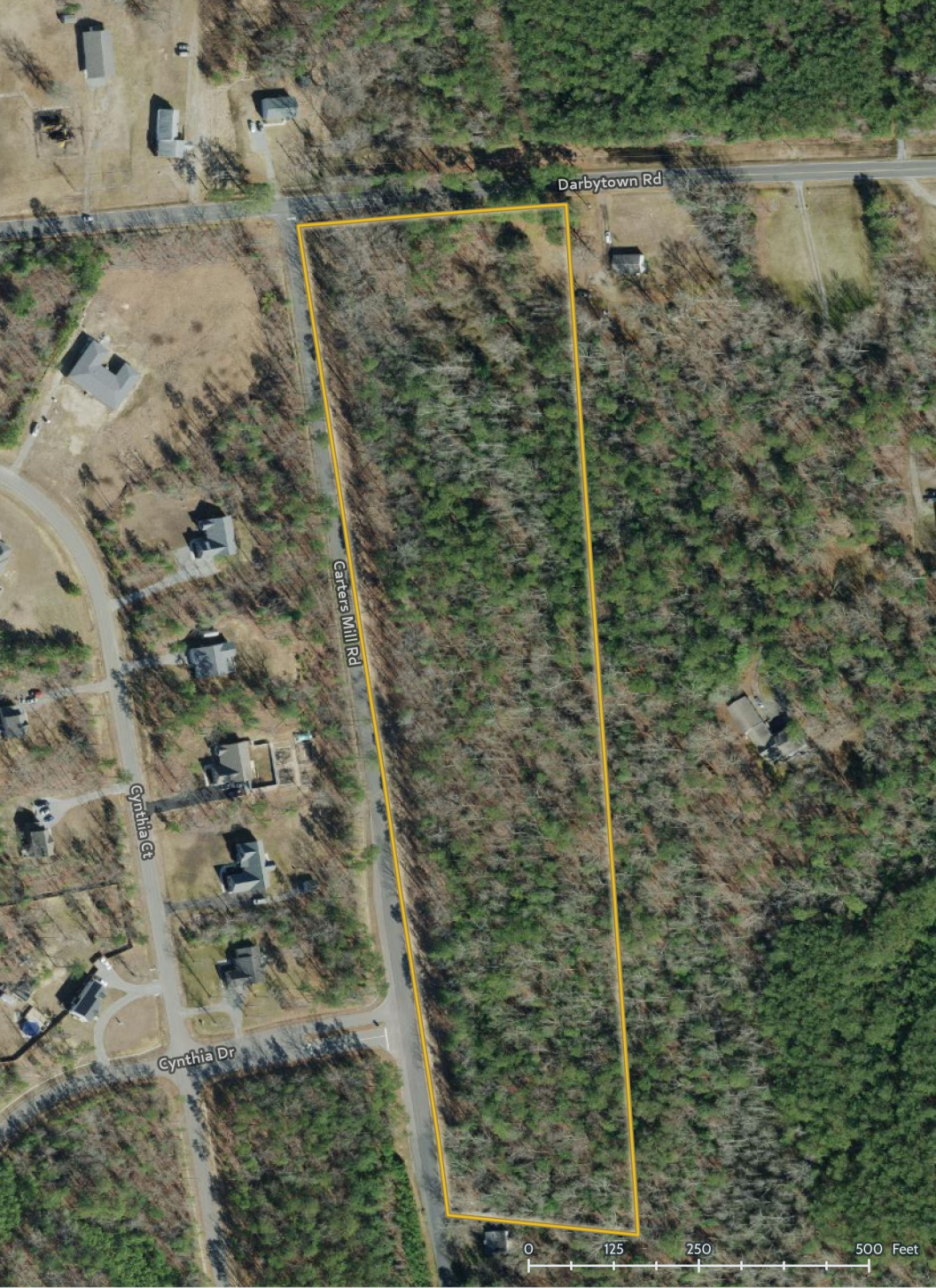
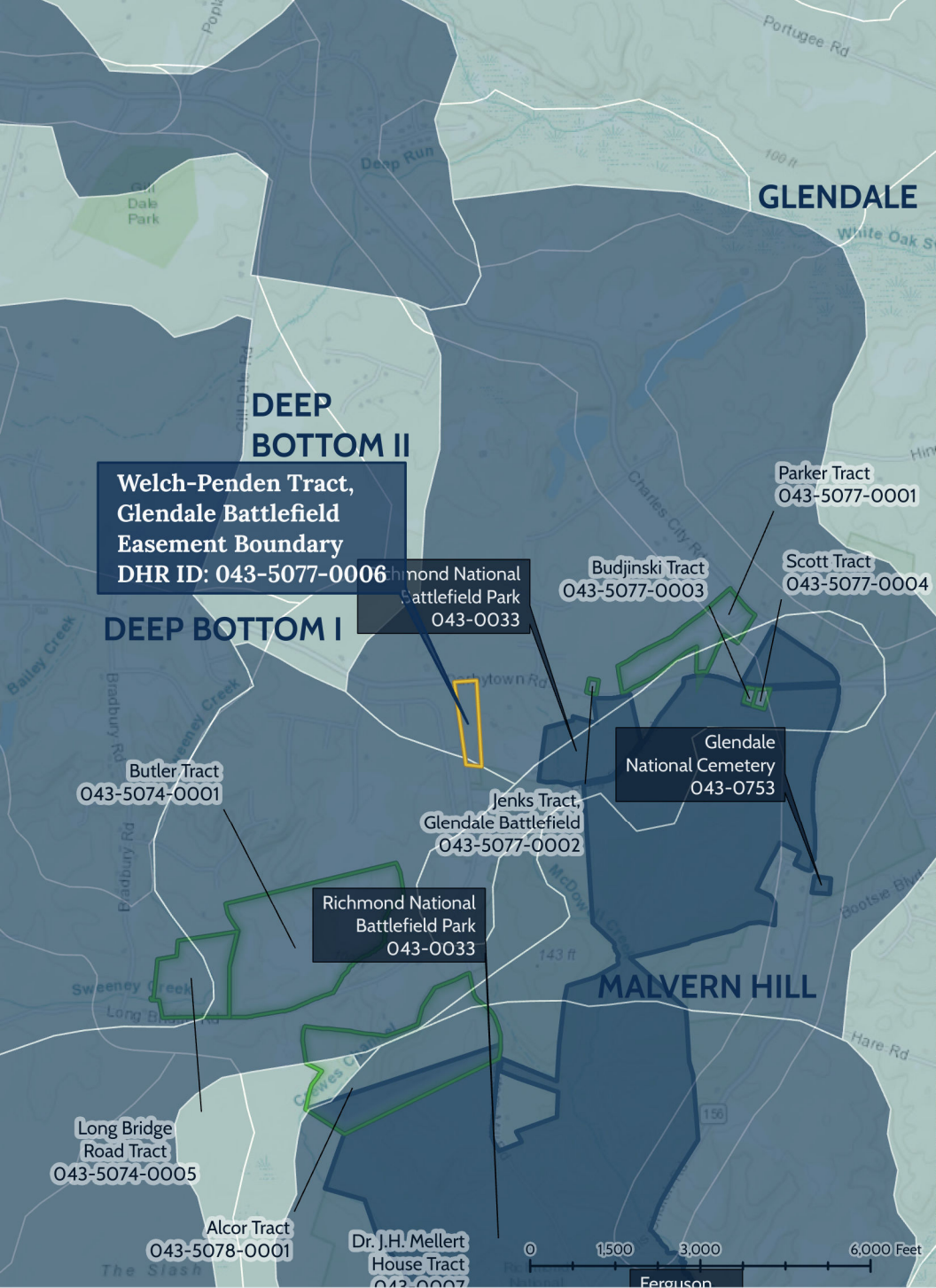
The Welch-Penden Tract is of historic and archaeological significance and is within the boundaries of three battlefields with preservation priority ratings from the Civil War Sites Advisory Commission. Restrictions on ground disturbing activities and alterations of historic and landscape resources on the Property, including archaeological sites, and requirements for the maintenance of such resources will ensure the Property retains its historic integrity as a Civil War battlefield landscape. Preservation of the Property will augment efforts to preserve historic properties in Henrico County, including approximately 1,537.036 acres of land already subject to perpetual easements held by the Board. Additionally, restrictions on development, new construction, and ground disturbing activities and requirements for forest management in the easement will protect the forestal and ecological resources on the Property and the natural benefits associated with forest conservation such as clean air and water. Preservation of the open-space and wooded character of the Property preserves a local landscape that attracts tourism and commerce to the area and enhances the quality of life for area residents. The Property is also located within the Chesapeake Bay watershed. Limiting new construction, timbering, ground disturbing activities and uses of the Property in the Easement will support protection of water quality in the Chesapeake Bay. The Property is visible from Darbytown Road and Carters Mill Road, both public rights-of-way. The protection of the Property by the easement will fulfill the intent of the 2024 Virginia Outdoors Plan to protect Virginia's historic and cultural resources, including Civil War battlefield landscapes and resources, and to place historic preservation and open-space easements on historic properties.

### **Easement Acceptance Committee Recommendation:**

The Easement Acceptance Committee recommends approval of the Welch-Penden Tract easement offer subject to the following conditions:

1. The Trust is required to work with VEPCO/Dominion to locate any existing recorded or unrecorded easements for the undocumented utility line along Darbytown Road on both parcels and for a small span of utility line along Carters Mill Road on the ±11.741-acre parcel. If the utility easements are unrecorded or do not exist, the Trust should work with VEPCO/Dominion to record new utility easements prior to recordation of DHR's easement, if possible.
2. Final review of the title work, title commitment, survey, draft easements, and other recorded and unrecorded documents affecting title to the Property by the Office of the Attorney General. Per this review, counsel may identify additional issues that require documentation or action.





**Welch-Penden Tract, Glendale Battlefield**  
**Henrico County, Dutch Gap Quad**  
**DHR ID: 043-5077-0006**

- 043-5077-0006
- VBHR Easements
- ABPP Core Areas (2014)
- ABPP Study Areas (2014)
- Listed Resources

Created By: D. Bascone 7/11/2023  
 Sources: VDHR 2023, ESRI 2023, VDOT 2023, VGIN 2023  
 Records of the Virginia Department of Historic Resources (DHR) have been gathered over many years and the representation depicted is based on the field observation date and may not reflect current ground conditions. The map is for general illustration purposes and is not intended for engineering, legal or other site-specific uses. The map may contain errors and is provided "as-is". Contact DHR for the most recent information as data is updated continually





<b>BHR Meeting Date:</b> March 20, 2025	<b>Staff:</b> Kyle Edwards	<b>DHR File No.</b> 036-5313-0002
<b>Applicant:</b> Fairfield Foundation (“Foundation”)	<b>County:</b> Gloucester	<b>Acres:</b> ±3.0

Property Features and Current Use:

The Oney Tract (the “Property”) is comprised of a single ±3.0-acre tax parcel located on Fairfield Lane, approximately 5.3 miles southwest of the town of Gloucester. The Property includes a section of Fairfield Lane (a private gravel road) but is otherwise unimproved. The Property is entirely under forested cover and used for open-space purposes. The Property is adjacent to Fairfield Plantation, a ±229-acre property owned by the Fairfield Foundation (“Foundation”) which operates this property as the Fairfield Archaeological Park focusing on the study and possible reconstruction of the ca. 1694 Fairfield Manor House and outbuildings. The Foundation conveyed an easement on the ±229-acre property to the Board of Historic Resources (“BHR”) in 2021. The Oney Tract is entirely within the Fairfield Site, a site listed on the Virginia Landmarks Register and the National Register of Historic Places in 1973. Additionally, the Property is within the ±563-acre Fairfield Archaeological District, a district determined eligible for listing on the Virginia Landmarks Register in 2024. The boundaries of the Fairfield Archaeological District are based on the 1847 survey of Fairfield Plantation which included the manor, outbuildings and agricultural lands along Carter Creek. Following the Civil War, African Americans formerly enslaved at Fairfield Plantation established their own communities in areas of the former plantation. The Piney Swamp Community was located south and southwest of the original plantation site, an area that includes the Property. The Oney Tract and surrounding parcels to the east, west and south were owned by two African American families from 1873 to 1955 who used their lands for agricultural purposes. The Property has been under forested cover since the early 1960’s. The Fairfield Foundation acquired the Property in fee-simple in July 2024 and plans to install a permeable trail and interpretive kiosk. The Property will be part of the Fairfield Archaeology Park which is open to the public two days per month. Fairfield Foundation was awarded a Virginia Outdoors Foundation (“VOF”) Preservation Trust Fund grant. The conveyance of an easement to the BHR is a condition of the grant.

Conservation Values:

Historic/Landscape:

- The Property is entirely within the Fairfield Site, a site listed on the Virginia Landmarks Register and the National Register of Historic Places in 1973. The Fairfield Site is part of Fairfield Plantation, a vast property settled by Lewis Burwell I in the mid seventeenth century. Fairfield Manor (constructed 1694 with later additions), located in the western part of the site near Carter Creek, served as the center of plantation life until the Civil War and is an important example of the transition from Tudor-Stuart to Georgian architecture. Archaeological resources within the Fairfield Site include the foundations of several outbuildings, formal gardens, a family cemetery and slave quarters. Research has also revealed that late nineteenth century and early twentieth freedman settlements were located within the site. The Fairfield Site also contains archaeological evidence of Native American occupation from the Archaic to the Woodland periods (8,000 BC to 1600 AD).
- The Property is entirely within the ±563-acre Fairfield Archaeological District, a district found eligible for listing on the Virginia Landmarks Register on June 20, 2024 under Criteria A and D:
  - The Property is eligible for listing under Criterion A as part of “a place that is associated with events that have made a significant contribution to the broad patterns of our history”. In addition to being part of the Fairfield Plantation, the Property was also part of the Piney Swamp Community, one of several post-Civil War freedman’s settlements located on lands that were previously part of the plantation. These communities included free and previously enslaved African Americans. The Piney Swamp Community was located south and southeast of the original plantation site. It was composed primarily of farmers and watermen and grew during the late nineteenth and early twentieth centuries to include its own school, Piney Swamp School (active 1893 to 1947), and church, Antioch Church (active 1906 to present).
  - The Property is eligible for listing under Criterion D as a place that “may be likely to yield, information important in prehistory or history”. This includes archaeological data related to the development of Fairfield Plantation and its history of African American ownership associated with the Piney Swamp Community.

**Archaeological:** Although the Property has not been subjected to professional archaeological survey, in the opinion of DHR, the Property has the potential to contain archaeological sites, deposits and features associated with Fairfield Plantation, the African American Piney Swamp Community, and Native American occupation of the area.

**Conserved Lands:** The Property is adjacent to the ±229.117-acre Fairfield easement held by the BHR.

**Open Space:** The Property includes approximately ±3.0 acres of open-space land entirely under forested cover.

**Conserve Virginia:** The Property lies entirely within the “Cultural and Historic Preservation Category” in ConserveVirginia, Virginia’s land conservation strategy that identifies high value lands and conservation sites across the Commonwealth of

Virginia.

### Other Supporting Governmental Policy:

**Federal:** (i) The National Historic Preservation Act of 1966 (54 U.S. Sections 300101-307108 (2015, as amended) and Federal Regulations (36 C.F.R. Parts 60.4, 61, 63, and 68); (ii) standards and guidelines promulgated by the Secretary of the Interior for the appropriate treatment of historic properties listed on the NRHP (36 C.F.R. Part 68)

**State:** (i) Section 1 of Article XI of the Constitution of Virginia; (ii) Chapter 22 of Title 10.1, Sections 10.1-2200 through 10.1-2214 of the Code of Virginia; (iii) The Open-Space Land Act, Chapter 17 of Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia; (iv) State Review Board's determination at a public meeting on June 20, 2024 that the Property meets the criteria for listing on the Virginia Landmarks Register; (v) BHR practices in reviewing and accepting an easement over this Property, which include review by VDHR's Easement Program staff, review by a committee comprised of VDHR staff from different divisions and review and acceptance by the BHR at a public meeting, as set forth in the BHR's written adopted policies; (vi) Virginia Outdoors Plan (2024) Region 2, Section 3.2; (vii) Chesapeake Bay Preservation Act, Virginia Code Sections 62.1-44.15: 67-79; and (viii) VOF Preservation Trust Fund.

**Local:** The Property's future land use designation is Suburban Countryside. The Gloucester County's *Comprehensive Plan 2016-2036* (adopted February 2, 2016, amended 2022) provides support for the placement historic preservation easements at page 187, the placement of conservation easements at page 205, and support for the preservation efforts of the Fairfield Foundation at page 187. By letter dated August 8, 2024, Gloucester County has confirmed that DHR's proposed historic preservation and open-space easement is consistent with the current comprehensive plan.

### Existing Buildings and Structures:

Section of Fairfield Lane (private)

### General Easement Terms:

**Maintenance and Preservation:** Property shall be maintained, preserved, and protected in same or better condition.

**Division:** no subdivision or division permitted.

**Permitted New Buildings, Structures and Amenities:** (i) reconstructions of documented historic buildings/structures; (ii) pervious roads/drives; (iii) pervious paths/trails; (iv) utilities that serve the Property (v) fences, gates, mailboxes; (vi) outbuildings/structures ancillary to use as a historic site.

**New Construction:** construction of new buildings, structures, and amenities, requires prior written approval; use *Secretary of the Interior's Standards for Treatment of Historic Properties* as standard for review.

**Archaeology:** ground disturbance may require professional archaeological survey; owner must take reasonable precautions to protect archaeological sites; no relic hunting.

**Impervious Surface Coverage:** cap at 1% or less for all construction.

**Activities:** prohibits activities inconsistent or incompatible with the Conservation Values protected by easement.

**Ground Disturbance:** (i) grading, blasting, earth removal, or other ground disturbing activities shall not alter topographic aspects of property, except as for construction of permitted buildings, structures, and roads; (ii) mining by any method, dredging on or from the property, or drilling for oil, gas or any natural resource (excluding fresh water), is prohibited.

**Forest Management:** easement shall address forest management including timbering, replanting, landscape rehabilitation and land conversion consistent with the current standard easement template; review and approval required prior to landscape rehabilitation.

**Trash:** accumulation or dumping of trash/refuse/junk, or hazardous/toxic material is prohibited.

**Signs:** restrictions on size and location of signs on the Property; interpretative signage permitted.

**Public Access:** easement requires 2 days minimum public access and Property is also visible from a public-right-of way.

**Grant Funding:** VOF Preservation Trust Fund Grant; easement to include recitals and restrictions for this grant program.

### Documentation Information:

**Tax Map Number:** 38-101

**Property Address:** at or along Fairfield Lane

**USGS Quad:** Clay Bank

### Statement of Public Benefit:

The Oney Tract is of historic and archaeological significance and is within the boundaries of the Fairfield Site, a site listed on the Virginia Landmarks Register and the National Register of Historic Places. Restrictions on ground disturbance, archaeological resources and historic resources will ensure the Property retains its historic integrity. Preservation of the Property will augment efforts to preserve historic properties in Gloucester County, including approximately 638.66 acres of land already subject to perpetual easements held by the BHR. Preservation of the open-space and wooded character of the Property preserves a local landscape that attracts tourism and commerce to the area and enhances the quality of life for area residents. The Property adjoins the ±229.117-acre Fairfield Plantation, a property already under easement to the BHR. The

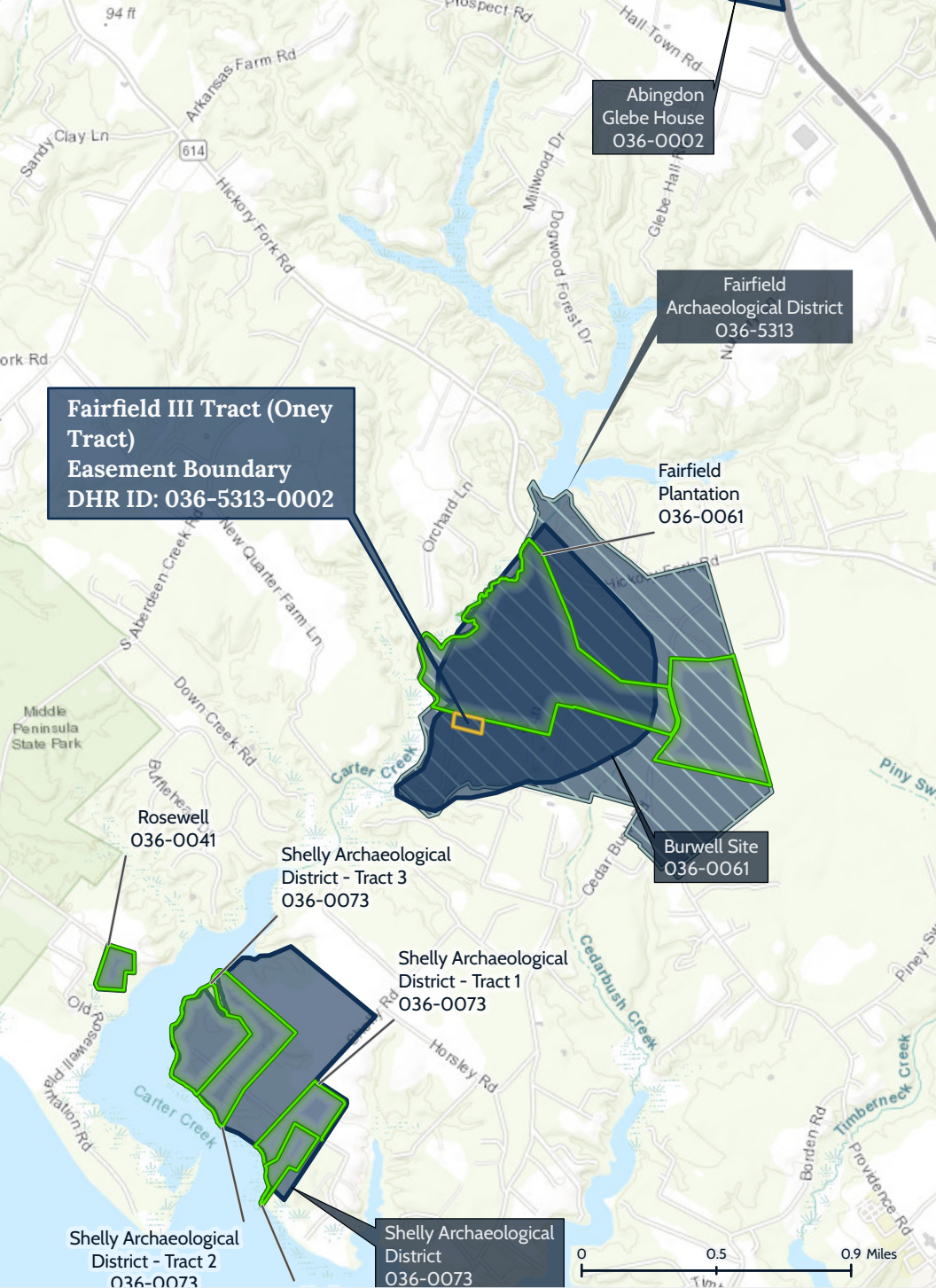


easement will require physical public access two calendar days per year. The protection of the Oney Tract by the easement will also fulfill the intent of the 2024 Virginia Outdoors Plan to protect Virginia's historic and cultural resources and to place historic preservation and open-space easements on historic properties.





**Easement Acceptance Committee Recommendation:**

The Easement Acceptance Committee recommends acceptance of the Oney easement offer by the Virginia Board of Historic Resources, subject to the following conditions:

1. Final review of the title work, title commitment, survey, draft easement, and other recorded and unrecorded documents affecting title to the property by the Office of the Attorney General. Per this review, counsel may identify additional issues that require documentation or action.



**Fairfield III Tract (Oney Tract)**  
**Gloucester County, Clay Bank Quad**  
**DHR ID: 036-5313-0002**

-  036-5313-0002
-  VBHR Easements
-  Listed Resources
-  Eligible Architectural Resources



**DHR** VIRGINIA DEPARTMENT  
OF HISTORIC RESOURCES

Created By: D. Bascone 8/9/2024  
Sources: VDHR 2024, ESRI 2024, VDOT 2024, VGIN 2024  
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# **POLICY UPDATES**





## VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

### Historic Preservation Easement Program

#### ***POLICY #12***

#### ***Administrative Fees***

The Board of Historic Resources (the “Board”) recognizes that the acquisition and stewardship of perpetual preservation and conservation easements requires a substantial commitment of resources on behalf of the Commonwealth, which vary depending on numerous factors including the number and complexity of the historic resources protected, additional restrictions necessary to meet the requirements of grant funding, the property’s proximity to areas experiencing substantial growth and development, and relationships with grant funding entities and co-holders. In order to have the capacity to accept new easements while sustaining its commitment to the protection of the Commonwealth’s unique historic resources already under easement, the Board has adopted the following administrative fee schedule.

The Department of Historic Resources (“DHR”), specifically, the Easement Program within the Division of Preservation Incentives, will be responsible for assessing and administering these fees on behalf of the Board. The Director of DHR is hereby authorized to waive these fees in the Director’s discretion and to promulgate any additional rules necessary for the administration of these fees provided that such rules comply with the terms of this Policy.

#### **Administrative Fee Schedule**

\*The following fees are payable by the applicant:

<b>Fee</b>	<b>Amount</b>	<b>Due</b>
Easement Application Fee	\$500	With application
Grant Funded Easements	\$10,000	Invoiced at the time the baseline documentation site visit is scheduled
Reconsideration of Easement Offer	\$1,000	With application
Update or Revision of Baseline Documentation	\$1,500	Prior to DHR conducting work
Amendment of Existing Easement	\$2,000	With application
Conversion/Diversion (Under Section 10.1-1704 of the Open Space Land Act) Review Fee	\$1,600	With application
Conversion/Diversion (Under Section 6(f)(3) of the Land and Water Conservation Fund Act) Review Fee <sup>1</sup>	\$1,600	With application
Conversion/Diversion Processing Fee	\$1,600 for first 40 hours with potential for additional fees if staff time extends beyond 40 hours	With application
Boundary Line Adjustment Review	\$1,600	With application
Expedited Project Review	\$500	Upon approval of request

<sup>1</sup> Land and Water Conservation Fund Act (54 U.S.C. §§ 200301 - 200310 (2016, as amended)), specifically Section 200305(f)(3), commonly known and hereinafter referred to as “Section 6(f)(3).”

## **I. New Easement Offers**

### **A. Easement Application Fee**

A fee of five hundred dollars (\$500) shall be paid at the time a new easement application is submitted for review and consideration by DHR and the Board. This fee will go toward DHR's due diligence review and analysis of the proposed offer. DHR will retain easement application forms for five (5) years from the date of the application. If the easement is not recorded within this timeframe, a new application form must be submitted and will be subject to the five hundred (\$500) dollar fee.

### **B. Grant Funded Easements**

An administrative fee of ten thousand dollars (\$10,000) will be assessed against any easement offers ~~that are~~ funded by any grant funding source, excluding grants funded by the Commonwealth of Virginia. Such fee is intended to offset DHR's administrative costs associated with the easement. This fee will be invoiced at the time DHR schedules the baseline documentation site visit. If multiple grants are awarded to the subject of an easement offer, the fee will be charged for each such grant, excluding any grants funded by the Commonwealth of Virginia.

### **C. Reconsideration of an Offer**

A fee of one thousand dollars (\$1,000) will be required for reconsideration by the Board of any previously approved offer of easement where such reconsideration is a result of: (i) the expiration of the Board's prior approval, or (ii) a change in the terms of the easement offer due to an act or omission of or a modification made or proposed by the applicant and/or landowner.<sup>2</sup> This fee must be received by DHR with the ~~new application~~ Reconsideration Application.

Examples of a change of terms of the easement offer by an applicant may include, but are not limited to, the following:

- Failure to accurately and/or completely identify all existing buildings, structures, amenities, and features on the real property being offered for easement in the Easement Application.
- A lease, or extension or renewal of a lease or license granted to a third party to use the real property, e.g. a residential lease, being offered for easement beyond the term provided to and/or approved by the Board.
- Granting of rights to third parties, such as conveyance of an access easement or utility right-of-way, after approval of the offer by the Board and without providing notice of the intent to convey such rights prior to the Board's approval to accept.

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<sup>2</sup> **Board Policy #2: Criteria for Acceptance of Easements**, states that the Board's standard approval to accept a new offer of easement expires ~~two (2)~~ three (3) calendar years from the date of the Board meeting at which the offer was approved for acceptance. Similarly, if any significant changes to the terms of the easement offer or significant or major changes to the property occur following the Board's approval, the revised offer must be brought back to the Board for its reconsideration.

- Significant change(s) in the structure of the proposed transaction, such as new or different sources of grant funding, loss of grant funding, intent to seek federal and/or state tax benefits.
- Change(s) in the fundamental terms of the offer, such as inclusion of new or additional reserved rights such as an increase in the square footage allowance for new construction or allowances for additional buildings or structures.

The applicability of this fee and any determination of whether this fee applies shall in no way affect the requirements for reconsideration pursuant to **Board Policy #2: Criteria for Acceptance of Easements**.

#### D. Baseline Documentation

A fee of one thousand five hundred dollars (\$1,500) will be assessed in each instance where a baseline documentation report (“BDR”)<sup>3</sup> is required to be updated or revised because (i) the terms of the easement have changed or (ii) the easement is not recorded within six months of completion of the BDR. Such fee is due prior to DHR conducting the work to update or revise the BDR.

Because the BDR reflects the condition of the property at the time of easement recordation and serves as the basis for enforcement and stewardship it is imperative that the information and documentation contained therein is accurate. A BDR generally includes: (i) a brief written description of the current condition, character, and features of the property; (ii) a brief written description outlining the historic, archaeological, and cultural significance of the property as well as other conservation values; (iii) a list of existing historic and non-historic buildings, structures, and sites with a detailed description of existing architectural features of primary built historic resources that are specifically protected by the easement; (iv) the specific conservation purposes protected by the easement; (v) a brief written description of the current condition, character, features, and use of the property; (vi) historic documentation, survey plat, and maps of the property; and (vii) photos of the property and protected resources with an accompanying photo-point map.

## II. Existing Easements

#### A. Amendment

With the exception of amendments initiated at the request of DHR and/or the Board, a fee of two thousand dollars (\$2,000) must be submitted with the application and prior to the Board’s consideration of a proposed amendment of an existing easement held by the Board.

All amendments must be consistent with **Board Policy #6: Easement Amendments**.

If a new or updated BDR is necessary to document the conditions of the property at the time of the amendment, an additional BDR fee of one thousand dollars (\$1,000) will apply.

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<sup>3</sup> **Board Policy #4: Documentation of Easement Properties** requires that documentation of the condition of the resources and conservation values protected by the easement be conducted as close as possible prior to recordation of the easement. This documentation is essential in the administration of the easement as it serves as the basis for enforcement of the terms of the easement and stewardship of the resources protected.

## B. Conversion / Diversion

### 1. Review Fee

A fee of one thousand six hundred dollars (\$1,600) shall be assessed for the Board's review and determination of whether a project or activity proposed by non-government entities affecting an easement property constitutes a conversion or diversion of all or a portion of such property. This fee will serve to offset the significant resources required of DHR to gather information, communicate with the project proponent and landowner, and prepare the matter for presentation to the Board. This fee will apply regardless of the Board's determination and must be submitted with the Project Review Request.

If the project proponent is unaware of the terms of the conservation easement, DHR Easement Program staff will notify the project proponent in writing that the proposed project or activity requires review under Section 10.1-1704 of the Open-Space Land Act. In such event, the fee will be due within ten (10) business days of the date of the written notice by DHR. DHR Easement Program staff may suspend review of the project until the fee is received by DHR. It is the project proponent's responsibility to ensure payment has been received by DHR.

### 2. Processing Fee

If the Board determines that the project or activity proposed by a non-government entity constitutes conversion or diversion, and the project proponent chooses to move forward with the project or activity, an additional fee of one thousand six hundred dollars (\$1,600) will be assessed for staff time required to process the project. If the total staff time required to process the project exceeds forty (40) hours, the project proponent will be charged for each additional hour of staff time at the hourly rate or combined hourly rates of the staff members processing the project. The initial processing fee will be due within ten (10) business days after the public meeting at which the Board determined that the project or activity constitutes conversion or diversion. Additional charges shall be due within ten (10) business days after notice thereof by DHR.

If the project or activity determined to constitute conversion or diversion must be reviewed a second time by the Board, an additional fee of five hundred dollars (\$500) will be assessed against the project proponent. The additional fee will offset the cost of staff time necessary to prepare for and present the matter to the Board. Second reviews may be necessary for the Board to review proposals regarding additional mitigation or substitute property.

### 3. Additional Fee for Federal Grant Funded Battlefield Easements

A fee of one thousand six hundred dollars (\$1,600) will be assessed when DHR Easement Program staff, on behalf of the Board, is required to prepare and provide to the American Battlefield Protection Program ("ABPP") an evaluation of whether a project or activity proposed by non-government entities will impact or directly affect a battlefield easement property and may constitute conversion or diversion of conserved land subject to Section 6(f)(3) (defined below) and



any proposed mitigation or substitution.<sup>4</sup> This fee must be submitted with the Project Review Request and is in addition to any other fee, including the fee assessed under Section II.B.1.

If the applicant submits a Project Review Request and is not aware that the affected property is subject to Section 6(f)(3), DHR Easement Program staff will notify the applicant in writing that the proposed project or activity requires review under Section 6(f)(3). The fee is due within ten (10) business days of the date of invoice by DHR. DHR Easement Program staff may suspend review of the project until the fee is received by DHR. It is the applicant's responsibility to ensure payment has been received by DHR.

#### C. Boundary Line Adjustments

A fee of one thousand six hundred dollars (\$1,600) will be assessed for consideration by the Board of a request for a boundary line adjustment ("BLA"). This fee will offset the extensive staff time and resources to review the request and prepare and present the matter to the Board. The fee must accompany the Project Review Request form. DHR Easement Program staff may suspend review of the BLA request until the fee is received by DHR. It is the applicant's responsibility to ensure payment ~~has been~~<sup>is</sup> received by DHR.

#### D. Expedited Project Review

A flat fee of five hundred (\$500) will be assessed against an applicant for an expedited review of a submitted Project Review Request. For purposes of this Policy, the expedited review period is ten (10) business days. This fee applies to each individual project, therefore, projects involving more than one building or phased projects may require additional fees.

Expedited reviews shall only be available with respect to existing easements and to (1) current landowners and (2) third parties such as contract purchasers, utility companies, and other agents of the landowner, provided the prior written approval of the landowner has been received by DHR. DHR's Director, in coordination with the Director of the Division of Preservation Incentives (hereinafter "Division Director") has the authorization of and full discretion enjoyed by the Board to agree or decline to conduct an expedited review. In determining whether to agree or decline to conduct an expedited review, the Director may consider factors such as the complexity of the project, the amount of information available in DHR's records about the property, the extent and complexity of the deed of conservation easement and the applicable restrictions, the existence of co-holders who may share in review responsibilities, and the schedules and workloads of staff involved in such reviews. The Director may assign all authority and responsibility under this Section II.D to the Division Director.

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<sup>4</sup> A significant number of easements held by the Board over battlefield properties were acquired using or conveyed as a condition of grant funding provided by the ABPP, a federal program within the National Park Service under the Department of the Interior. The properties benefitting from ABPP's grant program are subject to the Land and Water Conservation Fund Act (54 U.S.C. §§ 200301 - 200310 (2016, as amended)), specifically Section 200305(f)(3), commonly known and hereinafter referred to as "Section 6(f)(3)." Section 6(f)(3) imposes a similar conversion/diversion standard on the land and requires that the ABPP make determinations regarding projects or activities that have the potential to constitute conversion or diversion. The deeds of conservation easement for those ABPP-funded battlefield properties include provisions requiring DHR Easement Program staff, on behalf of the Board, to prepare and provide to ABPP an evaluation of the project or activity and any proposed mitigation or substitution. As such, ABPP-funded battlefield easements impose additional responsibilities on DHR's Easement Program.

Notwithstanding the foregoing, no expedited review shall be available for (1) reconsiderations by DHR's Treatment Committee, or (2) appeals brought to the Board pursuant to **Board Policy # 5: Review of Applications for Work on Easement Properties.**

*[Adopted by the Virginia Board of Historic Resources, June 15, 2017; Effective July 1, 2018; Revised March 21, 2018; Revised April 17, 2019; Revised December 10, 2020; Revised March 18, 2021; Revised March 20, 2025.]*



## **VIRGINIA BOARD OF HISTORIC RESOURCES**

### **Historic Preservation Easement Program**

#### **POLICY #13**

#### **Conversion/Diversion**

The Virginia Open-Space Land Act,<sup>1</sup> enacted by the General Assembly in 1966, authorizes any public body, defined, in part, as state and local governments having authority to acquire land for public use, to acquire "title to or any interests or rights of not less than five years' duration in real property" for the perpetual preservation of open-space land. As a public body, the Virginia Board of Historic Resources ("Board") holds historic preservation and open-space easements on historically significant properties pursuant to its enabling legislation in Chapter 22 of Section 10.1-2204(A)(4) of the Code of Virginia (1950, as amended) ("VA Code") and the Open Space Land Act ("OSLA"). These easements are administered by the Virginia Department of Historic Resources ("DHR").

Easements held by the Board under the OSLA constitute an interest in real property owned by the Commonwealth of Virginia. Section 10.1-1704 of the OSLA provides a specific process to be followed if a property under open-space easement is proposed to be converted or diverted to a use not compatible with the easement's protections.

*Conversion* generally refers to a change in the use of the protected land, either whole or in part, that is different from, and incompatible with, its dedicated open-space uses.

*Diversion* implies that the proposed project or activity is so incompatible with the conservation purposes of the easement that the restrictions imposed by the easement must be removed, either in whole or in part, and that appropriate substitute land will be placed under easement to replace the land being diverted.

Section 10.1-1704 of the OSLA sets a rigorous standard that must be met for a project or activity to be eligible for conversion or diversion and also requires that specific conditions be met to the satisfaction of the easement holder. The OSLA provides very limited flexibility for projects and

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<sup>1</sup> Va. Code §§ 10.1-1700 – 10.1-1705 (1950, as amended).

activities that benefit the public to impact a property subject to an open-space easement, while ensuring land of comparable conservation quality and quantity is preserved in perpetuity.

### **Easements subject to Open-Space Land Act**

The OSLA outlines a process by which land designated as open space may be converted or diverted from its use as open-space land, provided the requirements of Section 10.1-1704 are met.

*VA Code Section 10.1-1704. Diversion of property from open-space land use; conveyance or lease of open space land.*

- A. *No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless: (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.*

The process, as set forth above, requires three steps:

1. The Board must determine whether the project/activity is essential to the orderly development and growth of the locality and conforms to the official comprehensive plan for the applicable locality.
2. The Board must evaluate the substitute land offered, as to whether it is:
  - of at least equal fair market value;
  - of greater conservation value as the permanently preserved land affected; and
  - of reasonably equivalent usefulness and location.
3. The Board must ensure that the substituted land is placed under open-space easement and made subject to the provisions of Section 10.1-1704 of the OSLA.

Any project or activity affecting an easement held by the Board under the OSLA that may constitute conversion or diversion must be reviewed by the Board. The Board retains the exclusive authority in making determinations regarding conversion or diversion.

To assist the Board with its assessment, DHR Easement Program staff will perform a preliminary review to determine whether a proposed project or activity may constitute conversion or diversion and require review by the Board. DHR Easement Program staff work with the easement property owner and the project proponent to compile detailed information about the undertaking, whether it is consistent with the terms of the applicable easement, provide guidance

**Commented [MW1]:** Do we ever work with the project proponent without the property owner? What if the property owner says no? Do we still work with the project proponent?

**Commented [MM2R1]:** Since our relationship is contractually with the property owner, I think this is "and", but will leave the comment for OAG guidance.

as to the nature and extend of appropriate land substitution, and/or how the proposed conversion or diversion meets the requirements of Section 10.1-1704 of the OSLA. Staff may develop recommendations to avoid conversion or diversion of land subject to the easement. After the information gathering process is complete, Easement Program staff will present the project to DHR's Easement Acceptance Committee ("EAC") for review. The EAC will consider the request and provide a recommendation to the Board. Easement Program staff does not make a final determination regarding whether a given project or activity constitutes conversion or diversion, or the appropriate substitute land, but will present all relevant material to the Board for its consideration.

The following factors, among other, may be applicable in DHR Easement Program staff's threshold determination of whether the project or activity should be reviewed by the Board as a possible conversion or diversion:

- Permanent change to the use of the easement property or portion thereof that is inconsistent with the purposes and stated conservation values of the easement or is otherwise prohibited by the easement.
- Prolonged or permanent use or activity that is inconsistent or incompatible with the preservation purpose and/or conservation values protected by the easement.
- Installation of a structure or facility that is not otherwise permitted by the easement.
- Permanent conveyance of a portion of the easement property in fee simple to a third party where the conveyance is not a permitted division of the property under the easement and where the purpose of that conveyance is not consistent with the purposes of the easement.

**A proposal reviewed by DHR and the Board pursuant to Section 10.1-1704 of the OSLA may take a year or more to complete, as several Board meetings may be necessary to review a proposal in its entirety.**

The burden to satisfy Section 10.1-1704 rests entirely with the project proponent. The project proponent must document that the project/activity is an essential public benefit and conforms to the local comprehensive plan. If the Board determines that the project or activity constitutes conversion/diversion and that it meets the essentiality and comprehensive plan conformity requirements outlined in step one of the review process above, the project proponent must work with DHR Easement Program staff and the Easement Property Owner to identify appropriate substitute parcels of land. Due to the unique characteristics of every historic property, identifying potential appropriate and compatible substitute parcels will require diligence and careful research. In order for the Board to compare the fair market value of the substitute property to the subject property, the project proponent must obtain appraisals of both properties. The value of the substitute and subject properties must be substantiated by an appraisal that conforms to the Universal Standards of Professional Appraisal Practice ("USPAP") and is prepared by a certified general real property appraiser licensed in Virginia who meets the Appraiser Qualifications Board's professional accreditation standards.

The Board may impose conditions to mitigate the impact of any project or activity that results in conversion or diversion and may require evaluation of alternative substitute property. Failure to obtain the Board's approval for any project constituting conversion or diversion means the project shall not proceed. If the Board determines that the project or activity does not constitute conversion or diversion, Easement Program staff will review the proposal according to Easement Program *Policy #5: Project Review* and in consultation with the Easement Property Owner.

Review by the Board of Historic Resources or DHR's Easement Program staff of any project or activity affecting an easement property is entirely separate from and does not satisfy compliance review under state law, the National Historic Preservation Act, as amended, or any other federal, state, or local regulation. Project proponents should contact the Director of DHR's Review and Compliance Division to coordinate any necessary and appropriate environmental regulatory review.

Examples of projects requiring Board review for a determination of conversion or diversion include, but are not limited to:

- Installation of a new gas line with a corresponding permanent easement for benefit of the gas company where the purpose of the line is gas transmission, and the line does not serve the easement property.
- Widening of an existing overhead electrical transmission line with a corresponding permanent easement for the benefit of the utility company and where the purpose of the line is to provide electrical service to properties other than the easement property.
- Installation of an underground sewer pipeline with a corresponding permanent easement for benefit of the local government where the purpose of the sewer line is to serve adjacent properties and the line does not serve the easement property.
- Conveyance in fee simple of the easement property or a portion thereof to a utility company or state or local government agency for construction or installation of public utilities or facilities such as a road, sewer or water lines, school, airport, etc.

#### **Battlefield Easements acquired with Federal Grant Funding**

All easements held by the Board whereby the land or the easement were acquired using a Battlefield Land Acquisition Grant ("BLAG") awarded through the American Battlefield Protection Program ("ABPP") of National Park Service are subject to 54 U.S.C. § 200305(f)(3), commonly known and hereinafter referred to as "Section 6(f)(3)" of the Land & Water Conservation Fund. Section 6(f)(3) imposes requirements regarding conversion and diversion and the American Battlefield Protection Program Authorization of 2009 (54 U.S.C. § 308103) assigns responsibility for such determinations to the ABPP.

Section 6(f)(3) states that no real property or interest in real property (easement) acquired or developed with grant assistance shall be converted or diverted from its conservation or battlefield

preservation uses, other than with the approval of the Secretary of the Interior acting through the ABPP, and only upon the substitution of other land of equal market value and of reasonably equivalent usefulness and location for conservation and battlefield preservation purposes, which land is to be perpetually protected for conservation and battlefield preservation purposes.

Under the specific terms of each deed of easement held by the Board for such battlefield properties, DHR Easement Program staff are generally required to notify ABPP of any proposed conversion or diversion and provide a written opinion as to whether the activity proposed constitutes conversion or diversion and whether the proposed substitute land is adequate.

Any project or activity involving a battlefield easement subject to the OSLA and Section 6(f)(3) will require independent consideration by both the Board of Historic Resources under Section 10.1-1704 of the OSLA and by the ABPP under Section 6(f)(3). The project proponent and/or easement property owner should contact DHR Easement Program staff to coordinate the review processes to the greatest extent possible.

### **Fees**

All applicable fees for review of potential conversion or diversion will be assessed consistent with Easement Program *Policy #12: Administrative Fees* and the published Easement Program Administrative Fees Billing Statement. If Easement Program staff determines that a project review request requires a conversion or diversion determination by the Board, the Conversion/Diversion Review Fee is due prior to staff conducting its review. If the project also involves review under Section 6(f)(3), that fee will also be due prior to staff conducting its review. The fees are assessed per each individual easement property impacted by the request. Easement Program staff will not prepare or present a conversion or diversion project to the Board until all fees are paid in full. Should the Board determine that the request constitutes Conversion/Diversion, the Conversion/Diversion Processing Fee will then be due. Should the request require Easement Program Staff time in excess of forty (40) hours, additional fees may be applicable.

### **Project Qualifications**

#### **1. Essentiality**

DHR strongly encourages project proponents to avoid impacts to open space land protected by easement including, but not limited to, public utility expansion, transportation, and infrastructure projects. In rare instances where avoidance is not possible, DHR will work to minimize any impacts to the protected properties, their conservation values and public interest.

Typical project proponents are localities, other state agencies, federal agencies, or utility companies. The project proponent bears the responsibility of proving the essentiality for public use and interest. The project proponent must provide examples of all alternatives



considered and explanations as to why those alternatives were not implemented. Clear evidence illustrating the lack of feasible alternatives is required; cost-effectiveness will not be considered a viable reason for a conversion or diversion.

## **2. Compliance with Comprehensive Plan**

The project proponent must demonstrate to the Board that the proposed project is consistent with the current comprehensive plan in effect at the time of the conversion or diversion for the appropriate locality in which the property is located. This should minimally include written confirmation from the locality containing specific references to goals, objectives, strategies, future land use maps and needs identified in the plan.

## **3. Substitute Property**

Pursuant to Section 10.1-1704 of the OSLA, substitute property is required whenever land subject to an open-space easement is converted or diverted from its open-space use. DHR Easement Program staff may provide preliminary feedback regarding appropriate substitute property with the project proponent in advance of any formal purchase offer, however the final determination remains the responsibility of the Board. These options should be consistent with the Commonwealth's land protection priorities and reflect similar conversation values to those of the affected easement. **Substitute land is required for both conversion and diversion projects. Substitute lands are subject to all applicable Easement Program fees and application processes.**

### **A. Fair Market Value**

The project proponent must demonstrate to the Board that the substitute land is of at least equal fair market value of the converted or diverted land. The appraisal must conform to USPAP and include fair market valuation of the converted or diverted land before and after the easement was recorded, as well as the value of the proposed substitute land currently, and if encumbered.

### **B. Conservation Value**

The project proponent shall include maps and photographs of the proposed substitute property and a complete description of the conservation values to be protected. A clear demonstration of conservation values comparable to the affected property is required.

### **C. Usefulness/ Location**

The project proponent must provide information on the usefulness of the proposed substitute property as open space as well as the proximity of the proposed substitute land to the existing protected property.

### **D. Easement Application**

The project proponent must submit a complete Easement Application Form, including required photographs, title commitment & insurance policy, maps, boundary survey, and Phase 1 Environmental Site Assessment (ESA), for the proposed substitute land.

**E. Site Visit**

DHR Easement Program staff will conduct a site visit to the proposed substitute land in advance of the staff presentation to the Board.

Due to the individuality of each easement held by the Virginia Board of Historic Resources, DHR Easement Program staff may establish additional review requirements as necessary.

*[Adopted by the Virginia Board of Historic Resources on [DATE].]*