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Preservation Easement Program Policies



Idaho State Historical Society

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A. Overview

This document provides guidance to Idaho State Historical Society (ISHS) staff and trustees regarding the operation of the Preservation Easement Program. The content serves as an informational foundation to direct ongoing decision-making including easement acceptance, the application process, internal easement program operations, and violation resolution. The long-term success of the Preservation Easement Program will depend on strong working relationships with property owners, ongoing monitoring, and education about the preservation benefits of historic preservation easements.

The Preservation Easement Program Policies are supplemented by the Preservation Easement Program Standard Operating Procedures—a set of documents, forms, and templates—that provide additional detail on day-to-day program management topics and processes.

The Preservation Easement Program is managed by the Idaho State Historic Preservation Office (SHPO) and is an ISHS Board of Trustees (the Board) approved program with any future changes or amendments requiring Board approval.

B. Program Purpose and Mission

The mission of the ISHS Preservation Easement Program is to provide a long-term preservation solution for significant historic resources within the State of Idaho. The Preservation Easement Program helps the ISHS accomplish and advance its mission to preserve Idaho history and promote sustainable and economically viable communities through historic preservation.

The ISHS Preservation Easement Program is one of the State of Idaho's most effective tools to ensure the preservation and protection of a historic property in perpetuity. A historic preservation easement is a legal document through which a property owner retains title and use of property, and, at the same time, secures its long-term preservation by granting a preservation easement to ISHS. Alteration of the property encumbered by the easement requires prior permission from the ISHS. Future owners are also restricted from changing the property without prior approval throughout the life of the easement.

The program encourages developing partnerships focused on economic, cultural, and environmental sustainability for historic properties.

C. Eligibility Criteria

The ISHS will generally consider accepting and holding preservation easements on properties using the following criteria:

1. Property Type. The ISHS Preservation Easement Program is primarily designed to support easements on structures. However, the variety of cultural resources recognized as historic runs the gamut of property types and environments, from commercial, to religious, to agricultural/rural, to archaeological, to residential. ISHS may consider placing a preservation easement on any property that will further its historic preservation mission.
2. Property Listing. Properties which are eligible for the program must be either listed in the National Register of Historic Places, a contributing property within a National Register Historic District, a National Historic Landmark, a Local Landmark, or have been determined to be potentially eligible for any of the above by the State Historic Preservation Office.
 - a. In order for the property owner to claim a federal income tax deduction on a preservation easement donated to the ISHS, the property must be considered a certified historic structure by the Internal Revenue Service (IRS). A property is considered a certified historic structure if it is a building, structure, or land area individually listed in the National Register of Historic Places, or if it is a building located in a registered historic district and is certified by the National Park Service as contributing to the historic significance of that

district. Additional information regarding a “qualified conservation contribution” is available in the Internal Revenue Code, 26 U.S.C. § 170(h).

3. Property Location. The ISHS implemented the Preservation Easement Program to support the preservation of historic properties located in the State of Idaho in support of its mission to preserve and promote Idaho history. ISHS will only accept easements on properties located within the State of Idaho.
4. Property Condition. A property should possess integrity of design, structure, materials, workmanship, and any other aspects of integrity necessary to demonstrate the preservation and conservation values of the property. The ISHS recognizes that a property in poor condition may not be a viable easement candidate and will take into consideration the property’s current condition. Evidence that the extant historic resources require substantial work and/or capital expenditures to stabilize or rehabilitate the resources, the presence of existing damage or disturbance to the resources, evidence of relic hunting, looting, unauthorized salvage, or other deleterious actions may necessitate additional review or require resolution prior to the acceptance of the easement.
5. Property Owners. The ISHS will accept easements on properties held by non-profits, for-profits, and municipalities and will continue to consider easements on properties held by a variety of ownership structures.
 - a. Easements may be accepted for properties having single or subdivided ownership or long-term renewable leaseholds.
 - i. Subdivided Ownership: Easements will be accepted for a property having subdivided ownership provided that the entire property is placed under easement, property conveyances are received from all property owners, and that an association of property owners, with the power to act for all the property interests, has been formed which will be responsible for complying with the terms of the easement.
 - ii. Leasehold Interests: Easements may be accepted on properties subject to long-term leases provided that all parties have an interest in the property and being affected by its terms consent to recordation of the easement.
 - b. The ISHS may consider the real estate development experience, financial stability, and capacity of property owners when considering the acceptance of an easement. The property owner must be able to demonstrate financial stability, managerial capacity, and commitment to maintain the historic features of the property subject to the easement.
 - c. The ISHS retains the right to request that prospective owners submit references and documents to reflect the property owner’s good financial and managerial standing.

D. Fees and Funds

The ISHS recognizes that the acquisition and stewardship of perpetual preservation easements requires a substantial commitment of resources, 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 unique historic resources already under easement, the ISHS has adopted the following administrative fee schedule.

The Preservation Easement Program will be responsible for assessing and administering these fees. SHPO staff will assess the program’s fee structure periodically and may adjust the amounts accordingly with approval from the Executive Director of the ISHS. The Executive Director is authorized to waive these fees at the Executive Director’s discretion and to promulgate any additional rules necessary for the administration of these fees provide that such rules comply with the terms of this Policy.

Fee	Amount	Due
Easement Application Fee (non-refundable)	\$500	With application
Preparation Fee	\$4,000 minimum, see <i>Preparation Fee</i> below	Invoiced at the time that property assessment commences
Stewardship Contribution	Varies, see <i>Stewardship Contribution Schedule</i> below	Invoiced prior to recordation of the Deed of Easement

1. **Application and Preparation Fees.** The ISHS will require the prospective donor of a preservation easement to pay fees to cover the Preservation Easement Program's costs in considering an easement application and negotiating, executing, and recording the easement.
 - a. *Application Fee.* The ISHS will charge a non-refundable fee of \$500 due upon the filing of an easement application. The fee will cover the expenses incurred in reviewing the application for conformance with the ISHS's general acceptance criteria. Applications will not be considered until the fee is paid in full.
 - b. *Preparation Fee.* The ISHS will charge a minimum fee of \$4,000 due upon the commencement of Preservation Easement Program staff's review and assessment of the property. The preparation fee will cover the costs of site visits, property assessments, preparation of legal documents, execution of easement documents, and recordation of the executed deed. If legal and preparation expenses exceed \$4,000, the ISHS will invoice the property owner for the remaining balance. If legal and preparation expenses are less than \$4,000, the remaining balance will be credited towards the property owner's stewardship contribution.
2. **Stewardship Contribution.** The ISHS requires a stewardship contribution to cover the costs of administering the easement in perpetuity. The Preservation Easement Program's goal is to ensure a total stewardship fund sufficient to defray the cost of administering, and if necessary, defending the entire easement portfolio. The amount of the stewardship contribution is based on a percentage of the appraised value of the property immediately prior to the easement donation. Stewardship contributions are based on the following schedule:

Appraised Value of Property	Stewardship Contribution	Due
Less than \$750,000	\$7,500 (minimum)	Invoiced prior to recordation of the Deed of Easement
\$750,000 - \$2 million	1% of appraised value	Invoiced prior to recordation of the Deed of Easement
\$2 million - \$6 million	1% of first \$2 million plus .5% of additional value	Invoiced prior to recordation of the Deed of Easement
Over \$6 million	Negotiable, but not less than \$40,000	Invoiced prior to recordation of the Deed of Easement

3. **Additional Fees.** In addition to the above application and preparation fees and stewardship contribution, the following additional amounts will be assessed when the easement involves the following:

Additional Fee	Amount	Due
Reconsideration of Easement Offer	\$1,000	Invoiced at the time when new application is submitted
Update or Revision of Baseline Documentation	\$1,500	Invoiced prior to ISHS conducting work
Easement Amendments	\$2,000 minimum, see <i>Easement Amendments</i> below	Invoiced at the time that Easement Amendment is executed

Expedited Project Review	\$500	Invoiced upon approval of request
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- a. *Reconsideration of an Offer Fee.* The ISHS will charge a non-refundable fee of \$1,000 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.¹ The fee must be received by the ISHS with the new application. Examples of a change of terms of the easement offer by an applicant may include, but are not limited to, the following:
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.
- b. *Update or Revision of Baseline Documentation Report.* The ISHS will charge a non-refundable fee of \$1,500 for each instance where a Baseline Documentation Report (BDR) 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 work to update or revise the BDR.
 - i. 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) historic documentation, survey plat, and maps of the property; and (vi) photos of the property and protected resources with an accompanying map keyed to the location of photos.
- c. *Easement Amendments.* With the exception of amendments initiated at the request of the ISHS and/or Board, a minimum fee of \$2,000 must be submitted with the application and prior to the ISHS's consideration of a proposed amendment to an existing easement held by the ISHS. The amendment fee includes costs related to any new or updated Baseline Documentation Report necessary to document the conditions of the property at the time of

¹ The Easement Program Policy (see Section F: Application Review and Approval Process, Number 6, Subsection C-i) states that the Board's standard approval to accept a new offer of easement expires one (1) calendar year 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.

the amendment. If legal or preparation fee exceeds \$2,000, the ISHS will invoice the property owner for the remaining balance.

- d. *Expedited Project Review.* The ISHS will charge a fee of \$500 if a property owner requests an expedited review of a submitted Alteration Request Application. 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.

E. Application Submission

An offer of easement by a property owner is first considered by the ISHS's Preservation Easement Program staff to ensure that the property meets the Board's legal requirements and that the application includes the information necessary for formal review. A detailed application form is available on the ISHS's Preservation Easement Program webpage and is provided to every prospective donor.

While each easement donation comprises a unique course of action from start to finish, the steps (from initial contact to application submission) typically adhere to the following process. Some easement donations, such as those that involve properties with deferred maintenance, those that are required due to grant funding, or those that are tax-deductible donations, may require additional or augmented steps to submit an easement application. For those donation scenarios, refer to Section H: Unique Easement Donations.

1. Initial inquiry. The property owner interested in donating an easement contacts the ISHS's Preservation Easement Program Manager either via telephone or email.
2. Consultation. Following an initial telephone/email inquiry, the Preservation Easement Program Manager schedules a meeting to discuss the property owner's preservation goals and the purpose of the Preservation Easement Program. Easement Program staff may decide to conduct a site visit to assess the property's condition as well. There is no fee with the initial site visit unless the property owner requests expedited service. If the owner has interest in applying, the Preservation Easement Program Manager:
 - a. Provides: Preservation Easement Application Form, Donating an Easement Overview, Deed of Easement sample, and Preservation Easement Program Policies.
 - b. Determines: if a site visit is needed to further discuss the program with the prospective donor, tour the property, and review the standard easement template.
3. Application. Prospective donors must complete and return the Easement Application Form along with a \$500 non-refundable application fee. A completed application includes:
 - a. *Easement Application Form.* This includes four parts: the General Application Form, Application Checklist, Grant Related Projects Form (if applicable), and Federal Tax Incentives Form (if applicable).
 - b. *Application Fee.* A fee of \$500 must be submitted with the application with a Billing Statement provided by the ISHS on the Preservation Easement Program's webpage.
 - c. *Authorization.* If applicant is different from property owner, owner must submit a signed letter indicating that the applicant is authorized to submit an application on their behalf and that Preservation Easement Program staff is authorized to communicate with the applicant regarding owner(s)' property, the easement application, required documentation and easement negotiation process.
 - d. *Photographs.* 5-10 high-quality digital photographs or images (resolution of 600 pixels x 600 pixels in jpeg format preferred) must include the following:
 - i. At a minimum, one photograph of each exterior elevation of the primary building, and one photograph of each additional building/structure (historic and non-historic) located on the property (i.e. detached garages, barns, sheds, guesthouses, etc.)
 - ii. For electronic application submissions, photographs must be compiled into one document and not attached individually to an email or document exchange

website. Preservation Easement Program staff do not have the resources to download, sort, identify, and print individual photo files. A photo page template is provided on the Preservation Easement Program webpage for property owners' convenience.

- e. *Title Commitment & Insurance.* Applicant must obtain a title insurance policy insuring the property owner's acquisition that includes the following:
 - i. Continuous chain of title of ownership interests for the property (with copies of all relevant documents) dating back to at least 1940 must be submitted with the easement application.
 - ii. Title commitment prepared by an Idaho licensed title searcher, title company, or attorney.
 - 1. Must include legible copies of all deeds and plats in the chain of ownership and all encumbrances identified as exceptions in the commitment.
 - 2. A title commitment insuring the property owner's acquisition of the property may be submitted with the application. However, once acquisition is complete, a title commitment insuring the ISHS must be provided.
- f. *Boundary Survey.* A current (within one year) boundary survey prepared by an Idaho-licensed surveyor is required for all easement projects. If a current survey is not available at the time the easement application is submitted, a preliminary survey should be provided to the ISHS for review as soon as possible and in order for the project to be considered by the Board of Trustees. Preservation Easement Program staff will review a draft preliminary survey as part of the application process, but an official survey must be submitted prior to easement recordation. The survey should show and/or indicate the following as applies to the property:
 - i. Exterior dimensions of all buildings and structures at ground level;
 - ii. Indicate square footage of exterior footprint of all buildings and structures at ground level; and
 - iii. Location of easements and/or utilities existing on or serving the surveyed property.
- g. *Proof of Insurance.* Copy of general liability insurance policy and homeowners' policy (as applicable) is required for all easement donations. If a current policy is not available at the time the easement application is submitted, then it must be provided prior to easement recordation.
 - i. Prior to easement recordation, the ISHS must be added to the policy as additionally insured.
- h. *Leases and Other Agreements (if applicable).* Copies of all residential, agricultural, commercial, or other lease agreements that will be in effect at the time of easement recordation must be submitted with the application. Unless otherwise approved by SHPO, any unrecorded lease or lease agreement that will be in effect at the time of recordation of the easement must include subordination language provided by or approved in advance by SHPO. Existing leases or lease agreements may need to be amended to include the appropriate subordination language.
- i. *Mortgage or Other Lien (if applicable).* For any mortgage or lien that will be in effect at the time of easement recordation, the following documents must be provided:
 - i. Written documentation from lender(s) indicating their willingness to subordinate the lien to the easement.
 - ii. Name and position of individual who will be signing on behalf of the lender(s) and document identifying that individual as authorized to sign on behalf of the lender(s).
 - iii. Name of Trustee(s) who will be signing on behalf of the lender(s).
 - iv. Recorded Appointment of Substitute Trustee document (as applicable).
- j. *Trust Agreement (if applicable).* If property is held in trust, copy of trust agreement, deed of trust, will or other document(s) that created the trust.

- k. *Covenants, Leases, and Other Unrecorded Documents (if applicable)*. Copies of the following documents must be submitted with application: deed restrictions, covenants, and/or homeowner's association agreements, unsecured notes, agricultural leases, residential leases, etc.
 - l. *Environmental (if applicable)*. Copies of the following documents must be submitted with the application if the property contains related environmental factors, Phase I Environmental Site Assessment, Forest Management Plan, timber harvest documentation, Farm Conservation Plan, and/or documentation identifying threatened, rare, or endangered species.
- 4. Application Submission. Property owner returns the completed application form and supporting documentation to the Preservation Easement Program Manager.

F. Application Review and Approval

The ISHS will generally consider accepting and holding preservation easements on properties in accordance with the ISHS's Eligibility Criteria. Although each easement donation comprises a unique course of action from start to finish due to the unique nature of historic properties, the steps to review and approve the application typically adhere to the following process. Some easement donations, such as those that involve properties with deferred maintenance, those that are required due to grant funding, or those that are tax-deductible donations, may require additional or augmented steps to review and approve the application. For those donation scenarios, refer to Section H: Unique Easement Donations.

- 1. Initial Review for Completeness. After the property owner submits their completed application form and supporting documentation, the Preservation Easement Program Manager will review the application package for completeness within one (1) week of receipt. The Preservation Easement Program Manager will notify the property owner or their designated agent by e-mail if the application is incomplete.
- 2. Site Visit. Within thirty (30) days of the application's submission, Preservation Easement Program staff will schedule a site visit to visually inspect the property's current conditions and assess the property's preservation and conservation values. Preservation Easement Program staff will document the existing historic and non-historic buildings, structures, and sites with a detailed description of existing architectural features of primary built historic resources that the proposed easement will protect. Staff will also take photographs of the property and the proposed features which would be protected by the easement. Documentation collected during this initial site visit may be used for the Baseline Documentation Report should the easement be accepted by the Board.
- 3. Property Inspection. The property owner will obtain an independent professional property inspection prepared by a qualified inspector that assesses the architectural/structural integrity of the property. Once the inspection is completed, the property owner will provide Preservation Easement Program staff with the documentation produced by the inspection for their review.
- 4. Preparation Fee Payment. The ISHS will invoice the property owner a minimum of \$4,000 at the time that Preservation Easement Program staff begin their review and assessment of the application and property. The preparation fee will cover the costs of site visits, property assessments, preparation of legal documents, execution of easement documents, and recordation of the executed deed. If legal and preparation expenses exceed \$4,000, the ISHS will invoice the property owner for the remaining balance. If legal and preparation expenses are less than \$4,000, the remaining balance will be credited towards the property owner's stewardship contribution.
- 5. Due Diligence. The Preservation Easement Program staff's review will investigate and document a property prior to the acceptance of the easement with due diligence including, but not limited to, the following:
 - a. *Title Investigation*. Early in the process, a title company or appropriate legal counsel will be retained to review the title and issue a preliminary commitment for title insurance. The ISHS will evaluate title exceptions and document how they will not result in

- extinguishment of the easement or significantly undermine the property's important conservation values. The ISHS will update the title at or just prior to closing.
- b. *Legal Counsel.* If necessary, the ISHS may retain legal counsel to review existing encumbrances to the property such as leases, mortgages, liens, etc.
 - c. *Property Boundaries.* The ISHS may obtain professional services to review the property surveys provided by the property owner.
 - d. *Condition Assessment.* The ISHS may obtain appropriate professional services to determine the current condition of the historic structure.
 - e. *Additional Assessments.* The ISHS, in determining the conservation values of the property, may require additional third-party assessment of the natural, historic, cultural, and architectural values.
6. Preservation Easement Program Committee Review. The Preservation Easement Program Manager will send the application package, which includes any additional materials collected during the site visit, to the Preservation Easement Program Committee for review and schedule a meeting to discuss the easement within thirty (30) days of the site visit. The Preservation Easement Program Committee is an ad hoc committee comprised of Idaho State Historic Preservation Office staff. The Preservation Easement Program Committee will review easement applications in a two-step process.
- a. *First Review Meeting.* During the first meeting, the Committee will consider whether the property meets the threshold requirements for participation in the Preservation Easement Program as well as the historic significance and integrity of the property and its character defining architectural components, archeological features, and/or setting and landscape elements. The Committee will also determine what additional information is required to fully evaluate the proposed easement; and what issues must be addressed in order to make a formal recommendation to the Board of Trustees concerning acceptance of the easement.
 - i. The Preservation Easement Program Committee will apply standard selection criteria to determine if the property meets the ISHS's Easement Eligibility Criteria, the conservation purpose of such an easement, and the feasibility of protecting the property through an easement.
 - ii. If a comprehensive application is received and the project presents no potential issues to be resolved, it is possible that the Committee may make a recommendation during their first meeting.
 - b. *Second Review Meeting.* Pending receipt of additional information and resolution of all identified issues, the Preservation Easement Program Committee will again consider the proposed easement at a second meeting, at which the Committee may make a formal recommendation concerning acceptance to the Board of Trustees.
 - c. *Preservation Easement Program Committee Recommendation.* The Preservation Easement Program Committee may take one or more of the following actions:
 - i. Recommend approval of the easement offer as proposed;
 - 1. See Section H: Unique Easement Donations if easement donation is required due to grant funding.
 - ii. Recommend that any approval be conditioned on specific requirements or actions;
 - 1. See Section H: Unique Easement Donations if conditions require work on areas of deferred maintenance.
 - iii. Not recommend acceptance of the easement offer as proposed; or
 - iv. Defer making a recommendation where insufficient information has been provided by the property owner or their designated agent, or where conditions affecting the property may require prior resolution.
 - d. *Informing the Property Owner.* Staff will again inform the property owner of the Committee's recommendation. Written correspondence to owner includes summary of proposed easement provisions and any conditions for approval recommended by the Committee. The Preservation Easement Program Committee's goal is to resolve issues

early in the easement application process and present a final easement proposal to the Board with no conditions attached to approval.

7. ISHS Board of Trustees Review. Per evaluation and recommendation from the Preservation Easement Program Committee, the easement offer is added to the agenda for the next quarterly Board meeting.
 - a. *Board of Trustees Meeting.* At the Board meeting, the Preservation Easement Program Manager will present the offer, describe the property's historic significance and the formal documentation of that significance, highlight any special features of the property, specify any reserved rights, and address the Preservation Easement Program Committee's recommendations, including any recommended conditions of approval.
 - b. *Board's Decision.* The Board of Trustees or their designee will make the final determination regarding whether the ISHS will proceed to the due diligence period to pursue an easement to protect the property.
 - i. The Board may take the following actions, including, but not limited to:
 1. Approve the easement offer as proposed;
 - a. See Section H: Unique Easement Donations if easement donation is required due to grant funding.
 2. Approve the easement offer with conditions requiring specific requirements or actions;
 - a. See Section H: Unique Easement Donations if conditions require work on areas of deferred maintenance.
 3. Decline acceptance of the easement offer as proposed; or
 4. Defer making a recommendation where insufficient information has been provided by the property owner or their designated agent, or where conditions affecting the property require prior resolution.
 - ii. The Board has full discretion in deciding whether to accept an offer of easement and the applicable conditions for such acceptance. The Board may decline to accept an offer for any reason. The Board may condition its acceptance as it deems appropriate to ensure the protection of the property's cultural resources, to maintain the integrity of the Preservation Easement Program, and to fulfill its mission.
 - c. *Informing the Property Owner.* The Preservation Easement Program Manager informs the property owner of the Board's decision. Written correspondence sent to the owner documents approval or denial by the Board of an easement offer, including any conditions for the approval, as well as a sunset clause, or a timeframe within which the easement must be recorded.
 - i. If the easement is not recorded within the specified timeframe, the property owner must seek new approvals from the ISHS and the Board. Standard approvals are valid for one (1) year from the date of the Board's meeting at which the offer was approved for acceptance.
 - ii. Any one of the following may require reconsideration by the Preservation Easement Program Committee or the Board at its next regularly scheduled meeting:
 1. Any significant changes to the terms of the easement offer made after approval by the Board but prior to recordation of the easement.
 2. Any significant or major changes to the property or its ownership that occur after Board approval but prior to recordation of the easement.
8. Property Appraisal and Determination of Stewardship Contribution Fee. The property owner will obtain an independent professional appraisal prepared by a qualified appraiser. The appraisal may be required to produce both the appraised market value of the property and the diminished value of the property after easement recordation. The Preservation Easement Program Manager will then determine a stewardship contribution fee based on the formal appraisal of the property.
 - a. *Appraisal Policy.* The process of donating an easement should be thought of as an arm's-length transaction, where the parties involved (the property owner, the appraiser, the IRS,

etc.) and the ISHS function independently of each other to ensure legal compliance. Therefore, the ISHS does not make recommendations regarding “preferred” appraisers, nor does it provide advice on maximizing the value of a charitable contribution derived from an easement donation.

- i. See Section H: Unique Easement Donations if the easement donation was approved by the Board with conditions that required areas of deferred maintenance to be addressed prior to execution of deed.

G. Easement Drafting and Execution

After Board approval, the draft deed of easement is prepared by the Preservation Easement Program Manager or legal counsel based on the ISHS’s current standard template, proposed reserved rights, grant funding requirements (if applicable), and any conditions for approval imposed by the Board of Trustees.

1. Drafting the Deed of Easement. For every preservation easement, the ISHS will individually tailor the easement language to the specific property. The ISHS will update the standard template language to be included in easements as necessary to reflect changes in federal and state law and historic preservation practices. However, all easements will typically include the following stipulations and clauses:
 - a. The ISHS will take all available measures to include all necessary and appropriate provisions to ensure it is legally enforceable in the applicable jurisdiction.
 - b. Preservation Easement Program staff will recommend restrictions based upon the property’s conservation values, significance, integrity, and the ISHS’s ability to responsibly monitor and enforce the easement.
 - c. Easements with historic or architectural conservation values will restrict the entire exterior (all elevations) and the roof of the primary historic resource(s) on the protected property. The easement will prohibit any change to the exterior of the primary historic resource(s) that would be inconsistent with its historic character. As appropriate, specific interior architectural features as well as the exteriors of secondary historic resource(s) on the protected property may be similarly restricted.

Easements will reference *The Secretary of the Interior’s Standards for the Treatment of Historic Properties* (36 C.F.R. 68) and *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (referred to as the “Secretary’s Standards”), as they may be amended from time to time.
 - d. Property owners who take advantage of a tax deduction on their easement property will be required to provide public access in order to ensure public benefit of the easement as required by federal law. The level of public access will be determined on a case-by-case basis.
 - e. Each easement will require that the property be adequately insured for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage.
 - a. Such insurance shall include the ISHS as additionally insured and shall provide for at least thirty (30) days’ notice to additionally insured before cancellation and that the act or omission of one insured will not invalidate the policy to the other insured.
 - b. Each easement will require that property owners send a certificate of insurance annually or when coverage is renewed.
 - c. If the property owner fails to submit proof of insurance coverage annually or at the time of renewal, the property owner must deliver proof of coverage within ten (10) days of the ISHS’s written request for documentation of coverage.
 - f. If applicable, each easement will require property owners to provide annual confirmation of the property being accessible to the public, confirmation of the signed mortgage on the property, and confirmation of the signed agreement between property owner and lessee.

- g. Each easement will require that, with appropriate notice, the ISHS will be permitted at all reasonable times to inspect the property's protected features.
 - h. Each easement will include stipulations regarding extinguishment and the process for making amendments to the easement.
 - i. Each easement will require that the property owner must notify the ISHS with all proposed sales of the property.
 - j. In addition to prior approval required for alterations, each easement will require that the property owner receive written approval prior for change of use of the property; subdivision of the property; boundary line adjustments; and execution of any easement for any purpose, including access easements, utility easements or overlay easements in favor of any private person or entity or any public utility.
2. Baseline Documentation Report. Using the documentation collected during the site visit, Preservation Easement Program staff will prepare a Baseline Documentation Report (BDR) on the easement property that describes the characteristics and conditions of the property at the time of easement recordation as well as the features and conservation values that are the subject of the easement. The BDR will sufficiently document the conditions of the protected features to effectively monitor and enforce the easement in perpetuity, or for an otherwise specified length of time.
- a. *Timing*. Baseline documentation shall be prepared after the easement restrictions have been generally finalized.
 - b. *Contents*. Baseline documentation will include property descriptions, photographs, and other relevant information to document the conservation values protected by the easement.
 - c. *Pre-Recording Updates*. If there are significant alterations to the property after the baseline documentation has been prepared and the easement has yet to be recorded, Preservation Easement Program staff will update the documentation accordingly. If the easement has not been recorded a year after the preparation of the baseline documentation, it should be updated to reflect the current conditions prior to closing.
 - d. *Anticipated Supplements*. In the event a major rehabilitation is ongoing or anticipated at the time of the easement, the ISHS should reserve the right to update or supplement the baseline documentation after the completion of the rehabilitation project.
 - e. *Draft Report*. The draft baseline documentation report is sent to the owner for review and the owner provides Preservation Easement Program staff with comments and modifications, if necessary.
 - f. *Final Report*. Preservation Easement Program staff prepares a final report for signature, based upon the comments and modifications sent by the property owner.
 - g. *Signatures*. In all cases, the baseline documentation will be reviewed by the property owner prior to recordation of the deed of easement. The ISHS and the Grantor must acknowledge and concur with the accuracy and completeness of the baseline documentation in writing.
 - h. *Exhibit B*. The Baseline Documentation Report is typically included as "Exhibit B" in the final deed of easement.
3. First Draft. Once the easement is drafted but prior to its execution, the draft deed of easement is given to the owner(s) (and their attorney) for review. If necessary, the owner(s) provides the Preservation Easement Program Manager with comments and modifications on the draft deed of easement.
4. Final Draft. The Preservation Easement Program Manager revises the draft deed of easement based on the comments provided by the property owner (and their attorney). The Preservation Easement Program Manager and property owner continue to negotiate the terms and language of the deed of easement until they have agreed upon a final draft. The ISHS's legal counsel is included in the negotiations as necessary.
5. Internal Approval of Final Draft. After agreeing upon a final draft deed of easement with the property owner, the final draft deed of easement and title work are reviewed by the ISHS's legal counsel and grant funding organization (if applicable). The Preservation Easement Program

Manager then sends a memo, outlining the proposed easement donation and its obligation to the ISHS Executive Director with the final draft deed of easement. The memo requires approval by the Executive Director.

- a. If at any point during the transaction process, the proposed easement donation is unable to meet any of the requirements of the Preservation Easement Program Policies, Preservation Easement Program staff will seek approval from the Board of Trustees to proceed with the easement transaction. Any exemptions from the Easement Policies approved by the Board of Trustees shall be noted in the concurrence memo to the Executive Director.
6. Mortgage Subordinations. The property owner will secure any required mortgage subordinations (existing liens and/or mortgages must be subordinated at the property owner's expense).
7. Tax-Deductible Easement Donations. If applicable, an Appraisal Summary and IRS Form 8283 are provided to the ISHS at least thirty (30) days in advance of recordation. See Section H: Unique Easement Donations for more information.
8. Stewardship Contribution Payment. As a condition of accepting an easement, the ISHS generally requires an acceptable easement stewardship donation to fund the ongoing monitoring and enforcement of the easement in perpetuity. Property owners must pay the stewardship donation prior to the recording of the easement.
 - a. See Section H: Unique Easement Donations for scenarios that would not require the property owner to contribute an easement stewardship donation.
 - b. The ISHS's easement stewardship model is on a percentage of the appraised market value of the property. Refer to Section D: Fees and Funds for specific fee schedule.
9. Recording. Once the final easement draft is approved by the owner (and owner's attorney), grant funding organization (if applicable), and Preservation Easement Program staff after consultation with legal counsel, the final draft is signed and notarized in counterpart by the property owner(s) and ISHS Executive Director on behalf of the Board. The ISHS will promptly record preservation easement transaction documents at the appropriate recorder's office.
 - a. The Preservation Easement Program staff archives the recorded easement according to the recordkeeping policies established by the ISHS.

H. Unique Easement Donations

There will be certain situations that require additional or augmented steps in the review, approval, and closing process due to the nature of the easement donation. If at any time the proposed easement property involves one of the following situations, Preservation Easement Program staff will supplement the Preservation Easement Program Policies with the following:

1. Easement Donations with Required Maintenance. During their inspection of the property and review of the application, Preservation Easement Program staff will consider the complexity of the property's current condition, assessing the level of maintenance required of the existing historic buildings, structures, sites, landscapes, or features, and whether such resources are vulnerable to deterioration or will otherwise require a high level of monitoring by staff or the need for significant capital investment to maintain or preserve the existing historic resource(s). Preservation Easement Program staff will engage a professional property inspector to assess the property. If deferred maintenance is observed during a site visit in the Application Review Process, the following augmented procedural steps will be taken:
 - a. *Preservation Easement Program Committee Review*. In the case that Preservation Easement Program staff or professional property inspector observe deferred maintenance of the proposed easement property, Preservation Easement Program Committee may recommend that the Board approve the easement but with the condition that the maintenance be addressed prior to the execution of the deed of easement.
 - b. *Board of Trustees Review*. After reviewing the Preservation Easement Program Committee's recommendation, the Board may approve the easement donation but with the condition that the maintenance be addressed prior to the execution of the deed of easement.

- c. *Memorandum of Agreement (MOA)*. The Preservation Easement Program Manager and property owner sign an agreement stipulating that the property owner has one (1) year from the date of the Board's approval to address the deferred maintenance. The MOA states that once the deferred maintenance is complete, only then will the ISHS execute the deed of easement.
 - d. *Maintenance*. The property owner addresses the deferred maintenance that was conditioned by the Board's approval, resolving any issues set forth by the Board.
 - e. *Baseline Documentation Report*. Preservation Easement Program staff schedules a site visit with the property owner to create a new Baseline Documentation Report, if one was already compiled, so that all documentation reflects the current condition of the property upon the execution of the deed.
 - f. *New Appraisal*. The property owner receives a new appraisal from a qualified independent appraiser and sends a copy of the appraisal to the Preservation Easement Program Manager. A property appraisal must be conducted after the maintenance is completed in order to reflect the current condition of the property upon the execution of the deed.
 - g. *Closing Process*. Preservation Easement Program staff and the property owner return to following the standard closing procedures. Return to closing process.
2. Easement Donations Due to Grant-Funding Programs and National Historic Preservation Act (NHPA) Section 106 Mitigation. The Idaho State Historic Preservation Office may acquire easement properties through the Section 106 mitigation process or federally funded grant programs, such as but not limited to, Save America's Treasures (SAT), Certified Local Government (CLG) funding, and other National Park Service grants. All property owners must submit an application and supporting documentation. Preservation Easement Program staff will typically adhere to the same application submission, review, approval, closing, monitoring, and alteration guidelines set forth by the Preservation Easement Program Policies. However, there may be certain instances in which the standard process will not apply to easement donations brought on by grant funding and Section 106 mitigation. The following are some common situations where the procedure is augmented:
- a. Property owners of grant-funded easements will not be required to pay an application fee, preparation fee, or make an endowment contribution payment.
 - b. Property owners of grant-funded easements will not be required to obtain an independent qualified appraisal.
 - c. When reviewing applications from grant-funded easements, the Preservation Easement Program Committee will always recommend that the Board of Trustees approve the easement donation due to SHPO's obligation to accept these types of easements.
 - d. When reviewing applications resulting from Section 106 mitigation, the Preservation Easement Program Committee typically recommends that the Board of Trustees approve the easement donation. However, Preservation Easement Program staff may disagree with compliance staff and decide to not recommend the easement. In these situations, Preservation Easement Program and compliance staff should work together to identify a property that both agree would be viable easements for the program.
3. Tax-Deductible Easement Donations. Property owners may wish to seek a tax deduction with the donation of their easement property. In these cases, Preservation Easement Program staff will adhere to the same review, approval, closing, monitoring, and alteration guidelines set forth by the Preservation Easement Program Policies. Additional steps taken for tax-deductible easement donations occur during the application review and approval process when reviewing necessary IRS forms, as well as during the closing process when Preservation Easement Program staff or legal counsel reviews each potentially tax-deductible easement for consistency with Section 170 (h) of the Internal Revenue Code and the accompanying Treasury Department Regulations. See also 26 U.S.C. §170 (a)(1), 170(f)(8), 170(f)(11) and 170(f)(13) (2011) and Treasury Regulations 26 C.F.R. §1.170A-13 and 1.170A-14 (2011). If a property owner expresses interest in receiving a tax deduction, Preservation Easement Program staff will adhere to the following additional procedural requirements:
- a. The ISHS will inform potential easement donors who wish to claim a federal income tax deduction, in writing and early in project discussions, that:

- i. The property must be considered a certified historic structure by the IRS. A property is considered a certified historic structure if it is a building, structure, or land area individually listed in the National Register of Historic Places, or if it is a building located in a registered historic district and is certified by the National Park Service as contributing to the historic significance of that district.
 1. If the property is located in a registered historic district, the property owner must apply for a certification of significance through the National Park Service.
 2. The property owner must complete Part 1: Evaluation of Significance of the Historic Preservation Certification Application and return a completed application to the Preservation Easement Program staff.
 3. Preservation Easement Program staff then forwards the application, along with a recommendation, to the National Park Service, which makes the certification decision.
 4. The property must be certified by the National Park Service either by the time of the transfer of the easement or the due date (including extensions) for filing the Federal income tax return for the taxable year of the easement transfer.
- ii. The burden is on the donor to demonstrate that the requirements of the 26 U.S.C. §170 and the accompanying Treasury Department regulations and any other federal or state requirements have been met.
- iii. The donor is responsible for any determination of the value of the donation.
- iv. The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000.
 1. The ISHS does not participate in or provide recommendations regarding appraisers or the appraisal process. Property owners are strongly advised to engage an independent qualified appraiser with extensive and credible experience with easements in Idaho.
- v. The ISHS must receive a draft and final copy of the appraisal.
 1. Per federal tax regulations, an easement donation must be completed within sixty (60) days of the date of the appraisal.
- vi. The ISHS will not provide individualized legal or tax advice. The ISHS will inform donors that they should seek legal counsel knowledgeable about preservation easements in Idaho.
- vii. The ISHS provides no representation or warranty that an easement will result in a charitable contribution.
- b. The ISHS will, independently, or with assistance from outside counsel, evaluate each transaction for consistency with federal income tax deduction or credit requirements.
- c. The donor must complete IRS Form 8283 and provide it to Preservation Easement Program staff for signature on behalf of the Board prior to the execution of the deed at least thirty (30) days prior to recordation.
 - i. Prior to signing IRS Form 8283, the ISHS must review a draft copy, and receive a final copy, of the appraisal. If the ISHS has substantial concerns about the appraised value or the appraisal, the ISHS will convey these concerns to the donor in writing.
 - ii. In signing Form 8283, the ISHS acknowledges acceptance of the conveyance of the easement on behalf of the Board and confirms its status as a qualified organization under 26 U.S.C. §170(h).
 - iii. Form 8283 includes a disclaimer provision stating that acknowledgement by the donee (easement holder) does not constitute agreement with the claimed fair market value.
 - iv. The Executive Director will make the final determination regarding whether or not to sign IRS Form 8283.

I. Stewardship and Monitoring

By recording a preservation easement, the ISHS and the property owner(s) have agreed to the shared obligation, typically in perpetuity, of historic property stewardship. These stewardship responsibilities focus primarily on the maintenance, protection, and preservation of each property's unique character-

defining features and conservation values cited in the deed of easement and baseline documentation report. The desired result of the Preservation Easement Program's efforts to uphold these stewardship responsibilities are two-fold. First, the Preservation Easement Program ensures compliance with individual easement terms by conducting regular monitoring visits for each protected property. Second, the Preservation Easement Program seeks to foster positive working relationships with individual easement property owners through a program of on-going communication, outreach, and education.

1. **Monitoring.** It is the goal of the ISHS to ensure compliance with individual easement terms and conditions by conducting regular, efficient monitoring visits for each protected property. The monitoring process will include the following steps:
 - a. *Initial Notice.* Written notice of anticipated annual inspection either by hard copy letter or e-mail will be sent using primary contact information in the Preservation Easement Program records in accordance with individual easement provisions or at least fifteen (15) days prior to the suggested inspection date. The notice should provide an opportunity for collaborative scheduling.
 - b. *Scheduling.* When possible, the Preservation Easement Program staff will work to arrange a time and date for the visit that is convenient for the property owner. Except in limited situations, the owner or their representative should meet with the Preservation Easement Program staff during the inspection.
 - c. *On-Site Inspection.* The Preservation Easement Program staff should only inspect areas protected under the Easement, unless invited to view other areas or features by the owner/representative. The following steps will occur during a monitoring visit:
 - i. Using the Baseline Documentation Report as a reference document, Preservation Easement Program staff will closely inspect the conditions of all structural elements, character-defining features, natural resources, landscape features, and archaeological resources addressed by the easement, documenting visible signs of deterioration or elements that may require repair, remediation, or treatment.
 - ii. All alterations to the property, which have occurred since the previous site visit, will be noted. These include, but are not limited to, changes to existing historic features, new construction, removal of an existing structure, vegetation that may need attention, changes in land usage, new utility infrastructure, and ground disturbance or erosion issues.
 - iii. Preservation Easement Program staff will endeavor to document any previously undocumented or unknown resources on the property.
 - iv. Monitoring photographs should capture the resources protected by the easement, including: elevations, oblique views, and details of the primary historic structure; views of historic and non-historic associated outbuildings or other structures; interior spaces and elements within the primary historic building that are protected by the easement; any protected elements that exhibit deterioration or may require maintenance; open space and property boundaries, landscape features, changes or alterations to the property (including land usage), ground disturbance, and archaeological resources.
 - v. In consultation with the property owner, Preservation Easement Program staff will obtain the following information during each monitoring event: 1) any alterations to the property since the previous visit; 2) any changes or projects planned for the property in the near future; 3) security features present on the property; and 4) recent public access to the property (for tax-deductible easements).
 - d. *Inspection Follow-Up.* Preservation Easement Program staff will create a digital or paper record of the inspection visit to demonstrate that the ISHS has fulfilled its monitoring obligation, recorded the property's current condition, and summarized any information received or conveyed during the time of the on-site visit.
 - i. After the monitoring visit, Preservation Easement Program staff will provide the property owner with either a hard copy or digital copy of the Annual Monitoring Report within thirty (30) days of the monitoring visit. The report will summarize

staff observations and conversations with the owner, establish necessary corrective actions for issues noted during the site visit, and recommend measures and best practices for on-going property maintenance.

- e. *Recordkeeping.* A digital copy of the document will be saved within the property's Easement File maintained on the ISHS's Preservation Easement Program Drive.
 - f. *Violations.* Any violation or suspected violation of the terms of the easement identified during the monitoring visit will be addressed by the Preservation Easement Program staff within the Annual Monitoring Report and subsequent steps will follow the procedure outlined in Section K: Violations.
 - i. In cases where corrective action is needed, the Preservation Easement Program will set timeframes for the owner to complete such work. Timeframes for additional monitoring during a violation will be established as necessary, but Preservation Easement Program staff may schedule a site visit at the close of the remediation or mitigation phase of the violation resolution process in order to ensure all requested actions were adequately completed.
2. Communication and Outreach. The ISHS will maintain regular contact and foster productive working relationships with easement property owners. In addition to the annual monitoring visit, outreach may take the form of newsletters, workshops, site visits, or other correspondence to facilitate the sharing of information between the ISHS and the property owner. When requested, the Preservation Easement Program staff will provide technical assistance and information to property owners in order to support the appropriate stewardship of historic resources, as well as to promote an ongoing partnership.
- a. Preservation Easement Program staff will send a notice to all easement property owners at the beginning of each calendar year to remind property owners both of their stewardship obligations as well as the ISHS's design review and monitoring responsibilities on their property.
 - b. Annual notices will also remind property owners that they must provide confirmation of current owner's contact information, confirmation of the current insurance policy, confirmation of the property being accessible to the public (if applicable), confirmation of the signed mortgage on the property (if applicable), and confirmation of the signed agreement between property owner and lessee (if applicable).

J. Request for Alterations

The ISHS recognizes the need for balance between the prioritization of historic preservation values and the continued use of historic property. This dynamic balance requires careful consideration of any proposal to alter a property—including the review of restoration or rehabilitation projects as well as new construction. In addition, there are instances where regular maintenance and other work is necessary.

It should be noted that each easement is drafted with specific reserved rights and restrictions, and that some easements may allow or prohibit certain alterations. This policy is meant to outline the review and approval process and to provide general guidance as to which types of work require prior written approval. This guidance may not be universally applicable to all deeds, projects, or properties. In all cases, the easement is the governing document and will dictate whether prior written approval is required and how that review and approval will be conducted.

In the event that any features of the property are damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, the property owner must notify the ISHS and seek approval for the necessary corrective work.

Preservation Easement Program staff reviews and responds to alteration requests in a timely and consistent manner. Property owners and Preservation Easement Program staff may refer to the *Determining When Prior Written Approval is Required* document for guidance as to when prior written approval is necessary for alterations.

1. Receiving Requests. The ISHS accepts requests on a rolling basis from property owners and representatives. The ISHS requires property owners to submit an Application for Alteration for its review and approval. Preservation Easement Program staff may request that the property owner or representative provide architectural plans, sample materials, or other items as necessary.
 - a. Types of Project Requests. Requests may be defined as follows:
 - i. Minor Projects. Minor projects are defined as having limited or no impact on protected features; minor projects can include alterations to protected features that are more extensive than routine maintenance but adhere to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Some requests for minor projects may not warrant review by the Preservation Easement Program Committee and may be approved by staff review.
 - ii. Major Projects. Major projects are defined as having a significant impact to the property; major projects might include new construction of a primary or secondary building, a major addition to an existing protected building, demolition of any protected feature, or any potentially precedent-setting alteration. Major projects may require longer staff review due to the complexity of the project. Staff may request a phone call with the owner, site visit with the owner, estimates for alternative materials or approaches, or additional information that might delay the review process.
 - b. Required Information. The information required to evaluate requests depends on the scope of the project. Minor projects may only require a written general explanation of the project and an estimate from a contractor or specification sheets, while major projects may require architectural plans and more detailed information. Photographs of the feature(s) to be altered must be provided with the Application for Alteration.
 - c. Receipt of Request. The Preservation Easement Program Manager will confirm receipt of the request, generally within 1-2 business days, indicating that additional information may be required to complete the review.
 - d. Verify Response Deadline. Within one (1) week, the Preservation Easement Program Manager will verify if the property's easement includes a response deadline. While most easements do not prescribe a response deadline, a limited number of easements do, and a failure to respond by the deadline may result in the request being automatically approved. If a response deadline exists in the property's easement, staff will provide a response within that timeframe.
2. Initial Review. The Preservation Easement Program Manager will strive to review the application for sufficiency within one (1) week of receipt. This review will determine if any additional information is needed to assess and approve the request. If more information is required, staff will contact the property owner and request the information.
 - a. The incomplete Alteration Request Application will not be reviewed by the Preservation Easement Program Committee until the property owner submits the additional requested information.
 - i. To help ensure that the necessary information is provided with the initial request, the property owner should complete the Alteration Request Application form available online or by request with their submission and include all supplemental materials referenced or requested in the Alteration Request Application.
3. Preservation Easement Program Committee Review. The Preservation Easement Program Manager will send the completed application to all members of the Preservation Easement Program Committee and will schedule a meeting to discuss the application within thirty (30) days of receipt of all necessary and requested information.
 - a. Approval or denial is not required within that thirty (30) day period. Preservation Easement Program staff will endeavor to issue an approval or denial within that thirty (30) day period for a request that includes the necessary information, and no other circumstances warrant an extension or delay of that review period.

- b. The Preservation Easement Program staff shall notify the property owner or designated agent or representative of the need for an extension or delay in writing within the initial thirty (30) day review period.
 - c. Circumstances warranting an extension or delay of the review period include, but are not limited to, the following:
 - i. Receipt of additional materials or information requested in writing by the Preservation Easement Program staff;
 - ii. Archaeological survey and/or investigation as determined by the Preservation Easement Program staff;
 - iii. A site visit as determined by Preservation Easement Program staff;
 - iv. Consultation with the property owner and his/her representatives or consultants regarding the proposed project;
 - v. Review of the existing historic or archaeological resources on the property to determine historic significance applying the National Register Criteria for Evaluation (36 C.F.R. 60);
 - vi. Complexity of the request;
 - vii. Extent to which the request is consistent with the terms of the easement;
 - viii. Extent to which the request is consistent with the applicable Secretary of the Interior's Standards as set forth above.
4. Standards. At all times, the Preservation Easement Program Committee will apply the Secretary of the Interior's *Standards* in their review of requests. In the event an easement document utilizes different standards for review, the standards required by the easement shall govern.
- a. The *Secretary of the Interior's Standards* shall include:
 - i. Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (National Park Service, as amended).
 - ii. Secretary of the Interior's *Professional Qualifications Standards* (48 F.R. 44716 (Sept. 1983, as amended)).
 - iii. Secretary of the Interior's *for Rehabilitation* (36 C.F.R. 67, as amended).
 - iv. Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 C.F.R. 68, as amended).
 - v. Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (National Park Service, as amended).
 - vi. Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service, as amended).
5. Communicating Approvals/Denials. Approvals and denials will be issued by Preservation Easement Program staff through e-mail, unless the property owner explicitly requests delivery through postal mail. All approvals or denials must be made in writing. Preservation Easement Program staff are discouraged from verbally communicating any type of approval, particularly during an easement inspection.
- a. If denied, the ISHS will work with the property owner to ensure the work can be done while retaining the historic integrity of the property. The property owner will need to submit a new Alteration Request Application with the augmented proposed project.
6. Follow-Up from Property Owner. When the project is completed, property owners send a Completed Alteration Documentation form along with photographic evidence that the project was completed according to the agreed upon terms of alteration. If Preservation Easement Program staff do not receive a Completed Alteration Documentation form or general update within six (6) months from the time they sent their approval, the Preservation Easement Program Manager will contact the property owner for an update on the project.
- a. If the approved alterations are not implemented within one (1) year of approval from the Preservation Easement Program Committee, the property owner must resubmit the request for approval.

7. Archiving Communications. All approvals and correspondence will be saved as PDF files to the easement property's digital file.
8. Alterations Due to Casualty Damage or Destruction. In the event that any features of the property are damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, the property owner must notify the ISHS in writing within fourteen (14) days of the damage or destruction. Such notification must include what, if any, emergency work has already been completed.
 - a. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the property and to protect public safety, will be undertaken by the property owner without ISHS's prior written approval.
 - b. Within thirty (30) days of the date of damage or destruction, and if determined necessary by the ISHS, the property owner, at their own expense, will submit a written report prepared by a qualified restoration architect and/or a structural engineer who is considered acceptable by the ISHS and property owner. The report shall include the following:
 - i. An assessment of the nature and extent of the damage;
 - ii. A determination of the feasibility of the restoration of the Building(s) and/or reconstruction of damaged or destroyed portions of the Building(s); and
 - iii. A report of such restoration/reconstruction work necessary to return the Building(s) to the condition existing at the effective date of the deed of easement.
 - c. Approval of the necessary restoration/reconstruction work will follow the procedure outlined in Section J: Request for Alterations.

K. Violations

The ISHS takes seriously the obligation to uphold and enforce the terms of each easement to ensure that the resources they have committed to protect are not lost through deterioration, neglect, irresponsible management, or inappropriate changes.

The ISHS monitors each easement it holds on a regular basis to ensure that the property is preserved in accordance with the restrictions set forth in the easement. When the ISHS suspects that an activity or alteration that violates the terms of an easement has occurred, is ongoing, or may occur in the future, the ISHS will follow a systematic approach to document and address the perceived violation.

Each easement violation presents a unique situation and requires a tailored approach. The ISHS will seek to address individual violations and develop a strategy to remedy those situations in accordance with the following general objectives:

- a. To maintain the conservation and preservation purposes of the easement.
- b. To maintain the most constructive working relationship possible with the property owner.
- c. To maintain public confidence in the ISHS's ability to enforce easement restrictions generally and, in part, as a deterrent to other potential violators.
- d. To protect the ISHS's legal rights and economic investment in the easement.
- e. To evaluate each suspected violation thoroughly prior to formulating a response strategy.
- f. To ensure that communication with a property owner regarding a violation reflects the only official position of the organization.
- g. Where consistent with the foregoing objectives, to balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
- h. To maintain consistent responses to similar easement violations.
- i. To enter into litigation as a last resort and only when there is a sound legal basis for judicial action.

The ISHS will adhere to the following general procedures when managing violations and potential enforcement properties:

1. Document the Violation. The Preservation Easement Program staff person who discovers a potential violation during an inspection visit will thoroughly document the current conditions at the property. Preservation Easement Program staff may conduct a site visit if the violation was not observed during an annual inspection and may notify the ISHS's legal counsel of the suspected violation.
2. Review Easement Restrictions. When a violation is suspected, Preservation Easement Program staff will first review all pertinent documentation, including the easement, baseline documentation, and available inspection reports, to determine if an easement violation has occurred, its exact nature, and when it likely took place. Preservation Easement Program staff should consult the ISHS's legal counsel for interpretation if necessary.
3. Define the Violation. In determining whether a violation has occurred and the severity of any violation, the ISHS will primarily consider: (1) the purpose of the preservation and conservation easement, and (2) the conservation and preservation values of the property. Secondary considerations may include the identity of the violator (e.g. property owner or third party) and the intent of the violator (e.g. accidental, deliberate, or repeated).

Legacy easements (easements recorded prior to 2024) may not have included the following technical requirements and/or specific stipulations regarding violations in the original deed of easement. For legacy easement violations occurring prior to 2024, the policies stipulated will not be retroactively enforced. However, the following definitions of violations will be applied in the future.

Violations may fall into one of the following categories:

- a. *Technical Violation*. A procedural violation that has no impact upon or consequence to the preservation easement's purpose or the protected architectural features.
Some of the following technical violations may not be applicable to certain legacy easements. Based on the stipulations of the recorded easement, Preservation Easement Program staff will determine the applicability of the violation on a case-by-case basis.
Examples of "technical" violations:
 - i. Failure to provide notice of proposed sale;
 - ii. Failure to provide a certificate of insurance annually or when coverage is renewed, when required by the easement;
 - iii. Failure to maintain public access, if required; and
 - iv. Failure to insert the Easement, either verbatim or by express reference, in any subsequent deed or other legal instrument by which the property is transferred, including a lease of all or a portion of the property.
- b. *Minor Violation*. A violation that has negligible impact upon or consequence to the preservation and conservation easement's intent, purpose, and/or protected architectural features. Examples of "minor" violations may include:
 - i. Minor deferred maintenance that begins to compromise the integrity of architectural features;
 - ii. Unapproved alterations to protected architectural features that in the ISHS's discretionary review are consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*;
 - iii. Minor topographical and hardscape changes (e.g. sidewalk, installation of permanent raised flower beds);
 - iv. Minor tree cutting and trimming of protected trees;
 - v. Minor dumping (e.g. one or two piles, unobtrusive);
 - vi. Installation of small signs with limited impact to protected architectural features; and
 - vii. Unwillingness to schedule easement inspection, particularly with interior protections.
- c. *Moderate Violation*. A violation that has moderate impact upon or consequences to the preservation and conservation easement's intent, purpose, and/or protected architectural features. Examples of "moderate" violations may include:

- i. Substantial deferred maintenance that has been identified for several inspections and affects multiple protected features;
 - ii. Unapproved construction of an ancillary building;
 - iii. Alterations to protected architectural features that under the ISHS's discretionary review are not in accordance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*;
 - iv. Unapproved demolition of structures when such demolition is a permitted activity under an easement either with ISHS's discretionary approval or a reserved right with ISHS notification;
 - v. Larger topographical and hardscapes changes (e.g. driveway);
 - vi. Major tree cutting and trimming of protected trees (e.g. clearing of areas, removal of trees that significantly contribute to the setting of the property);
 - vii. Decreased visibility of the property from the right-of-way which impacts its public access, if required;
 - viii. Installation of larger signs that impact protected architectural features; and
 - d. **Major Violation.** A violation that has significant impact upon or consequences to the preservation and conservation easement's intent, purpose, and/or protected architectural features. Examples of "major" violation may include:
 - i. Prohibited activities including demolition or partial demolition (e.g. Main House), subdivision, and major dumping;
 - ii. Unapproved addition or alteration of principal structure; and
 - iii. Substantial deferred maintenance that has been identified for several inspections that has resulted in demolition by neglect of certain protected features at the property.
 - iv. Unapproved change of use of the property; subdivision of the property; boundary line adjustments; or execution of any easement for any purpose, including access easements, utility easements or overlay easements in favor of any private person or entity or any public utility.
4. **Determine the Corrective Action Plan.** Preservation Easement Program staff sends the Violation Report, along with supporting documentation, to the Preservation Easement Program Committee. The Preservation Easement Program Committee has the discretion to determine an appropriate approach to addressing the violation, which may start by seeking voluntary compliance from the property owner before defining the activity as a violation and/or issuing a formal notice of violation.
- a. **Retroactive Approvals.** Preservation Easement Program staff may choose to issue a retroactive approval for unapproved alterations or activities.
5. **Contact the Property Owner.** After documenting a violation to the easement agreement, Preservation Easement Program staff will send a Violation Letter and Violation Report attached to the Annual Monitoring Report to the property owner within thirty (30) days. The Report includes a detailed description of the violation and the Preservation Easement Program Committee's recommended course of action. The Letter serves as the official warning that the property owner is in violation of the terms of their easement. If possible, the letter and report will be sent to the property owner by a certified carrier. Staff will use the carrier's tracking service to confirm delivery. After the letter and report are mailed, a .pdf copy will be forwarded electronically to the property owner with a request for confirmation of receipt. Copies of all documentation, including shipping documents, tracking confirmation, and outgoing email, will be saved to the ISHS's electronic and hardcopy master file. The Violation Report and Letter will include a recommendation to resolve the violation. The exact recommendation made by the ISHS will vary depending on the circumstances. Multiple or repeated violations may escalate the proposed approach.
- a. ***Technical and Minor Violations.*** Property owners will have thirty (30) days to address technical and minor violations from the date of receipt of the Violation Letter.
 - b. ***Moderate Violations.*** Depending on the scale of the moderate violation, Preservation Easement Program staff will work with the property owner to identify a reasonable timeline to address the violation. If the violation has not been addressed within the agreed upon

- timeframe, Preservation Easement Program staff will consult with the ISHS's legal counsel to determine an appropriate course of action.
- c. *Major Violations.* Depending on the scale of the major violation, Preservation Easement Program staff will work with the property owner to identify a reasonable timeline to address the violation. If the violation has not been addressed within the agreed upon timeframe, Preservation Easement Program staff will consult with the ISHS's legal counsel to determine an appropriate course of action. If the Preservation Easement Program staff identifies a major violation that cannot be voluntarily corrected by the property owner (e.g. demolition), legal means may be the only method to address the violation. The exact recommendation made by the ISHS will vary depending on the circumstances.
6. Voluntary Remediation. If the property owner agrees to a corrective action, the ISHS will develop a follow-up letter reflecting the nature and extent of the restoration work or other follow-up actions and the agreed-upon timetable for completion. Preservation Easement Program staff may visit the property near the deadline date to document any restoration work.
 - a. When the project is completed, property owners send a Completed Corrective Action form along with photographic evidence that the project was completed according to the agreed upon terms. If Preservation Easement Program staff do not receive a Completed Corrective Action form or general update within the agreed upon timeframe, the Preservation Easement Program Manager will contact the property owner for an update on the project.
 - b. Once Preservation Easement Program staff receives the Completed Corrective Action form and determines that the project was completed according to the agreed-upon terms, a follow-up e-mail will be sent to the property owner (or via certified mail with return receipt requested) attesting to the satisfactory completion of the work or otherwise, as appropriate.
 7. Noncooperation. Preservation Easement Program staff will attempt to work with the property owner to voluntarily correct violations. If the property owner refuses to voluntarily restore the property or otherwise correct a violation within a reasonable time period for the scope of the violation, Preservation Easement Program staff will discuss the violation and determine an appropriate enforcement strategy with the ISHS's legal counsel.
 - a. The ISHS retains the right, itself or through agents or contractors, to restore, repair, or maintain the easement property. If the ISHS determines it is necessary that they take action to maintain the property, the property owner will be required to reimburse the ISHS for all sums reasonable, including inspection, maintenance, and attorney's fee. The amount of the debt shall be secured by lien upon the property and if the property owner fails to reimburse the ISHS in full promptly after request, then the ISHS may enforce the lien on the property in the manner in which mechanic's liens are then enforced in the State of Idaho.
 8. Litigation. As a course of last resort, the ISHS may use litigation or other legal means to address an easement violation. Enforcement through court action is expensive and time consuming and may produce an undesirable outcome. Litigation may cause irreparable damage to the relationship between the property owner and the ISHS. Nevertheless, court enforcement may be necessary to defend an easement, prevent or stop damaging activities, or obtain restoration of a property.

L. Amendments

The ISHS typically accepts preservation easements with the intent to hold them in perpetuity and enforce their terms and provisions as they are originally written. However, the ISHS recognizes that it may be necessary on rare occasions to modify the terms of its easements. When justified, Preservation Easement Program staff will process these modifications, known as amendments, in accordance with applicable laws. The following circumstances are examples of when the ISHS would permit the amendment of an easement:

- a. To correct an obvious error or oversight made at the time the easement was executed;
- b. To implement a prior agreement allowing modification of the restrictions at a future date under specified circumstances; or

- c. To provide for a minor modification of the easement where the modification is consistent and compatible with the intent and purpose of the original preservation easement, and where: (a) the amended agreement will have a net beneficial or neutral effect on the preservation goals of the original agreement and the protection of the easement property; or (b) the owner offers additional preservation measures on the same property sufficient to offset entirely any change of preservation values.

The ISHS will adhere to the following procedures when amending an easement:

1. Amendment Request. Amendments may be initiated by the property owner or the ISHS.
 - a. Amendment requests must be submitted in writing via postal mail or e-mail. The request should include a description of the change being requested, the reasons why it is warranted, a map of the property showing areas affected by the proposed amendment, and any other information that justifies the request.
 - b. Each request made by a property owner must be accompanied by a minimum fee of \$2,000 to cover anticipated costs in reviewing and executing the amendment request, regardless of whether the request is approved. The fee will cover legal expenses, staff time, and recording costs. If legal and preparation expenses exceed \$2,000, the ISHS will invoice the property owner for the remaining balance. If a revised baseline documentation report is required upon approval of the amendment request, an additional fee of \$1,500 will be charged. See Section D: Fees and Funds.
2. Initial Review. If a request is made by the property owner, the Preservation Easement Program Manager will review the request for sufficiency within one (1) week and may ask the property owner to provide additional information.
3. Preservation Easement Program Committee Review. Within thirty (30) days of receipt of the amendment request or additional information if required, the Preservation Easement Program staff will send the request and supplementary documentation to the Preservation Easement Program Committee, who will review the amendment request for consistency with the original preservation easement deed, the Preservation Easement Program Policies, and any related documentation. Preservation professionals, such as state and local partners, may be consulted at the ISHS's discretion. A site visit and meeting with the current property owner and/or original donor may also be conducted.
 - a. If an amendment requested by a property owner will increase the administrative burden on the ISHS for future monitoring and/or enforcement of the easement, the ISHS will advise the property owner of the amount of additional funding needed for the easement stewardship contribution. The amendment will not be recommended for approval until the property owner agrees to fund an increased stewardship contribution.
4. Board of Trustees Review. A written summary of the proposed amendment and the reasons why it is being requested will be presented to the Board of Trustees at their next quarterly meeting. The Board's approval will be granted or withheld using the following principles:
 - a. The amendment should be consistent with federal, state, and local laws and regulations governing:
 - i. the amendment of preservation and conservation easements; and
 - ii. charitable organizations.
 - b. The amendment will not jeopardize the ISHS's tax-exempt status or status as a charitable organization under federal or state law.
 - c. The amendment does not result in private inurement or confer impermissible private benefit.
 - d. The amendment is consistent with the documented intent of the donor, grantor, and any direct funding source.
 - e. The amendment will not impair the ISHS's ability to steward, defend, or enforce the easement.
 - f. No amendment shall result in the termination of the existing easement unless the terminated easement is immediately replaced by an amended or substituted easement

- consistent with this policy. No amendment shall alter the perpetual duration of an existing easement, if applicable.
- g. The amendment will not undermine the public's confidence in the ISHS to protect conservation values in perpetuity.
 - h. For easement donations that received a charitable contribution, no amendment shall be approved by the ISHS that is likely to result in the conservation easement failing to qualify as a valid conservation easement under the Internal Revenue Code.
5. Informing the Property Owner. Preservation Easement Program staff will communicate the Board's final determination to the property owner following the Board's quarterly meeting.
 6. Drafting the Amendment. The amendment will be drafted by Preservation Easement Program staff and will be reviewed by the ISHS's legal counsel as necessary. The amendment will be drafted in accordance with the criteria set forth in Section G: Closing Process, Subsection 1: Drafting the Deed of Easement.
 7. First Draft. The draft amendment is given to the owner(s) (and their attorney) for review. If necessary, the owner(s) provides the Preservation Easement Program Manager with comments and modifications on the draft amendment.
 8. Final Draft. The Preservation Easement Program Manager revises the draft amendment based on the comments provided by the property owner (and their attorney). The Preservation Easement Program Manager and property owner continue to negotiate the terms and language of the amendment until they have agreed upon a final draft. The ISHS's legal counsel is included in the negotiations as necessary.
 9. Internal Approval of Final Draft. After agreeing upon a final draft amendment with the property owner, the final draft amendment is reviewed by the ISHS's counsel at the Office of the Attorney General and grant funding organization (if applicable). The Preservation Easement Program Manager then sends a memo, outlining the proposed amendment and the reasoning for it, to the Executive Director with the final draft amendment. The memo requires concurrence by the Executive Director.
 - a. If at any point during the amendment process, the amendment is unable to meet any of the requirements of the Preservation Easement Program Policies, Preservation Easement Program staff will seek concurrence from the Board of Trustees to proceed with the easement amendment. Any exemptions from the Easement Policies approved by the Board of Trustees shall be noted in the concurrence memo to the Executive Director.
 10. External Approvals. Preservation Easement Program staff will also identify early in the amendment process as to whether consultation with a court, state agency, or other public official is required or desirable under the applicable state laws including the state's easement enabling act.
 11. Recording. Once the final amendment draft is approved by the owner (and owner's attorney), grant funding organization (if applicable), Office of the Attorney General, and Preservation Easement Program staff, the final draft is signed and notarized in counterpart by the owner(s) and ISHS Executive Director on behalf of the Board. The ISHS will promptly record preservation easement amendment documents at the appropriate records office.
 - a. The Preservation Easement Program staff archives the original amendment according to the recordkeeping policies established by the ISHS.
 10. Extinguishment. In the rare case that it is necessary to extinguish an easement in whole or in part, the ISHS will follow the terms of the easement with respect to taking appropriate action and obtaining judicial or regulatory review when required by law or specified in the easement.
 - a. In addition to the internal procedures outlined above for amendments, Preservation Easement Program staff shall consult with the ISHS's Board of Trustees to ensure the action will not have a negative impact on the ISHS's reputation and its impact on the preservation community at large.
 - b. The ISHS will ensure there is no private inurement or impermissible private benefit.
 - c. The ISHS will take steps to avoid or mitigate harm to conservation and preservation values. Any proceeds from the extinguishment will be used in a manner consistent with the easement.

M. Recordkeeping

The ISHS Preservation Easement Program maintains well-organized archival, paper, and digital records for each easement property. This ensures that authentic, reliable, and complete information and documentation relevant to the easement is properly managed and maintained in an effective and secure manner.

The ISHS creates and maintains files for each easement property. Each easement property will have off-site archival records, non-archival paper records, and digital records.

Records are primarily digital. Any paper records received or produced by the Preservation Easement Program are scanned and saved to a property's Easement File. All existing paper records were digitized in 2024 and filed in the appropriate folders.

1. Off-Site Archival Records. For all active and current easements, the ISHS will place all originals of all documents essential to the defense of each transaction, including original signed and recorded Deed of Easement, original signed Baseline Documentation Reports, and original copies of legal information at the Idaho State Archives. The paper records of expired easements will also be housed at the Idaho State Archives. The location of the archived files shall be protected from daily use and secure from fire, floods, and other damage.
 - a. A copy of the deed of easement will also be held and managed by the ISHS's Maintenance and Operations Supervisor.
2. Non-Archival Paper Records. Preservation Easement Program staff will retain non-archival paper records in filing cabinets at the Idaho State Historic Preservation Office (SHPO). These records include, but are not limited to, working copies of easements, baseline documentation reports, printed photographs, monitoring reports, paper correspondence, and other relevant documents.
 - a. *Easement Property File*. An easement property file will contain the following individual folders labeled: Alterations, Annual Confirmations, Baseline Documentation Reports, Docs of Historic Significance, Easements (Draft and Final) and Amendments, Preservation Easement Program Application, General Correspondence, General Reports and Documents, Legal, Maps and Surveys, Monitoring, and Violations.
 - i. Sensitive material pertaining to the retention of IRS-related documents, Social Security information, Easement Appraisals, or personal Financial Records will be managed appropriately. The original copy will be housed at the Idaho State Archives, and a copy of the material with sensitive information redacted shall be kept in the Easement Property File.
 - b. *Organizational Records*. Organizational records assist with preservation of institutional memory and provide comprehensive documentation of the Preservation Easement Program since its inception. Original letters, program materials, agendas, minutes, and memoranda compiled over the years are extremely valuable and illustrate the purpose and mission of the program. These documents provide a unique testimony to the history of the Preservation Easement Program while supporting legal, fiscal, and administrative purposes. The following organizational records shall be retained:
 - i. Preservation Easement Program Committee Records:
 1. Lists of current and past Committee members
 2. Meeting notices
 3. Meeting agendas and minutes
 - ii. Policies and Procedures
 1. Copies of each Preservation Easement Program Policy with revisions
 2. Copies of internal Preservation Easement Program Procedures documents
3. Digital Records. Digital records saved on the Preservation Easement Program Drive are for daily use and reference. All digital records on the Preservation Easement Program Drive are automatically backed-up at least once a day to an offsite server.

- a. *Preservation Easement Program Drive*. Located within the SHPO Shared Drive, the Preservation Easement Program Drive contains folders titled Easement Portfolio, Policies and Procedures, Organizational Records, and Miscellaneous.
 - i. The Easement Portfolio folder contains all the digital records pertaining to easement properties, which will be organized by specific property's Easement File.
 - ii. The Policies and Procedures folder contains all documents relating to the management and day-to-day operations of the Preservation Easement Program. This includes Preservation Easement Program Policies, Standard Operating Procedures, public-facing guidelines and FAQs, and forms and templates to be used by property owners and Preservation Easement Program staff.
 - iii. The Organizational Records folder contains documents, such as program materials, agendas, minutes, and memoranda.
 - iv. The Miscellaneous folder contains an assortment of digital records, such as previous research conducted on Preservation Easement Programs, model easements, and literature from the National Park Service or National Trust for Historic Preservation.
 - b. *Digital Records Access*. Only the Preservation Easement Program staff shall have access to the electronic Preservation Easement Program Drive.
4. Records Retention and Destruction. All recordkeeping by the Preservation Easement Program will be in accordance with the ISHS's General Records Retention Schedule.

N. Applicability

If in any scenario the Preservation Easement Program is unable to substantively meet any requirement of the Preservation Easement Program Policies, Preservation Easement Program staff will seek a waiver from the Board of Trustees. If the requested waiver poses significant reputational or organizational risk, the Board of Trustees reserves the right to deny the waiver.

The Preservation Easement Program Policies are subject to review and edit by approval of the Board of Trustees.

The Preservation Easement Program Policies is for the internal management of the ISHS's Preservation Easement Program. No third party is entitled to rely on these policies for the administration and enforcement of the ISHS's easement properties.