

**Required Language for Easements with
Nonprofit Grantees & Nonprofit or Private Grantors**

Purpose and Disclaimer:

The National Park Service’s American Battlefield Protection Program (NPS ABPP) requires the inclusion of the below easement terms for lands protected with federal financial assistance under the Battlefield Land Acquisition Grant program, for project structures when a nonprofit is the easement holder, or “Grantee”, and a nonprofit or private entity/individual is the landowner, or “Grantor”. The exact language of these mandatory terms must be included and may not be altered without the NPS ABPP’s prior approval.

In addition to this language, easements for project structures with a nonprofit or private Grantor and a nonprofit Grantee must also include the required terms found in the NPS ABPP “Standard Easement Requirement Checklist” document, per statutory and grant agreement requirements. For examples of these terms, please reference the NPS ABPP “Easement Template” document.

Note: This project structure should only be taken when a SHPO, state agency, or local government cannot or will not acquire and retain a fee-simple or less-than-fee interest in the Property. NPS ABPP will determine when a proposed project structure involving private or nonprofit Grantors granting easements to nonprofit Grantees satisfies statutory and program requirements. NPS ABPP will also determine if the proposed nonprofit easement holder meets the required qualifications as described in the NPS ABPP “Nonprofit Easement Holder Qualifications” document.

R-2 Grantee is a qualified non-profit 501(c)(3) organization authorized under the [State Conservation Easement Enabling Legislation] to receive properties and easements in gross or other interests in properties for the purpose of, among other things, the protection of the Conservation and Preservation Values, and has the resources to monitor and enforce the restrictions in this Easement.

R-4 The State of [State Name] has a public interest in ensuring that the Property be protected for battlefield preservation purposes in perpetuity. Additionally, the [State Name] State Historic Preservation Office’s (the “**SHPO**”) involvement and oversight of activities proposed at or conducted on the site is critical to protecting and preserving the interest of the State of [State Name].

R-8 Grantor acquired the [Property or Easement], in part, with grant funds awarded through the Battlefield Acquisition Grant Program, 54 U.S.C. §308103.

R-9 Under the Battlefield Acquisition Grant Program and Section 6(f)(3) of the Land and Water Conservation Fund Act, lands and interests in land acquired with Land and Water Conservation Fund assistance from the National Park Service’s American Battlefield Protection Program (the “**NPS ABPP**”) can be converted to a use other than battlefield preservation and protection only upon the written permission of the Secretary of the Interior (the “**Secretary**”), acting through NPS ABPP, and only upon the substitution of other land of equal market value and usefulness for battlefield preservation and protection.

BASELINE DOCUMENTATION REPORT: The Baseline Documentation Report, (the “**BDR**”) contains, among other items, (i) a written report describing the Property (including all Existing Resources), and (ii) aerial, topographic, and photo-point maps, a site plan, and photographs. Grantor hereby acknowledges that it has received a copy and accepts the findings of the BDR. The BDR is hereby incorporated by reference into this Easement and may be used in determining compliance with and enforcing the terms of this Easement.

[Please note that the BDR is a requirement of all project structures, but is included here specifically so that this exact language is included when a nonprofit is the Grantee, and a nonprofit or private entity/individual Grantor.]

PRESERVATION PLAN: A Preservation Plan for the Property shall be prepared and adhered to within [#] months of the date of this Easement, and must be reviewed and approved in writing by the SHPO. The Preservation Plan will provide a comprehensive management strategy for the Property in order to protect the Conservation and Preservation Values defined herein and in the accompanying BDR. The Preservation Plan will establish goals, objectives, and timelines for maintenance and preservation treatment activities, including but not limited to rehabilitation, restoration, demolition, removal, and reconstruction activities for features that may be in poor condition. The Preservation Plan must adhere to the *Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation*. In addition, the Preservation Plan will be consistent with the [State document] *[if applicable]*. Deviations from the Preservation Plan shall be allowed only with the prior written permission of the SHPO.

[OR in cases where the SHPO requests concurrent review and approval of draft easement and Preservation Plan]

The Preservation Plan recorded with this Deed has been reviewed and approved in writing by the SHPO on [Date] and adheres to the *Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation*. The Preservation Plan provides a comprehensive management strategy for the Property in order to protect the Conservation and Preservation Values defined herein and in the accompanying BDR. The Preservation Plan establishes goals, objectives, and timelines for maintenance and preservation treatment activities, including but not limited to rehabilitation, restoration, demolition, removal, and reconstruction activities for features that may be in poor condition. In addition, the Preservation Plan will be consistent with [State document] *[if applicable]*. Deviations from the Preservation Plan shall be allowed only with the prior written permission of the SHPO.

GENERAL AND RESIDENTIAL ACTIVITIES: There shall be no residential, commercial, or industrial uses or activities on the Property, except for the activities permitted herein and in conformance with the Preservation Plan. Permitted activities shall be limited to those related to the preservation, maintenance, exhibition, and interpretation of the Property that do not compromise the Property's Conservation and Preservation Values, and those in the accompanying BDR. The Grantor may reserve the right to reside on the Property, to house a caretaker, or to lease the Property to tenant(s), provided that the proposed residential activities sustain the Conservation and Preservation Values identified herein and are in conformance with the approved Preservation Plan.

[if applicable] Existing Agriculture. Agricultural, timber harvesting, or horticulture at a greater scale and intensity than existing resources may only be permitted if specified in the Preservation Plan approved by the SHPO.

GROUND DISTURBING ACTIVITIES: There shall be no Ground Disturbing Activities, without prior written approval of the Grantee and the SHPO. Ground Disturbing Activities include but are not limited to any and all grading, topographic changes, blasting, and earth removal, other than routine ground keeping and planting.

PERMITTED NEW IMPROVEMENTS: No new building, structure or amenity shall be built or maintained on the Property after the Effective Date, other than those identified in the approved Preservation Plan. The location, size, and design of any new structure or amenity must be in accordance with the Preservation Plan, and receive the prior written approval of the Grantee and the SHPO.

WORK ON EXISTING RESOURCES AND DEMOLITION: Any work involving the construction, alteration, rehabilitation, restoration, renovation, replacement, extension, demolition, or removal, in whole or part, of Existing Resources as documented in the Baseline Documentation Report must be in accordance with the Preservation Plan, and receive the prior written approval of the Grantee and the SHPO. Any demolition of Existing Resources must be in accordance with a Demolition Plan that is approved by the SHPO. Prior to the demolition of any building or structure on the Property, the Grantor will consult with Grantee and the SHPO to evaluate its eligibility for the National Register of Historic Places (36 C.F.R. 60.4).

TREES AND VEGETATION MANAGEMENT: Trees and vegetation on the Property shall be managed in accordance with established arboreal and horticultural practices and in a manner that will prevent damage to Existing Resources and Permitted New Improvements consistent with the Conservation and Preservation Values, and the Preservation Plan. The following activities are permitted without the prior written approval of Grantee: (a) non-commercial, *de minimis* harvest of trees for trail clearing, firewood, or Grantor's personal use; (b) removal of individual dead, diseased, or dying trees or invasive species; and (c) removal of trees that pose an imminent hazard (i) to human health or safety or (ii) to buildings, structures, facilities, amenities, livestock, or other domesticated animals maintained on the Property.

UTILITIES: The Grantor shall not place upon the Property any electrical, telephone, water or sewer or other utilities or utility easements without the prior written consent of the Grantee and

the SHPO. Utilities or utility easements that do not serve the Property, including utilities from an adjacent or separate property that pass through the Property, are strictly prohibited. If the Grantor receives notification from any utility company, governmental agency, or other entity of proposed utilities or utility easements to be placed upon the Property it shall notify the Grantee and the SHPO as soon as practicable to do so.

RIGHT TO CONDUCT ARCHEOLOGICAL SURVEY AND INVESTIGATION: For the purposes of this Easement, all pedestrian, shovel testing and test unit excavation, and remote sensing survey techniques to identify, protect, preserve, and document all archeologically significant deposits, sites, features, and artifacts in areas of proposed Ground Disturbing Activities are defined as “**Archeological Survey and Investigation**”. Archeological Survey and Investigation on the Property are permitted, provided, that (i) archeologically significant deposits, sites, features, or artifacts present on the Property shall not be intentionally disturbed, demolished or excavated or otherwise defaced or altered except by or under the supervision of a professionally qualified archeologist meeting or exceeding the *Secretary's Standards*, with training or experience that is acceptable to the Grantee and the SHPO; (ii) a scope of work shall be completed and approved by the Grantee and the SHPO prior to any said survey or excavations; (iii) during any such survey or excavations the Grantor shall allow in attendance on the Property at all times a designee of the Grantee; (iv) any such research or excavation shall be done only during daylight hours; and (v) the topography and all visible surface features of the Property disturbed by any such research or excavation shall be restored to its prior condition and appearance once such research or excavation is complete. Any such field investigations, explorations, or recovery operations conducted pursuant to such approval shall be carried out in consultation with the Grantee and the SHPO and in accordance with the *Secretary's Standards* and in a manner to ensure that the appropriate amount of historic, scientific, archeological, and educational information be recovered and preserved in addition to the physical recovery of objects.

TREATMENT OF ARCHEOLOGICAL RESOURCES: The Grantor shall take all reasonable precautions to ensure that all archeological resources, features, deposits, and artifacts, whether known or unknown from the Effective Date of this Easement, are protected from vandalism, erosion, mutilation, or destruction from any cause. Grantor shall notify the Grantee and the SHPO of any known instances of vandalism or theft of archeological resources on the property as soon as is practicable to do so, but no later than 30 days after the event.

TREATMENT OF ARTIFACTS: Artifacts, both prehistoric and historic, recovered from Archeological Survey and Investigation of the Property shall remain the personal property of the Grantor, unless otherwise provided by law. The Grantor is permitted to sell or donate archeological collections recovered from the Property to licensed archeological repositories or accredited collections management organizations. If the Grantor chooses to transfer ownership of artifacts to a repository, the Grantor must provide written notice of the donation or sale to the Grantee and the SHPO. This notice must provide the name of the facility, its qualifications, the location where the artifacts will be stored, treated, or managed, and confirmation that the organization adheres to all appropriate state guidelines on archeological artifact treatment and the *Secretary's Standards*.

TREATMENT OF HUMAN REMAINS: The Grantor is responsible for the protection of all human remains discovered on the Property from vandalism, mutilation, and destruction by any cause. If human remains are discovered on the Property during approved Archeological Survey and Investigation or during any other Ground Disturbing Activity, then Grantor shall immediately cease all activities at the specific location(s) where human remains and/or inadvertent discoveries have been found and notify the Grantee, the SHPO, and the [*Federally Recognized Indian Tribe, if applicable*] within [#] of hours. The Grantor shall comply with all laws and guidelines applicable to the discovery and treatment of human remains, including without limitation, notifying local law enforcement and obtaining any necessary permits or authorizations for treatment of human remains. Grantor shall be responsible for all costs and expenses associated with the treatment and/or removal of human remains discovered on the Property.