



STATE OF MICHIGAN

JENNIFER GRANHOLM
GOVERNOR

DEPARTMENT OF HISTORY, ARTS AND LIBRARIES
LANSING

MARK HOFFMAN
ACTING DIRECTOR

April 2009

STATE TAX CREDIT PROGRAM: INFORMATION SHEET NO. 6

Historic Preservation Easement Eligibility Criteria

As provided in Public Acts 447 and 448 of 2008 (MCL 206.266 and MCL 208.1435) for the State of Michigan historic preservation income tax incentive, a resource is eligible for the tax incentive program if that resource is subject to a historic preservation easement.

According to a definition provided by the National Park Service, Technical Services Division:

A preservation easement is a voluntary legal agreement that protects a significant historic, archaeological, or cultural resource. An easement provides assurance to the owner of a historic or cultural property that the property's intrinsic values will be preserved through subsequent ownership. In addition, the owner may obtain substantial tax benefits. Under the terms of an easement, a property owner grants a portion of, or interest in, her property rights to an organization whose mission includes historic preservation. Once recorded, an easement becomes part of the property's chain of title and usually "runs with the land" in perpetuity, thus binding not only the owner who grants the easement but all future owners as well.

A preservation easement, therefore, can serve the role of protecting a historic resource, while providing a financial incentive under the state tax incentive program. The following criteria will be used to define the conditions that are essential to an easement that will provide access to the tax incentive program.

- The preservation easement must be in perpetuity. Any easement that is established for a defined period of years, or that has any other provision that in any way limits the period of time in which the easement is in effect will not meet the criteria for this program.
- The preservation easement must ensure that all work undertaken on the resource conforms with the *Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* and is reviewed by the easement holder. The easement must protect the entire resource, and must not be restricted to specific areas or elements of the resource.
- An eligible historic resource is one that is listed in the National Register of Historic Places, either individually or as contributing to a district, or has been determined eligible for listing in the National Register of Historic Places by the Michigan State Historic

Preservation Office (SHPO). The easement must be executed before a Part 3 – Certification of Completed Work will be issued by the SHPO. A copy of the recorded easement must be submitted to the SHPO.

- The preservation easement must be donated to a qualified organization. A qualified organization is one whose mission is the preservation, protection, maintenance, and rehabilitation of historic resources. The organization is typically a governmental or non-profit organization that has the capacity and resources to fulfill the obligations outlined in the easement document. The qualified organization must be recognized by the IRS, approved by the SHPO, and shall be capable of performing the following functions related to the holding of the easement:
 - 1) Monitor the easement annually.
 - 2) Review of all proposed work on the resource according to the *Secretary of the Interior's Standards for Rehabilitation* by a professional who meets or exceeds the professional requirements for "Historic Architecture" as stated in 36CFR Part 61. The minimum professional qualifications for a Historical Architect are a professional degree in architecture or a state license to practice architecture, plus one of the following: (1) at least one year of graduate study in architectural preservation; or (2) at least one year of full-time professional experience on preservation projects.
 - 3) Ability to perform site visits.
 - 4) Agree to share information related to the easement and monitoring with the SHPO as it relates to a tax credit project.
 - 5) Have the knowledge and expertise necessary to monitor maintenance and request repairs to the historic resource to prevent any adverse impacts to its historic integrity.
 - 6) Have access to sufficient financial resources to defend the easement should a legal challenge arise.

The SHPO does not have expertise in the valuation of easements, tax issues, appraisal concerns, etc. and therefore cannot provide comment or advise on such issues. The applicant should consult with the appropriate professional for questions relating to these issues.

Except in special circumstances, the SHPO will not become an easement holder.