

NPS American Battlefield Protection Program | Battlefield Land Acquisition Grant
Standard Easement Requirements

I – Statutorily Required Provisions

Authorization: Inclusion of the ABPP’s legal authorization (54 U.S.C. 308103, the Battlefield Acquisition Grant Program) to award the grant, and acknowledgement of the grant.

Conversion: Acknowledgement of the LWCF Act’s Section 6(f)(3) prohibition of conversion, and the process should a conversion be proposed (written approval of the Secretary acting through the NPS ABPP in accordance with the requirements of Section 6(f)(3)).

Historic Significance: Statement of the historic significance of the property as it relates to the historic war (Revolutionary War, War of 1812, Civil War) including the report that identified the battlefield and providing its name and number, its priority number, and its rating.

Conservation and Preservation Values: Statement of the Conservation and Preservation Values advanced by the Easement including the preservation of the battlefield for curation, interpretation, public benefit, and any additional natural features or resources.

Perpetuity: A perpetual duration of the Easement terms.

Non-profit Language: *[If applicable]* Required language enumerating the State’s interest in the Easement and providing for SHPO review of certain activities. *(Please see the “Required Language for Easements with Nonprofit Grantees & Nonprofit or Private Grantors” document)*

II – Grant Agreement Required Provisions

Baseline Documentation Report (BDR): Report on the current condition of the property and resources known at the effective date of the Easement incorporated by reference into the Easement and recorded with the Easement.

Subdivision: Prohibition or limitation on subdivision of the property.

Permitted Activities: [General & Residential Activities] Statements limiting permitted activities to those existing at the effective date, and those related to the preservation, maintenance, exhibition, and interpretation of the Property that do not compromise the Property’s Conservation and Preservation Values, and in the accompanying BDR. If timbering is a permitted activity, a SHPO-approved Forestry Plan is required (if not a nonprofit to nonprofit project structure).

Ground Disturbance: Limitations on ground disturbing activities affecting the topography (e.g., grading, topographic changes, blasting, and earth removal, other than routine ground keeping and planting). Inclusion of guidance on unplanned or emergency ground disturbing activities.

Construction: [Permitted New Improvements] Restrictions on new construction such as any new building, structure, or amenity.

Demolition: Statement that prior to the demolition of any building or structure on the Property the Grantor will consult with the Grantee and the SHPO to evaluate its eligibility for the National Register of Historic Places, receive approval from the Grantee, and approval of a Demolition Plan from the SHPO.

Utilities: Provision requiring the SHPO and the Grantee's consent prior to placing any utility or utility easement on the property, and the Grantor to promptly notify the Grantee and SHPO when a utility or utility easement is proposed on the property.

Public Access: Allowance of public access to the property. At a minimum, the property must be visible from a public right-of-way.

Sign: Statement that the Grantor will provide notice on a sign that the property is being preserved with Federal funds from the American Battlefield Protection Program, administered by the National Park Service and briefly identify the property's historical significance.

Archeology: Statements guiding archeological survey and excavation on the property, future curation of recovered artifacts and archeological resources, and discovery of human remains.

Inspection, Approval, & Enforcement: Establishment of monitoring or inspection guidelines so that the Grantee can ensure the Grantor is following agreed-upon restrictions and activities. Establishment of a review process for the Grantee's approval of required activities. Establishment of guidelines for the Grantee, should enforcement be necessary.

Standard of Review: Statements that all applicable activities will adhere to the Secretary of the Interior's Standards.

Conveyance of Interest in Real Property: Inclusion of requirement to notify NPS ABPP in writing within no less than ninety (90) calendar days prior to any transfer of fee-simple title of the Property.

Amendment: Inclusion of provisions allowing for amendment of the Easement, with consent of the Grantee and SHPO, that:

- Does not interfere with its perpetual duration
- Is not contrary to or inconsistent with its Conservation and Preservation Values
- Ensures proper recordation of the amendment

Assignment: Limitations on transfer or assignment of the Easement only on notification of and approval by NPS ABPP stating that the assignee fulfills the Grantee requirements, consultation with the Grantor and SHPO, and assurance that the terms of the Easement will continue in perpetuity.

III – NPS ABPP Suggested Provisions (Best Practice)

Mining, Excavating, and Drilling: Provision ensuring that no mining, excavating, dredging, or removing from the Property of soil loam peat, gravel, sand, rock or other mineral resource or natural deposit. There shall be no drilling for oil, gas, or any other natural deposits on the Property.

Subordination: Statement warranting that any prior mortgage or lien is subordinated in interest to this Easement. If there is a prior mortgage or lien, the Grantor must secure a subordination agreement from the creditor to be referenced in the Easement along with the signature of the Creditor or its representative and record such an agreement with the deed of ownership.

Merger: Provision stipulating that if the Easement property is later held in fee simple by the Grantee that the Easement will not merge with the fee estate and will instead continue to encumber the property.

Defenses: Provision ensuring that the Grantor abandons the equitable defenses of laches, waiver, estoppel.