

Richmond Land Trust, Inc. Policies for Amending Conservation Easements

The Board of Trustees of the Richmond Land Trust, Inc. (RLT) will consider requests to amend conservation easements that:

- Satisfy an expressed landowner need, and
- Have a better or at least neutral effect on the resources conserved, and
- Improve ease of implementation and administration for stewardship staff and the landowner.

The Board or its appointees must also reconcile any conflicting values or multiple goals of the conservation easement. To do this, all the facts and circumstances must be carefully examined, including the principles and considerations listed below. Any other considerations relevant in individual circumstances must be examined, too.

Principles and Considerations

The following principles and considerations, and any additional ones, will be weighed as appropriate to each individual circumstance, recognizing that no conservation easement has only one goal. With multiple goals there will be tensions. Amendments can redefine the balance among multiple goals over time or to reflect changes in policy.

- a) The proposed amendment is consistent with the overall purposes of the conservation easement;
- b) The proposed amendment will enhance the resource values conserved or have a neutral effect;
- c) There are no feasible alternatives available to achieve a similar purpose;
- d) Denial will cause undue hardship over which the landowner had no control;
- e) There are no issues regarding private benefit (see below) or any issues can be adequately addressed;
- f) The proposed amendment is consistent with any other written expressions of the original Grantor's intent;
- g) All conservation easement co-holders approve of the amendment;
- h) The likelihood of land ownership by those working the land is increased or the economic sustainability of the agricultural or forestry operation on the land is increased;
- i) The proposed amendment is consistent with at least one of the below circumstances.

Circumstances of the Requested Amendment

RLT's steward for the affected property or a member of the Board of Trustees will recommend that the Board approve an amendment to a conservation easement in the following circumstances:

- a) *To Complete a Prior Agreement:* In a few cases, a conservation easement will have included a specific provision or an unrecorded agreement or letter allowing modification of the restrictions at a future date under specified circumstances. Such agreements must be set forth in the conservation restriction document or in a separate document signed by all parties including RLT at the time or prior to when the conservation easement was executed. The amendment must be consistent with the terms and conservation intent of the original agreement.
- b) *To Upgrade Standard Language and Format:* The standard language and format of conservation easements are periodically revised to reflect new standard clauses, statutory changes, changes in policy, or to improve enforcement and administration, or enhance the protection of the conservation values of the protected property, or consolidate the legal documents in order to simplify the protection regime. Amendments for any of these purposes will be recommended so long as the changes are consistent with the intent and objectives of the original conservation easement.

- c) *To Correct an Error or Ambiguity*: An amendment may be recommended to correct an obvious error or oversight that was made at the time the conservation easement was entered into. This may include correction of a legal description, inclusion of language that was unintentionally omitted, or clarification of an ambiguity in the easement in order to avoid litigation over the interpretation of the document in the future, or to cooperate in a boundary adjustment based on a survey or in an exchange of land if the resource values of the land to be received are at least equivalent to the land exchanged.
- d) *To Settle Condemnation Proceedings*: RLT may recommend a settlement agreement with the condemning authority where it appears that the land to be taken has little or no resource value, is not central to the purpose of the conservation easement and where condemnation power would be properly exercised for a recognized public purpose. If the condemnation proposed is significant, affects valuable resources and is central to the conservation easement, and there is no other better alternative site for the proposed facility, RLT may still recommend a settlement agreement with the condemning authority if the public health, welfare and safety significantly outweighs the conservation resource values, but will do so only with great caution. In reaching such an agreement, the intent of the original conservation easement must be preserved to the greatest possible extent.
- e) *To Conserve More Resources*: RLT welcomes amendments to add additional land to a conservation easement. RLT also welcomes the return of reserved rights by landowners.
- f) *To Reconfigure Conservation Easements*: Modifications or additions of reserved rights in exchange for additional land conservation may be recommended provided that the above principles and other considerations are substantially met. We will not accept agricultural options or cash as the primary value equivalent exchange for adding reserved rights. Adding farm labor housing may be an exception where we would possibly accept an agricultural option on the farm land or the whole farm. In those circumstances, we would also seek to limit the size and value of the additional housing unit by imposing size limits and value per square foot limits to the agricultural option. We might also accept them to close a value gap between the additional land conserved and the right released.
- g) *To Add Amendments Consistent with Conservation Purposes*: Other amendments of a conservation easement may be recommended where the modification is consistent with the goals of the original conservation project, there is no or only incidental private benefit, the amendment is substantially equivalent to or enhances the resource values protected by the conservation easement and any additional burden on the Stewardship staff is outweighed by the increased conservation value. Requests made under this section will be reviewed carefully.

Private Benefit Test

Conferring benefit (from a legal perspective) upon private parties without those private parties reciprocating with an equivalently valued public benefit to the RLT could threaten our tax-exempt status as an organization that is federally recognized as “operated exclusively” for charitable purposes. Treasury regulations set forth the “private benefit test” and reflect the legal requirement that RLT be “primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3)” – that it be operated exclusively for charitable purposes and not confer benefit on private parties. Private benefit issues must be resolved before an amendment can be approved.

Conflict of Interest

Any conflicts of interest or potential conflicts must be resolved before an amendment can be approved. The conflicts of interest procedures must be followed.

Requesting an Amendment

Any landowner seeking an amendment shall write or call his or her RLT steward or any member of the Board of Trustees, stating the change being sought and the specific reasons for it.

Cost Reimbursement

RLT may request the landowner to pay all legal, surveying, appraisal and other costs pertaining to the change. The RLT Board of Trustees may waive some or all costs for the following reasons: hardship, contributing errors by RLT, costs covered through a separate project or other grant especially if additional land is conserved. The amendment Baseline Documentation Report (BDR) will state our rationale and principles served by allowing the amendment.

All current project BDRs will recite the reasons for all exclusions due to future audit sensitivities and to provide documentation for future amendments.

Stewardship Endowment

RLT may request the landowner to pay an additional stewardship endowment sufficient to generate income to cover stewardship costs likely to be incurred under the new provisions. The Board of Trustees may elect to apply for grant funds to cover the endowment if the amendment is to conserve additional land.

As approved by the RLT Board of Trustees, February, 2011