

Policy 11.4 Conservation Easement Amendments

PURPOSE:

This policy establishes requirements for amending conservation easements.

POLICY:

Landowners and the community must be confident that the Whidbey Camano Land Trust ("Land Trust") will fulfill its obligations to monitor and enforce the terms and conditions of conservation easements (or "easement") in perpetuity. Amendments to conservation easements have the potential to erode this confidence, jeopardize the Land Trust's tax-exempt status and create problems for easement donors who claimed income tax deductions based on the value of the original easement.

Therefore, it is the policy of the Land Trust to hold and enforce its conservation easements as written, except in the limited circumstances set forth in this policy.

1. **Required Conditions** - Any request for an amendment will be reviewed in accordance with *Procedure 11.4.A Procedure for Amending a Conservation Easement* and may be granted only when the Land Trust has determined that the proposed amendment meets all of the following conditions:
 - a) Continues to serve the public interest and is consistent with the Land Trust's mission.
 - b) Is consistent with the original intent and purpose of the easement.
 - c) Is consistent with the documented intent of the donor, grantor and any direct funding sources.
 - d) Complies with all applicable federal, state and local laws.
 - e) Strengthens the conservation values that are protected or has a neutral effect.
 - f) Provides neither a "private benefit" nor any "private inurement" as those terms are defined by the Internal Revenue Service and Land Trust *Policies 4.1* and *4.2*.
 - g) Will not affect the qualification of the easement or the status of the Land Trust under any applicable federal or state laws, including without limitation, State of Washington RCW 64.04.130 and Chapter 84.34 RCW or Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provisions then applicable).
 - h) Will not adversely affect the Land Trust's monitoring or stewardship obligations.
 - i) There is no reasonable or feasible alternative to accomplish the purpose of the amendment.
 - j) It is the minimum change necessary to achieve the purpose of the amendment.

2. Permitted Types of Amendments – The Land Trust will consider amendments to its conservation easements in the following circumstances:

- a) Correction of Errors or Ambiguities, such as correcting a legal description, including standard easement language that was unintentionally omitted, or clarifying an ambiguity to avoid future litigation related to interpretation of the document.
- b) Settlement of Condemnation Proceedings, for example when conservation easements are subject to condemnation for public purposes such as highways or schools and the conditions described in *Policy 11.5 Condemnation Actions* have been met.
- c) Part of a Remedy or Resolution of a Violation consistent with *Policy 11.3 Enforcement of Conservation Easements*.
- d) Consistent with Conservation Purpose and Enhance Conservation Values, for example adding acreage, adding restrictions or removing reserved rights.

3. Payments –

- a) If an amendment requested by a landowner will increase the administrative burden on Land Trust for future monitoring of compliance and/or enforcement of the conservation easement, the landowner will also be responsible for providing additional funds to the Conservation Stewardship Fund, determined on a case-by-case basis according to *Procedure 11.4.A for Amending a Conservation Easement*.
- b) If an amendment is requested by a landowner, the landowner is responsible for costs according to *Procedure 11.4.A for Amending a Conservation Easement*.
- c) If the amendment is required as part of the resolution of a violation or if the Land Trust initiates the amendment, then the Land Trust and the landowner will negotiate how the costs will be assigned, according to *Procedure 11.4.A for Amending a Conservation Easement*.

Relevant Documents:

Procedure 11.4.A for Amending a Conservation Easement

Policy 4.1 Conflicts of Interest Policy

Policy 4.2 Insider Compensation Policy

Policy 11.3 Enforcement of Conservation Easements

Policy 11.5 Conservation Easement Condemnation Policy

Approved: February 1, 2010

President, Board of Directors