

Procedure 11.4.A for Amending a Conservation Easement

PROCEDURE

1. Landowner Requests an Amendment

- a) The Whidbey Camano Land Trust (“Land Trust”) will provide a landowner with a written copy of the amendment policy and procedures.
- b) The landowner will then file a written request with the Land Trust. The request, at a minimum, will contain all of the following:
 - 1) Name of applicant;
 - 2) Date of request;
 - 3) Proposed wording of the amendment, showing specific proposed language;
 - 4) A concise statement of the purpose and reasons for the request;
 - 5) A description of how the proposed amendment is likely to affect the conservation values of the property (e.g., either positively or negatively);
 - 6) If appropriate, a description of how the amendment is likely to affect other nearby conservation easement properties;
 - 7) A map showing proposed changes, if any, to the location and extent of the protected area(s);
 - 8) Payment of \$1,000 to cover initial staff and professional consultant costs associated with reviewing the request. Any unexpended portion of the initial \$1,000 fee will be refunded to the applicant.
- c) The staff and Stewardship Committee will discuss the request, formulate findings and make a recommendation to the Board of Directors (“Board”) that includes the cost estimate listed in item 1.d) 6) below. If appropriate, the Land Trust may negotiate with the landowner regarding the terms and conditions of the proposed amendment.
- d) The Land Trust staff and Stewardship Committee’s review of the request will include the following:
 - 1) Consideration of each of the Required Conditions of *Policy 11.4 Conservation Easement Amendments*;
 - 2) At least one site visit to assess the need for and impact of the proposed amendment;
 - 3) Contacting organizations or agencies from which approval may be required, such as co-holders of the conservation easement, granting agencies that provided funds for acquisition of the easement, or an organization that assigned its interest in the relevant easement to the Land Trust;

- 4) If appropriate, consultation with relevant qualified professionals, such as wildlife biologists, attorneys, engineers and/or surveyors;
 - 5) A review of donor restrictions related to the easement acquisition;
 - 6) Determination of the costs associated with completing the amendment, including staff time, legal advice, additional professional consultations, updated baseline and, if appropriate, additional funds that should be added to the Stewardship Fund to offset increased obligations associated with the monitoring and stewardship of the amended conservation easement;
 - 7) Review of the property's title status regarding further title insurance and subordination of lenders to assure that the amended conservation easement is covered by any policy and that lenders will be subject to the amendment;
 - 8) Confirm that there is no conflict of interest or potential conflict of interest for any involved parties (see Land Trust *Policy 4.1 Conflicts of Interest* and *Policy 4.2 Insider Compensation*);
 - 9) Determine that the proposed amendment will not set an undesirable precedent or undermine the public's confidence in the Land Trust to protect conservation values in perpetuity.
- e) Final Review, Decision and Completion:
- 1) The Board will discuss the Stewardship Committee's report and recommendations. It will then approve, approve with modification, or reject the request for the amendment at its next regularly scheduled meeting or at a special meeting convened for that purpose;
 - 2) Following the Board's action, Land Trust staff will notify all interested parties in writing of the Board's decision;
 - 3) If the landowner agrees to proceed, the Land Trust negotiates to share costs, depending on the specific circumstances of the case. The landowner must pay his/her share of the negotiated costs before the Land Trust proceeds. The Land Trust will return any unused portion of that payment to the landowner;
 - 4) If appropriate, the baseline documentation will be updated or supplemented;
 - 5) The Land Trust will recommend that the landowner obtain his or her own legal counsel. Land Trust legal counsel will review and approve the amendment language. During this process, staff and legal counsel may decide whether a restated and amended conservation easement is preferable to a separate amendment agreement;
 - 6) The final amendment will be signed by all necessary parties and recorded in the official records of Island County, Washington and any other jurisdiction in which such recording is required.
- f) The Land Trust will respond to the landowner's request within 120 days of receipt of a completed written request.

2. Land Trust Initiates the Amendment Request

- a) Staff will submit a request in writing to the Stewardship Committee. The request, at a minimum, will contain all of the following:

- 1) Name of conservation easement and landowner;
 - 2) Date of request;
 - 3) Proposed wording of the amendment, showing specific proposed language;
 - 4) A concise statement of the purpose and reasons for the request;
 - 5) A description of how the proposed amendment is likely to affect the conservation values of the property (e.g., either positively or negatively);
 - 6) If appropriate, a description of how the amendment is likely to affect other nearby conservation easement properties;
 - 7) A map showing proposed changes, if any, to the location and extent of the protected area(s);
 - 8) Estimate of initial staff and professional consultant costs associated with reviewing the request.
- b) The staff and Stewardship Committee will discuss the request, formulate findings and make a recommendation to the Board that includes the cost estimate listed in item 2.c) 5) below.
- c) The Land Trust staff and Stewardship Committee's review of the request will include the following:
- 1) Consideration of each of the Required Conditions of *Policy 11.4 Conservation Easement Amendments*;
 - 2) Contacting organizations or agencies from which approval may be required, such as co-holders of the conservation easement, granting agencies that provided funds for acquisition of the easement, or an organization that assigned its interest in the relevant easement to the Land Trust;
 - 3) If appropriate, consultation with relevant qualified professionals, such as wildlife biologists, attorneys, engineers and/or surveyors;
 - 4) A review of donor restrictions related to the easement acquisition;
 - 5) Determination of the costs associated with completing the amendment, including staff time, legal advice, additional professional consultations, updated baseline and, if appropriate, additional funds that should be added to the Stewardship Fund to offset increased obligations associated with the monitoring and stewardship of the amended conservation easement;
 - 6) Review of the property's title status regarding further title insurance and subordination of lenders to assure that the amended conservation easement is covered by any policy and that lenders will be subject to the amendment;
 - 7) Confirm that there is no conflict of interest or potential conflict of interest for any involved parties (see Land Trust *Policy 4.1 Conflicts of Interest* and *Policy 4.2 Insider Compensation*);
 - 8) Determine that the proposed amendment will not set an undesirable precedent or undermine the public's confidence in the Land Trust to protect conservation values in perpetuity.

d) Final Review, Decision and Completion:

- 1) The Board will discuss the Stewardship Committee's report and recommendations within 60 days of receipt of the recommendation. The Board will then approve, approve with modification, or reject the request for the amendment at its next regularly scheduled meeting or at a special meeting convened for that purpose.
- 2) If the Board approves moving forward with the request, the landowner will be contacted by Land Trust staff. The Land Trust staff will meet with the landowner, discuss the reasons for the proposed amendment and benefits to the landowner, and encourage the landowner to seek the advice of legal counsel.
- 3) Once the landowner has been given an opportunity to retain legal counsel, the Land Trust will obtain the landowner's written approval before proceeding.
- 4) If the landowner agrees to proceed, the Land Trust may negotiate with the landowner to determine who will pay what costs associated with the amendment. The landowner must pay their share of the negotiated costs before the Land Trust proceeds. The Land Trust will return any unused portion of that payment to the landowner.
- 5) If appropriate, the baseline documentation will be updated or supplemented.
- 6) Land Trust legal counsel will review and approve the amendment language. During this process, staff and legal counsel may decide whether a restated and amended conservation easement is preferable to a separate amendment agreement.
- 7) The final amendment will be signed by all necessary parties and recorded in the official records of Island County, Washington and any other jurisdiction in which such recording is required.

3. Review of an Amendment Resulting from a Violation Remedy

- a) The process will be the same as Section 1 above except that the Land Trust and the landowner may negotiate how the costs will be assigned. *See Policy 11.3 Enforcement of Conservation Easements.*

Approved: February 1, 2010

President, Board of Directors