

# Scenic River Land trust

## Conservation Easement Amendment Policy and Procedure

Approved: 6/13/2017

### **Pre-amble**

Under exceptional circumstances, the Scenic Rivers Land Trust (SRLT), will consider requests for amendment to its existing conservation easements made in writing by the Landowner. The Land Trust itself may also initiate an amendment to an easement by written request to the Landowner. SRLT recognizes that amendments to conservation easements are not routine, but can serve to strengthen an easement or improve its enforceability.

### **Article I: Amendment Considerations**

Amendments to existing easements held by SRLT will not be considered unless the Board of Directors finds that they:

1. Have either a positive or neutral effect on the conservation values of the conservation easement or improve its enforceability;
2. Uphold the intent of the original grantor and the fiduciary obligations of SRLT to protect that property for the benefit of the public in perpetuity;
3. Do not result in private inurement;
4. Do not result in impermissible private benefit;
5. Comply with SRLT's conflict of interest policy;
6. Comply with any funding requirements;
7. Are consistent with SRLT's mission; and
8. Do not make stewardship more difficult

Conservation easements may be amended under the following circumstances:

1. To fulfill agreements specified in the conservation easement,
2. To correct an error in original drafting; for example:
  - a. To correct a legal description (survey description),
  - b. To correct errors in conservation easement exhibits,
  - c. To include exhibits inadvertently omitted,
3. To clarify an ambiguity in the conservation easement,
4. To adjust a conservation easement to acknowledge a condemnation by a public agency,
5. To add new provisions that strengthen the preservation and protection of conservation values,
6. Amendments may be considered for other reasons provided they have a beneficial or neutral effect on the conservation values protected by the conservation easement.

## **Article II: Procedure of Amending**

- A. The Landowner shall pay in advance a minimum amendment fee of \$750 to cover SRLT staff time, legal review and county fees to record the amendment upon approval. The amount of the requested fee may be increased in cases where extensive staff or legal work is needed to review and complete an amendment. No Landowner fee will be required for amendments initiated by or to correct an error or omission made by SRLT. The Landowner will be responsible for providing, or reimbursing the Land Trust for its direct costs of providing, necessary updated exhibit maps, legal descriptions, appraisals, surveys, etc. SRLT staff will estimate the costs to process an amendment and secure the agreement of the Landowner to cover those costs before an amendment request is considered.
- B. All requests for amendment must be in writing, and should include a detailed description of the change being requested, a rationale explaining why the request is warranted, and if appropriate a map of the property with areas affected by the proposed amendment clearly marked.
- C. SRLT staff will conduct a preliminary review of the request for easement amendment, conduct a site visit if appropriate, and make a report and recommendation to the Board.
- D. Staff will update title information to assure that the correct parties are engaged in amending the easement.
- E. An SRLT staff member shall present the request in writing to the Board of Directors, highlighting all relevant issues and including the presenter's recommendation to approve, reject or modify the proposed amendment.
- F. SRLT will consider the public relations aspects of amending an easement, and take steps as appropriate to inform its members, advisors, grantors, partner organizations, neighbors of the property, etc., of the proposed amendment before it is approved by the Board. However, in all cases except funding requirements, any third-party opinions about the propriety of granting or denying an amendment request shall be advisory only. SRLT retains exclusive authority to grant or deny amendment requests, within the constraints of funding requirements.
- G. The Board of Directors shall take action on each request for final approval of amendments. No amendment shall be executed without the prior approval of the Board of Directors. Subordination of pre-existing liens shall be required. The board shall review the amendment request and documentation using the criteria set in Article I, as well as considering the following:
  - a. Does the conservation easement require notification or approval of amendments

- by any other parties? If so, have these requirements been addressed?
- b. Will this amendment undermine the public's confidence in SRLT?
  - c. Will the granting or denial of the amendment request create a bad precedent for future amendment requests?
  - d. Should the amendment be reflected in a restatement of the original conservation easement or in an amendment to the conservation easement?
- H. The presenting staff member shall notify the landowner in writing of any action taken by the Board of Directors to approve, request or modify the proposed amendment.
- I. Staff will coordinate with co-holders, funders or individuals as required in the original conservation easement.
- J. The Board of Directors may require, as a condition of an amendment, that the owner notify the Internal Revenue Service and state Comptroller once the amendment has been executed.
- K. If the terms of the amendment are approved, staff will review the title status of the property to determine whether further title insurance and subordination of lenders is required to assure that the amended conservation easement is covered by any policy and any lenders will be subject to the amendment.
- L. All easement amendments will take the form of a legal deed and will be recorded in the land records of the local jurisdiction in which the affected property is located.

### **Article III: Policy Review**

Scenic Rivers Land Trust will evaluate the adequacy of its amendment policy on a periodic basis and make adjustments as needed to ensure that the goals/philosophy outlined in this policy are met. To this end, this policy shall be reviewed no less than every 3 years by the board of directors. Changes in law, best easement stewardship practices and other practices of Scenic Rivers Land Trust may require adjustments to this Easement Amendment Policy.