

**Santa Fe Conservation Trust**

**CONSERVATION EASEMENT AMENDMENT POLICY**

**Policy 2013-04**

**Adopted on: April 16, 2013**

**Updated: October 19, 2017**

The Santa Fe Conservation Trust (SFCT) acquires and holds conservation easements for the purpose of protecting land for the benefit of current and future generations by working with private landowners who voluntarily decide to place their land under a conservation easement.

These easements are permanent. SFCT will monitor the easements in perpetuity, communicate the terms of the easement to current and future landowners, and when necessary enforce the terms of the easement. SFCT incorporates the grantor's conservation goals and intent for the land in the conservation easement document. SFCT will use its expertise to work with the donor to draft a conservation easement that will benefit the public and the environment when adhered to unchanged in perpetuity. The Santa Fe Conservation Trust's record in crafting worthwhile easements and upholding their terms and purposes will help determine whether future donors will put their trust in the organization.

Under very limited circumstances, the SFCT will consider written requests by Landowners for amendments to their conservation easements. SFCT itself may also initiate an amendment to a conservation easement by written request to the Landowner. Generally, an amendment will only be considered by SFCT if it has a positive or not less than neutral impact on the conservation purposes of the easement but the amendment must never result in a net degradation of the conservation values the easement is designed to protect. Amendments that are simply intended to clarify ambiguities or to correct errors in the original easements or exhibits, and therefore serve the purposes of the original documents, will normally be agreed to.

The following principles, procedures and examples are intended to guide consideration of an amendment to a conservation easement, whether the amendment is proposed by the SFCT, the Landowner, or a third party.

## **Amendment Criteria**

A conservation easement amendment must meet all of the following criteria:

1. Clearly serve the public interest, be consistent with SFCT's mission and conform to SFCT's Conflict of Interest Policy.
2. Comply with all federal, state and local laws.
3. Not jeopardize SFCT's tax-exempt status.
4. Not permit any private inurement or confer impermissible private benefit.
5. Have a net positive or not less than neutral effect on the relevant conservation values protected by the easement.
6. Be consistent with the conservation purposes and intent of the easement.
7. Be consistent with the documented intent and/or restrictions of the donor and any direct funding source.

## **Conservation Easement Amendment Circumstances**

The following are examples of circumstances in which it may be appropriate to amend a conservation easement, subject to the Amendment Criteria above and the discretionary recommendations and approvals by SFCT staff, board committee and board. This list is not intended to include all of the circumstances in which an amendment may be appropriate, and each amendment, whether referred to in the list or not, must be considered in the context of the specific facts involved.

- To add land to a conservation easement.
- To add restrictions on uses or activities that enhance the protected conservation values or easement purposes.
- To carry out a specific agreement set forth in the easement or in an agreement executed by all parties to the easement prior to the initial execution of the easement.
- To correct a typographical error or other mistake.
- To make a minor boundary adjustment.
- To upgrade an easement to current standard language.
- To reflect changes in law or policy.
- To improve easement enforcement or administration.
- To clarify or rectify an ambiguity in order to rectify a dispute and/or to strengthen easement provisions, or to broaden easement provisions consistent with overall conservation values.
- To allow uses or technology not in existence or contemplated at the time of granting of the easement.
- To reduce or eliminate reserved rights that increase conservation protection of the property.
- To settle condemnation proceedings.

### **Amendment Screening Test Questions**

1. Does proposed amendment serve the public interest and further organizational mission and goals?
2. Is the amendment legally permissible under all federal, state and local laws?  
Is it also true that the amendment will not jeopardize the land trust's tax-exempt charitable status? (IRS Form 990 Schedule D requires disclosure of all amendments and terminations of any conservation easement.)
3. Will the proposed amendment result in no private inurement, nor in any impermissible private benefit? (See further description below on impermissible private benefit)
4. Is the proposed amendment consistent with the conservation purposes and intent of the easement?
5. Does the amendment fulfill obligations to the donor, grantor or funder? Will prospective donors, grantors and funders recognize that fact?
6. Will the proposed amendment result in a net beneficial or neutral effect on the conservation attributes or conservation values of the easement land?
7. Will land trust members and the public understand the amendment or, at least, not find it objectionable? If not, can steps be taken to improve public perception? Does the land trust understand the community ramifications of the amendment?
8. How does the proposed amendment affect stewardship and administration of the easement?
9. Are there other parties that must or should be engaged in the process or that hold a legal interest in the easement?
10. Are there any stakeholders that it would be wise to engage??
11. Are there any conflicts of interest to be resolved?
12. Are there any title issues to resolve?
13. Are there property tax concerns?
14. Is there additional expert advice needed (e.g., as real estate appraisers, natural resource experts, fish and wildlife experts, or other professional advisors)?
15. Should the baseline documentation be updated, and who should pay the cost to do so?
16. What information needs to be gathered to prepare Form 990?
17. Will a Form 8283 need to be prepared?
18. Are there no other questions that should be addressed for the particular amendment proposal?

### **Amendment Procedures**

1. Each request for an amendment must be in writing, and should include a detailed description of the change being requested, the rationale for the change, and, if appropriate, a map of the property with areas affected by the proposed amendment clearly marked. A \$1000 non-refundable deposit must accompany all requests.

2. The Landowner shall pay in advance a non-refundable deposit of \$1000 to cover SFCT staff time to review the request, any legal review and recording fees the SFCT may incur during the review and or approval process. The Landowner will be responsible for providing the funds or reimbursing the SFCT for its direct out of pocket costs of creating or causing to be created necessary updated conservation easement exhibit maps and legal descriptions, supplements to the baseline documentation report, appraisals, surveys, etc. as determined necessary by SFCT to complete the easement amendment. SFCT staff will estimate costs using the Conservation Easement Preparation Cost Estimate Staff rates to process the amendment and secure the agreement of the Landowner to cover those costs that exceed the \$1000 deposit, before an amendment request is fully considered. No Landowner fee will be required for amendments initiated by SFCT or to correct an error or omission made by SFCT. If an amendment requested by a landowner will increase the administrative burden on the Santa Fe Conservation Trust for future monitoring of compliance and/or enforcement of the conservation easement, SFCT will advise the landowner of the amount of additional funding needed for the Conservation Stewardship Fund Endowment and suspend processing of the amendment until and unless the landowner has agreed to deposit the additional amount in the event SFCT approves the amendment.
3. SFCT staff will conduct a preliminary review of the request for an easement amendment to determine whether it meets the Amendment Criteria. Staff will refer to the Land Trust Alliance's *Amending Conservation Easements: Evolving Practices and Legal Principles*, 2<sup>nd</sup> Edition 2017 as the basis for its review. The staff will conduct a site visit to analyze the amendment request if appropriate. The staff will make a written report and recommendation to the Land Review Committee as to approval or disapproval of the proposed amendment and on what terms and conditions. If staff is recommending approval, the report shall address each of the Amendment Screening Test Questions. If compliance with any of those criteria is uncertain to any degree, the staff will provide sufficient information to the committee so that the committee can evaluate any risks to SFCT that may be involved. If the staff's recommendation is to disapprove the amendment request, the staff report will focus on the reasons for such disapproval, and need not address criteria that are not relevant to the recommendation.
4. The final draft of a proposed conservation easement amendment will be reviewed and approved by the SFCT general counsel or another qualified attorney prior to presentation to the Land Review Committee and Board of Directors.
5. The Land Review Committee will review the staff report and final draft of the conservation easement amendment and recommend action to the Board of Directors.
6. Conservation easement amendments may only be approved by a two-thirds majority vote of the Full Membership of the Santa Fe Conservation Trust's Board of Directors, and any



such approval or denial shall be in its absolute discretion. The specific reasons for approval or denial of a conservation easement amendment will be thoroughly documented and the landowner will promptly be notified of the decision in writing.

7. Upon approval and signature by all parties to the conservation easement, the amendment will be submitted for recordation to the County Clerk, and a copy of the recorded amendment placed in the SFCT files, provided to the Landowner, and provided to other agencies as appropriate.

#### **Impermissible Private Benefit**

Suppose an easement landowner in a suburbanizing environment proposes an amendment to allow a new house to be constructed on easement property where the easement only allows the existing house. This proposed amendment would clearly put dollars in the landowner's pocket, by increasing the fair market value of the property. The amendment would convey impermissible private benefit in violation of the law.

#### **Incidental and, Therefore, Permissible Private Benefit**

Suppose a landowner proposes to amend an easement by adding additional land. Neighbors to the property (unrelated to the easement landowner) will enjoy an increase in their property value as a result. This increase in value of the neighboring properties occurs as an unavoidable concomitant of the easement conveyance—that is, the benefit to the public from the conservation easement could not be achieved without necessarily benefiting the neighboring landowners. Accordingly, this effect is considered incidental private benefit.

Approved on the 19th day of October, 2017



Sandra Massengill, Secretary, SFCT

