

VES Land Trust Conservation Easement Amendment Policy

The success of a land protection program depends upon the trust and confidence of the property owner and the community at large that the Virginia Eastern Shore Land Trust will uphold the terms of its easements. This confidence may be eroded if the VES Land Trust permits any amendment of the easement that reduces the conservation values of the land.

Amendment of a conservation easement could jeopardize the tax-exempt status of VES Land Trust with the Internal Revenue Service .The donors of a conservation easement may invite challenge of a claimed charitable contribution deduction by an amendment to a conservation easement. Therefore, VES Land Trust holds, monitors and enforces each conservation easement strictly as written.

A proposed amendment will be considered in accordance with the guidelines and procedures listed below. *It must be acknowledged that VES Land Trust cannot agree to or execute any conservation easement amendment without the express written approval of its easement co-holder.*

Guidelines

- A proposal to amend a conservation easement must be consistent with the conservation values and the purpose of the conservation easement, and will be considered solely on its own individual merits.
- No amendment may jeopardize the obligations of the VES Land Trust or its co-holder to monitor and enforce the easement, terminate the easement or invalidate the easement under the Internal Revenue Code or any other applicable law.
- A proposed amendment may not increase the net value of the property in violation of the private benefit/inurement provisions of the Internal Revenue Code.
- A proposed amendment will be considered only if it has been shown that no alternative to amendment is available.
- The amendment must be the minimum change necessary to achieve the purpose.
- A proposed amendment will be considered only if the landowner agrees to pay all expenses incurred by VES Land Trust and its co-holder, including staff time in analyzing the proposal and the cost of legal review of the proposal.

Purpose of Requested Amendment

VES Land Trust will consider modification to its conservation easements only in the following circumstances:

1. **Enhanced Protection.** The proposed amendment would significantly enhance the resource protection of the easement.
2. **Prior Agreement.** The amendment:
 - is consistent with the general terms and conservation purpose of the original agreement;
 - is not inconsistent with the intent of the principal parties to the original; and
 - is consistent with or enhances the conservation goals of the original agreement.

For example, the Land Trust might permit the change in the location of a house site permitted as a reserved right, if the new location would not harm, impact or reduce the conservation values being protected by the easement. In no case will the Land Trust permit an additional house site not provided for in the original agreement.

3. **Correction of an Error or Ambiguity.** The Land Trust may authorize an amendment to correct an obvious error or oversight made at the time the easement was granted. This may include correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of an ambiguity in the terms of the restrictions in order to avoid litigation over the interpretation of the document in the future.

4. **Settlement of Condemnation Proceedings.** Conservation easements held by the Land Trust may be subject to condemnation for public purposes, such as highways, schools, etc. Where it appears that the condemnation power would be properly exercised, the Land Trust may enter into a settlement agreement with the condemning authority in order to avoid the expense of litigation. In reaching such an agreement, the Land Trust shall attempt to preserve the intent of the original conservation easement to the greatest extent possible.

Procedures for Requesting An Amendment

Any landowner seeking a modification of an existing conservation easement shall file a request in writing, accompanied by a map and other documentation and a payment of \$2,500 to cover the Land Trust and its co-holder's costs of reviewing the proposed amendment. The request shall state what change is being sought and the specific reasons it is needed or warranted.

The Land Trust staff shall immediately forward a copy of the request to the easement co-holder and place the request on the agenda of the next regularly

scheduled meeting of the VES Land Trust Board of Directors, but not less than 30 days after receiving the proposed amendment. The Board of Directors shall consider the amendment request and any initial recommendation of the co-holder regarding the amendment request. The board will then decide if the land trust should continue to examine the request or if it should be rejected at this meeting.

If the Board so directs, the VES Land Trust staff and any appointed members of the board shall form a committee to work with the co-holder to review the request for amendment, including evaluation, site visit and review by legal counsel. Such review shall include consultation with the principal parties to the original agreement, including the landowner who donated the easement.

The committee may recommend that the amendment is unwarranted or it may conclude that the amendment is legally permissible, is consistent with the terms of this Policy Statement, and is clearly warranted by the circumstances. In either case, the committee shall make a recommendation to the VES Land Trust Board of Directors for final action.

The Board of Directors shall approve, approve with modification or reject the request for amendment. Approval shall require a two-thirds vote of the members present at a meeting in which there is a quorum.

Approved by the VES Land Trust Board of Directors, _____, 2005.

Price Mears Clarke, Secretary