



Amendment Policy & Procedure

Adopted 2005, Revised July 2019, adopted by the Board of Directors September 2019

Conservation Easement Amendments

The Land Trust for Tennessee (“LTTN”) acquires and holds conservation easements in order to permanently protect the unique character of Tennessee’s natural and historic landscapes and sites for future generations. Because conservation easement acquisitions are accomplished through voluntary agreements with landowners, the success of the program depends upon the confidence of these owners that LTTN will meet its obligations to monitor and enforce the agreements. This confidence could be seriously eroded if LTTN allowed modifications of its conservation easements on a regular basis and without thoughtful consideration of the implications of these modifications. It is the policy of LTTN to hold and enforce its conservation agreements as written whenever possible, but LTTN acknowledges that amendments can serve to strengthen an easement, clarify its language, or improve its enforceability.

Any amendment will be reviewed in accordance with the procedures outlined below, and will be approved only when the Board of Directors of LTTN determines that the amendment meets all of the core principles below.

Core Principles

- The amendment clearly serves the public interest and is consistent with LTTN’s mission.
- The amendment complies with any applicable federal, state, and local laws.
- The amendment does not jeopardize LTTN’s tax-exempt status or status as a charitable organization under federal or state law.
- The amendment does not result in private inurement or confer impermissible private benefit.
- The amendment is consistent with the conservation purpose(s) and intent of the easement.
- The amendment is consistent with the documented intent, if any, of the grantor, and any direct funding source, if any.
- The amendment has a net beneficial or neutral effect on the relevant conservation values protected by the easement.

Important Considerations

The Board of Directors of LTTN also considers the following when reviewing any requests for an amendment:

- Has LTTN’s conflict of interest policy been complied with?
- Are there other feasible alternatives available to achieve the intended purpose?
- Are there public perception issues or reputational risks to be considered?
- Are there any requirements for notification or approval by any other parties such as a co-holder, third-party enforcers or project funder?

- Will an amendment hinder LTTN's ability to steward, defend, or enforce the conservation easement?

Amendment Procedures

The following are recommended as standard procedures. The staff of LTTN may vary from the standard procedures to the extent they, in the exercise of their reasonable discretion, deem necessary or appropriate. The failure to follow any one or more of the procedures detailed below will not affect the legitimacy or enforceability of any Amendment.

1. The amendment is initiated by the landowner or LTTN. If LTTN has initiated the amendment, it will notify the landowner of LTTN's intent and provide the landowner with LTTN's policies and procedures.
2. LTTN creates an amendment request file on the cloud server in the appropriate project folder and creates a new stewardship activity in LOCATE.
3. The Director of Stewardship, in consultation with appropriate staff, reviews the amendment request subject to LTTN's Amendment Policy and other guidelines, such as the Land Trust Alliance's Amending Conservation Easements book.
4. If the Director of Stewardship determines that the amendment may be possible, then a site visit is arranged when necessary to document the site and current conditions.
5. The Director of Stewardship presents the amendment request and associated information to the Stewardship & Conservation Committee. This can be done in the form of a memo outlining the request. This memo should include an analysis of the core principles.
6. The Committee then makes a recommendation on action to the full Board of Directors at the next Board meeting. The Board of Directors may approve, approve with modification, or reject the request for the amendment.
7. The Director of Stewardship notifies the landowner in writing of the Board's decision. If the amendment is to add acreage to an existing conservation easement, the landowner is sent the Post Approval Packet and Engagement Form and follows Standard 9 and 10 as applicable.
8. If approved, the amendment is then drafted by LTTN staff and reviewed by legal counsel. Other appropriate due diligence is completed such as title investigation, environmental due diligence, etc. If the landowner is pursuing a tax deduction for an amendment (for example, adding acreage or extinguishing significant reserved rights), the landowner obtains a qualified appraisal.
9. The Director of Stewardship documents for the file that there is no private inurement or impermissible private benefit. LTTN should consider whether to hire an appraiser or other relevant expert to provide necessary valuation or opinions of value for the file.
10. If the amendment is to add acreage, a full baseline documentation report will be completed on the new acreage and added to the existing baseline report. If the amendment is for another

substantial change, it will be documented with a baseline documentation supplement as is necessary to fully document the property conditions.

11. Once all due diligence is completed and the amendment has been granted final approval by both parties, the amendment, and if applicable the baseline report, is signed and notarized by both parties. The amendment, and any other relevant documents (for example, a mortgage subordination), is promptly recorded in the appropriate Register of Deeds office.
12. When appropriate, the Director of Stewardship or Stewardship Manager schedules a site visit to ensure that the changes comply with the amended conservation easement.

Stewardship Fund & Other Costs

Each amendment request *initiated by a landowner* is accompanied by an initial fee to cover anticipated staff and direct costs pertaining to review of the request. This fee is charged regardless of whether or not the request is approved. The amount of the fee charged is determined by an established fee structure based on the complexity, costs and staff time requirements of each amendment request. Any documentation required, such as a boundary survey or title investigation, is the responsibility of the landowner. There will be no fee charged for corrections due to LTTN error or omission or for amendments initiated solely by LTTN, and any associated costs will be covered by LTTN. LTTN may request an additional donation to the Stewardship Fund if the nature of the amendment increases stewardship responsibilities and costs to LTTN.

Condemnation

Amendment of a conservation easement as a result of condemnation proceedings is not covered by the statement of Amendment Principles, above, but is addressed in the policies and procedures set forth in this section.

If a condemning authority indicates an interest in condemning some or all of an easement property, LTTN will work diligently to prevent a net loss of protected conservation values and will use its reasonable best efforts to preserve the intent of the original easement to the extent possible in the circumstances. LTTN recognizes that it may be impossible to effectively prevent condemnation for proper public purposes. When part of a protected property is to be condemned by a public entity, the easement may be amended, or terminated in part or whole, in lieu of engaging in full condemnation proceedings, provided that:

1. LTTN determines that the exercise of eminent domain would be lawful, and the condemning authority has made all determinations and taken all actions that are required by law as conditions to its pursuing condemnation proceedings.
2. LTTN determines that the best interest of all parties would be better served by negotiating a settlement with the condemning authority rather than engaging in litigation.

LTTN will use any compensation received in a manner consistent with the conservation purposes of the original easement.

LTTN staff, the Stewardship & Conservation Committee, and the Board will work to carry out the policies set forth above in this section, referring to the Amendment Procedures only as deemed useful in the circumstances. Approval of an amendment in lieu of condemnation will require a simple majority vote by the board. Some of the final steps set forth under the Amendment Procedures above will apply to an amendment in lieu of condemnation. Under those circumstances, LTTN staff will determine whether and how to apply those steps.