

General Example of an Amendment Checklist  
*for you to adapt to your own organization*

1. Tools available to assist with risk analysis regarding amendments are
  - a. Your written amendment policy
  - b. The applicable easement modification clause
  - c. Triage systems (see below and see *Amendment Triage and Range of Amendments* handout); these are often incorporated in a separate written amendment procedures document
  - d. The risk spectrums excerpted from the 2007 Amendment Report
  - e. *Land Trust Standards and Practices* and The Learning Center
  - f. *Conservation Easement Management in Perpetuity*, Chapter Two on Amendments, Leslie Ratley-Beach (The Land Trust Alliance, 2009).
  - g. Experienced legal counsel on call for your land trust who knows the laws of your state and as well as the applicable federal laws and is capable of assisting you to analyze unique individual situations
  - h. Rhode Island Assistant Attorney General
  - i. National experts on call through the Alliance and
  - j. Each other: use peer review with other land trusts that have experience with amendments
  
2. Triage is critical.
  - a. Taking the challenge apart into small components to allow for a clear understanding and more manageable analysis is the first step.
  - b. Ask questions such as
    - i. What is the land trust (or other holder) mission?
    - ii. What does our amendment policy tell us our shared values and beliefs are about amendments?
    - iii. What does our state conservation enabling act say?
    - iv. Does the attorney general have a role?
    - v. Does any funder of the easement have a condition or role?
    - vi. How did we acquire the easement: purchase, donation, exaction?
    - vii. What additional laws and regulations are implicated by method of acquisition?
    - viii. When did we acquire the CE?
    - ix. Who drafted it (land trust or landowner)?
    - x. Did the land trust make any errors that contributed to the amendment request?
    - xi. Does the CE have an amendment clause? What does it require?
    - xii. What is the magnitude of the amendment request?
    - xiii. What is the effect of the request on the CE stated purposes?
    - xiv. What does the CE, the baseline, *the annual monitoring reports* and the property file tell us about the land trust and the grantor's intentions?
    - xv. Are there opportunities due to other factors that make the request more plausible such as updating an old easement, merging two

adjacent easements, correcting seriously ambiguous clauses or correcting substantive omissions that adversely affect conservation?

- xvi. What do the stated restrictions and reserved rights suggest?
  - xvii. How does the proposed amendment affect stewardship and administration of the easement?
  - xviii. Who else do we need to talk with? Do we have co-holders? How will this amendment go over with abutting landowners? Should we consult with them?
  - xix. What alternatives are available?
  - xx. Does anyone have a conflict of interest?
  - xxi. Does the amendment request fall within the principles articulated in the Amendment Report page 17?
    - 1. If yes how do we document that?
    - 2. If not how?
    - 3. Could the request be modified to satisfy the principles and policy?
    - 4. What alternatives?
  - xxii. Does the amendment request fall within our amendment policy?
    - 1. If yes how do we document that?
    - 2. If not how?
    - 3. Could it be modified?
    - 4. What alternatives?
  - xxiii. If we consider this amendment, how would we describe it on Form 990?
  - xxiv. Have we addressed and documented every issue raised by the amendment risk spectrum?
  - xxv. What will this cost and who pays?
- c. What does your attorney identify as potential downside risks, legal uncertainties and potential upside opportunities?

### **DISCLAIMER**

This is a tool to help land trusts provided with the understanding that the speakers and organizations are not engaged in rendering legal, accounting or other professional counsel. If you require legal advice or other expert assistance, seek the services of competent professionals.

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