

# Groundswell Conservancy Policy

**Name:** Conservation Easement Amendment

**Approval:** Approved by Executive Committee March 9, 2006  
Amended by Executive Committee October 11, 2017  
Amended by Executive Committee January 8, 2020  
Amended by Executive Committee October 14, 2020  
Amended by Executive Committee June 12, 2023

Land Trust Alliance Standards and Practices 11H. Amendments. 1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles. 2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles. 3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a *de minimis* extinguishment, document how the land trust's actions address the terms of LTA Standard 11J1.

As Groundswell Conservancy's easements mature, property owners or Groundswell itself may seek to amend the terms and/or conditions stipulated in its easements. This policy is written to ensure that future amendments uphold both the original intent of the donated easement and the organization's stewardship obligation under the Internal Revenue Code. It is the express intent that this workable policy be based on the premise that an amendment reflects either a change for the better or a change that has a neutral effect, but the amendment must never result in a net degradation of the conservation values the easement is designed to protect.

Any request for an easement amendment shall meet the standards set forth in this policy. If the request is made by the easement Grantor or current landowner, it shall be the responsibility of the Grantor or current landowner, at the Grantor's or current landowner's expense, to provide information sufficient to demonstrate that the standards are met. An amendment may be approved only if the amendment meets these review criteria:

- upholds the conservation purpose and values of the conservation easement
- maintains the conservation easement's perpetual duration
- maintains the qualification of the conservation easement under Section 170(h) of the Internal Revenue Code of 1986 or any successor provision
- does not result in private inurement or impermissible private benefit
- maintains Groundswell Conservancy's obligation to its mission, its tax-exempt status (specifically, maintains Groundswell Conservancy's prohibition against private inurement), its compliance with requirements imposed by agencies that funded the acquisition of the easement, and its governing legal principles relating to the establishment and maintenance of conservation easements
- achieves a goal that cannot be met by other means
- has a net beneficial or neutral effect on the relevant conservation values protected by the easement

Groundswell Conservancy complies with any amendment procedures contained in the conservation easement. It obtains judicial or regulatory review when required by law or specified in the easement deed. Groundswell Conservancy consults with easement co-holders (and other partners) as necessary prior to amending an easement. No easement will be amended without the approval of the Groundswell Conservancy Board of Directors.

Unless waived by Groundswell Conservancy, a request for an amendment to a conservation easement made by a landowner will be accompanied by a non-refundable \$750 payment from the landowner. This payment will help cover Groundswell Conservancy's costs including staff time, legal review, recording fees, etc. The landowner may also be responsible for all costs exceeding the initial fee. Factors that may be considered in determining if the fee (or additional costs) will be waived (or shared) include: which party initiates the amendment request, whether the amendment would result in a positive or a neutral conservation outcome, and staff time and legal review necessary to complete the amendment. Any additional costs paid by the landowner would be non-refundable.

Groundswell Conservancy shall document decisions to amend conservation easements including supporting information relating to the review criteria, as well as updated Baseline Documentation, appraisals, and opinions of other organizations involved in the decision, as appropriate. Groundswell shall review the condition of the title of the eased property to correctly identify the Grantor of the proposed amendment. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a *de minimis* extinguishment, such documentation will also consider Groundswell Conservancy's actions in the context of its reputation and the impact on the land conservation community at large.

<p>Groundswell Conservancy is accredited by the Land Trust Accreditation Commission. Policies may be updated to reflect changing accreditation standards and practices, as well as changing local organizational needs.</p>
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