

Chebeague & Cumberland Land Trust EASEMENT AMENDMENT POLICY

I. INTRODUCTION

Chebeague & Cumberland Land Trust (“CCLT”) recognizes that from time to time, circumstances may arise that will warrant amendment of Conservation Easements it holds. Most, but not all, the Conservation Easements held by CCLT include provisions regarding amendment. This policy is intended to echo the philosophy expressed in those Conservation Easements that contain amendment clauses and provide guidance regarding amendment of Conservation Easements that do not include amendment clauses. Further, this policy is intended to be shared with potential donors so that they will fully understand the amendment policy if they are contemplating granting a Conservation Easement to CCLT.

II. POLICY

CCLT may agree to amendments to Conservation Easements it holds if in the Board’s judgment the proposed amendment enhances or does not materially detract from the conservation values sought to be protected under the Conservation Easement at the time it was granted.

In addition, a proposed amendment to a Conservation Easement must satisfy all of the following criteria:

1. Clearly serve the public interest and be consistent with the land trust’s mission;
2. Comply with all applicable federal, state and local laws; specifically 33 §477-A. Conservation Easement Standards Section 2.A and 2B.:

2. Amendment and termination. Amendments and termination of a conservation easement may occur only pursuant to this subsection.

A. A conservation easement executed on or after the effective date of this section must include a statement of the holder's power to agree to amendments to the terms of the conservation easement in a manner consistent with the limitations of paragraph B. [2007, c. 412, §4 (NEW).]

B. A conservation easement may not be terminated or amended in such a manner as to materially detract from the conservation values intended for protection without the prior approval of the court in an action in which the Attorney General is made a party. In making this determination, the court shall consider, among other relevant factors, the purposes expressed by the parties in the easement and the public interest. If the value of the landowner's estate is increased by reason of the amendment or termination of a conservation easement, that increase must be paid over to the holder or to such nonprofit or governmental entity as the court may designate, to be used for the protection of conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation purposes of the easement. [2007, c. 412, §4 (NEW).]

3. Not jeopardize the land trust's tax-exempt status or standing as a charitable organization under federal or state law;
4. Not result in private inurement or confer impermissible private benefit, and
5. Be consistent with the documented intent of the donor, grantor and any direct funding source.

III. ALLOWABLE PURPOSES

An amendment to an CCLT Conservation Easement may be allowable for the following purposes:

1. The amendment facilitates administration and/or enforcement of the Conservation Easement; or
2. The amendment is deemed necessary by the land trust to clarify language in the Conservation Easement or to correct an administrative error.

IV. PROCEDURE

A party proposing amendment of a Conservation Easement must make a request in writing, directed to the Board. The amendment proposal shall be reviewed initially by the Acquisitions Committee. If the Committee determines that the amendment proposal meets all of the criteria set forth in Section II and has one of the purposes set forth in Section III, the amendment proposal shall be referred for review to a qualified attorney engaged by the Land Trust. If the attorney's agrees that the amendment proposal does in fact meet the criteria and is for a permitted purpose as set forth above, the attorney shall draft the amendment language and circulate it to the Landowner and the Board for consideration. After review by all parties is complete, the question of whether the amendment shall be adopted shall be placed on the agenda for a regular or special meeting of the Board and adoption of the amendment must be approved by a two-thirds majority of the Board.

If such a majority votes in favor of adoption, the amendment shall be signed by a duly authorized officer and recorded in the Cumberland County Registry of Deeds.

The Stewardship Committee shall update the Baseline Data relevant to the Conservation Easement after adoption of the amendment to reflect the change.

The Board shall be responsible to notify any third parties whose interests are materially affected by the amendment.

If the donor of the Conservation Easement received an income tax deduction at the time of the original donation, the Board shall also verify that the Landowner files appropriate documentation with the Internal Revenue Service regarding the amendment.

V. COSTS

All costs to amend a Conservation Easement that are incurred by CCLT, including but not limited to legal review, staff time, appraisals, ecological evaluations, updating baseline data, and other expenses, shall be paid by the party requesting the amendment, regardless of whether or not the amendment is granted.

Certified by:


Kerry McCormack, Secretary


Date