



Policy Title: **CONSERVATION EASEMENT AMENDMENT**

Policy Number: **P15-LTA111**

Adopted: Nov 18, 2015

Revised: N/A

Due for Review: FYE 2021

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SCOPE

This policy addresses the process for granting an amendment to a conservation easement held by Avalonia Land Conservancy, Inc (“Avalonia”). Its implementation is the responsibility of the Board of Directors.

DEFINITION

Although conservation easements are meant to be enforced as written in perpetuity, Avalonia recognizes that in a few, limited situations it may be necessary or preferable to amend the conditions of the easement. In order for the Board of Directors to agree to an amendment it must

- clearly serve the public interest and be consistent with Avalonia’s mission.
- comply with all federal, state, and local laws.
- not jeopardize Avalonia’s tax-exempt status or status as a charitable organization under federal or state law.
- not result in private inurement or confer impermissible private benefit.
- be consistent with the conservation purpose(s) and intent of the conservation easement.
- be consistent with the documented intent of the donor, grantor, and any direct funding source.
- have a net beneficial or neutral effect on the relevant conservation values protected by the conservation easement.

PURPOSE

The purpose of this policy is to ensure that all Avalonia volunteers and employees understand the conditions and process that may result in the amendment of a conservation easement.

Avalonia will consider amendments to its conservation easements in the following circumstances:

- An amendment is necessary to correct an error or ambiguity made at the time the easement was granted.
- In the case of a lawful condemnation of the easement property for public purposes, Avalonia shall attempt to preserve the intent of the original conservation agreement to the greatest extent possible.
- A natural catastrophe such as a hurricane, fire, or rising sea-level greatly alters the conservation values the easement is designed to protect.

Minor modifications which are consistent with the conservation purpose of the easement may be considered if

- they meet all of the limitations listed above under “Definition”.
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- the amendment is consistent with the conservation purposes and intent of the easement.
- there are no feasible alternatives available to achieve the purpose of the amendment.
- the amendment will not impair Avalonia's ability to steward, defend or enforce the conservation easement.
- the amendment does not effect a termination of the existing easement unless the terminated easement is immediately replaced by an amended easement consistent with this policy. No amendment shall cause the perpetual duration of an existing easement to be terminable.
- the amendment does not undermine the public's confidence in Avalonia to protect conservation values in perpetuity.
- the amendment does not result in the conservation easement failing to qualify as a valid conservation easement under the Internal Revenue Code.

Amendment proposals

- may be initiated by the landowner or Avalonia, but any costs must be borne by the landowner.
- must be submitted in writing with appropriate documentation.
- must be reviewed by the Stewardship Committee for consistency with the original easement deed, this policy, and Avalonia's Conflict of Interest Policy.
- must include a summary of a site visit by a member of the Stewardship Committee.
- must be reviewed by legal counsel.
- must be submitted as a proposed amendment to the Board of Directors for preliminary approval.

A final draft of the amendment

- must be prepared by counsel.
 - must be approved by the Board of Directors.
 - must be duly recorded.
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