**MODEL CONSERVATION EASEMENT AMENDMENT POLICY**

1. **INTRODUCTION**

[LAND TRUST] holds conservation easements to protect conservation values in accordance with I.R.C. § 170 (h). [LAND TRUST] is obligated to protect these conservation values in perpetuity by monitoring its easements at least annually and enforcing them in the event of a violation. [LAND TRUST] recognizes that it may be necessary or desirable on rare occasions to modify the terms of its easements, but [LAND TRUST] will do so only in accordance with applicable law and only for uses that have a beneficial or neutral effect on the conservation values they protect.

Therefore, it is the policy of [LAND TRUST] to hold and enforce its conservation agreements as written, except in the limited circumstances described in this policy. All requests for consent, waiver, modification or amendment of the terms of an easement (“amendment”) will be reviewed according to the procedures set forth in this policy

Because every property is unique, no decision by [LAND TRUST] with respect to an amendment of a conservation easement shall create a precedent with respect to any other request for an amendment.

Although this amendment policy sets forth certain guidelines and procedures, nothing herein shall be deemed to impair the sole and absolute discretion of the board of directors in determining whether any proposed amendment is acceptable to [LAND TRUST].

1. **AMENDMENT POLICY**

[LAND TRUST] will consider amendments to its conservation easements only in the following circumstances:

A. Correction of an Error or Ambiguity. [LAND TRUST] may amend an easement to correct a drafting error or oversight made at the time the easement was entered into. This may include correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of an ambiguity in the terms of the restrictions in order to avoid litigation over the interpretation of the document in the future.

B. Prior Agreement. Occasionally, an easement contains a specific provision or there is an unrecorded agreement or other document allowing modification of the easement terms at a future date under defined circumstances. Such agreements must be set forth in the conservation easement or in a separate document signed by all parties, including [LAND TRUST] on or before the date the easement was executed. The amendment must be consistent with the terms and conservation intent of the original agreement.

C. Settlement of Condemnation Proceedings. Conservation easements and other interests in land held by [LAND TRUST] may be subject to condemnation for public purposes, such as highways, schools, etc. In the event of a lawful condemnation proceeding, [LAND TRUST] shall attempt to preserve the intent of the original conservation agreement to the greatest extent possible.

i. Whenever all or part of the property is taken in the exercise of eminent domain by a public, corporate, or other authority so as to abrogate in whole or in part the conservation easement, the landowner and [LAND TRUST] shall act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

ii. The balance of the damages recovered shall be divided between them in proportion to the fair market value on the date of execution of the easement deed of their respective interests in the condemned portion of the property. For this purpose, the [LAND TRUST]’s interest shall be the amount by which the fair market value of the property immediately prior to the execution of the conservation easement deed was reduced by the restrictions imposed. [LAND TRUST] shall use its share of the proceeds in a manner consistent with and in furtherance of the conservation purposes set forth in its bylaws.

D. The Substantial Alteration or Destruction of a Conservation Value caused by a cataclysmic event such as volcanic eruption, earthquake, fire, rising sea levels, destruction of habitat caused by global warming, or species extinction. In this situation, [LAND TRUST] may amend the easement to protect and preserve the remaining conservation values provided that the amendment meets the requirements listed in (4), below. If there are no conservation values remaining, [LAND TRUST] may petition a court of competent jurisdiction to terminate the easement.

E. Minor Modifications Consistent with Conservation Purpose. [LAND TRUST] may authorize other minor modifications of the conservation restrictions upon making the following findings.

i. The amendment clearly serves the public interest and is consistent with [LAND TRUST]’s mission.

ii. The amendment is consistent with the conservation purposes and intent of the easement.

1. The amendment complies with all applicable federal and state laws.
2. The amendment has a net beneficial or neutral effect on the conservation values protected by the easement.
3. There are no feasible alternatives available to achieve the purpose of the amendment.
4. The amendment will not jeopardize [LAND TRUST]’s tax-exempt status or standing as a charitable organization under federal and state law.
5. The amendment does not result in private inurement or confer impermissible private benefit.
6. The amendment is consistent with the documented intent of the donor, grantor, and any direct funding source.
7. The amendment will not impair [LAND TRUST]’s ability to steward, defend or enforce the conservation easement.
8. The amendment will not cause the perpetual duration of the easement to be terminable.
9. The amendment will not undermine the public’s confidence in [LAND TRUST] to protect conservation values in perpetuity.

**3. PROCEDURES FOR AMENDING A CONSERVATION EASEMENT**

A. Amendments may be initiated by the landowner or [LAND TRUST].

B. Amendment requests must be submitted in writing. The request should include a description of the change being requested, the reasons why it is warranted, a map of the property showing areas affected by the proposed amendment, and any other information that justifies the request.

C. Each request by a landowner must be accompanied by a payment of [$XXX] to cover anticipated costs in reviewing the amendment request, regardless of whether the request is approved, and, if it is approved, the costs of drafting and recording the amendment. Any unexpended portion of the fee will be refunded. Additionally, the landowner will be responsible for any costs exceeding the initial fee, as billed by [LAND TRUST] and the costs of any required documentation, such as a survey, boundary marking, or updated baseline documentation report.

D. [STAFF PERSON, COMMITTEE, OR OTHER ENTITY] will review the amendment request for consistency with this policy, the original conservation easement deed, and related documentation. Other persons, such as attorneys and natural resource professionals, may be consulted. A site visit and meeting with the current landowner and/or original donor may be conducted.

E. If there is any reason to suppose that the amendment request will give rise to an actual or perceived conflict of interest, [LAND TRUST]’s conflict of interest policies will be adhered to.

F. A written summary of the proposed amendment and the reasons why it is being requested will be presented to the [LAND TRUST] board of directors for preliminary approval. Such approval will be granted or withheld using the criteria listed in Section 2 (E), above. The board’s findings and decision will be recorded in the minutes of the board meeting.

G. If the board grants preliminary approval, the amendment will be drafted. All amendments must be reviewed and approved by [LAND TRUST]’s legal counsel.

H. The final draft of the amendment and a written summary of the reasons why it is being requested, along with a description of any changes since the board gave preliminary approval, will be presented to the board of directors for final approval. The board’s decision and any additional findings with respect to the criteria listed in Section II (5), above, will be recorded in the minutes of the board meeting.

I. The amendment will be duly recorded. Originals and copies of the amendment deed and all related documentation shall be retained according to [LAND TRUST]’s recordkeeping policy.

This policy adopted by [LAND TRUST] board of directors on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .**

 (date)

hbj: 2009