**Standard 11I1: Conservation Restriction Amendment Policy**

SAMPLE LAND TRUST

CONSERVATION RESTRICTION AMENDMENT POLICY

# Introduction

# The Sample Land Trust (SLT) acquires and holds conservation restrictions, also commonly known as “conservation easements”, in order to protect the environment, preserve the rural small town character of Sample Town and to provide our community with passive recreational opportunities. SLT conserves wildlife habitats, forests, fields, rivers, wetlands and scenic views in perpetuity, for the benefit of current and future generations. SLT’s stewardship of its conservation restrictions is designed to:

* Uphold the terms of the restrictions
* Maintain positive relationships with landowners
* Comply with IRS requirements
* Protect SLT’s tax-exempt status
* Fulfill requirements of agencies and individuals providing funding
* Manage in a fiscally responsible manner

Conservation restriction acquisitions are accomplished through voluntary agreements with landowners. The success of our efforts depends in part upon the confidence of these owners and the community that SLT will meet its obligations to monitor and enforce these agreements in perpetuity. Amendments to conservation restrictions have the potential to erode this confidence, to jeopardize SLT’s tax-exempt status and to create issues for restriction donors who claimed income tax deductions based on the value of the original easement. Consequently, it is important that SLT not allow any inappropriate amendments of its conservation restrictions.

Therefore, it is the policy of SLT to hold and enforce its conservation restriction agreements as written. Any request for an amendment will be reviewed according to the procedures set forth in this policy statement and generally will be approved only where the Board of Directors determines that:

1. The requested amendment is consistent with SLT’s goals and will not undermine SLT’s obligation to monitor and enforce conservation restrictions it has accepted; and
2. The amendment is warranted under one or more of the purposes set forth below; and
3. There are no feasible alternatives available to achieve that purpose; and
4. The amendment is the minimum change necessary to achieve that purpose.

Every property is unique. Therefore, no decision by SLT with respect to an amendment of a conservation restriction shall form 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 SLT.

**2. Purpose of Requested Amendment**

SLT will consider amendments to its conservation restrictions generally in the following circumstances:

1. Correction of an Error or Ambiguity. SLT may authorize an amendment to correct an obvious error or oversight made at the time the conservation restriction 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.
2. Settlement of Condemnation Proceedings. Conservation restrictions held by SLT are subject to condemnation for public purposes, such as for highways and schools. Where it appears that the condemnation power would be properly exercised, SLT may enter into a settlement agreement with the condemning authority.

## Minor Modifications Consistent with Conservation Purpose. Any amendment must be consistent with the conservation purpose(s) of the existing conservation restriction, and must meet the criteria enumerated in Section 3 below. In addition:

### If SLT initiates the amendment, it should be conservation neutral or provide a positive conservation benefit; or

### If the landowner initiates the amendment, it should provide a positive conservation benefit; and,

1. In either case, if it appears that the amendment will materially increase the appraised value of the landowner’s property, SLT may require full appraisal report by a qualified, independent appraiser , or for minor amendments, a letter of advice from such an appraiser.

**3. Criteria for Consideration of Amendment**

As a matter of policy, and subject as aforesaid to the discretion of the Board of Directors, SLT may but shall not be obligated to agree to an amendment where it determines that the following criteria have been met:

A. The amendment is consistent with SLT’s mission and clearly serves the public interest.

B. The amendment is consistent with the intentions of the original parties to the restriction, and to the documented intent of other donors or direct funding sources, where applicable.

C. The amendment is in compliance with all federal, state, and local laws.

D. There is no reasonable and feasible alternative to amendment.

E.The amendment does not result in private inurement for members of the Board of Directors, or impermissible private benefit to other parties.

F. The amendment will not jeopardize SLT’s tax exempt status or status as a charitable organization under federal or state law.

G. SLT will identify and resolve any other conflicts of interest affecting the amendment request before the Board of Directors grants approval and the amendment and its outcomes should be in compliance with the SLT Conflict of Interest Policy.

H. The amendment does not (i) effect a termination of the existing conservation restriction unless the terminated conservation restriction is immediately replaced by an amended conservation restriction consistent with this policy, or (ii) cause the perpetual duration of an existing conservation restriction to be terminable.

I. The amendment is not likely to result in the conservation restriction failing to qualify under the Internal Revenue Code or other applicable laws.

J. If the original conservation restriction requires notification or approval of amendments by any other parties (e.g., funders), these requirements shall be met before the Board of Directors grants approval.

K. An amendment does not hinder SLT’s ability to steward, defend or enforce the conservation restriction, or increase SLT’s costs in monitoring the conservation restriction without an accompanying payment by the requestor to offset such costs.

## L. The amendment will not undermine the public’s confidence in SLT to protect conservation values in perpetuity.

## The applicable policies and procedures of SLT with respect to evaluating and negotiating the acquisition of a new conservation restriction should be applied to any amendment.

## 4. Amendment Procedures

## Amendment is an extraordinary procedure and not available to a landowner as a matter of right, unless the conservation restriction itself, or Federal, state, or local law mandates that a particular amendment must be adopted. Any landowner seeking an amendment to an existing conservation restriction agreement shall file a request in writing with SLT stating what change is being sought and the specific reasons why it is needed or warranted. Where appropriate, the request shall also be accompanied by a map and other documentation. Unless specifically waived by the Board of Directors in writing, the request shall also be accompanied by an administrative fee of $500 (or such other amount as the Board determines from time to time as the amendment administrative fee), and in addition the landowner shall be responsible for all out-of-pocket costs of SLT (including but not limited to legal, survey and appraisal) whether or not the request is approved. The SLT Board may waive some or all of the costs for the following reasons: hardship, contributing errors by SLT, costs covered by a separate project or other grant especially if additional land is conveyed.

Upon receipt, SLT’s Land Acquisition Committee will review the amendment request and documentation, conduct a site visit, and provide a recommendation to the Board of Directors. In conducting its evaluation and developing its recommendation, SLT representatives will, at a minimum, consider the criteria listed in Section 3. The review and recommendation shall be documented.

No amendment shall be accepted without prior authorization by an affirmative vote of the majority of the full Board. The Board of Directors may approve, approve with modification, or reject the request for amendment at its next regularly scheduled meeting or at a special meeting convened for that purpose. A record of the approval vote will be included in the full Board meeting minutes, a copy of which will be filed with SLT’s property records along with the written review and recommendation and pursuant to its recordkeeping policy and practices.

If the terms of the amendment are approved, SLT will review the title status of the property to determine whether further title insurance and subordination of lenders is required to assure that the amended conservation restriction is covered by any policy and any lenders will be subject to the amendment.

# 5. Endowment

If an amendment requested by a landowner will increase future stewardship costs for monitoring of compliance or enforcement of the conservation restriction, the landowner will be responsible for providing additional funds to the Stewardship Fund. The amount will be determined on a case by case basis. SLT will advise the requestor of the amount of additional stewardship cost, and may require that the requestor pledge the additional amount in the event SLT approves the amendment.

# 6. Documentation

If the full Board approves an amendment of an existing conservation restriction, the amendment will be set forth in a document reviewed and approved by legal counsel to SLT, signed by all necessary parties, and recorded in the town clerk’s office where the existing conservation restriction is recorded. During this process, the Land Acquisition Committee and counsel may decide whether a restated and amended conservation restriction is preferable to a separate amendment agreement. Original property records and other irreplaceable property documents created in connection with the amendment shall also be filed and safeguarded consistent with SLT’s recordkeeping policy and practices.

Adopted by the Board at its meeting on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.