



LPOSC CONSERVATION EASEMENT AMENDMENT POLICY

Adopted June 2, 2009, Revised March 10, 2015

Amendments to conservation easements are viewed by the La Plata Open Space Conservancy (LPOSC) as being appropriate in only very limited, special circumstances. LPOSC does not routinely amend its conservation easements for purposes other than strengthening the conservation easement, improving enforceability, or adding additional area to the conservation easement. The Board of Directors may approve conservation easement amendments only by a two-thirds majority vote of the board membership.

It is the policy of the Board of Directors that amendments are allowable only if all of the following principles are considered by the Board of Directors.

Conservation Easement Amendment Principles

1. Whether the amendment would adversely affect the qualification of the easement (under IRS regulations) or LPOSC's qualification as a charitable organization under any applicable federal, state, and local laws.
2. Appraisals and/or other contemporaneous evidence document that no private inurement or impermissible private benefit will result from an amendment.
3. The amendment serves the public interest.
4. The amendment has a net beneficial effect or has a not-less-than-neutral effect on the relevant conservation attributes protected by the easement.
5. The amendment is consistent with LPOSC's mission.
6. The modifications are consistent with the documented intent and/or restrictions of the donor, grantor and any direct funding source.
7. Other parties that hold a legal interest in the easement agree to the amendment.
8. The amendment complies with all applicable federal, state and local laws.
9. The amendment complies with LPOSC's conflict of interest policy.
10. Each amendment request by a landowner must be accompanied by a payment of \$1,000.00, of which \$500.00 will be a non-refundable application fee to cover anticipated staff costs pertaining to review of the request, regardless of whether the request is approved. The remaining \$500 will be treated as a deposit and will serve to cover direct and 3rd party costs related to the review of the request. The deposit will be used to directly offset costs incurred by the organization and any amounts not used are refundable to the requestor. All costs in excess of the initial payment will be billed to the landowner and may include; boundary survey

and/or monumentation, legal review, or any other third party costs necessary for the review of the request. LPOSC may request an additional Conservation Easement Stewardship Fund donation if the nature of the amendment would increase LPOSC's stewardship responsibilities. There will be no fees for corrections due to LPOSC errors or omissions, nor for amendments initiated by the La Plata Open Space Conservancy.

11. The Amendment is accepted by a two-thirds vote of the entire La Plata Open Space Conservancy's Board of Directors in its absolute discretion.

12. An amendment may also be approved if the original conservation easement was legally invalid in any material respect.

Amendment Procedures

1. All requests for amendment must be in writing, and should include a detailed description of the change being requested, a rationale explaining why the request is warranted, and, if appropriate, a map of the property with areas affected by the proposed amendment clearly marked.
2. The Landowner shall pay in advance a standard \$1000 fee for all amendments. The amendment fee is to cover LPOSC staff time, legal review and county fees to record the amendment upon approval. The amount of the requested fee may be increased in cases where extensive staff or legal work is needed to review and complete an amendment. No Landowner fee will be required for amendments initiated by or to correct an error or omission made by LPOSC. The Landowner will be responsible for providing, or reimbursing the Conservancy for its direct costs of providing, necessary updated exhibit maps, legal descriptions, appraisals, surveys, etc. LPOSC staff will estimate the costs to process an amendment and secure the agreement of the Landowner to cover those costs before an amendment request is considered.
3. LPOSC staff will conduct a preliminary review of the request for an easement amendment to determine whether it meets the thresholds of the Amendment Principles. Staff will refer to the Land Trust Alliance's *Amending Conservation Easements: Evolving Practices and Legal Principles* 2007 study section entitled "Reviewing the Request: Amendment Screening Tests" as the basis for its review. The staff may conduct a site visit if appropriate.

The staff will make a written report and recommendation to the Board of Directors as to approval or disapproval of the proposed amendment and on what terms and conditions, including but not limited to the restating and amending of the conservation easement deed. If staff is recommending approval, the report shall address each of the Amendment Principles. If compliance with any of those principles is uncertain to any degree, the staff will provide sufficient information to the Board so that the Board can appreciate the uncertainty and any risks to LPOSC that may be involved. If the recommendation is disapproval, the staff's report will focus on the reasons for such disapproval with the necessity to address principles that are not relevant.

4. The final draft of a proposed amendment will be reviewed and approved as to form by the LPOSC general counsel or another qualified attorney prior to presentation to the Board of Directors.
5. Conservation easement amendments may only be approved by a two-thirds majority vote of the La Plata Open Space Conservancy's Board of Directors in its absolute discretion.

6. Upon approval and signature by all parties to the easement, the amendment will be submitted for recordation to the County Clerk, and a copy of the recorded easement placed in the Conservancy's easement files, provided to the Landowner, and provided to other agencies as appropriate.

Easement Amendment Circumstances

The following are examples of circumstances in which it may be appropriate to amend an easement, subject to the Amendment Principles above and the discretionary recommendations and approvals by LPOSC staff, board committee and board. This list is not intended to include all of the circumstances in which an amendment may appropriate, and each amendment, whether referred to in the list or not, must be considered in the context of the specific facts involved.

- To add land to an easement.
- To add restrictions on uses or activities that enhance the protected values or easement purposes.
- To carry out a specific agreement set forth in the easement or in an agreement executed by all parties to the easement prior to the initial execution of the easement.
- To correct a typographical error or other minor mistake.
- To make a minor boundary adjustment.
- To upgrade to current standard language (Restating and amending the easement if LPOSC's Board of Directors determines this to be necessary).
- To reflect changes in law or policy.
- To improve easement enforcement or administration.
- To clarify or rectify an ambiguity, to resolve a dispute and/or to strengthen easement provisions.
- To allow uses or technology not in existence or contemplated at the time of granting of the easement.
- To settle condemnation proceedings.