

Sample BLM Conservation Easement Amendment Policies and Procedures

Recommended by WO 350 Division of Lands and Realty (2005)

(revised 02/2005)

U.S.D.I. BUREAU OF LAND MANAGEMENT

Field Office
Street Address / P.O. BOX
City, State Zip Code
(phone no. / fax no.)

BUREAU OF LAND MANAGEMENT **CONSERVATION EASEMENT AMENDMENT POLICY**

[Note: “Policy” portion is available for public distribution. “Internal Guidelines” portion below is confidential, to prevent possible interference with pending negotiations between the agency and owners of easement properties]

BLM’s conservation easements are achieved primarily through voluntary agreements with landowners. Once an agreement is executed, BLM is bound to uphold the terms of the easement as negotiated. BLM’s record in upholding the terms and purposes of the original easement will determine whether future donors will put their trust in BLM.

It is BLM’s policy to hold and enforce conservation easements as written. Amendments to conservation easements will be authorized only under exceptional circumstances and then only under the guidelines below.

- In no case will an amendment be allowed that adversely affects the qualification of the easement (under IRS regulations) or under any applicable federal, state, and local laws or regulations.
- Issues of private benefit or inurement will be taken into account when considering amendments to easements, as required by IRS regulations.
- Unless waived or reduced by written agreement approved by the Authorized Officer, any party requesting a conservation easement amendment shall pay all costs including staff time (direct and indirect costs) and other costs (survey, title services, etc.) for reviewing the request, regardless of whether the amendment is granted, and for developing the amendment, if approved.
- The Amendment will be acceptable to the BLM Authorized Officer in its sole and absolute discretion.

Note: An easement amendment which exclusively increases the level of protection provided by an easement or adds new land to the existing easement shall not fall under this easement amendment policy, but will be considered as a new project.

*** This policy applies to deed restricted lands (e.g. reserve interests) as well as conservation easement lands.**

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Conservation Easement Amendment Internal Guidelines – CONFIDENTIAL*

Amendments to easements or deed restrictions must follow these guidelines unless the guidelines are amended by the BLM's Authorized Officer.

Approvable Conservation Easement Amendments

1. *Correction of Error or Clarification of an Ambiguity*

The BLM may initiate an amendment to correct an error or oversight in an original conservation easement. This may include correction of a legal description, inclusion of standard language unintentionally omitted, clarification of ambiguous language or obsolete terms in order to avoid litigation over interpretation of the document in the future.

2. *Modification Consistent with Conservation Purpose*

At times, a landowner may request an amendment that modifies the restricted uses or areas of an easement Property due to unforeseen adverse conditions or hardships. These requests will be considered for amendment only if all of the following conditions are met:

- A. The modification is not inconsistent with the purposes of the original easement; and
- B. The amendment creates a condition that enhances or is substantially equivalent to the terms of the original easement; and
- C. The net result of the modification does not enhance any property value that could be construed to violate the private benefit/inurement provisions under IRS regulations; and
- D. The modifications are made only with respect to the Property currently under easement; (amendments under this provision of the policy are **not** to be construed to permit a modification where additional land outside the easement Property is protected in return for modification of the easement); and
- E. The modification does not set an unfavorable precedent for future amendments; and
- F. The modification results in conditions that are monitorable and enforceable by the BLM; and
- G. The modification is acceptable to the BLM in its sole and absolute discretion.

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Recommended Procedures for Requesting and Approving an Amendment

1. Either the BLM or the landowner may initiate amendments.
2. Amendment requests must be made in writing. The request should include a description of the change being requested, a map of the property showing areas affected by the proposed amendment (if applicable), and a list of reasons why the request is warranted.
3. Each request by a landowner must be accompanied by a \$_____ payment (estimated in advance) to cover anticipated staff and direct costs pertaining to review of the request, regardless of whether the request is approved, and if approved, to carry out development of the amendment. Any unexpended portion of the fee will be refunded, but the landowner will be responsible for all costs exceeding the initial fee, as billed by the BLM. Any documentation required, such as a boundary survey and monumentation, will be the responsibility of the landowner. The BLM may request an additional Conservation Easement Stewardship Fund donation if the nature of the amendment would increase the BLM's stewardship responsibilities. There will be no fees for corrections due to the BLM's errors or omissions.
4. The BLM project manager or BLM authorized officer (approving official) will review any amendment request for consistency with regard to this policy, the original conservation easement deed, related documentation and the features of the land. The BLM project manager, agency legal counsel, other BLM staff or natural resource professionals, may review the request. A site visit, meeting with the current landowner and/or original donor may be arranged. A recommendation will be made to the BLM authorized officer (approving official) regarding acceptance of the amendment, unless the request clearly does not meet the criteria of this policy. All proposed amendments will be subject to review by agency legal counsel (Office of the Solicitor) pursuant to Department of Justice (DOJ) title standards.
5. Consideration of amendment requests and development of approved amendments will be taken up as staff schedules and priorities allow. However, amendment consideration and development will be superseded in priority by monitoring and enforcement of BLM held easements.