

Amendment triage and range of amendments

1. Land trusts often first evaluate an amendment request on a rough magnitude scale to get a sense of whether the proposal is very unlikely to be approved. This avoids personnel wasting time on analysis and instead focusing on a diplomatic denial. It also assists with identifying modifications that might make the request acceptable as well as efficiently identifying the range of nominal corrections and modifications.

One Possible Method of Triage of Range of Amendment Requests		
Nominal to Modest	Murky Middle	Not very likely to No
1. Extinguish reserved right	1. Correcting violations	1. Large scale or impact commercial uses
2. Add more land or other public benefit	2. Exchanges of more than nominal land	2. Wholesale change of purpose
3. Correct typos	3. Relocating reserved rights	3. Wholesale damage to overall intent and spirit
4. Correct erroneous legal descriptions that had insufficient land or other persons' land (be careful on dropping land); it really has to be an error	4. Relocating exclusions	4. Non-consistent commercial structures
5. Nominal boundary corrections and clarifications (not wholesale swaps)	5. Commercial activities consistent with conservation purposes	5. Unpermitted residences or other large structures
6. Nominal structures	6. Alternative energy and net metering	6. High intensity uses not permitted already
7. Positive or no negative effect on purposes or overall intent	7. Telecommunications	7. Elimination of substantive restrictions
	8. Modification of substantive restrictions with or without mitigation offset	8. Negative public perception
	9. Unpermitted divisions	9. Substantial damage to purposes or intent or both
	10. Net neutral effect on purposes or overall intent	

2. Land trusts typically use several basic questions or tests to determine whether the proposed amendment meets the thresholds of the amendment principles.

- *Public interest and organizational mission test.* Does the proposed amendment serve the public interest and further organizational mission and goals?
- *Legal test.* Is the amendment legally permissible under federal, state and local law? Could the amendment jeopardize the land trust's tax-exempt, charitable status?
- *Financial test.* Could the proposed amendment result in private inurement or impermissible private benefit?
- *Conservation purposes test.* Is the proposed amendment consistent with the conservation purposes and intent of the easement?
- *Existing and prospective donor test.* Does the amendment fulfill any obligations to the donor, grantor or funder? Will prospective donors, grantors and funders recognize that fact?
- *Conservation results test.* Will the proposed amendment result in a net beneficial or neutral effect on the conservation attributes of the easement land?
- *Public perception test.* Will land trust members, neighbors and the public understand the amendment or, at least, not find it objectionable? If not, what can be done to improve public perception? Does the land trust understand the community ramifications of the amendment?

3. Then land trusts typically move to a detailed analysis such as a checklist example following.