Policy on Amending Conservation Easements

Aquidneck Island
Aquidneck Island is the largest island in Narragansett Bay, an estuarine watershed of world renown. The Island has diverse ecological, geological, coastal, and agricultural resources, spectacular landscapes, and a rich cultural heritage grounded in marine trades and farming. Today, Aquidneck Island’s natural resources and rural livelihoods are threatened by the harmful effects of human activity, particularly caused by unbridled development.

General Statement of Policy
The Aquidneck Land Trust (ALT) acquires and holds conservation easements on property in order to protect Aquidneck Island’s wetland, agricultural, coastal, forest, wildlife, ecological, recreational, and open space values for the benefit of present and future generations of Rhode Islanders in general and for those who treasure Aquidneck Island in specific.

Because its acquisitions are accomplished through voluntary agreements with landowners, the success of the program depends upon the confidence of these owners that ALT will meet its obligation to monitor and enforce the agreements. This confidence would be seriously eroded if ALT allowed unrestricted modification of its conservation easements, particularly if those modifications weakened the strength of the easements with respect to preserving the values stated above. Amendments could raise potential problems with the Internal Revenue Service, both for ALT in terms of its tax-exempt status and for donors of conservation easements in terms of any charitable deduction that may have been claimed for a gift. Further, amendments could jeopardize ALT’s membership in good standing with the Land Trust Alliance (LTA), whose Standards and Practices ALT has adopted, and its good standing in the land conservation community including accreditation status.

Therefore, it is the policy of ALT to hold and enforce its conservation easements as written. As such, it will permit amendments to conservation easements only in very limited circumstances. Any request for an amendment will be reviewed according to the procedures set forth in this Policy, provided that the Executive Director may, within his or her sole and absolute discretion, refuse to hear a request for an amendment if the property is found to be in non-compliance with the terms and provisions of the Conservation Easement at the time of the amendment request. The requested amendment will be approved and implemented only where the ALT determines the following:

1. the requested modification is warranted under one or more of the four circumstances set forth below under the Purpose of Requested Amendment section of this Policy;

2. it is the minimum change necessary to satisfy that purpose;

3. it will not substantially erode the confidence of ALT’s supporters – including both past and future donors of conservation easements and other interests in land – about the goals of the organization or its intent to enforce its conservation easements;

4. it will not violate any funding requirements;

5. it is consistent with the purpose of the applicable conservation easement and will result in a positive or not-less than neutral conservation outcome unless prohibited by a properly mandated governmental action such as a condemnation action;
(6) is consistent with ALT's mission and Conflict of Interest Policy;

(7) it is consistent with the requirements of LTA, including but not limited to its Standards and Practices; and

(8) it will not violate any applicable laws and thus not result in private increment or impermissible private benefit.

Additionally, unless specifically waived, the requestor shall pay all staff and out-of-pocket costs pertaining to reviewing the change, whether or not the request is approved, and if approved, to its implementation.

Purpose of Requested Amendment
ALT will consider modification to its conservation easements only in the following four circumstances:

(1) Prior Agreement. Potentially, a conservation easement may include a specific provision allowing modification of its restrictions at a future date under specified circumstances. Such agreements must be set forth in the conservation easement document or in a separate document signed by both parties at the time the conservation easement was originally executed. The amendment must be consistent with the terms and conservation intent of the original agreement.

(2) Correction of an Error or Ambiguity. ALT may authorize an amendment to correct an obvious error or oversight made at the time the conservation 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.

(3) Settlement of Condemnation Proceedings. Conservation easements and other interests ALT holds in land are subject to condemnation for public purposes, such as highways, schools, etc. Where it appears that the condemnation power would be properly exercised, ALT may enter into a settlement agreement with the condemning authority in order to avoid the expense of litigation. In reaching such an agreement, ALT shall attempt to preserve the intent and purpose of the original conservation easement to the greatest extent possible.

(4) Minor Modifications Consistent with Conservation Purpose. ALT may authorize other minor modifications to the conservation easement where (a) the modification is not inconsistent with the intent of the principal parties of the original conservation project, and (b) the amended easement is substantially equivalent to or enhances the conservation goals of the original document.

ALT will be extremely cautious in consenting to a change under this section, and will do so only where the circumstances suggest that a change is clearly warranted and in the best interests of conservation. For example, ALT may allow the change of a house site permitted under the conservation easement to a new location, where the new location has a lower impact on the conservation values sought to be protected under the easement. No change will be made to allow for an additional house site not provided for under the original easement.

Procedures for Requesting an Amendment
Any landowner of property conserved by ALT seeking a modification to an existing conservation easement shall file a request in writing with ALT 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 waived by ALT's Executive Director, the request shall also be accompanied by a payment of $1,000 to cover ALT's costs. Any unexpended portion of the fee shall be refunded after the decision. The landowner shall also be responsible for all costs exceeding the initial fee unless waived by ALT's Executive Director. Any non-waived additional costs must be paid before a decision is issued.

ALT's Stewardship Director shall initially review all requests. The field review shall include reasonable efforts to contact the principal parties to the original transaction, including the landowner who donated / sold the restrictions, any town or State board or agency which contributed funds to the acquisition, and any persons who supported the acquisition through financial gifts, pledges of charitable credit, etc.

Upon the Stewardship Director's review and evaluation that a requested amendment is a "Prior Agreement," "Correction of an Error or Ambiguity," "Settlement of Condemnation Proceedings," and/or a "Minor Modifications Consistent with Conservation Purpose," as defined herein, or is deemed inconsistent with this Policy on Amending Conservation Easements, the recommendation will be forwarded to ALT's Executive Director. The Executive Director may approve, reject, or forward the recommendation to the Easement Amendment Panel described below. If the Executive Director approves the recommendation, said approval shall be final and will be shared with ALT's Board of Trustees at their next regularly scheduled meeting. However, the Executive Director's approval shall be final as to the Stewardship Director's recommendations only where said recommendations involve minor amendment requests. Minor amendment requests are those requests that do not involve commercial, excluding commercial agriculture, or residential development. If the requested amendment is not minor, the amendment request shall follow the procedure below.

The Easement Amendment Panel consists of ALT's Executive Director, Stewardship Director, General Counsel, if appropriate, Legal Defense Committee and a member of the Stewardship Committee. If the panel concludes that the amendment is legally permissible, consistent with the terms of this Policy and the subject Conservation Easement, and clearly warranted by the circumstances, the Executive Director shall forward the request and panel recommendation to the Board of Trustees. A decision of the panel to disapprove the request shall be final and will be shared with ALT's Board of Trustees at their next regularly scheduled meeting.

The Board of Trustees may approve, approve with modification, or reject any panel recommendation for approval at its next regularly scheduled meeting or at a special meeting convened for that purpose. A decision by the Board of Trustees shall be final. In all cases, approval shall require a two-thirds vote of the full Board of Trustees.
Approved by the Board of Directors on January 15, 2002:
Policy revised and approved by the Board of Directors on April 22, 2003
Policy again revised and approved by Board of Trustees on September 2, 2008
Policy again revised and approved by Board of Trustees on May 25, 2009
Policy again revised and approved by Board of Trustees on October 22, 2013.