

Standard 11: Conservation Easement Stewardship

Amendment Policy

Mission: Utah Open Lands (UOL) holds conservation easements for the purpose of protecting the conservation purposes and conservation values as outlined in the IRS Regulations: “outdoor recreation by, or the education of, the general public; relatively natural habitat of fish, wildlife, or plants; open space; clearly delineated governmental policies which specifically includes agricultural and ranching values and historically important land areas.” (see [Sec. 170(h)(4)(A)(i-iv)] below)¹.

Utah Open Lands holds and enforces conservation easements as they are recorded. Amendments are rare and will only be entered into if the proposed amendment is consistent with the terms of the conservation easement, is consistent with our mission and complies with Charitable Trust doctrine and laws governing conservation easements. Utah Open Lands will only consider amendments that have a beneficial effect on the conservation purposes and values protected by the conservation easement. Utah Open Lands assesses amendment requests pursuant to the following amendment standards and procedures.

Amendment Standards

1. An amendment must demonstrate a beneficial effect on conservation values protected by the conservation easement.
2. An amendment must not adversely affect the status of Utah Open Lands as a qualified organization, eligible donee, or eligible holder of this Easement.
3. An amendment must not affect Utah Open Lands’ public charity status and must be consistent with our mission.
4. An amendment must not result in private inurement or confer impermissible private benefit, as those terms are defined for purposes of federal tax law.²
5. An amendment must not impair, injure, or destroy any of the Property’s Conservation Values or other significant conservation interests, or be detrimental to or inconsistent with the Conservation Purposes of the Easement.
6. No amendment shall be considered if a conflict of interest exists.
7. An amendment must not limit or otherwise alter the perpetual duration of this Easement.
8. All amendments will satisfy any funding requirements made at the time of the granting of the Easement.
9. An amendment must not modify the amendment clause, any restriction on transfer, extinguishment, , liberal construction, or no merger provisions of the Easement.
10. Any amendment requires approval of the Board of Directors of Utah Open Lands and is documented in writing in compliance with this policy; and permanently retained in UOL files.
11. An amendment must be in writing, duly signed, and promptly recorded in the appropriate location for public land records.
12. Any other action may or may not require a written or recorded amendment, but in all cases will be documented by a written memorandum of understanding in the file.

Amendment Circumstances

1. Amendments that are technical in nature:
 - To fulfill agreements specified in the conservation easement;

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- To correct an error in original drafter;
 - To correct a legal description (survey description);
 - To correct errors in conservation easement exhibits;
 - To include exhibits inadvertently omitted, or which may clarify the existing terms of the conservation easement;
 - To clarify an ambiguity in the conservation easement;
2. To adjust a conservation easement to acknowledge a condemnation by a public agency;
 3. To enhance the protection of one or more of the Conservation Values of the Property and are not detrimental to or inconsistent with the Conservation Purpose of this Easement, including an amendment to add land to this Easement.
 4. Amendments that eliminate or reduce one or more of the uses or practices permitted by the terms of this Easement.
 - To add new provisions that strengthen the preservation and protection of conservation values; or
 - Amendments may be considered for other reasons provided they have a beneficial effect on the conservation values protected by the conservation easement.
 - Any other factor deemed material to Utah Open Lands.

¹ **Section 170(h) (4)(A)** For purposes of this subsection, the term “**conservation purposes**” means – (i) the preservation of land areas for outdoor recreation by, or the education of, the general public, (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (iii) the preservation of open space (including farmland and forest land) where such preservation is – (I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or (iv) the preservation of a historically important land area or a certified historic structure.

²**Inurement/Private Benefit - Charitable Organizations:** A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization.

Amendment Procedures

1. Utah Open Lands reserves the right to charge a fee for review, drafting and execution of the amendment.
2. Landowner and Utah Open Lands staff will discuss the proposed amendment and UOL’s Amendment Policy.
3. Landowner or Utah Open Lands will submit to the other party a written request to amend the conservation easement that:
 - a. Outlines reasons and basis for amendment and,
 - b. Provides maps, photos, and other documentation deemed necessary by Utah Open Lands, the expense of which shall be born solely by the landowner.
4. Utah Open Lands staff may conduct a field review and meet with landowner as necessary.
5. Staff will review the amendment request and documentation using the following criteria: (see amendment criteria matrix attached).
 - a. Will the amendment have a beneficial effect on the conservation values protected by the conservation easement? (Amendment Standard 1)
 - b. Will the amendment affect Utah Open Lands’ ability to steward or defend the conservation easement? (Amendment Standard 1)

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- c. Does this amendment confer a private benefit to the landowner or any other individual greater than the benefit to the general public? (The general public benefits through the preservation and protection of the conservation values.) If there is any question as to whether the private benefit conferred is greater than the public benefit conferred by such an amendment, such determination shall be made by an independent appraisal paid for by Grantor. (Amendment Standard 2)
 - d. Does this amendment result in private inurement for any Utah Open Lands board member, staff person, or contract employee? If so, the amendment must be denied. (Amendment Standard 2)
 - e. Is there any other conflict of interest affecting this amendment request? If so, the conflict of interest must be resolved before approving this amendment? (Amendment Standard 3)
 - f. Does the conservation easement require notification or approval of amendments by any other parties? If so, have these requirements been addressed? (Amendment Standard 4)
 - g. Has the board of Directors reviewed the Amendment request? (Amendment Standard 5)
 - h. Should the amendment be reflected in a restatement of the original conservation easement or in an amendment to the conservation easement? (Amendment Standard 6)
6. Staff will coordinate with entities or individuals as required in the original conservation easement.
 7. Staff will update title information to assure that the correct parties are engaged in amending the easement.
 8. The full board of Utah Open Lands will make final decision or delegate when appropriate to the conservation subcommittee.
 9. If the terms of the amendment are approved, staff 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 easement is covered by any policy and any lenders will be subject to the amendment.
 10. The conservation easement amendment or restatement will be recorded in the county or counties in which the property is located.

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11. AMENDMENT INFORMATION and MATRIX

The purpose of this form is to assemble the information needed to evaluate a proposed amendment, and the effect that amendment may have on the conservation values of the property. It should be determined whether the proposed amendment would enhance, have a neutral effect, or be detrimental to the conservation values of the property. This information is used by the board to determine how to proceed regarding the proposed amendment. This matrix also serves to gather information to ascertain possible private benefit issues and to evaluate the broader questions of public benefit.

Name of Project:

Contact Information:

Owner(s):

Phone number:

Address:

Email address:

Physical Address of the Property:

County

Town

U.S.G.S. Quad

Original Conservation Easement Transaction Type

CE Purchases

Bargain Sale

CE donation

Other:

Total Number of Acres :

Acres in Project (if different) :

Purpose of the Conservation Easement as stated in the Easement document:

Conservation Values as stated in the document:

Directions to the Property:

Underlying zoning:

General description of property:

Permitted Uses that have been exercised, and permitted uses that have not yet been exercised:

Surrounding land uses:

Current land use:

Additional Information:

Occurrence/Inquiry which necessitated this review on the part of Utah Open Lands:

State the potential or proposed amendment:

Has the landowner made a request or statement regarding this matter in writing?

Summarize landowner's request or statement:

Key Contact People: (other than owner (above), third parties who have involvement with the property or are considered to have been involved in the amendment etc.)

Name/relationship:

Name/relationship:

Address:

Address:

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City/state/zip:

City/state/zip:

Phone/fax:

Phone/fax:

E-mail:

E-mail:

Name/relationship:

Name/relationship:

Address:

Address:

City/state/zip:

City/state/zip:

Phone/fax:

Phone/fax:

E-mail:

E-mail:

Will the amendment have a beneficial effect on the conservation values protected by the conservation easement?

Will the amendment affect Utah Open Lands' ability to steward or defend the conservation easement?

Does this amendment confer a private benefit to the landowner or any other individual greater than the benefit to the general public? (The general public benefits through the preservation and protection of the conservation values.) If there is any question as to whether the private benefit conferred is greater than the public benefit conferred by such an amendment, such determination shall be made by an independent appraisal paid for by Grantor.

Does this amendment result in private inurement for any Utah Open Lands board member, staff person, or contract employee? If so, the amendment must be denied.

Is there any other conflict of interest affecting this amendment request? If so, the conflict of interest must be resolved before approving this amendment?

Does the conservation easement require notification or approval of amendments by any other parties? If so, have these requirements been addressed?

Has the board of Directors reviewed the Amendment request?

Should the amendment be reflected in a restatement of the original conservation easement or in an amendment to the conservation easement?

Does the conservation easement require notification or approval of amendments by any other parties? If so, have these requirements been addressed?

Is coordination with funders or individuals necessary, as required in the conservation easement?

Will this amendment undermine the public's confidence in UOL? Describe how and why:

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Does granting or denying this amendment request set an unwanted precedent regarding future amendment requests?

Would the amendment affect UOL’s ability to steward or defend the conservation easement?

Additional Information:

_____ (Date and initial) Land owner given copy of UOL policies and procedures, and/or UOL staff discussed with them.

_____ (Date and initial) Staff Meeting / discussion with landowner.

Summary of discussion:

Describe the Utah Open Lands Staff assessment of the amendment request:

Is an amendment necessary? Or, would a restatement which clarifies the original conservation easement language be necessary?

Checklist

To fulfill agreements specified in the conservation easement;

To correct an error in original drafting;

To correct a legal description (survey description);

To correct errors in conservation easement exhibits;

To include exhibits inadvertently omitted, or which may clarify the existing terms of the conservation easement;

To clarify an ambiguity in the conservation easement;

To adjust a conservation easement to acknowledge a condemnation by a public agency;

To add new provisions that strengthen the preservation and protection of conservation values; or, Amendments may be considered for other reasons provided they have a beneficial effect on the conservation values protected by the conservation easement.

Any other factor deemed material to Utah Open Lands.

Yes No

 Has the Landowner made this request or statement in regard to a violation? Explain:

*If a violation has occurred, please complete the Violation Checklist form.

 Has the amendment request been made by the Grantor of the Easement or by a third party? Explain:

 Is the amendment request being made to clarify an interpretation of a permitted use, or for restoration purposes? Explain:

 Is the amendment proposed to clarify interpretation of the general effect of the conservation easement’s protection of the property? Explain:

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- Is the amendment request in conjunction with a pending sale of the property? Explain:
- Does the amendment request benefit an adjacent property? If yes, is the adjacent property owned by Grantor? Explain:
- Is the request to restrict a permitted use, such as development, in order to lessen the impact of the permitted use, and/or enhance the conservations values? Explain:
- Will the amendment affect stewardship responsibilities for the property? Explain:
- Has Utah Open Lands considered whether the amendment will benefit the Grantor or another party privately? Provide
the fiscal analysis? Explain: Will an appraisal be acquired?
- Does the Grantor request that the amendment qualify for additional tax benefits (i.e. removing development rights)
- Has the Grantor been made aware of the need to gain a certified conservation easement appraisal in conjunction with any
anticipated tax deduction?
- Has the amendment been requested by the original grantor of the easement? Explain:
- Will the proposed amendment result in an expanded area of land conserved?
- Will the proposed amendment result in land previously protected by the conservation easement no longer being protected?
- Will the proposed amendment result in trading land under the conservation easement for land outside of the conservation
easement?
- Will the amendment contradict or alter the stated purpose of the conservation easement? Explain
- Will the Amendment cause conservation values to come into conflict with one another?
- Are there other possible conflicts of interest involved in this matter?
(Any conflicts of interest must be resolved). If so, explain:

Conservation Purposes:

Describe how the amendment might affect the conservation purposes of easement and the conservation values. List the specific conservation values, possible conservation value conflicts, and evaluate whether the conservation values will be enhanced/ unaffected / negatively impacted: _____

If there is any question as to whether the private benefit conferred is greater than the public benefit conferred by such an amendment, such determination shall be made by an independent appraisal paid for by Grantor. (See IRS Regulation 1.179A-14-14(h)(3)(i). (The general public benefits through the preservation and protection of the conservation values.)

Does this amendment result in private inurement for any UOL Board Member, staff person, or contract employee? (See IRS Reg. 1.501 (c) (3) -1(c)(2) (If so, the amendment must be denied.)

Additional Information:

Describe alterations required for the amendment or occurring due to the violation (include size, location, and uses)

Roads/trails:

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Cultivation:

Archeological sites:

Ponds/wells/springs:

Gravel pits/ mines:

Subsurface utilities/septic:

Soil test pits:

Waste disposal:

Other:

Sketch or Attach Map of Vegetation Types & Surface Alterations:

Structures (*INCLUDE size, visibility, setback, location*)

Residences:

Accessory structures:

Commercial buildings:

Docks/floats/piers:

Walls, fences:

Seasonal storage:

Bridges, stairs, boardwalks:

Utility apparatus:

Recreational facilities:

Aquaculture facilities:

Junk/refuse:

Public Access Areas:

Staff field inspection: Details:

Attach drawings for clarity:

Additional Information:

Additional factors requiring consideration:

Community issues regarding this matter:

Condemnation:

Stewardship coverage:

Survey needed:

Baseline Data changes:

Appraisal?

Fee, if any, Utah Open Lands may charge for review of request and/or execution of amendment?

Other:

Record Keeping:

Meetings / Correspondence / actions taken:

Date	Staff	Action
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Date and Initial:

_____ Title information verified/ updated to insure correct parties are engaged in amendment process

_____ Title status of the property reviewed

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_____ Final decision made by the Chairman and appointed Utah Open Lands Board Member (name appointed member):

_____ Conservation Easement amendment or restatement is recorded in the county or counties in which the property is located.

Utah Open Lands Subcommittee

Reported/Presented to Utah Open Lands Subcommittee (attach copy of Board meeting minutes). Date and Staff

Responsible:

Action taken:

Utah Open Lands Board of Directors

Reported/Presented to Utah Open Lands Board of Directors (attach copy of Board meeting minutes). Date and Staff

Responsible:

Action taken: