

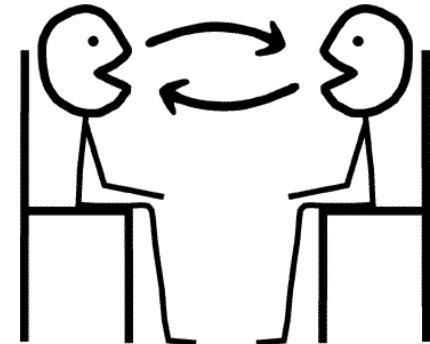
Conservation Amendments: Survey Results

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The Survey

- 40 amendment clauses from 27 different land trusts and government agencies
- 15 land trusts shared internal amendment policies
- Phone interviews with 9 land trusts



Amendment Clauses – Elements

- No amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 815 et seq. of the California Civil Code, or Section 170(h) of the Internal Revenue Code.
- Amendment shall not affect its perpetual duration.
- Any amendment shall be consistent with the purposes of this Easement.
- Amendment shall not impair the conservation values.

Elements of Amendment Provisions

- Amendment only by mutual written agreement.
- Amendment shall be recorded in the Official Records of _____ County, California.
- Amendment shall comply with any amendment policy adopted by Grantee.



Provisions Unique to Particular Easements

- Restrict what sections can be amended
- Require approval by funder
- Anticipate future possible amendments, such as boundary adjustment



Presumption Against Amendments?

- “It is the parties’ intention that this Conservation Easement will not be amended. In the event of unforeseen circumstances, Grantee in its sole discretion may consider an amendment to this Conservation Easement.”
- “Nothing in this paragraph shall be construed as requiring Grantee to agree to any particular proposed amendment.”
- “Owner and Holder recognize that circumstances could arise that would justify amendment of certain of the covenants, terms, conditions, or restrictions contained in this Easement.”

Internal Amendment Policies



Legal Concerns

- Amendments must not jeopardize the legal qualifications of the easement under local, state, or federal law.
- Amendments must not jeopardize the land trust's tax-exempt status or status as a charitable organization under federal law.
- Amendments must be consistent with state and federal laws, and local land use and zoning regulations.

Internal Policies: Legal

- Amendments must not undermine the perpetual nature of the easement.
- Amendments must not result in private inurement or impermissible private benefit.
- If an amendment results in private gain, it must result in equal or greater gain in value to the public.

Internal Policies: Addressing Policy Issues

- Easements should be written to avoid the need for amendment in the future.
- Amendments must not result in unfavorable precedent for future amendments.
- Amendments must be consistent with the original intent of the easement.
- Amendments must result in either a positive or neutral impact on the conservation values.

Policy Concerns

- Amendments may be approved only if there is no alternative solution to the issue, and must represent the minimum change necessary.
- If the amendment includes a loss of acreage, compensation must be received in the form of new acreage.
- If the amendment adds an additional building envelope, the total building envelope acreage must be less than the original building envelope acreage in order to compensate for increased disturbance posed by multiple buildings.

Policy Concerns

- Amendments must not conflict with the land trust's conflict-of-interest policy.
- Amendments must not increase the land trust's monitoring or enforcement burden, or the landowner must provide an additional endowment to compensate for this increased burden.
- Consider public perception and the potential impact of the amendment on the land trust's reputation.

Policy Concerns

- Bias Test: favoritism to particular landowner?
- Identification of Permitted purposes for Amendments
- Identification of Impermissible purposes for Amendment



Process Considerations

- A decision to proceed with an amendment is at the sole discretion of the land trust.
- Internal Approval: Two-thirds majority vote of the Board.
Approval by internal committee before a vote by the Board.
- Contact with and/or approval from the donor's heirs, as well as any parties that supported the acquisition of the easement

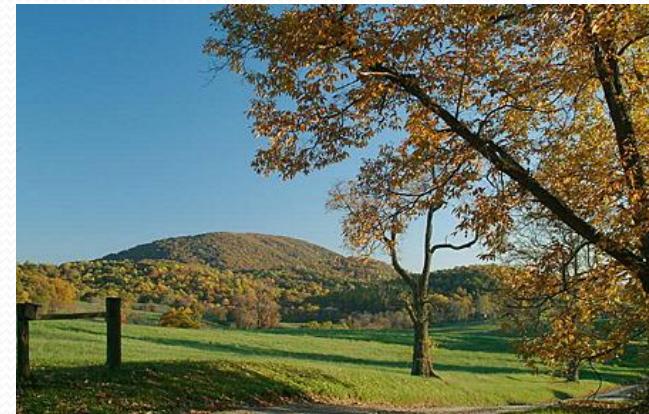
Process Considerations

- Attorney General Review: prior to amendments.
- Landowner pays for a title report.
- Landowner required to notify the IRS and the State Comptroller.



Process Considerations

- Landowner submits application and supporting documents.
- Stewardship site visit prior to the amendment decision.
- Amended baseline report.



Process Considerations

- Landowner pays amendment fee.
- Landowner pays all third party costs including for surveyors and legal fees.



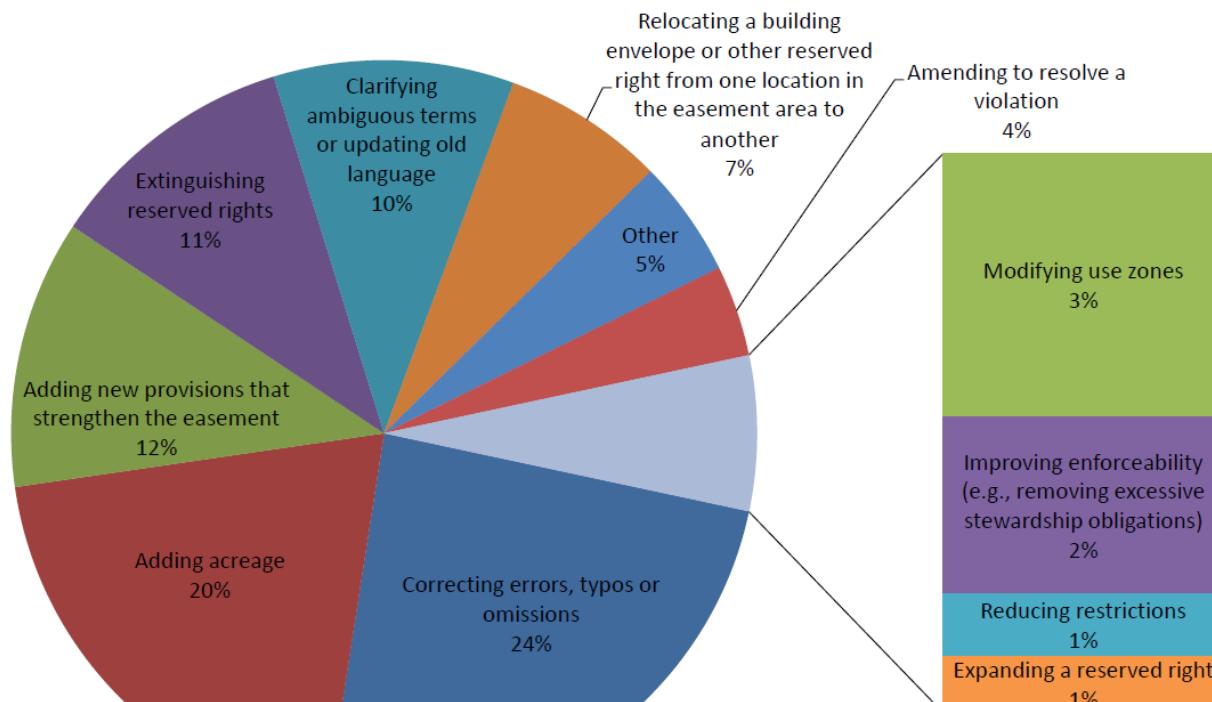
Discussions with Land Trusts About Specific Amendments

- 9 interviews
- 17 specific amendments
- 9 Tier 1
- 7 Tier 2



Land Trust Alliance Survey

Reasons for Amendments Completed Since 2006



 Land Trust Alliance
Together, conserving the places you love

Further Issues for Discussion?

- Should easements include more than legally required basics?
- Other ideas for internal policies?

