Blue Ridge Land Conservancy Practices

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11A: Funding Conservation Easement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction

2. Track stewardship and enforcement costs

Practice 11A1: Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction

Practice 11A2: Track stewardship and enforcement costs

It is the policy of the Blue Ridge Land Conservancy to understand and consider the costs and sources of funding associated with each potential real estate project before the project is approved. This includes costs related to project development (initial project costs, property report preparation, initial stewardship costs) and those related to long-term management and enforcement (monitoring and ongoing easement management, encouraging voluntary compliance and enforcement.)

All projects brought to the Board for approval must address estimated costs and potential sources of funding.

1. Generally, the Conservancy will use its operating funds or other available designated funding source to cover those costs associated with initial project development.
2. The Conservancy will require that each easement be accompanied by an unrestricted fee paid by the donor, or from other sources, sufficient to support the long-term management and enforcement cost associated with the easement with a required contribution to the Conservancy's Stewardship Endowment Fund per the Conservancy's established fee schedule. The fee structure shall meet or exceed the minimum required by the Land Trust Accreditation Commission.
3. The fee schedule will be re-visited annually by the Stewardship Committee to assure that the Conservancy has sufficient funding to meet its long-term stewardship obligations. Staff shall track stewardship costs and provide information to the Stewardship Committee as requested.
4. The fee shall be paid either at the time of recordation or on a payment schedule specified in a contractual agreement. The Conservancy generally will not accept easements unless the donor is pay the required stewardship and defense fee, except in special circumstances in which time is of the essence or the project has such high conservation value that seeking funds from outside sources if justified.
5. Sources of funding for the stewardship fee if the donor is unable to pay the fee shall be:
    a. Sale of the donor's Virginia Land Preservation Tax Credits and a corresponding signed payment schedule
    b. Upfront payment by a third-party conservation partner who may be assisting the landowner with the sale of their tax credits.
    c. Solicitation of donations from the Board, Friends of the land conservancy and the general public

   d. Grants and foundation gifts
6. All stewardship fees will be pooled to support the Conservancy's stewardship program. In addition, the Development Committee will place a priority on securing endowment funding sufficient to meeting our current stewardship obligations, based on the cost analysis.
7. The Conservancy will require compensation from the requesting party for costs associated with deed amendments.

Adopted 04/04/2007; amended 12/2/2009, 09/2/2015; revised 04/4/2018

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11B: Baseline Documentation Report

1. For each conservation easement, have a baseline documentation report, with written descriptions, maps and photographs, that documents:

a. The conservation values protected by the easement

b. The relevant conditions of the property as necessary to monitor and enforce the easement

2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing

a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing

3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

Practice 11B1: For each conservation easement, have a baseline documentation report, with written descriptions, maps and photographs, that documents:

a. The conservation values protected by the easement

b. The relevant conditions of the property as necessary to monitor and enforce the easement

Practice 11B2: Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing

a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing

Practice 11B3: When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

For every easement, the Blue Ridge Land Conservancy shall complete a baseline documentation report prepared prior to recordation of the easement and signed by the landowner and the Conservancy before recording the easement. The report shall document the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgement of interim data, that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i), shall be signed by the landowner at closing.

When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), the Conservancy shall document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report.

At a minimum, the baseline documentation report shall include photographs of key features and an aerial photo or detailed current map of the property, showing property boundaries, waterways, resource areas, roads, and structures. Recent site-specific resource inventories should be included, if available. If an appraisal was done as part of the transaction, information from that report, such as photos and summaries of man-made and natural features, should be included as well. The following information shall be included in the documentation:

- Date of completion
- Information on the location of the conservation easement
- Property description
- Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs
- Documentation of existing conditions that relate to the conservation easement's restrictions and reserved rights, including written descriptions along with related maps and photographs (such as the location and condition of any manmade improvements, data that would influence the exercise of reserved rights, pre-existing conditions that are otherwise prohibited by the conservation easement, other features that may threaten the conservation values, etc.)
- Dated signatures of the landowner and organization acknowledging that both attest to the accuracy of the information contained in the report (if the landowner is receiving tax benefits for a donated conservation easement, the acknowledgement must be compliant with the Treasury Department Regulations [§1.170A-14(g)(5)(i)(D)].)
- The authorship and qualifications and/or experience of the baseline preparer
- Other acknowledgements or information that would make the material admissible as a business record in court (such as an indication that the record was created at or near the time of the event rather than later in anticipation of litigation, that the record was created by someone with direct knowledge or who was given the information by someone knowledgeable, that the record was created and kept in the course of the organization's regularly conducted business, and that it is the organization's regular practice to create or maintain such records)
- One or more maps that 1) clearly show the property, such as by containing property boundaries, north arrow, scale, date the map was created, etc. and 2) contain features relevant to the enforcement of the conservation easement, such as a) existing manmade improvements or incursions, such as roads, buildings, fences or gravel pits; b) vegetation and identification of flora and fauna, such as rare species locations, natural habitat, animal breeding and roosting areas, and migration routes; c) land use history, including present uses and recent past disturbances; d) distinct natural features, such as large trees and aquatic areas, etc.; and e) special use areas, such as building envelopes, protected riparian zones, forest management zones, etc.

Baseline Documentation Reports shall be stored according to the Conservancy's record storage policy.

Adopted 04/04/2007; amended 12/2/2009, 09/2/2015, 05/4/2016; revised 04/4/2018

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11C: Conservation Easement Monitoring

1. Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures

2. Monitor each conservation easement property at least once per calendar year
a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
b. Promptly document the annual monitoring activities for each conservation easement

Practice 11C1: Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures

Practice 11C2: Monitor each conservation easement property at least once per calendar year

a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
b. Promptly document the annual monitoring activities for each conservation easement

The Blue Ridge Land Conservancy shall adhere to the following policy on monitoring conservation easements.

Schedule of Monitoring:

Each conservation easement held by the Conservancy shall be monitored at least annually to determine whether the terms and conditions of the easement for each parcel of property are being adhered to by the landowner. In some instances, monitoring should be done more frequently in order to identify any actions that may violate the terms of the conservation easement as soon as practicable, and thus reduce the Conservancy's chances for significant time and expense in correcting a violation.

A monitoring visit should take place within the calendar year following the previous monitoring visit (e.g., if a property is monitored in March, the Conservancy should monitor the property again no later than Dec. 31 of the following year). If weather, conditions on the property or other circumstances do not permit this, the Conservancy shall monitor the property again at the earliest opportunity available.

Persons to Monitor:

The Conservancy shall utilize staff, volunteers and Board members to monitor conservation easements in order to provide necessary continuity, better easement interpretation and ongoing relations with landowners, and long-term organizational accountability. Prior to commencing monitoring, the Conservancy staff, volunteers and board members shall receive adequate training in the methods and overall monitoring process.

For safety reasons, monitoring teams shall consist of no fewer than two individuals, one of whom is familiar with the property. Teams shall carry a first aid kit, cellular phone, GPS unit and other items as

necessary (emergency food and water, matches, insect repellant, raingear, sunscreen, etc.) to ensure their safety. Each team member shall wear an article of blaze orange clothing, such as a hat, jacket, or vest, in full display, at all times. At least one team member shall also hold current American Red Cross certification in Adult First Aid and CPR.

Method of Monitoring:

On-the-ground monitoring shall be the process used by the Conservancy unless special circumstances warrant otherwise.

Monitoring Process- Report and Follow-Up:

A member of the Conservancy monitoring team shall contact each landowner prior to each annual visit describing the monitoring visit planned and asking that a time convenient to both the landowner and the Conservancy be arranged.

The Conservancy's monitors shall prepare for each monitoring visit by familiarizing themselves with the conservation easement, baseline documentation, prior monitoring reports and the monitoring form. The Conservancy shall visit or view all areas of the property subject to restrictions on use and any areas of recent development activity to determine compliance with the terms of the conservation easement as well as shoot photos at GPS-tagged photo points. After each monitoring visit, the monitoring team shall complete and sign a written monitoring report which the Conservancy will send to the landowner within 30 days.

In addition, the monitoring report shall identify and address any violations and other issues uncovered during the monitoring visit, as well as the corrective actions that should be taken. At no time should the monitoring team confront landowners in the field regarding any observed violations.

Monitoring reports shall be stored according to the Conservancy's record keeping policy.

Adopted 04/04/2007; amended 12/4/2009, 09/2/2015; modified to reflect name change 2/2/15; revised 4/4/2018

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11D: Landowner Relationships

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts

2. Establish systems to track changes in land ownership

3. When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust's stewardship policies and procedures

Practice 11D1: Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts

Practice 11D2: Establish systems to track changes in land ownership

Practice 11D3: When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust's stewardship policies and procedures

To support its partnership with easement donors, the Blue Ridge Land Conservancy will:

- Thank each easement for his/her contribution through a letter from the Executive Director and a contemporaneous gift acknowledgment, acknowledging the donation of an easement or fee simple property (but not attesting to valuation)
- Provide each easement donor with signs that note the protected status of his/her property, if the donor so desires.
- Provide each easement donor with an honorary life membership in the Conservancy, which includes the Conservancy's magazine mailed to their home whenever published, and invitations to Conservancy special events and activities.
- Ask each easement donor if the Conservancy may publicize his/her conservation easement.
- Ask each easement donor if he/she might be willing to provide a testimonial regarding his/her project or serve as a reference for other landowners.
- Remind easement donors of their obligation to notify the Conservancy if they sell their conserved property. Following a transfer of ownership, make sure all new landowners that have purchased a conserved property receive a personal visit from staff, a copy of the BDR, a complimentary lifetime membership and an easement packet. Staff shall update stewardship records with the new owner information per the Conservancy's record keeping policy.
- Provide informal services to easement donors, such as advice on enhancing wildlife habitat or utilizing best management practices.
- Maintain good relations with local officials and government staff who may be able to provide assistance in keeping the Conservancy informed of issues associated with properties under easement.

Adopted 04/04/2007; amended 12/4/2009, 09/2/2015; revised 4/4/2018

Blue Ridge Land Conservancy Practices

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11E: Conservation Easement Enforcement

1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations

2. Investigate potential violations in a timely manner and promptly document all actions taken

3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution

Practice 11E1: Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations

Practice 11E2: Investigate potential violations in a timely manner and promptly document all actions taken

Practice 11E3: Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution

The Blue Ridge Land Conservancy shall follow the following policy for enforcing conservation easements.

Overall guidelines for violation response and enforcement:

1. Maintain the conservation purposes of the conservation easement.
2. Maintain the Conservancy's image both in its ability to achieve its mission overall and in its ability to enforce specific easements.
3. Protect the Conservancy's legal rights and economic value in the easement.
4. Maintain the most constructive working relationship possible with the easement donor.
5. Never give an easement donor an on-the-spot opinion about whether or not a violation exists. No person in the field should make decisions on violation response.
6. Conduct meetings with the property owner, in relation to the violation, as a team of two, including at least one staff member and which may also include a board member or legal counsel.
7. Maintain professionalism and integrity.
8. Be flexible as the situation warrants. Balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
9. The Conservancy will only use litigation as a last resort.
10. Maintain consistent responses to similar easement violations.
11. Notify and work with any co-holder of an easement at all stages of the process.

Steps to take in the event of a suspected violation:

1. If a suspected violation is identified in the field, the monitor shall take photographs or a video along with GPS points to thoroughly document the suspected violation. The violation should be reported to the Executive Director or their designee.
2. Within five (5) business days of becoming aware of a suspected violation, the monitor (or Executive Director or designee, depending on the nature of the potential violation) shall speak with the easement donor, either in person, by phone or by e-mail, and ask questions for further clarification of the suspected violation. Staff should not state definitively that there is or is not a violation. They should use polite deferment techniques. The staff member should thank the easement donor for his/her time. They should tell the easement donor they will follow up and send a copy of the monitoring report.

3. The Executive Director or designee shall review the monitoring report and purpose of the easement with the monitor. The Executive Director or designee shall carefully review the full easement, visit the site if necessary, and make an initial assessment of whether or not there is a violation. The Executive Director or designee shall then consult with the Stewardship Committee to further discuss and come to a final decision on whether or not there is a violation.

4. If it is determined that there is not a violation, the process ends.

5. If it is determined that there is a violation, the Stewardship Committee (in consultation with any co-holders) shall develop suggestions for remediation and/or compensation by the easement donor. At this time, the Committee may identify specific legal counsel within or independent of the Committee to provide consultant legal services.

The Executive Director shall then draft and send a letter to the easement donor (copied to any co-holders), along with a report to the Board at its next meeting. The letter shall specify the easement violation and references appropriate language from the easement. The letter should request a personal meeting with the easement donor.

If the easement donor cannot be contacted by telephone, the staff shall draft and send a certified letter (return receipt requested) that specifies the violation and requests a personal meeting to resolve the situation. A copy of the certified letter should also be sent by first class mail. A timeframe for contact should be specified in the letter. Upon contact, go to step 6. If the certified letter is rejected, staff shall attempt to have it delivered personally. If a response is not received in the time period identified, the situation shall be re-evaluated. An effort shall be made to visit the property at times when someone may be found at home and attempt to make contact. If there is no success with repeated attempts at contact, legal action should be considered.

6. In the meeting, Conservancy representatives and the easement donor should walk the site, discuss the purpose of the easement, and the nature of the violation.

7. If the Conservancy team and easement donor agree upon the nature of a violation, they should discuss alternatives for remediation and attempt to arrive at a solution. This may require further visits, research, consultations, and meetings.

8. The visit(s) shall be followed by a letter that documents the conversation and discussed alternatives. If an agreement has been reached, the letter shall also document the chosen remediation and a schedule of restoration as appropriate.

9. If the easement donor does not agree there is a violation or does not agree on the solution to a violation, the Executive Director shall reaffirm their position and state that he/she will consult the Conservancy's legal counsel as well as notify the Board.

10. The Executive Director shall consult with the Stewardship Committee and/or legal counsel to brainstorm other approaches that may be taken to attempt to reach an amicable resolution. Other alternatives may be employed to bring the easement donor back into negotiation. The Executive Director and Stewardship Committee should identify a time limit for closure of the case to avoid letting the issue lag over an extended period of time.

11. If the Conservancy has exhausted all attempts at negotiation, the Executive Director will seek Board approval to take legal action

12. The Conservancy may consider the use of an amendment or a discretionary approval (similar to amendment but not signed by easement donor) to resolve the violation. However, there are a number of considerations the Conservancy must weigh before pursuing this route:
    - If there has to be an exchange to compensate for any adverse impact of the amendment. The monetary value of the easement may not be reduced by the amendment (requires an appraisal). Amendments should be either conservation neutral or improve the conservation value.
    - Consider whether or not the amendment would be controversial in the community and incite negative public reaction.
    - Consider the time and expense for the approval process.

If an amendment is pursued, obtain Board approval before informing the easement donor. Document and update baseline data immediately.

Adopted 04/04/2007; amended 12/2/2009, 09/2/2015; modified 02/2/2015 to reflect name change; revised 4/4/2018

Blue Ridge Land Conservancy Practices

Standard 11: Conservation Easement Stewardship

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Practice 11F: Reserved and Permitted Rights and Approvals

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure

2. Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses

3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights

Practice 11F1: Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure

Practice 11F2: Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses

Practice 11F3: Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights

It is the policy of the Blue Ridge Land Conservancy that whenever possible, every new conservation easement contains discretionary written approvals by the donor for permitted rights such as construction of dwellings, clear-cutting, or other major alterations to the landscape. It is also the policy of the Conservancy that every new conservation easement shall contain language stating that the Conservancy reserves the right to request reimbursement from the easement donor for the Conservancy's reasonable costs for considering a request to exercise a reserved right. If and when an easement donor wishes to exercise a reserved right needing Conservancy approval, the Conservancy will use the following procedure:

Consideration of Request:

No request shall jeopardize the obligations of the Conservancy to monitor and enforce the easement, terminate the easement, or cause the easement to fail under IRS tax codes or any other applicable law.

Approval Procedure:

1. The initial request must be made in writing by the easement donor to all parties involved with the request. This must include the intent and nature of the action, the specific reason(s) the action is needed, and an explanation of how the request does not impede the original easement. When appropriate, the request must be accompanied by a map, written plans drafted by proper professionals, blue prints, picture(s) and/or other documentation.

2. Conservancy staff will review each request to determine whether the request is properly documented and satisfies the guidelines and purposes stated in this policy. The request must be

consistent with the original easement document, the baseline documentation report, and monitoring reports. Evaluations of all requests may include reasonable efforts to contact parties involved with the original transaction, including the landowner who donated the easement and transferred the property or his/her heirs. Other staff, Board members, legal counsel, or natural resource professionals may also be asked to review the request. After staff determines whether the request is properly documented, satisfies the stated guidelines and purposes above, it will submit the plan to the Stewardship Committee (Committee).

3. The Committee should meet to consider the request within 30 days. Staff will present all the information gathered, together with its recommendation to the Committee. If the Committee concludes the request is legally permissible, consistent with the terms of the policy statement, and clearly warranted by circumstances, the Committee may approve, approve with modification, or reject the request. Approval shall require a majority vote of the full Committee. Notification of the Committee decision will be forwarded by the Executive Director in writing to the party proposing the request. The Committee may also decide to make a recommendation to the Board for a discussion and vote.

4. If a proposed request is rejected by a majority vote of the Committee or Board, the Executive Director will, by certified return receipt mail, inform the party of the Committee's decision and advise the landowner of his/her right to resubmit the proposal for reconsideration by the Committee within thirty (30) days from the date he/she receives notification. The easement donor may resubmit the request, along with additional written documentation to justify the request, when changes have been made to address the Conservancy's concerns.

5. If the party resubmits the request and additional written documentation within the required time period, the Executive Director will review the resubmitted documents and present the material along with staff recommendation to the Committee at the next convenient regularly-scheduled meeting. Following a decision of the Committee or Board, the Executive Director will notify the party in writing of the Committee or Board decision.

A permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights shall be maintained according to the Conservancy's recordkeeping policy.

Adopted 04/04/2007; amended 12/2/2009, 09/2/2015; revised 4/4/2018

Standard 11: Conservation Easement Stewardship

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Practice 11G: Contingency Plans/Backups

1. Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them.

Practice 11G1: Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them.

Section 10.1-1015, Code of Virginia (Conveyance to the Commonwealth) states that if an easement holder ceases to exist, the easement and its right of enforcement shall vest in the Virginia Outdoors Foundation, unless the easement specifies transfer to another holder. The policy of the Blue Ridge Land Conservancy shall be that in the event it ceases to exist or can no longer administer and steward its conservation easements, they shall vest to the Virginia Outdoors Foundation, or the Conservancy's interest in the easement shall vest, in the event there is a co-holder.

To be prepared for this possibility, the Conservancy shall maintain adequate legal defense and stewardship funds as determined by the Land Trust Accreditation Commission, as well as accurate and up-to-date records, all of which shall be transferred to the Virginia Outdoors Foundation should such a scenario take place.

Adopted 04/04/2007; amended 12/2/2009, 09/2/2015; revised 4/4/2018

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Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11I: Amendments

1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles

2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles

3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a de minimis extinguishment, document how the land trust's actions address the terms of J.1. below

Practice 11I1: Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles.

Practice 11I2: Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles

Practice 11I3: If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a de minimis extinguishment, document how the land trust's actions address the terms of J.1. below

Overall Policy:

It is the policy of the Blue Ridge Land Conservancy to entertain amendments to conservation easements only when the amendment is consistent with the Land Trust Land Alliance Amendment Principles. The Conservancy will not sanction amendments that in any way materially diminish the conservation values of the property involved or the easement's perpetual duration. If an amendment is requested by the easement donor, the Conservancy may require cost reimbursement for it reasonable costs involved in the consideration, review, and approval of the amendment.

A proposed amendment will be considered only under exceptional circumstances and in accordance with the guidelines and procedures listed below.

The Seven Amendment Principles:

A conservation easement amendment should conform to all of the following amendment principles.

1. Clearly serve the public interest and be consistent with the land trust's mission
2. Comply with all applicable federal, state and local laws
3. Not jeopardize the land trust's tax-exempt status or status as a charitable organization under federal or state law
4. Not result in private inurement or confer impermissible private benefit
5. Be consistent with the conservation purpose(s) and intent of the easement

6. Be consistent with the documented intent of the grantor and any direct funding source
7. Have a net beneficial or neutral effect on the relevant conservation values protected by the easement

(from *Amending Conservation Easements: Evolving Practices and Legal Principles*, 2nd edition, 2017, Land Trust Alliance)

Guidelines:

- A proposal to amend a conservation easement must be consistent with the conservation values and the purpose of the conservation easement, and will be considered solely on its own individual merits.
- No amendment may jeopardize the obligations of the Conservancy to monitor and enforce the easement, terminate the easement, or invalidate the easement under the Internal Revenue Code or any other applicable law.
- A proposed amendment may not increase the net value of the property in violation of the private benefit/inurement provisions of the Internal Revenue Code.
- A proposed amendment will be considered only if it has been shown that no reasonable alternative is available, unless the amendment makes the easement more restrictive or adds property to the easement.
- The amendment must be the minimum change necessary to achieve the purpose unless the amendment makes the easement more restrictive or adds property to the easement.
- A landowner initiated proposed amendment will be considered only if the landowner agrees to pay all expenses incurred by the Conservancy, including staff time and costs for legal review of the proposal.
- All amendments shall be in compliance with any funding requirements and shall be consistent with the land trust's mission. In addition, when modifying easement boundaries or amending conservation easements that may result in the termination/release of a conservation easement in whole or in part, the Conservancy shall1) comply with all of its policies, the terms of the easement document, *Land Trust Standards and Practices*, and state and federal law, 2) seek judicial review when required, 3) document its consideration of the impact of its action in the context of its ethical obligations to the donor, the public and the land conservation community, and 4) document the financial impact of the amendment through appraisals or with other evidence to confirm that the amendment will not result in private inurement or impermissible private benefit.

Purpose of Proposed Amendment:

The Conservancy may approve a proposed amendment to a conservation easement only in the following circumstances:

1. **Correction of error or ambiguity**. The Conservancy may approve a proposed amendment to correct an obvious error or oversight in a conservation easement such as misspelling, correction of a legal description, inclusion of language unintentionally omitted, and clarification of ambiguous language or obsolete terms.

2. **Settlement of condemnation proceedings**. Conservation easements and other interests the Conservancy holds in land are subject to condemnation for public purposes, such as highways, schools, etc. When it appears that the condemnation power could be properly exercised, the Conservancy may enter into a settlement agreement with the condemning authority in order to avoid the expense of unnecessary litigation. In reaching such an agreement, the Conservancy shall attempt to preserve the purpose of the conservation easement.

3. **Minor modifications consistent with conservation purpose**. The Conservancy may approve a proposed amendment to a conservation easement when: (a) the proposed amendment is not inconsistent with the purpose of the easement, and (b) the amendment enhances the conservation purposes of the easement, or achieves a purpose substantially the same as the original easement.

Approval Procedure:

1. The Conservancy or the landowner may propose an amendment.

2. The proposed amendment must be made in writing and directed to the Conservancy, must state the intent and nature of the desired change, the specific reason(s) the change is needed, and how the request does not affect the purpose of the easement. The proposed amendment must be accompanied by a map, picture(s) and other appropriate documentation.

3. The Conservancy staff will review the proposed amendment to determine if the proposal is properly documented and conforms to the guidelines and purposes stated in this policy. The proposed amendment should be consistent with the format of the easement document. The Conservancy staff evaluations of a proposed amendment will include reasonable efforts to contact parties involved with the grant, including the landowner who donated the easement. The staff will submit its determination and recommendation to the Stewardship Committee.

4. If the Committee concludes that the proposed amendment is legally permissible and clearly warranted by circumstances, the Stewardship Committee will present the proposed amendment at the next Board meeting. A decision of the Board to approve or disapprove the request shall be final, unless the parties appeal as provided below.

5. The Board may approve, approve with modification, or reject the proposed amendment. Approval shall follow procedures for voting on substantive matters according to current bylaws. Notification of the decision will be forwarded in writing to the party proposing the amendment.

Appeal process:

1. If a proposed amendment is rejected by a vote of the Board, the Conservancy staff will, by certified return receipt mail, inform the party of the Board's decision and advise the party of their right to resubmit the proposed amendment for reconsideration by the Board.

2. The party requesting reconsideration shall have thirty (30) days from the date it received notification to resubmit the proposed amendment along with additional written documentation to justify the proposed amendment. Failure to resubmit the proposed amendment and

accompanying documentation within the required time period shall be deemed a waiver of the party's right for reconsideration.

3. If the party resubmits the proposed amendment and additional written documentation within the required time period, the Conservancy staff will review the resubmitted documents and present the materials along with a staff recommendation to the Board at the next convenient regularly scheduled Board meeting.

4. Following a decision of the Board, the Conservancy staff shall notify the party in writing of the Board's decision.

Adopted 12/2/2009; amended 09/2/2015; revised 4/4/2018

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11J: Condemnation

1. If a conservation easement is threatened with condemnation…

a. Take steps to avoid or mitigate harm to conservation values and document the actions taken
b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement
c. Document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed

Practice 11J1: If a conservation easement is threatened with condemnation…

a. Take steps to avoid or mitigate harm to conservation values and document the actions taken
b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement
c. Document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed

Because condemnation of land protected with a conservation easement is a rare and complex issue, it is the policy of the Blue Ridge Land Conservancy to consult with its legal counsel and develop a plan of action that is specific to the circumstances of the threatened condemnation. The overriding principles of any plan shall be:

- protecting the concept of perpetuity and conservation easements as perpetual protection for the lands they encumber
- the Conservancy's duty to defend the properties conserved by its conservation easements
- the likelihood of defeating the condemnation through various legal and non-legal means
- possibilities for negotiating a favorable settlement in the event that the condemnation cannot be defeated
- receiving fair compensation by the condemning body in the event the condemnation occurs.

Any plan shall include some or all of the following actions as appropriate:

- Taking steps to avoid or mitigate harm to conservation values and documenting the actions taken.
- Obtaining appropriate documentation of the percentage of the full value of the property represented by the conservation easement.
- Documenting the Conservancy's attempts to receive its proportional share of the proceeds and using any proceeds in a manner consistent with the conservation easement deed.

Adopted 12/2/2009; amended 09/2/2015; revised 4/4/2018

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11J: Partial or Full Extinguishment

1. In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,

a. Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed

b. Ensure there is no private inurement or impermissible private benefit

c. Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed

d. Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large

Practice 11J1: In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,

a. Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed
b. Ensure there is no private inurement or impermissible private benefit
c. Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed
d. Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large

It is the policy of the Blue Ridge Land Conservancy that when faces with a partial or full extinguishment of a conservation easement, it shall:

- Consult with the Conservancy's attorney and follow the terms of the conservation easement when taking action
- Check applicable Virginia statutes and common law to know how a conservation easement is treated in Virginia and whether the land trust needs to seek the review of the attorney general or court approval
- Take steps to avoid or mitigate harm to the conservation values protected by the easement
- Consider the potential impact of extinguishment on the Conservancy's reputation and on that of the greater land trust community
- Ensure there is no private inurement or impermissible private benefit
- Use any proceeds in a manner consistent with the conservation purposes of the easement
- Fully document all actions and decisions

Adopted 12/2/2009; amended 09/2/2015; revised 4/4/2018