

Madison Audubon Society, Inc.
Conservation Easement Amendment Policy

I. PURPOSE

When Madison Audubon Society (MAS) enters into agreements with landowners to protect and manage properties under terms of conservation easements, it does so for the purpose of ensuring the perpetual protection of the conservation values of the applicable lands. While it is the intent of MAS that the provisions of those easements be ‘perpetual’, it is recognized that even the most well-drafted conservation easement may need to be amended, for example, to clarify terms, add land, improve enforceability, resolve disputes, or address unauthorized land uses. An easement shall not be amended in any manner that would adversely affect the original purposes of the easement or jeopardize the public good resulting from it.

II. CRITERIA FOR APPROVAL OF EASEMENT AMENDMENTS

MAS shall consider a request for amendment of a conservation easement, regardless of the origin of the request (i.e., MAS or the Grantor). Conservation easement amendment requests shall be made in writing to the executive director. Requests shall include:

1. summary of the manner in which the easement would be altered by the proposed amendment, including citation of the section of the easement that is proposed for amendment;
2. statement of the reasons for seeking the amendment; and
3. relevant property descriptions, maps, plans, sketches, and other documentation, if any, necessary to illustrate the scope and effect of the proposed amendment.

The executive director shall review the request, in collaboration with the sanctuaries committee, to consider its adherence to the criteria below. MAS may implement an amendment only when the board of directors, based on the written recommendation of the executive director and with the benefit of legal counsel, when appropriate, determines that:

1. The requested amendment is acceptable for one or more of the following purposes:
 - a. **To honor the terms of an existing prior written agreement** that permits amendment to the agreement at a future date or under specified circumstances. Such a provision, or term, must be documented either by inclusion of specific language in the original agreement or in a separate document that is part of the original agreement or related to negotiations towards the original agreement.
 - b. **To upgrade the standard language and format** of the easement document to respond to statutory changes, improve enforcement and administration, or enhance the conservation values of the protected property.
 - c. **To correct an error or ambiguity** in the conservation easement that occurred at the time into which it was entered (e.g., standard easement language unintentionally omitted or corrections in a legal description).

- d. **To reflect an acceptable remedy or resolution** of a conservation easement violation discovered in compliance with the administration of *MAS Easement Enforcement Policy*.
 - e. **To ensure consistency** with the MAS mission or the conservation purposes of the easement.
 - f. **To strengthen protection of the conservation values** of the original easement (e.g., additions of acreage and easement use restrictions, or the removal of reserved rights).
 - g. **To respond to required easement changes from condemnation proceedings** that impact property with a conservation easement as a result of eminent domain actions for public purposes (e.g., highways, schools, and parks).
2. The amendment will be consistent with the original grantor's documented intentions and MAS intentions in accepting the easement.
 3. The amendment will have a net beneficial or neutral effect on the relevant conservation values protected by the conservation easement.
 4. The amendment will not adversely affect MAS monitoring or stewardship obligations.
 5. The amendment shall only include the change necessary to achieve the purpose of the request.
 6. The amendment will not create problems for charitable tax deductions related to the applicable lands, and/or jeopardize 501(c)(3) status of MAS.
 7. MAS reasonably believes the amendment complies with all applicable federal, state, and local laws.
 8. The amendment does not result in "private inurement" or confer impermissible "private benefit" (as those terms are defined for federal tax law purposes).

III. **FUNDING AMENDMENT COSTS**

Determination of the source of funds to cover amendment costs will be based largely on the basis for the amendment. Payment responsibility determination will be on a case-by-case basis. The executive director and sanctuaries committee will communicate with all parties and provide the board with a written recommendation for funding assignment.

In general, when the easement grantor requests the easement amendment, or the amendment is the result of violation of easement provisions by the grantor resulting in a loss of conservation value, the board will require the requestor to be responsible for funding all costs relating to the amendment. In this case, the party requesting the easement amendment shall submit a \$500 deposit toward covering the staff time involved in reviewing the request, and any associated expenses, such as MAS legal and consulting fees. Any unexpended portion of the fee will be refunded. This fee does not apply to amendment requests solely adding acreage to an easement. The requestor shall be responsible for all costs exceeding the initial deposit. Such fees shall be invoiced and paid prior to MAS finalizing and recording the amendment. Minor language modification requests to, for example, address an error or ambiguity may be borne by MAS as may the costs of standard language and format changes generated by MAS request. If a

violation of easement provisions by the grantor resulted in a loss of conservation value, the amendment must ensure there is a net benefit or a neutral effect.

IV. DUE DILIGENCE AND DOCUMENTATION

The board shall consider the need for a title review, land appraisal, environmental inspection, or other evidence of impact to value appropriate to the scale of the amendment to document that no private benefit will result from the conservation easement amendment. In addition, updated Baseline Documentation shall be completed prior to or at the time of any substantive amendment.

The executive director shall ensure that all reports, meeting minutes, and formal written communications with the land owner are documented in the project file and in accordance with the *Recordkeeping Policy*.

V. PROCEDURES FOR AMENDING A CONSERVATION EASEMENT

1. Amendment requests may be initiated by the landowner or MAS and submitted in writing to the executive director.
2. The executive director and sanctuaries committee will review the amendment request for consistency with criteria listed in Section II.
3. Should the request be determined as acceptable as outlined in Section II, the executive director and sanctuaries committee will submit to the board a written summary of the proposed amendment for preliminary approval. If preliminary approval is granted, the board will determine who is responsible for funding the costs. The board's decision and any additional findings will be recorded in the minutes of the board meeting.
4. If deemed responsible, landowner or easement grantor shall submit a \$500 deposit.
5. The executive director and/or designee will draft the amendment. A site visit, consultation with other individuals (e.g., natural resource professionals), meeting with the current landowner and/or original donor, etc. may be required.
6. Legal review of the amendment shall be conducted as determined by the board (e.g., to determine if changes to title insurance and subordination of lenders are required to ensure that the amended conservation easement is covered).
7. The executive director and sanctuaries committee will submit the final draft of the amendment to the board of directors for final approval. The board's decision and any additional findings will be recorded in the minutes of the board meeting.
8. If landowner or easement grantor is responsible for funding the amendment, all final payments or reimbursements shall be made before the amendment is finalized and recorded.
9. Baseline Documentation will be updated appropriately.
10. The conservation easement co-holders (if any) and property owner(s) shall approve of the amendment in writing.
11. The amendment will be duly recorded. Originals and copies of the amendment deed and all related documentation shall be retained according to the *MAS Recordkeeping Policy*.

Approved by the Board of Directors August 14, 2017. Amendments approved February 12, 2018.