



Santa Lucia Conservancy
Conservation Easement Amendment Policy
Approved by the Board of Trustees
August 18, 2022

Santa Lucia Conservancy's (SLC) conservation easements are achieved through voluntary agreements with landowners. Conservation easements are perpetual and are presented as such to landowners. Once an easement is executed and recorded, SLC is bound to uphold the terms of the easement as executed. It is SLC's policy to hold and enforce conservation easements as written. Amendments to conservation easements will be authorized only under unforeseen or changed circumstances and must satisfy all of the following conditions:

1. The amendment clearly serves the public interest and is consistent with SLC's mission;
2. The amendment complies with all applicable federal, state, and local laws;
3. The amendment will not jeopardize SLC's tax exempt status or status as a charitable organization under any applicable federal, state, and local laws or regulations;
4. The amendment must not result in private inurement or confer "impermissible private benefit" (see **Attachment A**);
5. The amendment is consistent with the conservation purpose(s) and intent of the easement;
6. The modifications are consistent with the documented intent and/or restrictions of the donor, grantor, and any direct funding source;
7. The amendment has a net beneficial or neutral effect on the relevant conservation values or attributes protected by the easement. If a proposed amendment has aspects to it which would be detrimental to conservation attributes or the easement's purposes, such as possible concessions made with respect to the property currently under easement or to the easement's terms themselves, SLC shall evaluate the net effect of such impacts (including by independent appraisal or expert opinion of natural resource professionals if circumstances warrant) when considering any such amendment. In addition, when such concessions are made, the beneficial aspect of the amendment may be attained by protecting land outside of the property, but only when:



A. The additional land is (1) contiguous or immediately across a public road, or (2) under exceptional circumstances, in the immediate vicinity; and,

B. The conservation benefits of protecting the additional land enhance the conservation attributes and/or purposes for which the original easement was granted.

8. The amendment will not adversely affect the perpetual duration of the easement or the perpetual protection of the conservation purposes, or the qualification of the easement under applicable state and federal regulations;

9. The amendment is acceptable to the State of California, acting through the Office of the Attorney General, Charitable Trusts Division, or the Probate Court, if applicable;

10. Other parties that hold a legal interest in the easement agree to and sign the amendment, and the amendment is recorded at the appropriate Official County Records;

11. The amendment complies with SLC's conflict of interest policy;

12. The modification results in conditions that are able to be reasonably monitored and enforced by SLC; in this regard SLC Board of Trustees may require additional funds for stewardship endowment and/or legal defense in order to appropriately steward the modified easement;

13. In general, any party requesting a conservation easement amendment shall pay all of SLC's costs including staff time and direct costs for reviewing the request, regardless of whether the amendment is granted, and for developing the amendment, if approved;

14. The amendment is acceptable to SLC's Board of Trustees in its absolute discretion. In addition to the conditions above, the Board of Trustees shall consider at least the following:

A. Whether the amendment will have an unfavorable precedent for future amendments; and,

B. Whether the amendment will have an adverse impact upon the public confidence in SLC.

*This policy applies not only to conservation easements granted to SLC by other parties but also to conservation easements created and reserved by SLC upon the conveyance of fee lands to other parties and sometimes referred to as "deed restrictions."



Procedures for Requesting and Approving an Amendment

1. SLC or the landowner may initiate requests for amendments.
2. Consideration of amendment requests and development of approved amendments will be taken up as staff schedules and priorities allow. However, amendment consideration and development will normally be superseded in priority by monitoring and enforcement of SLC easements.
3. Amendment requests must be made in writing. The request should include a description of the change being requested, a map of the property showing areas affected by the proposed amendment (if applicable), and a list of reasons why the request is warranted.
4. Each request by a landowner must be accompanied by a deposit, as determined from time to time by SLC in its sole discretion, but in the minimum amount of \$2,000. The deposit will be used to cover anticipated staff and direct costs pertaining to review of the request, regardless of whether the request is approved, and if approved, to carry out development of the amendment including due diligence requirements and legal fees. SLC, in its sole discretion, may retain outside professionals, such as appraisers or natural resource professionals, to assess various impacts of the proposed amendment, with such charges to be billed to the landowner. Any unexpended portion of the deposit will be refunded, but the landowner will generally be responsible for all costs exceeding the deposit, as billed by SLC. Any documentation required, such as a boundary survey and monumentation, will generally be the responsibility of the landowner. SLC may seek additional funds for stewardship endowment and/or legal defense funds if the nature of the amendment would increase SLC's stewardship responsibilities. There will generally be no fees billed to the landowner for corrections due to errors or omissions caused solely by SLC, or for amendments initiated by SLC. Staff shall, under extenuating circumstances, have the discretion to waive the requirement that a landowner pay for certain staff and other direct expenses, and also to charge a landowner for expenses that would normally be covered by SLC, as circumstances warrant.
5. Staff shall contact all other interest holders, such as an executory interest holder, and request their written position on the amendment. Amendments must be signed by other interest holders and any executory interest holder as provided in the easement or as deemed appropriate or advisable by SLC.
6. Staff may contact the original grantor and any major funder of a purchased easement to solicit their input regarding the proposed amendment, as deemed appropriate by SLC.



7. The Stewardship Manager will review any amendment request for consistency with regard to this policy, the original conservation easement deed, baseline and related documentation and the features of the land. The Executive Director, legal counsel, other SLC staff, appraisers or natural resource professionals at the request of SLC, may review the request. A site visit, meeting with the current landowner and/or original grantor or donor may be arranged. Staff will make a recommendation to the Executive Committee regarding acceptance of the amendment, unless the request clearly does not meet the criteria of this policy (in which case the staff would not bring the proposal before the Committee). If approved by the Executive Committee, SLC's Board of Trustees will vote on the amendment, with the exception of certain minor amendments described below.
8. The Board of Trustees delegates the approval authority for certain minor amendments to the Executive Director. For example, these minor amendments include correction of typographical errors, scrivener's errors, minor errors or omissions, or property descriptions with data from new surveys. Timely notification of such completed amendments shall be made to the Board of Trustees.
9. Staff shall initiate appropriate title work to ensure correct ownership, and identify any mortgages or liens that could impact the amendment, and to determine whether a recorded subordination agreement will be needed to subordinate such liens or mortgages to the easement amendment.
10. Staff shall thoroughly document all decisions and supporting information including updating the Baseline Documentation Report, appraisals, IRS forms and opinions of other organizations involved in the decision, as appropriate.
11. SLC will communicate the rationale for the amendment, or the rejection of an amendment request, to community leaders, abutters, and other interested parties, such as those in paragraphs 5 and 6 above, as deemed appropriate by SLC.



Attachment A
General Description of Private Benefit and Private Inurement

- I. The IRS places limits on “private inurement” and “private benefit” permitted by actions taken by a charitable organization. The organization has a duty to protect its non-profit, charitable tax status by limiting risks associated either of these outcomes.
- a. **Private Inurement**: Private inurement occurs when assets or income from a non-profit organization flow to an “insider” such as a trustee, staff member, or trusted advisor. The law defines an insider as any person who was "in a position to exercise substantial influence over the affairs of the organization" during the past five years. Insiders include key executives and voting members of the board. For example, if SLC approves a structure on the Openlands of a trustee-owned lot, that action could constitute private inurement.
- No private inurement is permissible by law, even incidentally, and may result in loss of the organization’s tax-exempt status.
- b. **Private Benefit**: In contrast, a private benefit occurs when benefits accrue to disinterested persons, i.e., those unrelated to the organization’s insider operations. For example, if SLC licenses a private company to erect a private structure on the Wildlands and that company is unrelated to any insider but would profit from the use of the building, that would raise private benefit concerns.
- II. Whenever a conflict of interest arises, in addition to documenting the nature of the disclosure of the conflict and the board’s proceedings to evaluate the conflict, related party transactions may need to be disclosed in the notes of the corporation’s audited financial statements, and its annual tax filing to the IRS.