

The Prairie Enthusiasts, Inc.

Amending Conservation Easements Policy

Recommended by Land Protection Committee: October 17, 2011

Adopted by TPE Board:

The success of a conservation easement depends upon the trust and confidence of the property owner that The Prairie Enthusiasts (TPE) will uphold the easement by monitoring and enforcement. This confidence may be seriously eroded if TPE permits any amendment of the easement that reduces conservation values of the land.

Amendment of a conservation easement could jeopardize the tax-exempt status of TPE with the Internal Revenue Service (IRS). The donors of a conservation easement may be subject to challenge of a claimed charitable contribution deduction by an amendment to a conservation easement. TPE holds, monitors and enforces each conservation easement strictly as written.

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

Guidelines

1. The amendment must clearly serve a public benefit and be consistent with the mission of TPE.
2. The amendment must be consistent with the conservation values and the purpose of the original conservation easement, and will be considered solely on its own individual merit.
3. The amendment must be consistent with the documented intent of the donor, grantor, and any direct funding source associated with the conservation easement.
4. The amendment must comply with TPE's conflict of interest policy.
5. No amendment may jeopardize the obligations of TPE to monitor and enforce the easement, may terminate the easement, or may invalidate the easement under the Internal Revenue Code or any other applicable federal, state, or local law.
6. The amendment may not jeopardize TPE's tax-exempt status or status as a charitable organization under federal or state law. Specifically it cannot increase the net value of the property in violation of the private benefit/inurement provisions of the Internal Revenue Code.
7. The amendment must result in a net beneficial or neutral effect on the relevant conservation values protected by the conservation easement. Ideally it will be substantially equal to or enhance the conservation values and purpose of the easement.
8. The amendment will be considered only if it has been shown that no alternative is available and it must be the minimum change necessary to achieve the purpose.
9. The amendment will be considered only if the landowner agrees to pay all expenses incurred by TPE, including staff time in analyzing the proposal, and for costs for legal review of the proposal.

Purpose of Proposed Amendment

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

- 1.) Correction of Error or Ambiguity. TPE 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 TPE hold in land are subject to condemnation for public purposes, such as highways, schools, etc. When it appears that the condemnation power would be properly exercised, TPE may enter into settlement agreement with the condemning authority in order to avoid the expense of unnecessary litigation. In reaching such an agreement, TPE shall attempt to preserve the purpose of the conservation agreement.
- 3.) Minor Modifications Consistent with Conservation Purpose. TPE may approve a proposed amendment to a conservation easement when the proposed amendment complies with all the guidelines specified above.

Approval Procedure

- 1.) The TPE or the landowner may propose an amendment. The proposed amendment must be made in writing and directed to all parties involved, 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 documentation deemed appropriate.
- 2.) TPE staff will review the proposed amendment to determine if the proposal is properly documented. TPE staff evaluations will include reasonable efforts to contact parties involved with the grant, including the landowner who donated the easement. Staff will submit the proposed amendment to the Land Protection Committee (LPC). The LPC will evaluate the proposal to determine if it complies with the guidelines and purposes stated in this policy. The LPC will document its findings.

If the LPC concludes that the proposed amendment is congruent with the guidelines and purposes stated above, the committee will vote to proceed with the amendment. A decision of the LPC to deny the request shall be final, unless the parties appeal as written under section 7.

- 4.) If approved, TPE staff will engage TPE legal counsel and negotiate the terms of the amendment with the landowner and their representatives. Once there is agreement between both parties the amendment will be submitted by the Chair of the LPC at the next Board of Directors meeting.
- 5.) TPE Board of Directors 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 Board of Directors decision will be forwarded in writing to all parties involved in the amendment.
- 6.) If approved the amendment will be signed, recorded, and any outside parties will be notified of the result. The amendment will be filed according to TPE's Records Policy. If pertinent, TPE will provide a contemporaneous gift letter and signed IRS form 8283.

7.) Appeal process:

- a) If a proposed amendment is rejected by a vote of TPE Board of Directors, TPE staff will, by certified return receipt mail, inform the parties involved of the Board's decision and advise the party of their right to resubmit the proposed amendment for reconsideration by the Board.
- b) The party requesting reconsideration shall have thirty (30) days from the date they 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 their right for reconsideration.
- c) If the party resubmits the proposed amendment and additional written documentation within the required time period, the LPC 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.
- d) Following a decision of the Board, TPE staff shall notify all parties in writing of the Board's decision.