



## **POLICY ON AMENDING CONSERVATION EASEMENTS**

Approved by the Board of Directors November 20, 1999

Revised February 11, 2006

Revised April 14, 2007

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### **I. General Statement of Policy**

Geneva Lake Conservancy (“GLC”) enters into conservation easement agreements that will protect and preserve water resources, natural areas and working lands on behalf of the residents of, and visitors to, the Walworth County lakes area.

Conservation Easements are achieved principally through voluntary agreements with land-owners. The success of this program depends upon the GLC’s ability and commitment to meet its obligation to monitor and enforce such agreements. Public confidence in GLC would be undermined if GLC maintained an irresolute and flexible policy for modifying conservation agreements. Amendments could also risk violations of Wisconsin and other state laws regarding the operations of charitable corporations and with Rules and Regulations of the Internal Revenue Service.

A conservation easement is not intended to be amended freely; it is intended to remain in place forever, as a standard for the protection of the affected property. The goals and values of the original easement instrument should be clear to those reading it after it was adopted. Any amendment is to be agreed to only for good cause, it must be in the public interest, and it must result in no private inurement. Any amendment can be presumed to have weakened the original easement, to encourage future requests for additional amendments and to be a potential source of future confusion.

GLC will hold and enforce its conservation agreements as written and will amend conservation restrictions only in exceptional circumstances. Any request for an amendment will be reviewed according to the procedures set forth in this Policy, and will be implemented only if the Board of Directors determines that:

- (1) The requested modification is warranted by one or more of the purposes set forth below (under “Mandatory Purposes for Easement Amendment Requests”);
- (2) It will constitute the minimum change necessary to satisfy that purpose;

- (3) It is not likely to undermine confidence about the goals of GLC or its ability to enforce its conservation agreements; and
- (4) Unless specifically waived by the Board of Directors, the requestor has undertaken to pay all of the costs of GLC (including for staff time and legal fees) pertaining to the requested change, whether or not the request is approved, and, if approved, to its implementation.

## **II. Mandatory Purposes for Easement Amendment Requests**

The Board of Directors shall be cautious in consenting to any amendment and shall consent only if the circumstances suggest that a change is clearly warranted and in the best interests of conservation. GLC will consider amendment of a conservation easement only in the following circumstances:

1. Prior Agreement. A conservation easement includes a specific provision that contemplates an amendment. Any such agreement must be a part of the easement instrument or in a separate document executed by both parties contemporaneous with the execution of the conservation executed. The amendment must be consistent with the terms and conservation intent of the original agreement.
2. Correction of an Error or Ambiguity. GLC may authorize an amendment to a conservation easement, to correct an error or oversight made by all parties, when the conservation easement was executed, including, without limiting the generality hereof, correction of a legal description, inclusion of standard language unintentionally omitted, or a clarification of an ambiguity in the terms of the restrictions. in order to avoid the incurrence of unreasonable costs in the interpretation of the document.
3. Settlement of Condemnation Proceedings. Since any conservation easement may be subject to condemnation, for public purposes, if GLC determines that the condemnation power was being properly exercised, GLC may enter into an easement amendment agreement with the condemning authority, in order to avoid unreasonable costs of litigation. In reaching such an agreement the GLC shall use its best efforts to preserve the intent of the original conservation easement.
4. Minor Modifications Consistent with Conservation Purpose. GLC may authorize other, minor modifications of the conservation easement where (a) the modification is consistent with the intent of the principal parties to the original conservation easement, and (b) the amended agreement is equivalent, in substance, to or enhances the conservation goals of the original easement instrument.

### **III. Factors to Consider When Evaluating an Amendment Request**

When evaluating an easement request, GLC may consider some or all of the following factors, as well as other factors consistent with this policy, as the GLC Board of Directors deems appropriate:

1. Is the proposed amendment contrary to any purpose stated within the easement, or is it contrary to any of the mission or any policy of the GLC?
2. Will the proposed amendment create a additional monitoring and enforcement burden for GLC?
3. Has the proposed amendment been made necessary by conditions beyond the control of the parties that could not have been anticipated by the parties at the time the easement was created?
4. Has the owner offered to offset any of the above factors with additional conservation protections?
5. Does the proposed amendment affect the value of the property subject to the easement and, in so doing, transfer increase the value of the underlying property to the owner or another private party?
6. Is there a risk that the proposed amendment will result in a violation of any federal or state statute, rule or regulation?
7. Would the proposed easement adversely affect public opinion of GLC or alienate members and supporters of GLC?
8. Does the proposed amendment affect the perpetuity of the easement?
9. Is the proposed amendment intended solely to correct an error or ambiguity?
10. Is amendment necessary, in order to obtain an agreement to a settlement of a condemnation or other legal proceeding that is fair to GLC and in its best interests?

**IV. Procedural Requirements for Evaluating an Amendment Request**

1. A person seeking an amendment to a conservation easement shall submit a request in writing to the GLC, stating the requested change and the specific reasons why it is warranted. The request shall be accompanied by a map and other appropriate documentation. Unless waived, the request also shall be accompanied by a payment of \$2,500, as a deposit towards reimbursement for the value of GLC's Staff time and other costs. Any excess of the fee, over the value of GLC's Staff time, shall be refunded. The person requesting the amendment shall be responsible for prompt payment, on demand, for the value of all of GLC's Staff time and its expenses that exceed the initial deposit and all later payments on account.
2. A committee appointed by the GLC Board of Directors shall review each request and report and make a recommendation to the GLC Board of Directors. Such a review shall include a site visit and a meeting with the land-owner, to review plans and develop additional relevant information.
3. GLC shall contact the original grantors, if possible, asking for his or her comments on the proposed amendment. GLC shall obtain whatever additional information is necessary and relevant, such as advice of legal counsel, consultants, neighbors and others who may have been involved in the creation of the original easement or in any amendment thereto, or who may be substantially affected by the proposed amendment.
4. Following the review and report, the GLC Board of Directors may act on the request for amendment. Approval shall require a majority vote of the full GLC Board of Directors then in office.
5. GLC will notify the person requesting the amendment of the GLC decision, in writing, and take necessary steps to implement any agreed to amendment to the easement.

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