

## F. EASEMENT AMENDMENTS

State law significantly limits the District's ability to allow easement amendments. Moreover, the success of the District's program depends on the public's confidence that the District will meet its obligation to enforce its agreements as written. This confidence could be seriously eroded if the District were to allow easement amendments other than those that clearly enhance the conserved open space values.

### OBJECTIVE

Strictly limit the circumstances under which amendments to conservation easements may be considered so as to protect the District's goals, maintain public confidence and ensure compliance with state law.

### POLICIES

1. Approve amendments to conservation easements only where there is a clear benefit to the District and its conservation goals.
2. Approve amendments to conservation easements only where the amendment is consistent with law, with adopted District policies and with the conservation purpose of the easement.
3. Amendments to provide for additional natural resource protection shall be permitted provided that such additional protection does not diminish or otherwise impair the conservation values of the land.
4. Notwithstanding the policies set forth herein, conservation easements, like other interests in real property, can be condemned for public purposes. Where it appears that the condemnation power has been properly exercised or there is a substantial threat that it will be so exercised, the District may enter into settlement negotiations with the condemning authority and the landowner, as appropriate under the circumstances, to seek settlement in lieu of condemnation.

### PROCEDURES

1. *Application by Landowner.*
  - a) All requests by a landowner for an amendment to a conservation easement shall be in writing and shall include the following:
    - (1) A description of the proposed amendment.
    - (2) The specific reason(s) why landowner is requesting the amendment.

- (3) An explanation of how the amendment is consistent with the conservation easement and with the amendment policies and procedures of the District.
    - (4) A map with notations identifying locations affected by the proposed amendment together with any other documentation necessary to understand the significance of proposed amendment.
    - (5) Payment of the initial filing fee set by the District along with a written agreement to pay all costs, including District's staff costs, relating to processing the amendment request.
  - b) Within thirty (30) days after receipt of the amendment application, the District shall inform landowner whether the application is complete or incomplete. If the application is incomplete, the District shall identify the additional information required. Where sensitive natural resources may be affected by a proposed conservation easement amendment, the District may require that further site study be conducted prior to considering the proposed amendment.
2. *Amendments Requested by District.* There may be circumstances when the District determines that amending the conservation easement will advance the purpose of the conservation easement. For example, the District may want to update the conservation easement to the District's current form or correct a mistake, or provide additional resource protection. In such circumstances, District staff may initiate an amendment to a conservation easement provided staff first obtains landowner consent. Upon receipt of landowner written consent, District staff shall prepare a written proposal, setting forth all information required under Procedures 1(a)(1) through (4) above, for submission to the District Board of Directors.
3. *Fees.*
- a) The District shall establish a fee schedule for amendments.
  - b) When the District initiates an amendment pursuant to Procedure 2 above, all costs of such application shall be borne by the District provided, however that if the landowner simultaneously requests an amendment, the landowner shall pay fees based on the costs reasonably allocated to the amendment sought by the landowner.
4. *Review of the Application.*
- a) Upon receipt of a complete application, the District shall evaluate the amendment application with respect to Policies 1 through 4 above and the findings required by Procedure 7 below. Staff evaluation may include consultation with appropriate experts, a site visit, and preparation of environmental documentation as may be required by the California Environmental Quality Act. The evaluation may also include consultation with the property owner, and any individual, entity or public agency that donated lands or contributed funds to the acquisition, apart from District funds.

- b) District staff shall, upon completion of its evaluation of the application, make a written recommendation to the General Manager and the District's Counsel. The written recommendation may recommend approval, approval with conditions or denial of the application. The staff recommendation shall be made within six months after receipt of a completed application.
5. **General Manager's Decision/Recommendation.** The District staff shall present its evaluation, together with its recommendation, to the General Manager. A copy of the evaluation and recommendation shall also be provided to the District's Counsel. The General Manager shall consult with the District's Counsel, and shall, within sixty (60) days of presentation by District staff, do one of the following:
    - a) Refer the proposed amendment back to staff for further evaluation, clarification or other action. The referral shall be in writing, explaining the reasons for the referral.
    - b) If the General Manager concludes that the amendment is legally permissible, is consistent with Policies 1 through 4 above, and is advisable, and that the findings required by Procedure 7 below can be made, the General Manager shall present the matter to the District's Board of Directors at a regularly scheduled Board meeting, together with his/her written recommendation for approval. In addition, if the General Manager determines that the Open Space Authority has jurisdiction over the proposed amendment, the matter shall also be placed on the agenda of the Open Space Authority. A copy of the recommendation shall be sent to the landowner.
    - c) If the General Manager concludes that the proposed amendment is not legally permissible, is contrary to Policies 1 through 4 above, is not advisable or that the findings required by Procedure 7 below cannot be made, the General Manager may deny the application for amendment and so notify the applicant. The denial shall be in writing and shall state the reasons therefore.
    - d) If, for any reason, the General Manager does not recommend approval of the amendment to the Board of Directors, he/she may, as an alternative to denial of the application under Procedure 5c, submit the amendment to the Board of Directors with no recommendation. Any such action shall be by written memo explaining the reasons for the action. A copy of the written memo shall be sent to the landowner.
  6. **Appeal of Decision by General Manager.** In the event that the General Manager denies an application pursuant to Procedure 5c, the landowner may appeal the denial by the General Manager to the Board of Directors. The appeal shall be in writing, shall include the required fee and shall be filed with the District within twenty (20) days after the District mails notice of the General Manager's decision.
  7. **Board of Directors Action.** The Board of Directors shall consider de novo any application that comes before it, whether by presentation of the General Manager or by appeal. The Board shall approve an amendment (whether initiated by a landowner or the District) only if it makes all of the following findings:

- a) The amendment is clearly consistent with the conservation purpose of the conservation easement.
- b) The amendment enhances and otherwise does not impair the conservation values of the land subject to the conservation easement.
- c) The amendment does not undermine the perpetual nature of the conservation easement.
- d) The amendment is not precluded by the conservation easement or by state or federal law.
- e) The amendment does not reconvey any interest in land that has been expressly extinguished by the conservation easement.
- f) The amendment is the minimum change necessary to satisfy the purpose of the amendment.
- g) The amendment is consistent with the District's Acquisition Plan and other applicable District policies in effect at the time of the proposed amendment.
- h) The amendment is consistent with all applicable land use and zoning regulations.
  - i) The amendment incorporates, to the maximum extent practical and legally permissible, the language used by the District in its then-current conservation easements.
  - j) The amendment increases or has no effect on the appraised value of the conservation easement.

In its consideration of an amendment, the Board of Directors further shall make a finding as to whether the proposed amendment will require approval of the County voters or the California legislature pursuant to Public Resources Code Section 5540 et seq.

- 8. Notwithstanding Procedure 7, in the event of condemnation or a bona fide threat of condemnation of a conservation easement or a portion thereof, the Board may enter into settlement negotiations with the condemning authority and the landowner, as appropriate under the circumstances, to seek settlement in lieu of condemnation.