

**DNR Checklist for Safe Harbor Boundary Line Adjustment  
and Extinguishment Clause Amendment Request**

Use this checklist when submitting a request to the DNR Facilities and Lands Bureau for a safe harbor boundary line adjustment or extinguishment clause easement amendment (pursuant to IRS Notice 2023-30) to ensure that all required supporting documentation has been included.

**Important Notes:**

- DNR **will not** review or approve requests that do not include or respond to each item required by this checklist.
- DNR **will not** guarantee review of any requests received **after 5:00 pm on July 7, 2023**.
- All requests must be submitted by email to **pamelaa.rood@wisconsin.gov** with the subject line header "Easement expedited modification request."

DNR Grant ID #: \_\_\_\_\_

Landowner: \_\_\_\_\_

Nonprofit Conservation Organization: \_\_\_\_\_

**REQUIRED EXHIBITS:**

- Written Landowner Request (copy of email is acceptable)
- Copy of Original Recorded Easement
- Draft Easement Language Changes (.doc or .docx formatted document showing "red line" changes)
- Project Letter from Entity which responds to each of the following:
  - Entity's approval of proposed amendment;
  - Confirmation that Entity will email an electronic copy of the recorded easement within 30 days of receipt of such recording to [pamelaa.rood@wisconsin.gov](mailto:pamelaa.rood@wisconsin.gov);
  - Acknowledgement that Landowner and/or Entity are responsible for recording and all costs related to the execution of any approved amendment; and
  - Acknowledgement that Landowner has been made aware that any decision to approve or deny a request to amend an easement is a discretionary action for DNR and does not create any appeal rights.
- Letter from Entity Legal Counsel that attests to the following:
  - 1. Safe Harbor Boundary Line Adjustment Amendment**
    - Confirmation that Entity has incorporated the following DNR required amendment language verbatim and removed all other boundary line adjustment terms from the deed;  
*"Pursuant to Notice 2023-30, Donor and Donee agree that boundary line adjustments to the real property subject to the restrictions may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location."*
    - The proposed amendment will not affect recording priority or, alternatively, that the necessary subordination(s) have been secured to maintain existing priority;

- No other easement terms beyond the boundary line safe harbor or extinguishment clause amendments are being modified; and
- If easement, in whole or part, is incorporated or held by a trust or other legal entity that counsel has evidence that signatory has authority to bind corporation, trust, or other form of legal entity.

## 2. Extinguishment Clause Amendment

- Confirmation that Entity has incorporated the following DNR required amendment language verbatim into the easement;

*“Pursuant to Notice 2023-30, Donor and Donee agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of the perpetual conservation restriction renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Donee’s portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Donee in a manner consistent with the conservation purposes of the original contribution.”*

*Determination of Proceeds. Donor and Donee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Donee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Donee’s property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Donee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.*

- The proposed amendment will not affect recording priority or, alternatively, that the necessary subordination(s) have been secured to maintain existing priority;
- No other easement terms beyond the boundary line safe harbor or extinguishment clause amendments are being modified; and
- If easement, in whole or part, is incorporated or held by a trust or other legal entity that counsel has evidence that signatory has authority to bind corporation, trust, or other form of legal entity.