

Society for the Protection of New Hampshire Forests

*Conservation Easement Amendment Policy**

Revised by Land Protection Committee 3/19/08, Board of Trustees 4/2/08

The Forest Society's conservation easements are achieved through voluntary agreements with landowners. Conservation easements are perpetual and are presented as such to land owners. Once an easement is executed, the Forest Society is bound to uphold the terms of the easement as executed. The Forest Society's record in upholding the terms and purposes of the original easement will determine whether future donors will put their trust in the Forest Society.

It is the Forest Society's policy to hold and enforce conservation easements as written. Amendments to conservation easements will be authorized only under exceptional circumstances and then only under all of the conditions below.

- In no case will an amendment be allowed that will adversely affect the qualification of the easement (under IRS regulations) or the Forest Society's qualification as a charitable organization under any applicable federal, state, and local laws or regulations.
- Issues of private benefit or inurement will be taken into account when considering amendments to easements, as required by IRS regulations.
- The amendment serves the public interest.
- The amendment has a net beneficial or neutral effect on the relevant conservation attributes protected by the easement
- The amendment is consistent with the Forest Society's mission.
- The modifications are consistent with the documented intent and/or restrictions of the donor, grantor and any direct funding source.
- Other parties that hold a legal interest in the easement agree to the amendment.
- The amendment complies with all applicable federal, state and local laws
- The amendment complies with the Forest Society's conflict of interest policy.
- The modifications are consistent with the purposes and intent of the original easement.
- Any party requesting a conservation easement amendment shall pay all Forest Society 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.
- The Amendment is acceptable to the State of New Hampshire, acting through the Office of the Attorney General, Charitable Trusts Division and/or the Probate Court, if applicable.
- The Amendment will be acceptable to Forest Society's Board of Trustees in its absolute discretion.

****This policy applies to deed restricted lands, where such restrictions are analogous to the terms and conditions of a conservation easement.***

Forest Society Amendment Policy

Society for the Protection of New Hampshire Forests
Conservation Easement Amendment
Internal Guidelines*

Revised by Land Protection Committee 3/19/08, Board of Trustees 4/2/08

Approvable Conservation Easement Amendments

1. *Corrections, Clarifications, Refinements or Updates.*

The Forest Society may initiate an amendment to correct an error or oversight in an original conservation easement. This may include correction of a legal description, refined property description (as a result of an improved survey or omission), inclusion of standard language unintentionally omitted, updating language to our current standard, clarification of ambiguous language, or obsolete terms in order to avoid litigation over interpretation of the document in the future.

2. *Modification Consistent with Conservation Purpose*

At times, a landowner may request an amendment that modifies the restricted uses, reserved rights or areas of an easement Property due to unforeseen adverse conditions, changed circumstances or land owner hardships. A landowner may also want to modify an easement to increase the conservation attributes of the property, such as adding acreage to the original easement or removing a reserved right. These requests will be considered for amendment only if all of the following conditions are met:

- A. The modification is consistent with the purposes and intent of the original easement; and
- B. The amendment creates a condition that has a net beneficial or neutral effect on the relevant conservation attributes protected by the easement; and
- C. The net result of the modification shall not result in private inurement or private benefit impermissible under IRS regulations and/or charitable trust laws; and
- D. The modifications are made only with respect to the Property currently under easement; (I.e. a modification by which additional land outside the current easement Property is protected in exchange for modification of easement terms *on* the current Property shall not be permitted.) However;
 - An exception to this paragraph D may be made in rare circumstances where the reduction of conservation attributes of the Property is minor and the conservation benefits of protecting the additional land that is contiguous or near the Property are very significant and enhance the purposes for which the original easement was granted

- This condition imposed by this paragraph D does not apply to an amendment that solely adds land with conservation attributes that benefit an existing easement and that benefit the original purposes without modification of the original easement restrictions; Such a prospective amendment will be evaluated and executed using the guidance and policies for any new easement; and
- E. The modification results in conditions that are monitorable and enforceable by the Forest Society; and

Additional Considerations

- A. The modification does not set an unfavorable precedent for future amendments; and
- B. The Forest Society shall consider whether the amendment will have any adverse impact upon the public confidence in the Society, and
- C. The modification is acceptable to Forest Society's Board of Trustees in its absolute discretion, and
- D. If deemed appropriate, the Forest Society will communicate the rationale for the amendment to community leaders, abutters and other interested parties.

Procedures for Requesting and Approving an Amendment

1. The Forest Society or the landowner may initiate amendments.
2. 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.
3. Each request by a landowner must be accompanied by a \$750 payment 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. Any unexpended portion of the fee will be refunded, but the landowner will be responsible for all costs exceeding the initial fee, as billed by the Forest Society. Any documentation required, such as a boundary survey and monumentation, will be the responsibility of the landowner. The Forest Society may request an additional Conservation Easement Stewardship Fund donation if the nature of the amendment would increase the Forest Society's stewardship responsibilities. There will be no fees for corrections due to Forest Society errors or omissions or amendments initiated by the Forest Society.

4. Any other interest holder, such as an executory interest holder or funder of a purchased easement, and the original donor shall be contacted, informed of the proposed amendment and their position requested in writing. This may include the Attorney General's office, as appropriate.
5. The stewardship director will review any amendment request for consistency with regard to this policy, the original conservation easement deed, related documentation and the features of the land. The Land Conservation Vice President, legal counsel, other Forest Society staff or natural resource professionals, may review the request. A site visit, meeting with the current landowner and/or original donor may be arranged. A recommendation will be made to the Land Protection 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 Land Protection Committee, Forest Society's Board of Trustees will vote on the amendment.
6. The Board of Trustees, upon the recommendation of the Land Protection Committee may delegate the approval authority for certain minor amendments to the President/Forester and/or Assistant Treasurer. For example, these minor amendments include correction of typographical errors, scrivener's errors or updating property descriptions with data from new surveys or correction of minor omissions.
7. Consideration of amendment requests & 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 Forest Society easements.
8. There shall be thorough documentation of all decisions and supporting information including updated Baseline Documentation, Appraisals, IRS forms and opinions of other organizations involved in the decision, as appropriate.

****These Guidelines apply to deed restricted lands as well as conservation easement lands. Amendments to easements or deed restrictions must follow these guidelines unless the guidelines are amended by SPNHF's Board of Trustees.***