

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

Revised and Approved by:
the Land Protection Committee July 16, 2014, and
Board of Trustees August 6, 2014

The Forest Society's conservation easements are achieved through voluntary agreements with landowners. Conservation easements are perpetual and are presented as such to landowners. 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 following conditions:

1. The amendment will not 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;
2. 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;
3. The amendment must not result in private inurement or confer impermissible "private benefit" (as those terms are defined for federal tax law purposes and N.H. RSA 7:19-a, as either or both may be amended from time to time).
4. The amendment serves the public interest;
5. The amendment is consistent with the Forest Society's mission;
6. The amendment has a net beneficial or neutral effect on the relevant conservation attributes protected by the easement. The net benefit is attained through concessions made with respect to the Property currently under easement, or in certain circumstances, the net benefit may be attained by protecting land outside of the Property, but only when:
 - A. The additional land is contiguous or in the immediate vicinity; and,
 - B. The conservation benefits of protecting the additional land enhance the conservation attributes and/or Purposes for which the original easement was granted.

7. The modifications are consistent with the documented intent and/or restrictions of the donor, grantor and any direct funding source;
8. Other parties that hold a legal interest in the easement agree to the amendment;
9. The amendment complies with all applicable federal, state and local laws;
10. The amendment complies with the Forest Society's conflict of interest policy;
11. The modifications are consistent with the Purpose(s) and intent of the original easement;
12. The modification results in conditions that are able to be reasonably monitored and enforced by the Forest Society; in this regard the Forest Society Board of Trustees may require an additional donation for the Conservation Easement Stewardship Endowment and/or Defense Fund in order to appropriately steward the modified easement;
13. 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;
14. The amendment is acceptable to Forest Society's Board of Trustees in its absolute discretion. In addition to the conditions above, the Board of Trustees shall consider at least the following:
 - A. Whether the amendment will have an unfavorable precedent for future amendments; and,
 - B. Whether the amendment will have an adverse impact upon the public confidence in the Society.

**This policy applies to deed restricted lands as well as conservation easement lands.*

Procedures for Requesting and Approving an Amendment

1. The Forest Society or the landowner may initiate amendments.
2. Consideration of amendment requests and 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.
3. 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.
4. Each request by a landowner must be accompanied by a deposit, as determined from time to time by the Forest Society in its sole discretion, but in the minimum amount of \$1,000. The deposit will be used 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 deposit will be refunded, but the landowner will be responsible for all costs exceeding the deposit, 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 Endowment and/or Defense 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.
5. Staff shall contact all other interest holders, such as an executory interest holder, and request their written position on the amendment. Any executory interest holder must ultimately sign the amendment.
6. Staff shall make reasonable efforts to contact the original donor and any funder of a purchased easement and request their written position on the amendment.
7. The Director of Easement Stewardship 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 Vice President for Land Conservation, legal counsel, other Forest Society staff or natural resource professionals at the request of the Forest Society, 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.

8. 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, minor omissions, or property descriptions with data from new surveys.
9. Staff shall initiate appropriate title work to ensure correct ownership and identify any mortgages or liens that could impact the amendment;
10. 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.
11. The Forest Society will communicate the rationale for the amendment to community leaders, abutters, and other interested parties, such as those in paragraphs 5 and 6 above, as appropriate.