

VERMONT RIVER CONSERVANCY
CONSERVATION EASEMENT AMENDMENT POLICY

Adopted by the Board of Trustees on February 6, 2013

No conservation easement has only one goal. With multiple goals there will be tensions. Amendments can redefine the balance among multiple goals over time and reflect changes in policy or address changes in circumstances that were not anticipated when the easement was executed.

Amendment requests that satisfy an expressed landowner need that cannot be met through implementation of other options, have a better or at least neutral effect on the resources conserved, and improve ease of implementation and administration (for both stewardship staff and landowner) may be recommended for VRC Board approval. VRC considers the primary goal of the easement to carry the greatest importance in decision-making processes. That, along with considerations of the following principles and factors will be weighed as appropriate to each individual circumstance.

Policy

It is the policy of the Vermont River Conservancy (VRC) to monitor and enforce conservation easements as written. VRC cannot modify or amend any conservation easement conveyed to it without first securing prior written approval of the Grantor, or grantor's successor in title, and/or co-holders, if applicable. Unless specifically waived by the Board of Directors, the requestor shall pay all costs associated with reviewing the change, whether or not the amendment request is approved. Additionally, approval of an amendment request may be conditioned by the requirement that an amount sufficient to offset any increased stewardship obligations be contributed to the Stewardship Fund.

Any request for an amendment will be evaluated by VRC according to the procedure set forth in this policy statement, and will be implemented only where the Board of Directors determines that:

- a) The requested modification is consistent with the purposes of the conservation easement, and must result in a positive or not less than neutral conservation outcome;
- b) There are no feasible alternatives available to achieve the result of the requested modification;
- c) The amendment would not create additional tax compliance issues that may be incurred by changing the status of any charitable deduction which may have been claimed for a gift, which may jeopardize VRC's status as a 501(c)(3). Prior to any amendment approval, IRS requirements will be researched and complied with. Any costs incurred in determining tax compliance will be paid for by the requesting party;
- d) The amendment is consistent with any previously documented expression of the original Grantor's goals;
- e) Conservation co-holders approve of the amendment; and
- f) The requested modification is warranted under one or more of the purposes set forth below.

Purposes of the Requested Amendment

The Vermont River Conservancy will consider modification to its conservation easements only in the following circumstances:

1. **Existence of Prior Agreement:** A conservation easement may include a specific provision allowing modification of the easement at a future date under specified circumstances. In these cases, such agreements must be set forth in the conservation easement document or in a separate document signed by both parties at the time the conservation agreement is executed.
2. **To Upgrade Standard Language and Format:** The standard language and format of conservation easements may be periodically revised and upgraded to reflect statutory changes, improve enforcement and administration, and enhance the protection of the conservation values of the protected property. Amendments of this purpose may be authorized so long as the provisions of the latest standard language are consistent with the intent and objectives of the original conservation easement.
3. **To Correct an Error or Ambiguity:** VRC may authorize an amendment to correct an error or oversight made at the time the conservation easement was entered into. This may include correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of an ambiguity in the terms of the restrictions in order to avoid litigation over the interpretation of the document in the future.
4. **To Settle Condemnation Proceedings:** Conservation easements and other land interests VRC holds are subject to condemnation for public purposes, such as highways, schools, etc. Where it appears that the condemnation power would be properly exercised, VRC may enter into a settlement agreement with the condemning authority in order to avoid the expense of litigation. In reaching such an agreement VRC shall attempt to preserve the intent of the original conservation agreement to the greatest extent possible.
5. **To Incorporate a Minor Modification Consistent with Conservation Purpose:** Other minor modifications of a conservation easement may be authorized where the modification is consistent with the goals of the original conservation project, and the amended agreement is substantially equivalent to or enhances the resource values protected by the conservation restriction. Requests made under this Section will be reviewed with discretion, and an amendment will be authorized only where the circumstances suggest that a change be clearly warranted and is in the best interests of conservation.
6. **To Increase Conservation Values:** VRC may authorize an amendment to increase conservation values by; protecting additional conservation purposes and/or additional land/acreage, or adding, expanding, or enhancing the easement's protection of natural or cultural resources existing on the protected property.
7. **To adjust a boundary:** An amendment may be authorized to facilitate landowner cooperation in a boundary adjustment based on a survey.

Procedure for Requesting an Amendment

Any landowner seeking a modification to a conservation easement shall file a request in writing with Vermont River Conservancy stating what change is being sought and the specific reasons why it is needed or warranted. Where appropriate, the request shall be accompanied by a map and other documentation. Unless waived, the landowner will pay all costs -- to be determined by the Board -- associated with review and subsequent execution of request. This fee will be paid upon the conclusion of the review process.

Process for Internal Review and Approval of Amendments

The Executive and Assistant Directors shall review all requests and shall refer them to VRC's Land & Stewardship Committee Chair for an evaluation, a site visit if appropriate, a determination as to possible need for legal review, and a recommendation. The Land & Stewardship Chair and Executive Director shall present the information gathered, together with their recommendations, to the Board of Directors who will review the request, information, and recommendations and make the final decision. Upon approval, the easement amendment will promptly be added to the files of the original easement.