

New York State Environmental Conservation Law

Article 49 - PROTECTION OF NATURAL AND MAN-MADE BEAUTY

Title 1 - (49-0101 - 49-0111) NATURAL AND MAN MADE BEAUTY

Title 2 - (49-0201 - 49-0215) STATE LAND ACQUISITION

Title 3 - (49-0301 - 49-0311) CONSERVATION EASEMENTS

TITLE 3

CONSERVATION EASEMENTS

49-0301. Declaration of policy and statement of purpose.

49-0303. Definitions.

49-0305. Conservation easements; certain common law rules not applicable.

49-0307. Procedures for modifying or extinguishing conservation easement.

49-0309. Scope of this title.

49-0311. Severability.

§ 49-0301. Declaration of policy and statement of purpose.

The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological, including old-growth forest, character, and the preservation of areas which are significant because of their historical, archaeological, architectural or cultural amenities, is fundamental to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.

§ 49-0303. Definitions.

When used in this title:

1. "Conservation easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301 of this title, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution.

2. "Not-for-profit conservation organization" means a not-for-profit corporation organized inter alia for the conservation or preservation of real property and which has the power to acquire interests in real property. Such organization must have qualified as exempt for federal tax purposes pursuant to Section 501 (c)(3) of the internal revenue code or any similar successor statutory provision.
3. "Public body" means the state or a municipal corporation as that term is defined in section two of the general municipal law. Such term shall further include the Palisades interstate park commission; the Central Pine Barrens joint planning and policy commission; and a soil and water conservation district as that term is defined in section three of the soil and water conservation districts law.
4. "Third party enforcement right" means a right which may be granted in a conservation easement which empowers a public body or a not-for-profit conservation organization which is not a holder of the easement to enforce any of the terms of the easement.

§ 49-0305. Conservation easements; certain common law rules not applicable.

1. A conservation easement may be created or conveyed only by an instrument which complies with the requirements of section 5-703 of the general obligations law and which is subscribed by the grantee. It shall be of perpetual duration unless otherwise provided in such instrument.
2. A conservation easement shall be modified or extinguished only pursuant to the provisions of section 49-0307 of this title. Any such modification or extinguishment shall be set forth in an instrument which complies with the requirements of section 5-703 of the general obligations law or in an instrument filed in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law.
3. (a) A conservation easement shall be held only by a public body or not-for-profit conservation organization, except that the state shall not be authorized or empowered to acquire or hold any conservation easement which is subject to the provisions of article fourteen of the constitution.

(b) Any conservation easement created pursuant to this title shall not limit, restrict or modify the right to construct, operate or continue the use of any facility, or impede any activity, duly authorized under the applicable provisions of the federal natural gas act (15 U.S.C. §§ 717-717 w).
4. A conservation easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law. The easement shall describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor, or if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed, otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real property burdened by the conservation easement. An instrument for the purpose of creating, conveying, modifying or terminating a conservation easement shall not be effective unless recorded. A person causing any such document to be so recorded shall forthwith forward a copy thereof to the department, which shall maintain a file of conservation easements.
5. A conservation easement may be enforced in law or equity by its grantor, holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. No general

law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any conservation easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce a conservation easement that:

- (a) It is not appurtenant to an interest in real property;
 - (b) It can be or has been assigned to another holder;
 - (c) It is not of a character that has been recognized traditionally at common law;
 - (d) It imposes a negative burden;
 - (e) It imposes affirmative obligations upon the owner of any interest in the burdened property, or upon the holder;
 - (f) The benefit does not touch or concern real property; or
 - (g) There is no privity of estate or of contract.
6. The holder of a conservation easement, its agents, employees, or other representatives may enter and inspect the property burdened by a conservation easement in a reasonable manner and at reasonable times to assure compliance with the restriction.
7. The department shall promulgate regulations establishing standards for conservation easements which shall specify but not be limited to:
- (a) the minimum term for a conservation easement as is necessary and appropriate to achieve the policy and purpose of this title, except that such standards shall not preclude taxpayers who own or convey conservation easements from qualifying for benefits under federal or state tax laws when such benefits would otherwise be available by virtue of such ownership or conveyance; and
 - (b) standards and procedures which require each conservation easement held by a public body to include terms under which the easement shall be modified where the commissioner has found after a non-adjudicatory public hearing at which the public shall be given opportunity to be heard, that such easement is inconsistent with any other interest in land required for the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television services and that no reasonable alternative exists for the local gathering, transmission or distribution of such service. Notice of any such hearing shall be given to the public pursuant to thirty days published notice in the state register, the environmental notice bulletin and in a newspaper having general circulation in the county where the real property burdened by the easement is situated and individual notice shall be given in writing to any person who may be entitled to enforce such easement pursuant to the provisions of subdivision five of this section at such address as such person shall file with the commissioner.
8. Where a conservation easement is modified pursuant to subdivision seven of this section, or pursuant to any regulations promulgated thereunder, such easement shall be modified only to the minimum extent necessary to accommodate the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television service.
9. Written notice shall be provided to the director of the budget and notice published in the state register and the environmental notice bulletin at least thirty days prior to the acquisition, or entry into a contract for the acquisition, on behalf of the state of any conservation easement.

§ 49-0307. Procedures for modifying or extinguishing conservation easement.

1. A conservation easement held by a not-for-profit conservation organization may only be modified or extinguished:
 - (a) as provided in the instrument creating the easement; or
 - (b) in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or
 - (c) upon the exercise of the power of eminent domain.
2. A conservation easement held by a public body outside the Adirondack park or Catskill park, as defined in section 9-0101 of this chapter, may only be modified or extinguished:
 - (a) as provided in the instrument creating the easement; or
 - (b) in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or
 - (c) upon the exercise of the power of eminent domain; or
 - (d) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to article eight of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law.
3. A conservation easement held by a public body inside the Adirondack park or the Catskill park, as defined in section 9-0101 of this chapter, may be modified or extinguished:
 - (a) as provided in the instrument creating the easement; or
 - (b) upon the exercise of the power of eminent domain; or
 - (c) unless such easement is held by the state, in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or
 - (d) where such easement is held by the state, upon a determination by the commissioner, after a non-adjudicatory public hearing, at which the public shall be given opportunity to be heard, that the easement can no longer substantially accomplish its original purposes or any of the purposes set forth in section 49-0301 of this title. Notice of any such hearing shall be given to the public pursuant to thirty days published notice in the state register, the environmental notice bulletin and in a newspaper having general circulation in the county where the real property burdened by the easement is situated and individual notice shall be given in writing to any person who may be entitled to enforce such easement pursuant to subdivision five of section 49-0305 of this title at such address as such person shall file with the commissioner; or
 - (e) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and

public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to the former article eight of the public service law, or a major electric generating facility or repowering project which has received a certificate of environmental compatibility and public need pursuant to article ten of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law, provided that such certificate contains a finding that the public interest in the conservation and protection of the natural resources, open spaces and scenic beauty of the Adirondack or Catskill parks has been considered.

4. Where a conservation easement is modified or extinguished pursuant to paragraph (d) of subdivision two or paragraph (e) of subdivision three of this section, such easement shall be modified or extinguished only to the minimum extent necessary to accommodate the facility which is the subject of the certificate of environmental compatibility and public need.
5. Nothing in this section shall be construed to preclude the extinguishment or modification of a conservation easement pursuant to the applicable provisions of the federal natural gas act (15 U.S.C. §§ 717-717 w).

49-0309. Scope of this title.

This title shall not affect any interests or rights in real property which are not conservation easements, and shall not affect the rights of owners to convey any interests in real property which they could now create under existing law without reference to the terms of this title. Nothing in this title shall diminish the powers granted by any other law to acquire interests or rights in real property by purchase, gift, eminent domain or otherwise and to use the same for public purposes. Nothing in this title shall be construed to alter the authority otherwise available to any public body to acquire conservation easements for the purposes of section 49-0301 of this title by eminent domain.

§ 49-0311. Severability.

The provisions of this title shall be severable, and if any clause, sentence, paragraph, subdivision or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered; provided that if a conservation easement created pursuant to this title is determined by any court of competent jurisdiction to be land or water or an interest in land or water subject to the provisions of article fourteen of the constitution then the authority of the state to hold or acquire such easement and the conveyance to the state of such easement shall be void ab initio.

ARTICLE XIV

Conservation

Sec.

1. Forest preserve to be forever kept wild; certain uses and

exceptions authorized.

2. Reservoirs.

3. Forest and wild life conservation; use or disposition of certain forest preserve lands authorized.

4. Protection of natural resources and the development of agricultural lands.

5. Violations of article; how restrained.