



GREAT POND MOUNTAIN CONSERVATION TRUST

Conservation Easement Amendment Policy

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Adopted: June 13, 2011

Revised: _____

Due for Review: _____

See Also: _____

Land Trust Standards and Practices

This policy complies with the LTA Standard 11, Practice I.

Introduction

Purpose of Policy: This policy governs the actions of GPMCT with respect to amendment and termination of easements.

Responsible Committee: Land Protection Committee

Policy

I. General Policy Statement

- A. The Great Pond Mountain Conservation Trust (GPMCT) acquires and holds conservation easements on property in order to protect, in perpetuity, the conservation values of the land as described in the mission statement.
- B. Because GPMCT's acquisitions are primarily achieved through voluntary agreements with landowners, the success of the conservation easement program depends upon the confidence of these landowners that GPMCT will meet its obligation to monitor and enforce the agreements. This confidence would be seriously eroded if GPMCT were to allow indiscriminate and unwarranted modification of its conservation easements.
- C. Furthermore, amendments to conservation easements can raise serious problems with the Internal Revenue Service. GPMCT's tax exempt status as an organization could be jeopardized if easements are amended inappropriately. An easement donor who has claimed a charitable deduction for a gift of an easement could lose that deduction if the easement is amended. Any amendment which results in the benefit to a landowner or any other private party may create "private inurement" for a "private benefit" if the benefits conferred by the amendment are more than incidental. The U.S. Tax Code prohibits GPMCT from engaging in any actions that create private inurement or private benefit.
- D. For these reasons and others, it is the policy of GPMCT to hold and enforce its conservation easements as written. Amendments to conservation easements will be authorized only in limited situations and only in the types of conditions outlined below. No amendments to conservation easements will be granted which could jeopardize GPMCT's tax exempt status or which could

cause the easement to fall out of compliance with applicable federal, state or local laws, regulations or ordinances.

- E. Notwithstanding the foregoing, Maine State law provides that GPMCT may agree to amendments to the terms of a conservation easement as provided in Section IID. (33 M.R.S. § 477-A.

II. Conditions Under Which Amendment Requests May Be Considered

GPMCT will consider amendments to its conservation easements only under the following circumstances:

A. Prior Agreement

In some cases, a conservation easement may have a specific provision allowing modification of the easement at a future date under specified circumstances. Such agreements must be set forth in the conservation easement document or in a separate written document signed by GPMCT and the conservation easement grantor at the time the document was executed. The amendment must be consistent with the terms and conservation intent of the original agreement.

B. Correction of an Error or Ambiguity

GPMCT may authorize an amendment or correct an error or oversight made at the time the conservation easement was executed. Such errors or oversights may include, but shall not be limited to, correction of legal descriptions, inclusion of standard language that was unintentionally omitted, or clarification of ambiguities. Any amendment authorized to clarify conservation easement ambiguities shall be supported by documents such as written statements, affidavits, agreements between GPMCT and the conservation easement grantor or other tangible evidence that the intention of the amendment is to clarify and implement the parties' original intentions when GPMCT first acquired the conservation easement from the grantor.

C. Settlement of Condemnation Proceedings

Conservation easements GPMCT holds on land are subject to condemnation for public purposes, such as highways and schools. Where it appears that the government's condemnation power will be properly exercised and GPMCT conservation easement, or part thereof terminated GPMCT may enter into a settlement agreement with the condemning authority and landowner in order to avoid the expense of litigation. In reaching such an agreement, GPMCT shall attempt to preserve the intent of the original conservation agreement to the greatest extent possible.

- 1) Whenever all or part of the property is taken in exercise of eminent domain so as to abrogate in whole or in part the conservation easement, the landowner and GPMCT shall thereupon act jointly to recover the full damages resulting from such undertaking with all incidental or direct damages and expenses incurred by them thereby to be paid out of damages recovered.
- 2) The balance of the damages recovered shall be divided between the landowner and GPMCT in proportion to the fair market value of their respective interests in that part of the property condemned on the date of execution of the easement. For this purpose, GPMCT's interest shall be the amount by which the fair market value of the property immediately prior to the execution of the conservation easement is reduced by the use limitations imposed. GPMCT shall use its share of the proceeds in a manner consistent with the conservation purposes set forth in its Bylaws.

D. Amendments Consistent with Conservation Purpose and Enhancing Conservation Values

It is the policy of GPMCT to authorize amendments to a conservation easement provided that the amendment is determined to be consistent with the original intent of GPMCT and the donor,

consistent with a statement of purpose in the easement and provided that the amendment enhances or has no adverse effect on the conservation values protected by the easement. It is the policy of GPMCT not to grant any amendment if GPMCT determines that the amendment would adversely affect the conservation easement's perpetual duration, would afford less protection to the conservation values protected by the original conservation easement, or would result in private inurement or private benefit to any party.

E. Amendments Pursuant to Statute

Maine law provides that an action affecting a conservation easement may be brought or intervened in by an owner of an interest in the real property burdened by the easement, the holder of the easement, a person having a third-party right of enforcement or in some cases the Attorney General. Under some circumstances the Court may permit termination of a conservation easement or approve amendment to a conservation easement that materially detracts from the conservation values it serves. (33 M.R.S. §477-A, §478)

III. Amendment Procedures

- A. Any landowner or other party seeking an amendment to an existing conservation easement must present to GPMCT a request in writing, stating what change is being sought and the specific why it may be needed or warranted. The request shall be accompanied by appropriate maps and other documentation.
- B. Upon receipt of a request, GPMCT staff will hold an initial consultation meeting with the landowner or other person who requests the amendment. During this initial consultation meeting, costs to review and process the request and payment arrangements will be discussed. A cost agreement will be developed and signed before proceeding. GPMCT staff shall review all requests and, where appropriate, a representative of GPMCT may visit the site.
- C. Evaluation of requests shall include consultation with third parties, when applicable and appropriate, including:
- Reasonable efforts to discuss the proposed amendment with the principal parties to the original transaction, including the landowner who granted the restrictions or his/her heirs or successors.
 - Funders, if any, of the original easement. GPMCT shall comply with all applicable funding requirements.
 - Additional third parties, public or private, whose opinions or expertise GPMCT determines may be helpful to its evaluation of the amendment request. (This may include, at the Board's discretion, abutters to the property.)
- D. GPMCT staff and/or the Land Protection Committee will compile information and review the request for amendment and make a recommendation to the Board of Directors as to the appropriateness of any amendment, along with recommendations for conditions, terms and suggestions for mitigating the impact of any amendment.

That recommendation will also discuss the necessity and/or appropriateness of notification of the Attorney General or an initiation of judicial proceedings as referenced in Section 2E. If the Board finds that notification of the Attorney General and initiation of judicial proceedings is not warranted, then it may approve, reject or approve with modification any such request. Approval shall require a two-thirds majority of the full Board.

- E. If the Board determines that notification of the Attorney General and judicial proceedings are necessary or appropriate, then it shall advise the Land Protection Committee and/or staff.

- F. The appropriate Planning Board will be notified of any conservation easement amendments within the Planning Board's jurisdiction.
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Documentation

All easement amendments that are approved by the Board must be made in writing, signed by both parties and must be recorded in the appropriate Registry of Deeds.

Finance

GPMCT's policy is that the requester of the amendment shall pay all costs, including staff time and consulting fees, for reviewing a requested amendment, whether or not the amendment is granted, and of implementing the amendment if approved. GPMCT may require the party requesting the amendment cover the costs of a qualified appraisal of the value of the requested amendment in order to assess whether the amendment will result in any private inurement or will confer any private benefit if the amendment request is approved. GPMCT may also require the donor to pay legal costs associated with judicial review of any proposed amendment (as provided in Section II.E.), including attorneys' fees and costs, including, without limitation, expert witness fees. At GPMCT's sole discretion, GPMCT may waive the foregoing requirement that the requestor of the amendment pay all or some of the costs of amendment review, judicial proceedings, approval, appraisal, for implementation.

Adoption

This policy was adopted by the Board of Directors of Great Pond Mountain Conservation Trust on the 13th day of June, 2011, at a duly constituted meeting at which a quorum was present.

Signature of authorized officer

Date