

Maine Coast Heritage Trust staff uses this document in its land conservation efforts. It is designed for internal MCHT use and is provided here as a reference or guide. Each land trust has its own mission, priorities, and organizational characteristics that should direct how it does its work and what documents it uses. Please feel free to use the ideas, processes, and even specific text contained in this document, but be sure to tailor them for your organization. Land trusts should always consult a lawyer and exercise due diligence in cases of legal significance. MCHT does not guarantee or provide advice as to the tax consequences of any project or action.

CONSERVATION EASEMENT AMENDMENT POLICY (BOARD APPROVED 11/11/2017)

Conservation easements are documents intended to last in perpetuity, yet circumstances do come up at times that necessitate considering a change, addition, or interpretation to handle an unforeseen problem. Such circumstances can be handled in a variety of ways, which should be evaluated by field staff in consultation with MCHT General Counsel and brought forward for Board review or approval as needed. Tools for such circumstances include Letters of Interpretation, Easement Addenda, or Easement Amendments.

MCHT will consider making Easement Amendments rarely, and only either for technical reasons (mutual mistake, impossibility of certain intentions, adding necessary IRS boilerplate language), or to make changes to an easement that will result in a net beneficial or neutral conservation effect on the relevant conservation values protected by the easement (such as adding land, granting public access, or eliminating a building right in exchange for less valuable rights conferred on the owner by the amendment). An amendment must clearly serve the public interest, and be consistent with MCHT's mission, as documented in the file.

Whenever doing an amendment, MCHT is prohibited from engaging in "impermissible private benefit" or "private inurement," by state non-profit laws and federal laws on tax exempt entities. This means that we cannot give value away to private parties by increasing the value of their real estate. To this end, an evaluation of the value of the amendment will be made, in a manner appropriate to the circumstances, and any net increase in the value of the landowners' estate resulting from the amendment must be paid over to MCHT, per Title 33 M.R.S. Section 477A(2)(b). Amendments will be crafted to result in a clear net decrease in the value of the landowner's estate, to avoid this necessity, if possible.

MCHT recognizes that state law requires court approval, in an action in which the attorney general is made a party, for any amendment the terms of which will "materially detract from the conservation values intended for protection," or for termination or limitation to the term of the easement, as may be required for a taking by eminent domain. Removal of any land from the easement is considered termination of the easement on that land and requires court approval.

Recognizing the above, MCHT will seek to craft amendments that solve problems in a manner that does not require court approval whenever possible. MCHT has no obligation to negotiate nor to enter into

any conservation easement amendment, including those that may require such court approval. MCHT may ask landowners to reimburse MCHT for costs of the amendment.

The following Amendment Principles promulgated by Land Trust Alliance are hereby adopted by MCHT, and will be used to guide it in amending conservation easements:

LAND TRUST ALLIANCE'S AMENDMENT PRINCIPLES

An amendment should meet all the following:

- 1) Clearly serve the public interest and be consistent with the land trust's mission;
- 2) Comply with all applicable federal, state and local laws;
- 3) Not jeopardize the land trust's tax-exempt status or status as a charitable organization under federal law;
- 4) Not result in private inurement or confer impermissible private benefit;
- 5) Be consistent with the conservation purpose(s) and intent of the easement;
- 6) Be consistent with the documented intent of the donor, grantor and any funding source;
and
- 7) Have a net beneficial or neutral effect on the relevant conservation values protected by the easement.