

EXPRESS TERMS

A new 6 NYCRR Part 592 is added to Subchapter D (formerly Subchapter C) of Chapter V, Real Property and Land Acquisition, to read as follows:

6 NYCRR Part 592

Procedure for the modification or extinguishment of a conservation easement held by the New York State Department of Environmental Conservation (Statutory authority: Environmental Conservation Law sections 3-0301, 49-0303, 49-0305 and 49-0307).

Section 592.1 Purpose and applicability

(a) The purpose of this Part is to set forth in regulation a procedure to be followed by the department when modifying or extinguishing a DEC conservation easement, as that term is defined in section 592.2(c) below.

(b) This Part will not apply to conservation easements which are owned or held by not-for-profit organizations or public bodies other than the department.

Section 592.2 Definitions

(a) "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's designated agent.

(b) "Department" or "DEC" means the New York State Department of Environmental Conservation.

(c) "Conservation easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of Title 3 of article 49 of the Environmental Conservation Law 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 the Environmental Conservation Law, provided that no such easement shall be acquired or held by the state which is subject to the provisions of Article XIV of the State Constitution.

(d) "ECL" means the New York State Environmental Conservation Law.

(e) "Environmental Notice Bulletin" or "ENB" means the weekly publication of the department that is published pursuant to section 3-0306 of the Environmental Conservation Law, and accessible on the department's website.

(f) "Grantee" means the department, as owner and holder of a DEC conservation easement.

(g) "Grantor" means the person or entity which is the owner of the underlying fee lands subject to the DEC conservation easement at the time of the grant of the DEC conservation easement or, as applicable, the grantor's respective successors, heirs and assigns.

(h) "Modification" means a change, addition, deletion, correction or amendment to a DEC conservation easement.

(i) "Property" means the underlying fee lands subject to the DEC conservation easement.

(j) "Purpose(s)" means the conservation objectives and goals set forth in the express language of a DEC conservation easement, or in the absence of such express language, as provided in ECL section 49-0303(1).

(k) "Third party enforcement right" means a right which may be granted in a DEC conservation easement which empowers a public body or a not-for-profit conservation organization which is not a holder of the DEC conservation easement to enforce any of the terms of the DEC conservation easement.

Section 592.3 Standards.

(a) The standards for the modification of a DEC conservation easement include:

1. A modification of a DEC conservation easement, other than a modification to the stated purpose(s) as set forth in a DEC conservation easement, must not alter, and must be consistent with, the stated purpose(s) of the DEC conservation easement; and
2. A modification of a DEC conservation easement must not affect the perpetual nature of the DEC conservation easement; and
3. The modification must comply with all existing policies, laws or regulations, including the specific requirements of the provisions of ECL section 49-0307, in effect at the time of the modification; and
4. The proposed modification of a DEC conservation easement shall result in a net conservation benefit to the state, which must be calculated and

considered within the spatial confines of the conservation easement in question or in the surrounding contiguous and adjoining lands, as determined by the department, after public comment, including consideration of any change in the level of public recreational opportunities or any change to the limitations or restrictions on the development, management or use of the property, or any other real property owned by or under the control of the grantor, for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the area where the property is located in a manner consistent with the public policy and purpose set forth in ECL section 49-0301.

(b) The standard for the modification of the purpose(s) or the extinguishment of a DEC conservation easement shall require a finding by the department that: the proposed new or modified purpose(s) enhance the original purpose(s) of the DEC conservation easement; or the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301 which include 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 character, including old-growth forest, character, and the preservation of areas which are significant because of their historical archaeological, architectural or cultural amenities, and 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.

Section 592.4 Procedures

The department must comply with the following procedures for any modification or the extinguishment of a DEC conservation easement.

(a) Written notice to grantor and entities entitled to third party enforcement rights and the Office of the Attorney General. The department must provide written notice of the proposed modification or extinguishment of a DEC conservation easement to the grantor, entities designated in the DEC conservation easement as having third party enforcement rights, and the Office of the Attorney General by certified mail, return receipt requested to the addresses on file with the department for the respective entities; and

(b) Public notice, comment period, non-adjudicatory hearing.

1. Public Notice.

i. For modification only of a DEC conservation easement. The department must publish public notice in the ENB of the department's intent to modify a DEC conservation easement including a general summary of the proposed modification(s) and the opportunity for the public to submit written public comments to the department. The public comment period shall begin on the date the notice of the public comment period appears in the ENB.

- ii. For modification to the purpose(s) or extinguishment of a DEC conservation easement. The department must publish public notice of its intent to modify the purpose(s) or extinguish a DEC conservation easement in the State Register, the ENB and in a newspaper having a general circulation in the county where the property is located. The public notice shall include the facts supporting a finding that: the proposed new or modified purpose(s) enhance the original purpose(s) of the DEC conservation easement; or the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301.
2. Public comment period. The department must provide for a public comment period for thirty (30) calendar days to accept public comments related to the proposed modification to, or extinguishment of, a DEC conservation easement. The department may provide for the receipt of public comment through the use of meetings, exchanges of written material, or other means during the public comment period.
3. Non-adjudicatory public hearing. For proposals which include the modification of the purpose(s) or extinguishment of a DEC conservation easement, the department must conduct a non-adjudicatory public hearing to be held during the public comment period to provide the public with an opportunity to be heard on the modification of the purpose(s) or the extinguishment of a DEC

conservation easement. Notice of the public hearing shall be included in the notice of the proposed modification of the purpose(s) or extinguishment of the conservation easement as set forth in subparagraph ii of paragraph 1 subdivision (b) of this section.

(c) Commissioner's determination only for modification to the purpose(s) or extinguishment of DEC conservation easement.

1. For any proposed modification to the purpose(s) or the extinguishment of a DEC conservation easement, the Commissioner must make a written determination that the proposed new or modified purpose(s) enhances the original purpose(s) of the DEC conservation easement; or the DEC conservation easement can no longer substantially accomplish its original purposes. The proposed modification to the purpose(s) or extinguishment of a DEC conservation easement following closure of the public comment period, shall comply with the requirements of section 592.3 of this Part and be consistent with the policies and objectives set forth in ECL section 49-0301. If a DEC conservation easement is modified or extinguished pursuant to this Part, it shall be set forth in an instrument which complies with the requirements of ECL section 49-0305.
2. The Commissioner will publish a notice of determination in the ENB with a hyperlink to the determination document. The recording of a

deed or other conveyance document in the county clerk's office where the DEC conservation easement is located must be filed no earlier than one hundred twenty (120) calendar days after the notice of the Commissioner's determination appears in the ENB.