§ 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 a major electric transmission facility which has received a siting permit pursuant to article VIII of the public service law, upon the filing of such certificate or permit 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.

* NB Effective until December 31, 2040

* (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.

* NB Effective December 31, 2040

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, a major electric transmission facility which has received a siting permit pursuant to article VIII 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 or permit 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 or permit 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.

* NB Effective until December 31, 2040

* (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.

* NB Effective December 31, 2040

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).