

	<b>WATER RESOURCES DIVISION POLICY AND PROCEDURE</b>		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: January 10, 2000  Revised Date: December 3, 2013  Reformatted Date:	Subject: Part 303 - Modification of Conservation Easements  Program Name: Water Resources Program  Number: WRD-026      Page: 1 of 6		Category:  <input type="checkbox"/> Internal/Administrative X External/Non-Interpretive <input type="checkbox"/> External/Interpretive

*A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.*

Note: This policy and procedure was previously numbered as 303-00-01 and Admin-00-01.

**PURPOSE:**

To provide guidance to the DEQ's Water Resources Division (WRD) staff regarding the modification of conservation easements.

**BACKGROUND:**

The WRD holds the recorded conservation easements, generally in fulfillment of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, permit conditions and receives approximately 100 new conservation easements annually. The conservation easements are conveyances of interests in real property and are perpetual. Circumstances may arise where a modification to an easement is requested. Requests for modifications to easements must meet specific criteria listed in Attachment A and are granted sparingly. The WRD establishes the following procedures for processing requests for the modification of easements

**PROCEDURES:**

Step	Who	Does What
1	Requester	Submits, in writing, a request for a modification to a conservation easement held by the DEQ to the appropriate district supervisor. The request to modify the conservation easement must be in writing and include the following: <ol style="list-style-type: none"> <li>1. A copy of the easement.</li> <li>2. A description of the proposed easement modification and the need for the modification.</li> <li>3. An assessment of the impacts of the proposed modification to the conservation values of the easement.</li> <li>4. Alternatives to the easement modification.</li> <li>5. The existing site conditions - baseline documentation.</li> <li>6. The current property title holder and any other interest holders.</li> <li>7. A site location map.</li> <li>8. Photographs of the easement area to be modified.</li> <li>9. A legal description of the proposed change.</li> </ol>

WATER RESOURCES DIVISION  
POLICY AND PROCEDURE

Number: WRD-026

Subject: Part 303 - Modification of Conservation Easements

Page 2 of 6

Step	Who	Does What
		<ol style="list-style-type: none"> <li>10. Copies of any DEQ permits associated with the easement site.</li> <li>11. A proposal to compensate for impacts to the easement.</li> <li>12. A signed, notarized statement that affirms compliance with the easement terms and conditions.</li> <li>13. The signed approval of all other parties who are subject to the same easement.</li> <li>14. Written documentation that the person who owns the property or has the authority to convey the land on behalf of the property owner is willing to modify the easement.</li> <li>15. The names and addresses of all the adjacent property owners to the easement and other land affected by the proposal.</li> <li>16. Documentation that demonstrates that the criteria in Attachment A are met.</li> </ol>
2	District Supervisor	<ol style="list-style-type: none"> <li>1. Notifies the WRD Conservation Easement Coordinator (CEC) that a request has been made.</li> <li>2. Assigns request to appropriate district staff.</li> </ol>
3	District Staff	<ol style="list-style-type: none"> <li>1. Reviews the request and required documents (1-15 above) for completeness; conducts an on-site inspection; and evaluates the following:               <ol style="list-style-type: none"> <li>a. Existing site conditions and surrounding land use(s).</li> <li>b. Resource impacts associated with the proposed modification request.</li> <li>c. Whether the proposed use requiring the easement change involves a regulated activity; and whether it would likely be permitted.</li> <li>d. Alternatives to easement modification.</li> <li>e. Whether there have been any violations within the easement area.</li> </ol> </li> <li>2. If there is a site violation, notifies the modification REQUESTER, in writing, that the request to modify the easement cannot be processed because there are/have been violations to the easement; or that there are permit conditions for mitigation that have not been satisfactorily met; and sends copies to the CEC. (Following resolution, the request may be resubmitted.)</li> </ol>

WATER RESOURCES DIVISION  
POLICY AND PROCEDURE

Number: WRD-026

Subject: Part 303 - Modification of Conservation Easements

Page 3 of 6

Step	Who	Does What
		<p>3. If there are no site violations, prepares a summary package containing a briefing that summarizes the issues and a recommendation either approving or denying the easement modification request. The recommendation for approval or denial shall be based on the considerations outlined in Attachment A, and shall include site review and other pertinent information. Forwards the summary package to the District Supervisor.</p>
4	District Supervisor	<p>Reviews the briefing and recommendation; considers the criteria in Attachment A; adds any pertinent information; and includes a supervisory recommendation approving or denying the easement modification request. The District Supervisor forwards the summary package to the CEC.</p>
5	CEC	<p>1. Reviews the summary package for completeness.</p> <ul style="list-style-type: none"> <li>• If the summary package is incomplete, district staff or the requestor is contacted for the necessary information.</li> <li>• If a clear reason for denial exists (e.g., no enhancement proposed or there is a violation on the side), the CEC forwards recommendation for denial to the Division Chief without public notice.</li> </ul> <p>2. If the summary package is complete, evaluates the easement modification request and makes a recommendation approving or disapproving the modification request based upon the criteria outlined in Attachment A.</p> <ul style="list-style-type: none"> <li>• Adds any pertinent additional information and the draft notice for the DEQ Calendar is prepared. The Calendar notice shall contain the DEQ's consideration of an easement modification request and establishes a 20-day period of public comment.</li> <li>• Forwards the calendar posting to the WRD Calendar liaison.</li> </ul> <p>3. Provides notice to all adjacent or affected property owners and other interested entities, as appropriate, such as local units of government, the Department of Natural Resources, and federal agencies.</p> <p>4. Prepares a Modification of Conservation Easement Request Tracking Form.</p>

WATER RESOURCES DIVISION  
POLICY AND PROCEDURE

Number: WRD-026

Subject: Part 303 - Modification of Conservation Easements

Page 4 of 6

6	WRD Calendar Liaison	<ol style="list-style-type: none"><li>1. Reviews the Calendar notice.</li><li>2. Submits the Calendar notice according to the DEQ Calendar production schedule.</li><li>3. Notifies the CEC confirming calendar notice publication date and forwards a copy of the final notice to the CEC.</li></ol>
7	CEC	<ol style="list-style-type: none"><li>1. Updates the summary package, upon expiration of the public comment period, to include public comments or additional information received.</li><li>2. Prepares a draft cover memo to the Division Chief with a recommendation for approval or denial.</li><li>3. Forwards the draft memo to Division Chief for review/approval.</li></ol>
8	Division Chief	<p>Makes all decisions regarding requests for modification to existing conservation easements held by the DEQ, considering the factors listed in Attachment A.</p> <p>Forwards decision to the CEC.</p>
9	CEC	<p>If the easement modification is approved, coordinates with the requester to complete documents necessary for proper conveyance and recording. Notifies district staff.</p> <p>If the modification is not approved, notifies requester and district staff in writing.</p>
10	Division Chief	<p>Executes easement documents if modification is approved. Forwards to the Division Secretary for notarization.</p>
11	Division Secretary	<p>Notarizes easement documents, if modification of the easement is approved, and returns the package to the CEC.</p>
12	Wetlands, Lakes, and Streams Unit	<p>Prepares a 7-day postdated letter to the appropriate Register of Deeds requesting recording of the easement. Forwards the letter and easement modification to the Administration Section.</p>

WATER RESOURCES DIVISION  
POLICY AND PROCEDURE

Number: WRD-026

Subject: Part 303 - Modification of Conservation Easements

Page 5 of 6

15	Administration Section	Processes a direct voucher and special handling request and forwards, along with the letter and easement, to the DEQ's Cashier's Office.
16	Cashier's Office	Keys in request and arranges with the Department of Treasury to issue a pay warrant.
17	Department of Treasury	Issues the pay warrant and forwards, along with the easement and letter, to the appropriate Register of Deeds.
18	Register of Deeds	Returns the original recorded easement to the CEC.
19	CEC	Retains the original recorded easement for the DEQ files and sends copies of the recorded easement to the requester and appropriate WRD district staff.

DIVISION CHIEF APPROVAL:



---

William Creal, Chief  
Water Resources Division

WATER RESOURCES DIVISION  
POLICY AND PROCEDURE

Number: WRD-026

Subject: Part 303 - Modification of Conservation Easements

Page 6 of 6

**ATTACHMENT A**

A proposed modification of an existing conservation easement held by the DEQ may be approved if the person requesting the modification demonstrates to the satisfaction of the DEQ, that the proposed modification meets the following criteria:

- There is a compelling need to change the easement.
- There are no feasible and prudent alternatives to changing the easement, and the requested change is the minimum required to accomplish the requestor's objective.
- The proposed modification shall be consistent with the intent and purpose of the original easement.
- The proposed modification will enhance the intent and purpose of the original easement.