

**COMMITTEE ON ECONOMIC DEVELOPMENT,
PLANNING AND ENVIRONMENTAL PROTECTION**

JULY 15, 2005

To amend title 12 Virgin Islands Code to enact the Uniform Conservation Easement Act

Senators Craig Barshinger, and Louis Patrick Hill
Co-Sponsor: Pedro "Pete" Encarnacion

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. Title 12 Virgin Islands Code, is amended by adding chapter 15 to read as follows:

"CHAPTER 15 UNIFORM CONSERVATION EASEMENTS

§601. Short title.

This chapter shall be known and may be cited as the Uniform Conservation Easement Act.

§602 Applicability.

(a) This chapter applies to any interest created after its effective date which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

(b) This chapter applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this State or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this State.

§603. As used in this chapter, unless the context otherwise requires:

(a) ‘Conservation easement’ means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(b) ‘Holder’ means a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

(1) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural

resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(c) ‘Third-party right of enforcement’ means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

§604. Creation, conveyance, acceptance and duration.

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in section 605(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

§605. Judicial actions.

(a) An action affecting a conservation easement may be brought by:

- (1) an owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

§605. Validity. A conservation easement is valid even though:

- (a) it is not appurtenant to an interest in real property;
- (b) it can be or has been assigned to another holder;
- (c) it is not of a character that has been recognized traditionally at common law;
- (d) it imposes a negative burden;
- (e) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (f) the benefit does not touch or concern real property; or
- (g) there is no privity of estate or of contract.

§607. Uniformity of application and construction.

The Uniform Conservation Easement Act enacted under this chapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the Act among states enacting it.

BILL SUMMARY

The Uniform Conservation Easement Act was drafted by the National Conference of Commissioners of Uniform States Laws in 1981. The Act has been approved by the American Bar Association and has been adopted in Alabama, Alaska, Arizona, Arkansas, Delaware, District of Columbia, Idaho, Indiana, Kansas, Kentucky, Maine, Minnesota, Mississippi, Nevada, New Mexico, Oregon, South Carolina, South Dakota, Texas, Virginia, West Virginia and Wisconsin.

In its prefatory note the Drafting Committee of the National Conference of Commissioners on Uniform State Laws (NCCUSL drafting Committee) explained:

“The [Uniform Conservation Easement] Act enables durable restrictions and affirmative obligations to be attached to real property to protect natural and historic resources. The Uniform Conservation Easement Act provides a simple, limited way to end impediments to the use of easements under the common law. It permits the acquisition of easements as limited interests in land with the minimum disturbance of other interests and uses.”

As the National Conference explained, the Uniform Conservation Act does not compel anybody to do anything, but if it appears advantageous as a matter of gift, sale or other conveyance for the property owner to transfer an easement, the Act assures the validity of the easement. The Act promotes non-compulsory, voluntary solutions to land use problems.

Section 601 of the new chapter 15 of title 12 sets forth the short title, the Uniform Conservation Easement Act. The NCCUL Drafting Committee states the following concerning section 602, applicability:

“There are four classes of interests to which the Act might be made applicable: (1) those created after its passage which comply with it in form and purpose; (2) those created before the Act's passage which comply with the Act and which would not have been invalid under the pertinent pre-Act statutory or case law either because the latter explicitly validated interests of the kind recognized by the Act or, at least, was silent on the issue; (3) those created either before or after the Act which do not comply with the Act but which are valid under the state's statute or case law; and (4) those created before the Act's passage which comply with the Act but which would have been invalid under the pertinent pre-Act statutory or case law.

It is the purpose of Section 602 to establish or confirm the validity of the first three classes of interests. Subsection (a) establishes the validity of the first class of interests, whether or not they are designated as conservation or preservation easements. Subsection (b) establishes the validity under the Act of the second class. Subsection (c) confirms the validity of the third class independently of the Act by disavowing the intent to invalidate any interest that does comply with other applicable law.

Constitutional difficulties could arise, however, if the Act sought retroactively to confer blanket validity upon the fourth class of interests. The owner of the land ostensibly burdened by the formerly invalid interest might well succeed in arguing that his property would be "taken" without just compensation were that interest subsequently validated by the Act. Subsection (b) addresses this difficulty by precluding retroactive application of the Act if such application "would contravene the constitution or laws of (the) State or of the United States." That determination, of course, would have to be made by a court.”

Section 603 defines three central elements: What is meant by a conservation easement; who can be a holder; and who can possess a "third-party right of enforcement"

Section 604 provides that conservation easements are created in the same manner as other easements. It provides procedures for the holder's acceptance of the easement and provides that the easement is of unlimited jurisdiction

Section 605 identifies four categories of persons who may bring actions to enforce, modify or terminate conservation easements, quiet title to parcels burdened by conservation easements, or otherwise affect conservation easements.

Section 606 removes outmoded common law defenses that could impede the use of easements for conservation or preservation ends. It comprehensively identifies these defenses and negates their use in actions to enforce conservation or preservation easements.

Section 607 ensures that the Act will be construed uniformly with the judicial decisions of the jurisdictions that have adopted it."

BR05-0531/May 18, 2005/YLT