

## APPENDIX

### CONSERVATION EASEMENT STATUTES BY STATE

The inconsistencies between state conservation easement statutes, particularly as they relate to the protection of wetlands, are best seen in comparison to one another, in the form of the table provided below.<sup>1</sup> When a statute conforms exactly to the UCEA, this conformity will be noted. Otherwise, the table will only note deviations or significant differences from the UCEA.<sup>2</sup>

The table was prepared for the purpose of illustrating the issues discussed in this Comment, and for that reason, emphasizes such features as wetland conservation easements, judicial termination procedures, and duration of easements, to the exclusion of features not relevant to the present inquiry. The information in the table is based on a direct survey of state statutes, and does not reflect the entire body of accompanying case law.

<b><u>ALABAMA</u></b> Ala. Code § 35-18-1 to § 35-18-6 (West 2005)	Duration as stated in instrument, default of thirty years or life of grantor, or until sale of the property. Protects mineral rights and liens. Specifically allows for judicial termination due to changed conditions. Prevents creation through eminent domain and protects eminent domain powers.
<b><u>ALASKA</u></b> Alaska Stat. § 34.17.010 to § 34.17.060 (Lexis 2005)	Provides tort immunity to landowner if an easement is used for recreational purposes without compensation. Prevents creation through eminent domain. Charities must be tax-exempt under § 501(c)(3). Contains UCEA § 6.

1. The tables in Squires, *supra* note 116, at 72–73 provided a starting point for the research below. Squires compiled his tables in 1998. This Comment presents a good opportunity for a revision and update.

2. The majority of legislative enactments of the UCEA have deleted Section 6, which reads, “This Act 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.” UCEA § 6. Those enactments that contain Section 6 will be noted. Likewise, the words “its effective date” in sections 5(a) and 5(c) have been replaced with the actual effective date of the statute, and the words “Section 3(b)” in Section 2(c) are replaced with the relevant section number in the state statute. Other minor substitutions such as “chapter” for “Act,” which do not affect the substance of the law, will not be noted.

<p style="text-align: center;"><b><u>ARIZONA</u></b></p> <p>Ariz. Rev. Stat. Ann. § 33-271 to § 33-276 (West 2005)</p>	<p>Specifies protection of “relatively natural habitat of fish, wildlife or plants or similar ecosystem.” Subject to recording and adverse possession laws. Must be recorded to be valid. Allows government to enforce if holder no longer exists. Judicial termination must consider the “public interest.” Protects eminent domain, but denies compensation in the event easement is taken.</p>
<p style="text-align: center;"><b><u>ARKANSAS</u></b></p> <p>Ark. Code Ann. § 15-20-401 to § 15-20-410 (Lexis 2005)</p>	<p>Explicitly allows for enforceability by injunction or other equitable remedy and entitles holders to enter and inspect. Protects eminent domain.</p>
<p style="text-align: center;"><b><u>CALIFORNIA</u></b></p> <p>Cal. Civ. Code Ann. § 815 to § 816 (West 2005)</p>	<p>Non-specific preservation purpose. Perpetual in duration. Prevents easements being used as a condition for granting other rights. Allows tribes to hold easements. Subject to recording laws. Allows injunctive relief and damages. Allows attorney fee-shifting. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>COLORADO</u></b></p> <p>Colo. Rev. Stat. § 38-30.5-101 to § 38-30.5-111 (Lexis 2005)</p>	<p>Deals extensively with water rights, and specifically protects wetlands and wildlife habitats. Water easements may be revocable. Subject to recording laws. Must be recorded to be valid. Allows termination by merger. Allows injunctive relief and damages. Tax assessment with due regard for reduced uses. Protects rights of public utilities. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>CONNECTICUT</u></b></p> <p>Conn. Gen. Stat. § 47-42(a) to § 47-42(c) (2005)</p>	<p>Non-specific preservation purpose. Comparatively simple statute, lacking many of the provisions of the UCEA.</p>
<p style="text-align: center;"><b><u>DELAWARE</u></b></p> <p>Del. Code Ann. tit. 7, § 6901 to § 6905 (Lexis 2005)</p>	<p>Substantially similar to UCEA, but with specific provisions for “fish and wildlife habitat,” and “rare species and natural communities.”</p>
<p style="text-align: center;"><b><u>DISTRICT OF COLUMBIA</u></b></p> <p>D.C. Code § 42-201 to § 42-205 (West 2005)</p>	<p>Exempts conservation easements from recordation tax, provided no consideration over \$100. Requires consent of holder to any “construction, demolition, alteration, or repair.” Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>FLORIDA</u></b></p> <p>Fla. Stat. § 704.06 (2005)</p>	<p>Specifically provides for “retaining such areas as suitable habitat for fish, plants, or wildlife,” along with preventing dumping or landfill, removing vegetation, excavation, or activities detrimental to water conservation or habitat preservation. Allows enforcement by injunction and inspection. Allows release by holder. Requires recordation. Provides tort immunity to holder of easement. Allows use of land for “linear facilities.” Protects eminent domain and prevents creation through eminent domain.</p>

<p style="text-align: center;"><b><u>GEORGIA</u></b></p> <p>Ga. Code Ann. § 44-10-1 to § 44-10-8 (2005)</p>	<p>Entitles owner to revaluation of property after recordation to reflect change in value due to encumbrance. Prevents creation through eminent domain. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>HAWAII</u></b></p> <p>Haw. Rev. Stat. § 198-1 to § 198-6 (2005)</p>	<p>Very general purpose, not mentioning water. Perpetual in duration. Requires recordation. Allows injunctive relief and damages. Allows attorney fee-shifting. Prevents creation through eminent domain. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>IDAHO</u></b></p> <p>Idaho Code Ann. § 55-2101 to § 55-2109 (Lexis 2005)</p>	<p>No effect on valuation for ad valorem taxes. Prevents creation through eminent domain. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>ILLINOIS</u></b></p> <p>765 Ill. Comp. Stat. 120/0.01 to 120/6 (2005)</p>	<p>Specifies “land or water areas . . . as suitable habitat for fish, plants, or wildlife.” Allows prevention of dumping or landfill, removing vegetation, excavation, or activities detrimental to water conservation or habitat preservation. Allows release and merger. Exempt from “marketable title” rule. Allows holder of any interest to convey, but only binding on that interest. Allows injunctive relief and damages, including punitive damages. Requires recordation. Allows enforcement by neighbors.</p>
<p style="text-align: center;"><b><u>INDIANA</u></b></p> <p>Ind. Code § 32-23-5-1 to § 32-23-5-8 (2005)</p>	<p>Allows termination by agreement of grantor and grantee. Tax assessment must reflect the easement. Contains UCEA § 6. Substantially similar to UCEA.</p>
<p style="text-align: center;"><b><u>IOWA</u></b></p> <p>Iowa Code § 457A.1 to § 457A.8 (2005)</p>	<p>Specifically protects wetlands and wildlife habitat. Held by charity only if the easement or bylaws allows transfer to government or other charity upon dissolution. Allows termination by release and changed circumstances, but no comparative economic test. Requires recordation (otherwise abandoned).</p>
<p style="text-align: center;"><b><u>KANSAS</u></b></p> <p>Kan. Stat. Ann. § 58-3810 to § 58-3817 (2005)</p>	<p>Unless stated otherwise, duration is limited to lifetime of grantor and revocable at grantor’s request. Protects eminent domain. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>KENTUCKY</u></b></p> <p>Ky. Rev. Stat. Ann. § 382.800 to § 382.860 (West 2005)</p>	<p>Contains provisions for consent to owners of subsurface rights, and freedom to mine coal on adjacent properties. Protects eminent domain. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>LOUISIANA</u></b></p> <p>La. Stat. Ann. § 1271 to § 1276 (2005)</p>	<p>Does not contain language on modification or termination in accordance with principles of law or equity. Does not contain common law exceptions (not appurtenant, negative burden, etc.). Allows for public facilities across easement. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>MAINE</u></b></p> <p>33 Me. Rev. Stat. Ann. § 476 to § 479-B (2005)</p>	<p>“Real property’ includes surface waters.” Explicitly allows termination for changed circumstances, with damages as only remedy, but prohibits comparative economic test for determining public interest. Allows entry for inspection. Contains UCEA § 6.</p>

<p style="text-align: center;"><b><u>MARYLAND</u></b></p> <p>Md. Real Prop. Code Ann. § 2-118 (2005)</p>	<p>Allows prevention of dumping or landfill, removing vegetation, excavation, or activities detrimental to water conservation or habitat preservation. Specifies various Maryland land trusts as default takers if instrument fails to specify grantee or specifies a grantee who cannot legally take the interest or estate.</p>
<p style="text-align: center;"><b><u>MASSACHUSETTS</u></b></p> <p>Mass. Gen. Laws ch. 184, § 31 to § 34 (2005)</p>	<p>Allows prevention of dumping or landfill, removing vegetation, excavation, or activities detrimental to water conservation or habitat preservation. Publicly held easement must be approved by secretary of environmental affairs; privately held must be approved by secretary as well as mayor and council. Enforceable by injunction, open to inspection. Release only after public hearing and with approval of mayor, council, and secretary. Provides for public interest test for continuance. Allows for telecommunications and energy easements.</p>
<p style="text-align: center;"><b><u>MICHIGAN</u></b></p> <p>Mich. Comp. Laws § 324.2140 to § 324.2144 (2005)</p>	<p>Very general in purpose and terms. Requires recordation.</p>
<p style="text-align: center;"><b><u>MINNESOTA</u></b></p> <p>Minn. Stat. § 84C.01 to § 84C.05 (2005)</p>	<p>Substantially identical to UCEA.</p>
<p style="text-align: center;"><b><u>MISSISSIPPI</u></b></p> <p>Miss. Code Ann. § 89-19-1 to § 89-19-15 (Lexis 2005)</p>	<p>Not extinguished by merger (acquisition of burdened estate by easement holder). Enforceable by enumerated public officials. Requires compensation to holder of easement in event of termination.</p>
<p style="text-align: center;"><b><u>MISSOURI</u></b></p> <p>Mo. Rev. Stat. § 67.870 to § 67.910 (2005)</p>	<p>Very general in terms, but specifically allows for conservation of “soils, wet lands, beaches or marshes.” Tax assessment must take into account limitations on future use. Only applies to counties of a certain population. Limitations on acquisition by eminent domain.</p>
<p style="text-align: center;"><b><u>MONTANA</u></b></p> <p>Mont. Code Ann. § 76-6-201 to § 76-6-211 (2005)</p>	<p>Allows prevention of dumping or landfill, removing vegetation, excavation, or activities detrimental to water conservation or habitat preservation. Minimum duration of fifteen years. Requires notice and commentary from local planning authority regarding conflict with planning (though commentary is non-binding). Requires recordation. Tax assessment based on restricted use. Enforceable by injunction. Allows for entry and inspection.</p>

<p style="text-align: center;"><b><u>NEBRASKA</u></b></p> <p>Neb. Rev. Stat. § 76-2, 111 to § 76-2, 118 (2005)</p>	<p>General provisions for “wildlife habitat” and “water quality.” Must be recorded and approved by governing body, denied if in conflict with pre-existing land use plan. Allows release to servient estate owner, but only with approval, and only if it “no longer substantially achieves” conservation purpose. Termination if inconsistent with public interest or no longer achieves purpose, but no comparative economic test. Enforceable in law or equity. Tax assessment mindful of restricted use. Protects eminent domain, especially for utilities, but with due compensation.</p>
<p style="text-align: center;"><b><u>NEVADA</u></b></p> <p>Nev. Rev. Stat. § 111.390 to § 111.440 (2005)</p>	<p>Substantially identical to UCEA.</p>
<p style="text-align: center;"><b><u>NEW HAMPSHIRE</u></b></p> <p>N.H. Rev. Stat. Ann. § 477:45 to § 477:47 (West 2005)</p>	<p>General provision for “land or water area.” Subject to recordation statute. Enforceable in law or equity.</p>
<p style="text-align: center;"><b><u>NEW JERSEY</u></b></p> <p>N.J. Stat. Ann. § 13:8B-1 to § 13:8B-9 (West 2005)</p>	<p>Allows prevention of dumping or landfill, removing vegetation, excavation, or activities detrimental to water conservation or habitat preservation. Provision for entry and inspection. Requires recordation. Release requires public hearing and approval of Commissioner of Environmental Protection. Tax assessment mindful of restricted use. Protects eminent domain. Charity must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>NEW MEXICO</u></b></p> <p>N.M. Stat. § 47-12-1 to § 47-12-6 (2005)</p>	<p>No explicit provision for wetlands or water areas. Requires recordation. Doesn't restrict surface mining of coal or mineral extraction. Prevents creation through eminent domain and protects power of eminent domain.</p>
<p style="text-align: center;"><b><u>NEW YORK</u></b></p> <p>N.Y. Envtl. Conserv. Law § 49-0301 to § 49-0311 (McKinney 2005)</p>	<p>Explicitly protects “wetlands” and “shorelines.” Allows for gas and other utilities. Requires recordation to be valid. Enforceable in law or equity, not affected by adverse possession, laches, estoppel, or waiver. Allows entry and inspection. Protects eminent domain. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>NORTH CAROLINA</u></b></p> <p>N.C. Gen. Stat. § 106-735 to § 106-749 (Lexis 2005)</p>	<p>Limited to “farmland preservation.”</p>
<p style="text-align: center;"><b><u>NORTH DAKOTA</u></b></p> <p>N.D. Cent. Code § 55-10-08 (2005)</p>	<p>Limited to “historic” easements.</p>
<p style="text-align: center;"><b><u>OHIO</u></b></p> <p>Ohio Rev. Code Ann. § 5301.67 to § 5301.70 (West 2005)</p>	<p>Explicitly protects “water, or wetland areas,” as well as “habitat for fish, plants, or wildlife.” Allows entry and inspection. Recordation required. Enforceable by “injunction or in any other civil action.” Charities must be tax-exempt under § 501(c)(3).</p>

<p style="text-align: center;"><b><u>OKLAHOMA</u></b></p> <p>Okla. Stat. tit. 60, § 49.1 to § 49.8 (2005)</p>	<p>Lacks specific language defining “third-party right of enforcement.” Protects eminent domain. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>OREGON</u></b></p> <p>Or. Rev. Stat. § 271.715 to § 271.795 (2005)</p>	<p>Allows grantors to obtain report on the effect of an easement on taxes before they convey. Tax assessment mindful of restricted use. Requires notice and hearing before creation. Prevents creation through eminent domain. Contains UCEA § 6.</p>
<p style="text-align: center;"><b><u>PENNSYLVANIA</u></b></p> <p>32 Pa. Consol. Stat. Ann. § 5051 to § 5059 (2005)</p>	<p>Minimum duration of twenty-five years. Allows for transfer upon dissolution of original holder, to other holder or to municipality. Requires courts to construe liberally in favor of the easement’s purpose. No termination by merger. Protects coal mining rights. Before creation, grantor must give notice of possible effect on coal interests. Allows actions to be brought by owners of contiguous coal interests. Protects eminent domain and purchase for public purposes, and requires just compensation. Charities must be tax-exempt under § 501(c)(3). Contains a modified UCEA § 6.</p>
<p style="text-align: center;"><b><u>RHODE ISLAND</u></b></p> <p>R.I. Gen. Laws § 34-39-2 to § 34-39-5 (2005)</p>	<p>Refers to “land or water area,” wildlife, and “protection of environmental quality.” Not subject to thirty-year limit on other restrictions in Rhode Island. Enforceable in law or equity. Allows for release by holder.</p>
<p style="text-align: center;"><b><u>SOUTH CAROLINA</u></b></p> <p>S.C. Code Ann. § 27-8-10 to § 27-8-120 (2005)</p>	<p>“Real property” includes surface waters.” Requires recordation. Requires hearing and vote for conveyance by government owner of land. Tax assessment must reflect existence of easement. Protects eminent domain.</p>
<p style="text-align: center;"><b><u>SOUTH DAKOTA</u></b></p> <p>S.D. Codified Laws § 1-19B-56 to § 1-19B-62 (2005)</p>	<p>Substantially identical to UCEA.</p>
<p style="text-align: center;"><b><u>TENNESSEE</u></b></p> <p>Tenn. Code Ann. § 11-15-101 to § 11-15-108 (Lexis 2005)</p>	<p>Limited to historic, scenic, and open-space easements.</p>
<p style="text-align: center;"><b><u>TEXAS</u></b></p> <p>Tex. Nat. Resources Code Ann. § 183.001 to § 183.005 (2005)</p>	<p>Similar to UCEA, with a recordation requirement and a special retroactive tax requirement upon termination of an easement.</p>
<p style="text-align: center;"><b><u>UTAH</u></b></p> <p>Utah Code Ann. § 57-18-1 to § 57-18-7 (Lexis 2005)</p>	<p>General provision for “land or water areas.” Requires recordation. Enforceable in law or equity. Provision for entry and inspection. Protects eminent domain, and prevents creation through eminent domain. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>VERMONT</u></b></p> <p>Vt. Stat. Ann. tit. 10, § 821 to § 823 (2005)</p>	<p>General provision for “land or water area.” Subject to a requirement of “filing a notice of claim within [a] forty year period.” Charities must be tax-exempt under § 501(c)(3), or a § 501(c)(2) organization controlled entirely by a § 501(c)(3) organization.</p>

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<p style="text-align: center;"><b><u>VIRGINIA</u></b></p> <p>Va. Code Ann. § 10.1-1009 to § 10.1-1016 (Lexis 2005)</p>	<p>Limitations must conform with comprehensive land use plan for the area. Tax assessment must reflect reduction in fair market value. Creation and recordation requires simultaneous notice to state officials. Allows enforcement by various state officials. Automatic transfer to Virginia Outdoors Foundation in event of dissolution of holder. Protects eminent domain and requires compensation. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>WASHINGTON</u></b></p> <p>Wash. Rev. Code § 64.04.130 (2005)</p>	<p>No mention of water. Comparatively simple statute. Charities must be tax-exempt under § 501(c)(3).</p>
<p style="text-align: center;"><b><u>WEST VIRGINIA</u></b></p> <p>W. Va. Code § 20-12-1 to § 20-12-8 (2005)</p>	<p>Minimum duration of twenty-five years. Court must broadly and liberally construe easement to effect conservation policy. Requires recordation to be enforceable. Prevents creation through eminent domain, unless whole property is condemned. Allows condemnation for utility purposes and generally protects eminent domain. Charities must be tax-exempt under § 501(c)(3). Contains modified version of UCEA § 6.</p>
<p style="text-align: center;"><b><u>WISCONSIN</u></b></p> <p>Wis. Stat. § 700.40 (2005)</p>	<p>Substantially similar to UCEA, including § 6.</p>
<p style="text-align: center;"><b><u>WYOMING</u></b></p> <p>Wyo. Stat. Ann. § 34-1-201 to § 34-1-207 (2005)</p>	<p>General provision for “maintaining or enhancing . . . water quality.” Tax assessment not less than taxable value of “agricultural land of similar productive use and value.” Protects right of mineral owner or lessee to reasonable use for mineral exploration and production. Protects eminent domain. Contains UCEA § 6.</p>