COLLEGE OF LAW
John A. Lovett
De Van D. Daggett, Jr. Distinguished Professor of Law

To: **Drafting Committee on Relocation of Non-Utility Easements Act**

From: **John Lovett, Reporter, Drafting Committee on Relocation of Non-Utility Easements Act**

Date: **June 14, 2018**

Re: **Policy Questions for Drafting Committee**

A. Introduction

The purpose of this memorandum is to frame several of the major policy issues facing the Drafting Committee on the Relocation of Non-Utility Easements Act (RNEA) in advance of our June 21, 2018 Conference Call. First, I would like to thank every committee member for agreeing to serve. I believe our work is important. We have a great opportunity to advance a sensible reform of the law and to promote greater uniformity among the states in this important, and often contested, area of property law.

In this memorandum, I do not provide a detailed review of the common law in the various states or a detailed analysis of any of the statutory innovations that have been made in a number of states. The chair of our drafting committee, Ellen Dyke, previously circulated a 16 page report that provides such an overview and that was an excerpt of a much longer CLE paper I recently co-authored with James C. Smith and Diane B. Davies that was published in the semi-annual ACREL papers series last fall.[1] That report drew on an earlier 36 page report that I submitted to Wilson Freyermuth and the ULC Scope and Program Committee in December 2010 when that committee was considering a potential Uniform Easement Relocation Act. That report drew on two articles I had published in the *Connecticut Law Review* and the *Edinburgh Law Review*.[2]

On May 24, 2012, a stakeholders meeting of the ULC Scope and Program Committee was held in Washington, D.C. at which I presented my December 2010 report, as updated by a short supplemental memorandum of Oct. 26, 2011. After receiving indications of support for the creation of a drafting committee from both the Real Property, Trust and Estate (RPT&E) Section

[1] Diane B. Davies, John A. Lovett, James C. Smith, *A Deep Dive into Easements*, 23-108, THE ACREL PAPERS (ALI-CLE 2017).
[2] John A. Lovett, *A Bend in the Road, Easement Relocation and Pliability in the New Restatement (Third) of Property: Servitudes*, 38 CONN. L. REV. 1 (2005); John A. Lovett, *A New Way: Servitude Relocation in Scotland and Louisiana*, 9 EDINBURGH L. REV. 352 (2005).

of the ABA and from the JEBURPA, the ULC Scope and Program Committee met by conference call on June 14, 2012, discussed numerous policy issues related to a potential Uniform Easement Relocation Act, and voted 6-2 to recommend the formation of a drafting committee to prepare an easement relocation act modeled on Section 4.8(3) of the *Restatement Third Property: Servitudes* and further made a number of specific recommendations about the content and scope of such an act. The most concise and definitive statement of those recommendations is found in the June 29, 2012 Final Report, authored by the Honorable Rodney Satterwhite, Chair, Study Committee on Relocation of Easements (hereinafter "Satterwhite Memorandum").[3]

This memorandum draws on several of the recommendations in that report but takes into account the modified charge to our committee to draft a Uniform Relocation of Non-Utility Easements Act that expressly exempts utility easements. It also takes into account preliminary discussions I have had with our Chair, Ellen Dyke. Ellen and I agree that the modified charge leads to the conclusion that our Drafting Committee should create a uniform act that broadly codifies the approach to easement relocation adopted by Section 4.8(3) of the *Restatement (Third) of Property: Servitudes* (2000).[4]

Yet even with this goal in mind, there are a number of important policy questions the committee should address during our June 21, 2018 conference call. If we can reach consensus on all or most of those questions, I can begin drafting this summer and should be able to complete an initial draft of the act by early fall 2018, which we will then be able to discuss in detail at our first actual drafting meeting scheduled for November 2-3 in Tucson. In the following section, I present nine (9) basic policy questions and the initial recommendations that Ellen and I offer to the committee. We look forward to hearing the views of the Drafting Committee on all of these issues and look forward to a robust discussion.

B. Policy Questions

1. Under what circumstances should a non-utility easement be subject to relocation?

Section 4.8(3) provides that an easement can be relocated at the servient estate owner's expense so long as the servient owner can show that it needs relocation to "permit normal use and development of the servient estate," and *only if* the relocation itself does not "(a)

[3] In addition to recommending that a drafting committee be formed, the Study Committee on Relocation of Easements also recommended in its Final Report that: (1) the act should permit a servient owner to relocate an easement under the basic standards set forth in the Restatement (Third) of Property: Servitudes, Section 4.8(3); (2) utilities or other entities with the power of eminent domain should be excluded from the act; (3) the basic provisions of the act should apply retroactively; (4) the act should have some form of a temporal "safe harbor" provision that would only apply prospectively; (5) the act should apply to contractual access easements, including those that provide for vehicular, pedestrian and recreational access, and possibly parking easements, and (6) the act should apply to non-contractual easements such as prescriptive easements, easements of necessity, and easements implied from prior use. Satterwhite Memorandum, 4-5 (June 29, 2012).

[4] Section 4.8(3) permits a servient estate owner to change the dimensions or location of an easement, at the servient estate owner's expense, "to permit normal use and development of the servient estate, but only if the changes do not: (a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, or (c) frustrate the purpose for which the easement was created." RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8(3).

significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, or (c) frustrate the purpose for which the easement was created."[5] Ellen and I would like to know whether the committee accepts these conditions and would like us to proceed—at least in our first draft—with language that mirrors the relevant parts of Section 4.8(3) of the Restatement.

To be precise, does the committee generally accept the four conditions mentioned in the Restatement, one focussed on the servient estate owner's need for the relocation, and the final three focussing on non-interference with the easement holder's functional interest in the easement, as the circumstances under which easement relocation should be permitted? Does the committee believe that the conditions should be tightened or relaxed? Are there other conditions that we should include in our first draft; for instance, a condition that the servient owner pay additional costs associated with assuring that the easement remains effective against successors of the servient estate owner, such as amending title deeds and the cost of recording amended deeds, or the condition that the relocation occur on the same servient estate?

2. Should RNEA be retroactive or prospective only?

The second major policy question we face concerns whether the relocation mechanism we eventually offer in the act should be retroactive—and thus provide servient estate owners with the ability to relocate easements that were created and recorded prior to the effective date of the act—or whether the act should be prospective only. As the study committee observed in 2012, the major advantage of retroactivity is that a new act would have a much more significant impact as it would provide guidance for parties and courts that must address older express easements that do not specifically deal with the subject of relocation in their constituent instruments. The advantage of a prospective approach is that it would mollify supporters of the current majority common law approach who view that approach as being consistent with easement holders' contractual expectations. In June 2012, the ULC Scope and Program Committee recommended that "[t]he basic provisions of the act should apply retroactively, because a purely prospective act would not address enough of the problems being countered in practice."[6]

Ellen and I agree with the Scope and Program Committee. Although a prospective act might be somewhat easier for legislatures to adopt, it would do little to solve the deadlock problems encountered by servient estate owners seeking to improve or develop their land. A retroactive act that embodies the safeguards of section 4.8(3) of the Restatement, and any additional safeguards we include in the act, would have a far greater impact in actual practice and would facilitate development of servient estates across the United States without compromising the interests of easement holders.

3. Should RNEA contain a temporal safe-harbor provision?

At the stakeholders meeting in 2012, considerable discussion took place as to the advisability of including a temporal safe-harbor provision in a potential act that would apply only

[5] RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8(3).
[6] Satterwhite Memorandum, at 5.

prospectively to new easements created after adoption of an act in a particular state. Virginia has adopted such an approach, allowing servient estate owners to relocate an easement of "ingress and egress" that has been "in existence for not less than ten years" as long as the servient estate owner provides notice to all parties in interest, obtains court approval, and the relocation will not cause "economic damage to the parties in interest" or "undue hardship."[7] Scotland adopted a similar but somewhat narrower safe harbor approach in 2003 legislation which provides a five-year safe harbor during which a servitude cannot be relocated or modified judicially if the parties to a constitutive instrument state their intention that modification cannot take place for such a period of time.[8]

After further discussion, Ellen and I recommend that we *not* include a temporal safe harbor in RNEA. If the conditions for relocation are properly articulated and applied and an easement holder obtains an equally functional easement in the new location, a temporal safe harbour should not be necessary. Moreover, a temporal safe harbor provision risks creating an arbitrary period during which an easement holder could irrationally withhold consent. Because we also believe that parties should be given the contractual freedom to opt out of the relocation provisions (see discussion below), a party that wants to obtain an easement with a defined and guaranteed location for some period of time (or even in perpetuity) can bargain for such a term, as long as that term is expressly stated in an easement creating agreement.

4. Should RNEA allow servient estate owners and easement holders to opt out and require easement holder consent for relocation with respect to easements established by contract?

The next major policy decision we need to address is whether parties to a new express easement created by contract after the adoption of RNEA should be able to opt out of its relocation provisions for a specific period of time or in perpetuity. Ellen and I believe that easements created by contract should be treated like other contracts and the law should respect the contractual freedom of parties. If parties to an easement agreement expressly agree that an easement whose location is specifically determined in the agreement is not subject to subsequent relocation, that mutually understood contractual term should be respected and that provision should be binding on all subsequent owners of the servient estate, provided the other requirements for an easement to run with the land have been satisfied. In short, the version of RNEA that we propose should create a new default regime from which parties could opt out if they specifically indicate their intention to limit easement relocation for a designated period of time or in perpetuity.

5. Should RNEA allow an easement holder a symmetrical right to relocate an easement at its expense based on criteria similar to those in Section 4.8(3)?

In anticipation of a potential question that might arise during our June conference call, Ellen and I discussed whether RNEA should adopt a symmetrical approach to easement relocation; that is, should easement holders, as well as servient estate owners, be allowed to seek relocation provided the new easement location meets the conditions for relocation? Although I

[7] VA. CODE § 55-50 (Lexis Nexus 2007) (enacted by VA. ACTS 1992, c. 373).
[8] TITLE CONDITIONS (SCOTLAND) ACT 2003 (asp 9) § 92.

see the initial appeal of a symmetrical approach to easement relocation, I believe that giving easement holders a right to unilaterally relocate an easement would impose too much of a burden on servient estates unless the easement holder (or dominant estate owner) specifically reserved that right in the original written agreement creating the easement. I expressed my views on this subject in my December 2010 report to the Scope and Program Committee. Here is what I wrote in that memo (footnotes amended):

> ***Traditionalists' View***: A third common rationale for maintenance of the common law no unilateral relocation rule is grounded in the observation that this default rule was frequently stated as applying equally to the easement holder as well as the servient estate owner. In other words, absent some special reservation, neither party to an easement should be able to relocate it without the other's consent.[9] This rationale, seemingly grounded in a notion of correlative rights, is appealing and has been mentioned in many decisions. Yet once again it is subject to several counter arguments.
>
> ***Restatement View***: Proponents of the Restatement approach to easement relocation first counter the traditionalists' claims about the importance of preserving doctrinal symmetry between the dominant and servient estates by asserting that section 4.8(3) actually re-balances the inherent powers of both parties to an easement. It does this because it actually compensates the servient estate owner for the risk that the easement holder will intensify her use of an easement in reliance on the traditional common law rule that allows the easement holder to make changes in the "manner, frequency and intensity" of an easement's use "to accommodate changes in technology" and "to permit normal development of the dominant estate,"[10] a rule that is preserved in section 4.10 of the Restatement,[11] and is well established at common law.[12] Thus, instead of creating a new asymmetry in the specific context of easement relocation, section 4.8(3) can be understood as remedying a bias in favor of development of the dominant estate. According to this line of argument, the Restatement approach creates flexibility and elasticity on both sides of the easement equation by allowing the servient estate owner, as well as the dominant estate owner, to respond to changing conditions that may make either parcel ripe for development.[13] Both the

---

[9] John V. Orth, *Relocating Easements, A Response to Professor French*, 38 REAL PROP. PROB. & TR. J. 643, 652-53 (2004) ; JON W. BRUCE & JAMES W. ELY, JR., THE LAW OF EASEMENTS AND LICENSES IN LAND § 7.13 (2010); Stamatis v. Johnson, 224 P.2d 201, 203 (Ariz. 1950); Fla. Power Corp. v. Hicks, 156 So.2d 408, 410 (Fla. Dist. Ct. App. 1963); Sakansky v. Wien, 169 A. 1, 3 (N.H. 1933); EMORY WASHBURN, A TREATISE ON THE AMERICAN LAW OF REAL PROPERTY § 1237 (John Wurts, ed. 6th ed. 1902); LEONARD A. JONES, A TREATISE ON THE LAW OF EASEMENTS §§ 343, 352 (1898).

[10] RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8(3), cmt. f, at 563. (2000).

[11] RESTATEMENT, *supra* note 6, § 4.10.

[12] BRUCE & ELY, *supra* note 5, at § 8:3 ("Reasonable use is not fixed at a particular point, but may vary from time to time. . . . Absent specific provisions to the contrary, the concept of reasonableness includes a consideration of changes in the surrounding area and technological developments.").

[13] It is worth noting here, that the common law rule allowing an easement holder to increase the frequency or intensity of use of the easement is generally subject to reasonableness and balancing analysis similar to the one incorporated into section 4.8(3). See RESTATEMENT, *supra* note 4, § 4.10; BRUCE & ELY, *supra* note 5, at § 8:13 ("The scope of an easement may be expanded beyond the terms of the grant or the original usage, but the dominant

Colorado Supreme Court and the Massachusetts Supreme Judicial Court found this logic persuasive.[14]

Independent Assessment: Although the simplicity and apparent symmetry of the traditional mutual consent rule is attractive, the author of this report believes the Restatement supporters' argument that allowing a servient owner to apply for relocation under the utilitarian framework of section 4.8(3) actually remedies an existing imbalance in the parties' ability to react to changing circumstances is conceptually stronger and more consistent with the historical roots of easement and servitude doctrine.[15]

I still believe that one of the primary advantages of section 4.8(3) as conceived by the Restatement drafters was that it rebalances the rights and responsibilities of the parties to an easement, particularly in light of their ability to respond to changing circumstances. The common law always gives the easement holder (usually a dominant estate owner) a great deal of flexibility to adapt an easement to new technological developments. Section 4.8(3), in my view, just gives the servient estate owner an equal measure of flexibility to respond to new conditions, as long as the circumstances for relocation are met, in which case there really is no harm to the easement holder. I also worry that if we were to give an easement holder a unilateral right to relocate an easement, we would give too much control to the easement holder. Of course, if an easement holder is interested in obtaining a unilateral right to relocate an easement based on certain conditions, the easement holder should be able to bargain for such a term, which would be enforceable under our default regime.

6. Should RNEA's relocation provisions apply to all express easements, including easements that have been previously localized by means of a metes and bound description, prior agreement, or conduct of the parties?

As I explained in the memorandum circulated to the committee earlier this spring, one way that some state courts have responded to section 4.8(3) is to adopt it but limit its application to undefined easements. In three states, the highest courts have adopted section 4.8(3) to authorize relocation of an easement only when its location or route is "undefined," *i.e.*, when its location was *not* specifically determined by (1) a metes and bounds description or other express language in the creating instrument, (2) subsequent agreement, or (3) subsequent conduct. The leading decision in this line of authority comes from the New York Court of Appeal in *Lewis v. Young*.[16] In that case, the court held that a servient landowner could relocate a driveway burdened with an *undefined* ingress and egress easement benefiting an adjoining parcel so that

---

owner may not unreasonably increase the burden on the servient estate. . . . In controversies over expanded usage, courts balance the dominant owner's right to enjoy the easement and take advantage of technological innovations with the servient owner's right to make all use of the servient land that does not interfere with the servitude. Since these rights are relative, courts must strive to protect the interests of both parties.").

[14] Roaring Fork Club, L.P., v. St. Jude's Co., 36 P.3d 1229, 1237 (Colo. 2001); M.P.M. Builders, LLC v. Dwyer, 809 A.2d 1053, 1057 (Mass. 2004).

[15] Lovett, *A New Way*, *supra* note 2, at 38-43 (reviewing commentary from civilian sources in particular that support mutual accommodation principles underlying section 4.8(3).

[16] Lewis v. Young, 705 N.E.2d 649, 653-54 (N.Y. 1998).

she could construct a tennis court, as long as she paid for constructing the new driveway and otherwise satisfied the Restatement criteria.[17] In reaching this conclusion, the court emphasized the importance of balancing the easement holder's access rights against the servient estate owner's development rights and speculated that adopting this approach in the context of undefined easements would not lead to excessive litigation and would instead promote rational bargaining to avoid unnecessary litigation.[18]

The Supreme Court of South Dakota adopted a similar version of section 4.8(3) in approving *ex post* the modification of an express ingress and egress easement whose location was not specified in the creating instrument.[19] The Nevada Supreme Court also adopted section 4.8(3), but it, too, limited its scope to situations when the creating instrument does not define the easement through specific reference to its location or dimensions.[20]

The primary advantage of limiting RNEA to undefined easements is that it might ease adoption in some states. But there are a number of disadvantages to this approach. First, it would significantly limit the reach of the act. Second, limiting RNEA to undefined easements would likely invite at least some additional litigation on the question of whether an easement's location was sufficiently defined in order to avoid application of the act's provisions. Finally, many contractual decisions to specify a location of an easement were still made many years ago and the parties to the easement likely never gave any serious attention to the question of whether the easement's location should be unalterable. If we were to limit the scope of RNEA to undefined easements, I wonder whether our drafting efforts would really be worthwhile.

I offer the following excerpt from the opinion of Judge Herber of that Supreme Court of Appeal of South Africa in that court's 2008 decision in *Linvestment CC v. Hammersley et al*,[21] in which that court held that the owner of a servient estate may unilaterally change the route of a precisely defined right of way (*i.e.*, one whose route was specified in the creating instrument by reference to surveyors' diagrams), "provided that (a) the servient owner is or will be materially inconvenienced in the use of his property by the *status quo ante*; (b) the relocation occurs on the servient tenement; (c) the relocation will not prejudice the owner of the dominant tenement; (d) the servient owner pays the costs attendant upon such relocation including those costs involved in amending the registration of the title deeds of the servient tenement (and, if applicable, the dominant tenement):"[22]

---

[17] Id. at 653-54 (relying on then tentative draft of Section 4.8(3); servient estate owner may unilaterally relocate an easement that lacks a metes and bounds description or other indication of the easement's location "so long as the change does not frustrate the parties' intent or object in creating the right of way, does not increase the burden on the easement holder, and does not significantly lessen the utility of the right of way").

[18] Id. at 652-54.

[19] Stanga v. Husman, 694 N.W.2d 716, 718-720 (S.D. 2005). In *Stanga*, the only reference to location in the creating instrument was to an "existing road." Id. at 719. *See also* Burkhart v. Lillehaug, 664 N.W.2d 41, 42-43 (S.D. 2003) (rejecting suit by dominant estate owners to compel servient estate owners to restore easement to original relocation 17 years after changes had been made, applying section 4.8(3) and noting that depiction of road on plat did not provide enough information to enable it to be precisely located).

[20] St. James Village, Inc. v. Cunningham, 210 P.3d 190, 193-196 (Nev. 2009).

[21] 3 S.A. L. Rep. 283 (Sup. Ct. App. 2008).

[22] Id. at 293-94.

> I am persuaded that the interests of justice do indeed require a change in our established law on the subject. The rigid enforcement of a servitude when the sanctity of the contract or the strict terms of the grant benefit neither party but, on the contrary, operate prejudicially on one of them, seems to me indefensible. Servitudes are by their nature often the creation of preceding generations derived in another time to serve ends which must now be satisfied in a different environment. Imagine a right of way over a farm portion registered fifty years ago. Since then new public roads have been created providing new access to the dominant tenement, the nature of the environment has changed, the contracting parties have long gone. Why should a present owner, on no rational ground, be entitled to rely on his *summum ius* derived from the alleged sanctity of a contract or grant or prescriptive acquisition to which he was not privy. Properly regulated flexibility will not set an unhealthy precedent or encourage abuse. Nor will it cheapen the value of the registered title or prejudice third parties.[23]

7. Should RNEA apply to non-express easements?

Courts in a number of states have already recognized that implied and prescriptive easements should be subject to relocation in a manner consistent with the basic approach of Section 4.8(3).[24] The Louisiana Civil Code expressly gives owners of servient estates burdened with a right of passage (the civil law analogue of an easement by necessity) with a broad "right to demand relocation of the servitude to a more convenient place at its own expense, provided that it affords the same facility to the owner of the enclosed estate."[25]

Given that non-express easements impose a burden on the servient estate owner in the absence of an express agreement between the servient and dominant estate owners, it makes sense to give servient estate owners the right to relocate a non-express easement, provided the new location still meets the circumstances for relocation. Consequently, in light of the absence of an express agreement on the initial easement location with these kinds of easements, except perhaps as evidenced by prior use in the case of an easement implied from prior use, and in light

---

[23] Id. at 292-93.

[24] Goodwin v. Johnson, 591 S.E.2d 34, 37-39 (S.C. Ct. App. 2003) (applying Restatement § 4.8(3) to approve unilateral relocation of easement of necessity, but noting that it "should be more difficult to relocate an express easement"); Bode v. Bode, 494 N.W.2d 301, 302 (Minn. Ct. App. 1992) (relying on equitable principles to hold that where the location of an easement by necessity has not been established by agreement of the parties, trial court has power to establish the location in a place desired by the owner of the servient estate); Huggins v. Wright, 774 So.2d 408, 412 (Miss. 2000) (servient tenant could be granted the option of relocating easement by necessity for utilities and ingress/egress, at its expense, in part because old, existing roadway in which original easement of necessity was located divided property in half); Taylor v. Hays, 551 So.2d 906, 908-10 (Miss. 1989) (same); Enos v. Casey Mountain, Inc., 532 So.2d 703, 706 (Fla. Dist. Ct. App. 1988) (allowing relocation of easement created by implication based on reliance on recorded subdivision plats); Millison v. Laughlin, 142 A.2d 810, 813-816 (Md. 1958) (holding that servient estate owner could relocate utility pole easement implied by prior use to reduce danger and annoyance and given that termini would remain unchanged); *Soderberg v. Weisel*, 687 A.2d 839, 842 (Pa. Sup. Ct. 1997) (recognizing possibility of unilateral relocation of a prescriptive easement if new easement location is as safe as the original, the relocation is a *relatively minor change* and the reasons for relocation are substantial, to prescriptive easements).

[25] La. Civ. Code art. 695. Article 695 also expressly states that "[t]he owner of the servient estate has no right to the relocation of this servitude after it is fixed." Id.

of early judicial recognition of the utility of easement relocation for non-express easements, Ellen and I recommend that all non-express easements—easements by necessity, easements implied by prior use or by some other form of implication, and prescriptive easements—should be subject to the relocation provisions of RNEA.

8. Should RNEA specifically exempt other kinds of express easements, for example, conservation easements or other negative easements?

Another issue, arguably outside the scope of our committee, is whether the act should cover or exclude other kinds of express easements. As noted in the introduction, our charge is to draft an act that excludes utility easements. But what about other types of express easements, in particular conservation easements or other negative easements?

Although most conservation easements likely apply to the entirety of a particular estate, it is possible that some conservation easements might apply to just a portion of a particular estate. In such a situation, it is at least conceivable that a servient estate owner might seek to relocate the easement under the circumstances set forth in the act. In that case, the servient estate would still have to prove that the relocation does not "lessen the utility of the easement" or "frustrate the purpose for which the easement was created." In the context of a conservation easement, the servient estate owner would then have to prove that the ecological or conservation interests for which the easement was created are still adequately served by the relocated easement. The same analysis would apply for other negative easements such as an easement of view, a negative easement limiting the height of a particular building, a façade easement, or some other kind of historic preservation easement. While I am currently unaware of any case in which a servient estate owner sought to use Section 4.8(3) or any related common law or statutory authority to relocate a conservation easement or any other negative easement, the drafting committee may wish to consider whether it would be advisable to expressly include or exclude such easements from the scope of the act.

9. Should RNEA address the procedure for easement relocation?

One question that has risen in a handful of cases concerns whether any specific procedure is required for operationalizing section 4.8(3) of the Restatement. In two of the leading decisions adopting the Restatement approach, courts specifically held that in the absence of easement holder consent to relocation, a servient estate owner can not engage in self-help when it wants to relocate an easement but instead must file a declaratory judgment action to obtain judicial approval for the proposed relocation.[26] In light of these decisions, we may well wish to draft a procedural section that addresses what kind of notice the easement holder is entitled to receive if the servient estate holder seeks to take advantage of its easement relocation rights and, if easement holder consent is not obtained, how the servient estate owner can seek judicial approval of the proposed relocation. I suspect that at least some provisions detailing these notice and procedure rules will increase the likelihood of adoption of the act.

[26] Roaring Fork Club, L.P. v. St. Jude's Co. 36 P.3d 1229, 1237-1239 (Col. 2001); MPM Builders, LLC v. Dwyer, 809 N.E.2d 1053, 1057-59 (Mass. 2004).