Land Trust Alliance
Together, conserving the places you love

August 16, 2018

Ellen Dyke, Esq., Chair
Drafting Committee on the Relocation of Non-Utility Easements Act
Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

Re: Exclusion of Conservation Easements

Dear Ellen:

It occurred to me after Molly Ackerly's very helpful telephone conversation with me on June 27, 2018, that it might be useful to your committee if we suggested language for inclusion in the Relocation of Non-Utility Easements Act to make clear that the Act is not intended to apply to easements held by government and land conservation organizations for conservation purposes. As we discussed, there are many reasons why a change to the law governing conservation easements would threaten the work of land trusts; most importantly, however, it would strike at the heart of the essential principle, enshrined in the Internal Revenue Code, that such easements are to be "granted in perpetuity."

We think the following language that tracks Section 170(h) of the U.S. Tax Code would make clear that the Act leaves conservation easements unaffected:

> No part of or provision in this statute shall apply to
>
> (a) any (i) "qualified real property interest" that (ii) is held by a "qualified organization" (iii) exclusively for "conservation purposes," as those terms are defined by section 170(h) of the Internal Revenue Code;
> (b) any real property interest that constitutes a historic preservation easement, trail easement, monitoring easement or public access easement relating to such a qualified real property interest; or
> (c) any easement granted on land adjacent to property subject to such a qualified real property interest for the purpose of public access to that property.

By referring to easements that meet the criteria under Section 170(h) for a charitable deduction from federal income tax, rather than those that in fact receive a deduction, we intend to make clear that our three subsections cover qualifying easements regardless of whether the landowner actually claims any government tax deduction or abatement, e.g. as when an easement is purchased at arm's length. We intend proposed sections (b) and (c) to make clear that easements associated with or necessary to protect conserved lands are also outside the

scope of the Relocation of Non-Utility Easements Act. Perhaps Professor Lovett could add our suggested language to and make consistent with the provision that he is drafting now to exclude easements held by utilities.

As I mentioned in our call and in an earlier email, the Land Trust Alliance is a national land conservation organization of over 1000 member land trusts supported by over five million individual members located throughout the United States. Founded in 1982, its mission is to support land trusts so they can save and conserve more lands now and for future generations. Land trusts are generally section 501(c)(3) organizations established to hold easements granted by landowners on land they wish to protect for conservation purposes, or to hold such land outright. Together, national, state and local land trusts hold over 42,400 conservation easements, and own over 16,600 parcels of conserved land, covering some 56 million acres in the United States.

Part of the Alliance's mission is to protect land trusts from legislative and other legal measures that intentionally or unintentionally might threaten their work. If it appears that the Drafting Committee is considering including conservation easements within the scope of the Act, we would appreciate the opportunity to submit our detailed arguments why this result would significantly and adversely affect the future of the land conservation effort.

Thank you for including the Land Trust Alliance in this process and for respecting this critical issue of perpetuity of conservation.

Sincerely,

Leslie Ratley-Beach, Esq.
Conservation Defense Director

cc: John A. Lovett, Esq.
Benjamin Orzeske, Esq.
Molly Ackerly, Esq.
Andrew Bowman, Esq., President Land Trust Alliance