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Protecting the Public Benefit: Crafting Precedent for Citizen Enforcement of Conservation Easements

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PROTECTING THE PUBLIC BENEFIT: CRAFTING PRECEDENT FOR CITIZEN ENFORCEMENT OF CONSERVATION EASEMENTS

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I. INTRODUCTION

In fiscal year 2004, Wal-Mart added 139 new discount stores, supercenters, and “neighborhood markets” to its already significant chain of stores across the United States.¹ Wal-Mart developers submit their proposals to governing town bodies all over the country with the promise that the \$20 million construction of a 200,000 square foot store will create 500 new jobs for the local economy, will have a payroll of over \$12 million, will increase the tax base of the area, and will provide convenient, affordable shopping for consumers. For these reasons, the big box stores are a hard offer for town planners to resist, and they often accept the stores with open arms, seeing them as a way to “put life back into the community” or to offer more shopping choices for their “underserved” town. Yet the proliferation of Wal-Marts and other stores contribute dramatically to problems of urban sprawl, traffic congestion, disappearance of green space, and loss of small businesses, and often come with many hidden costs, both economic and environmental.²

In the face of this development pressure, there is a legal tool that many private parties, local communities, and even states and the national government are using to conserve land: the conservation easement.³ Across the nation, small non-profit land trusts have sprung up in local communities; these land trusts have been aggressively pursuing conservation easements to conserve open space, preserve agriculture land, protect watersheds, and other conservation purposes.⁴ In addition, many communities

1. WAL-MART, 2004 ANNUAL REPORT 20 (2005). According to its Annual Report, Wal-Mart’s net sales topped \$256 billion in fiscal year 2004. *Id.* at 16.

2. Wal-Mart is the “most frequently sued company on the planet, averaging 15 lawsuits against it every day.” Carl Steidtmann, *Break it Up*, PROGRESSIVE GROCER, Feb. 15, 2005. The company is currently a defendant in numerous class actions brought under the Fair Labor Standards Act and state laws. WAL-MART, 2004 ANNUAL REPORT 48 (2005). The company is also a defendant in a class action brought by female employees for gender discrimination. *Id.* In order to help boost the public perception of Wal-Mart, the company recently announced “Acres for America,” a program that will fund land conservation projects throughout the United States. See Edward D. Murphy, *Wal-Mart Land Program Aids Maine*, PORTLAND PRESS HERALD, April 13, 2005.

3. A conservation easement is generally described as follows:

“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.”

UNIF. CONSERVATION EASEMENT ACT § 1 (1981). Although different states use slightly different terminology, including conservation easements, conservation servitudes, and conservation restrictions, the terms are used interchangeably throughout this Note, there being little or no difference between one name and the others.

4. Because of the tax-exempt status of most land trusts and because of the tax benefits that can be

have incorporated conservation easements into their comprehensive plans, often requiring developers, for example, to grant a conservation easement to the town as part of a subdivision proposal.⁵ Even state governments have increasingly used conservation easements to protect large swaths of land, engaging in lengthy and complex land transactions.⁶

But what happens if the town is the holder of a conservation easement on a parcel of land and that parcel is threatened by the very development that the town wants to welcome and encourage? What should happen if the town refuses to enforce the easement against the developer? Are there appropriate legal structures in place to ensure that the easement is enforced? Or should courts grant broader enforcement power to the public, as primary beneficiaries of conservation easements, in order to secure proper enforcement: a power of citizen enforcement? While there is significant debate about the certainty of conservation easements to last in perpetuity, the fact remains that there are already thousands of conservation easements in this country and the pace of conservation easement growth will likely only increase in the coming years. Stronger enforcement mechanisms are necessary now in order to protect the public benefit. All conservation easements have an important public interest at stake, and the public cannot take the risk that this interest will be lost forever if enforcement actions cannot be brought by parties willing to protect the publicly subsidized investments.

Given the lack of litigation surrounding conservation easements up to this point, every court decision handed down offers a chance to evaluate the strength of the instruments, how they will be interpreted in a judicial context, and what the effective theories are for enforcement of conservation values. Due to the statutory nature of the easements, and because the language of the statutes vary from state to state, there exists an opportunity to discuss the desirability of certain provisions over others. Although different theories have been advanced that would give effect to various avenues of

achieved from donating a conservation easement, land trusts usually make reference to one or more of the "conservation purposes" that define a "qualified conservation contribution" in the tax code. *See* I.R.C. § 170(h) (2005). *See also* LAND TRUST ALLIANCE, LAND TRUST STANDARDS AND PRACTICES 8 (2004), available at <http://www.lta.org/sp/index.html> ("For land and easement projects that may involve federal or state tax incentives, the land trust determines that the project meets the applicable federal or state requirements, especially the conservation purposes test of IRC § 170(h).").

5. *See, e.g.,* YARMOUTH, ME., 1993 COMPREHENSIVE PLAN OF YARMOUTH, MAINE, available at <http://www.yarmouth.me.us/> (follow "Comprehensive Plan" hyperlink). The Town's Comprehensive Plan explains:

Instead of purchasing all the rights to a piece of property, the Town is encouraged to acquire conservation easements on valued lands when appropriate The flexibility of the conservation easement as a tool for land preservation makes it attractive to the property owner as well as the Town. The Council recommends that the Town consider conservation easements as a way to preserve open space and scenic views while saving public acquisition dollars.

Id. at 23.

6. Some examples of these state programs can be found in Maine, which has the Land for Maine's Future Program (<http://www.state.me.us/spo/lmf>); New Hampshire, which started the Land and Community Heritage Investment Program (<http://www.lchip.org>); and Vermont, which has the Vermont Housing and Conservation Board (<http://www.vhcb.org>). These programs provide funding and varying levels of oversight for land conservation projects throughout their respective states.

enforcement by different parties, often it will come down to an interpretation of the language of a specific state statute to determine who has standing to enforce.

This Note begins with a brief introduction to the law of conservation easements. It then discusses some of the existing case law dealing with issues of standing and “citizen-enforcement.” The Note then examines how one court dealt with the problem of standing to enforce a conservation easement in Tennessee. Finally, the Note analyzes the effect that this decision and others like it could potentially have on the law of standing to enforce conservation easements, with suggestions for several frameworks that could justify giving standing to citizens seeking to enforce conservation easements.⁷

II. CONSERVATION EASEMENTS: A GENERAL OVERVIEW

Conservation easements have been increasingly seen as valuable tools to protect publicly important land. They have been the subject of a great deal of academic discussion recently, so this overview will be brief.⁸ There are many benefits that flow to both a landowner and to the public as a result of granting conservation easements. The landowner is typically encouraged by the possibility of tax benefits, both at the state and federal level.⁹ She has the comfort of knowing that an important piece of land will be protected from development “in perpetuity.” She also has the flexibility to create an instrument that imposes the restrictions and obligations appropriate for the situation. On the other hand, the public enjoys the protection of scenic views, agricultural pastures, open spaces, and other valuable lands that would otherwise be

7. Not dealt with in this Note is the fact that in most states there is no standardized system for recording or documenting conservation easements, leading to thousands of easements with little or no public oversight or public knowledge of location, size, or accessibility for recreational uses.

8. There are a number of good sources for learning the basics of conservation easements. See, e.g., Melissa Waller Baldwin, *Conservation Easements: A Viable Tool for Land Preservation*, 32 LAND & WATER L. REV. 89 (1997) (describing the general nature of conservation easements and the benefits of using easements for land conservation); Federico Cheever, *Public Good and Private Magic in the Law of Land Trusts and Conservation Easements: A Happy Present and a Troubled Future*, 73 DENV. U. L. REV. 1077 (1996) (describing the land trust movement in general and the public/private relationship of conservation easements); Andrew Dana & Michael Ramsey, *Conservation Easements and the Common Law*, 8 STAN. ENVTL. L.J. 2 (1989) (describing the common law background of the law of conservation easements, the land trust movement, and the legal ramifications of conservation easements lasting “in perpetuity”); Melissa K. Thompson & Jessica E. Jay, *An Examination of Court Opinions on the Enforcement and Defense of Conservation Easements and Other Conservation and Preservation Tools: Themes and Approaches To Date*, 78 DENV. U. L. REV. 373 (2001) (summarizing much of the case law concerning the enforcement and defense of conservation easements).

9. Unfortunately, some of the federal tax benefits that now exist may be scaled back in coming years. A recent report by the Joint Commission on Taxation recommended “reforming” a number of the tax incentives that result from conservation easement donations. STAFF OF THE JOINT COMM. ON TAXATION, 109TH CONG., *OPTIONS TO IMPROVE TAX COMPLIANCE AND REFORM TAX EXPENDITURES* 277 (Comm. Print 2005), available at <http://www.house.gov/jct/s-2-05.pdf>. The recommendations in the report include disallowing tax deductions for contributions of conservation easements on personal residences, and reducing the available deduction for other conservation easements to thirty-three percent of the appraised value of the easement, among other things. *Id.* at 284-87. But see Nancy A. McLaughlin, *Increasing the Tax Incentives for Conservation Easement Donations—A Responsible Approach*, 31 ECOLOGY L.Q. 1 (2004) (discussing abuse in the conservation easement context, but advocating a “responsible” approach to increasing the tax incentives offered to easement donors).

subject to development pressures.¹⁰ As conservation easements are a relatively new tool, it is important to engage in an analysis of their ability to be controlling in “perpetuity,” their strength in the face of challenges and enforcement actions in court, and their effectiveness in delivering public conservation benefits.¹¹

Although conservation easements are, generally speaking, statutory creations, they did not develop in a legal vacuum—they have traceable roots in the common law of both property and contracts.¹² Almost all of the states now have adopted so-called “enabling statutes,” which explicitly allow for the creation of conservation easements.¹³ Many of these statutes are modeled on the Uniform Conservation Easement Act (UCEA), adopted in 1981,¹⁴ although there is still a great lack of uniformity from state to state. A conservation easement donor essentially gives up certain rights of the proverbial “bundle of sticks”—often the development rights to the property.¹⁵ The identity of an entity that can hold a conservation easement (a “holder”) varies from

10. Many states have different names for restrictions depending on their purposes, such as conservation, agricultural preservation, watershed preservation, etc. See, e.g., MASS. GEN. LAWS ANN. ch. 184, § 31 (West 2003); N.H. REV. STAT. ANN. § 477:45 (West 2001). For purposes of this Note, these distinctions are disregarded, as they are usually treated fairly equally under the respective state laws.

11. Apart from the legal academic debate over the policy surrounding conservation easements, some practices have increasingly come under public scrutiny. For example, the *Washington Post* has done a number of stories that called into question certain practices by the nation’s largest land trust, The Nature Conservancy, as well as stories about exploitation of the tax incentives of conservation easements by greedy developers. See Joe Stephens & David B. Ottaway, *Nonprofit Sells Scenic Acreage to Allies at a Loss; Buyers Gain Tax Breaks With Few Curbs on Land Use*, THE WASHINGTON POST, May 6, 2003, at A01; Joe Stephens & David B. Ottaway, *Developers Find Payoff in Preservation; Donors Reap Tax Incentive by Giving to Land Trusts, but Critics Fear Abuse of System*, THE WASHINGTON POST, Dec. 21, 2003, at A01. This exposure, in part, led the IRS to issue a notice in June of 2004 explaining that it intended to disallow any improper deductions as a result of suspect transactions. I.R.S. Notice 2004-41, 2004-28 I.R.B. 31.

12. See generally, Gerald Korngold, *Privately Held Conservation Servitudes: A Policy Analysis in the Context of in Gross Real Covenants and Easements*, 63 TEX. L. REV. 433 (1984) (arguing that the term “easement” may be a misnomer, as the servitudes have more in common with real covenants than with traditional easements, and that blending these two historically distinct bodies of law can implicate important policy concerns).

13. Twenty-two states have adopted the Uniform Conservation Easement Act, and twenty-five others have enacted enabling laws other than the Uniform Act. Roderick H. Squires, *Introduction to Legal Analysis*, in PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE 72-73 (Julie Ann Gustanski & Roderick H. Squires eds., 2000).

14. UNIF. CONSERVATION EASEMENT ACT (1981).

15. The UCEA does provide that conservation easements can impose both “limitations” and/or “affirmative obligations.” UNIF. CONSERVATION EASEMENT ACT § 1(1) (1981). Other state enabling statutes are not quite as broad, generally referring only to limitations or restrictions. See, e.g., CAL. CIV. CODE § 815.1 (West, Westlaw through Ch. 241 of 2005 Reg. Sess. urgency legislation & Governor’s Reorganization Plans No. 1 & 2 of 2005) (conservation easement “means any limitation in a deed, will, or other instrument”); MASS. GEN. LAWS ch. 184 § 31 (West 2004) (explaining “[a] conservation restriction means a right . . . to permit public recreational use, or to forbid or limit any or all” specified activities); 32 PENN. STAT. ANN. § 5002 (West, Westlaw through Act 2005-58) (“[Open space benefits are] benefits . . . which result from the preservation or restriction of the use of selected predominantly undeveloped open spaces or areas.”). One major concern, however, is the fact that many conservation easements may give up little or no meaningful development rights—for example, a “working forest easement” that gives up some rights to build upon the land but has no limit on the amount of timber harvesting that is permitted. E-mail from Jeff Pidot, Chief of the Natural Resources Division, Maine Attorney General’s Office, to Sean Ociepkka (June 16, 2005) (on file with author).

state to state, but holders generally fall into one of two categories: governmental bodies and charitable organizations.¹⁶ Most conservation easements are either required or at least permitted to last “in perpetuity,” meaning that questions about the continuing validity of conservation easements are bound to arise well into the future.¹⁷ Considering the perpetuity of conservation easements, it is important that the legal foundation of their ability to be enforced be certain.

III. EXISTING ENFORCEMENT CASE LAW

Existing case law concerning conservation easement enforcement is sparse. Most cases brought thus far have been initiated by either the holder of the conservation easement or the owner of the burdened parcel of land.¹⁸ Although all of these cases can provide important glimpses into the way courts may handle disputes over such easements, the selected cases that follow may help to shed light on the issue of standing, and serve as precedent, both good and bad, for future arguments surrounding citizen enforcement of conservation easements.

In the relatively early Massachusetts case of *Knowles v. Codex Corp.*,¹⁹ a group of citizen plaintiffs sued Codex Corporation on a number of counts, including violation of a conservation easement.²⁰ In return for the town’s rezoning of a piece of property for business use by Codex, it agreed to place a conservation restriction on a number of acres on the parcel of land it wanted to develop.²¹ The restriction was granted to the town’s conservation commission, which was given authority to enforce its terms in the instrument.²² Codex’s actual plans differed slightly from what it had represented to the citizens of the town, and after Codex starting developing the land, a group of citizens brought suit.²³ The Massachusetts Court of Appeals held that the citizens did not have standing to bring suit, as that authority was specifically vested in the town’s conservation commission in both the restriction instrument and by statute.²⁴ This case

16. UNIF. CONSERVATION EASEMENT ACT § 1(2) (1981) (defining a “holder” as “a governmental body empowered to hold an interest in real property” or “a charitable corporation, charitable association, or charitable trust,” which has conservation purposes). Some state statutes make explicit reference to the Internal Revenue Code when defining a “holder” for the purposes of the law. *See, e.g.*, VT. STAT. ANN. tit. 10, § 821(c) (LexisNexis 1998) (defining a holder as a governmental body or a conservation organization qualifying under § 501(c)(3) or 501(c)(2) of the I.R.C.).

17. UNIF. CONSERVATION EASEMENT ACT § 2(c) (1981) (“A conservation easement is unlimited in duration unless the instrument creating it otherwise provides.”).

18. *See, e.g.*, *United States v. Ponte*, 246 F. Supp. 2d 74 (D. Me. 2003) (action by holder, the federal government, seeking enforcement); *Bennett v. Comm’r of Food and Agric.*, 576 N.E.2d 1365 (Mass. App. Ct. 1991) (action brought by owner of burdened land seeking authorization to construct a residence on the property); *Chatham Conservation Found., Inc. v. Farber*, 779 N.E.2d 134 (Mass. App. Ct. 2002) (action brought by holder of an easement seeking enforcement); *Goldmuntz v. Chilmark*, 651 N.E.2d 864 (Mass. 1995) (action by owner of burdened land seeking authorization to build an in-ground swimming pool); *Southbury Land Trust v. Andricovich*, 757 A.2d 1263 (Conn. App. Ct. 2000) (action by holder land trust seeking enforcement).

19. 426 N.E.2d 734 (Mass. App. Ct. 1981).

20. *Id.* at 735.

21. *Id.* at 735-36.

22. *Id.* at 736.

23. *Id.*

24. *Id.* at 737-38. The citizens apparently relied on the United States Supreme Court cases of *Sierra*

was decided prior to the adoption of the UCEA, and prior to the more recent explosion of conservation easement use; the public policy surrounding the use of conservation easements has certainly changed a great deal since 1981, and a court might well be more receptive to broader standing arguments today, given the widespread recognition of public benefit.²⁵

Determining who has standing to enforce a conservation easement was exactly the issue that the Connecticut Superior Court faced in the 1995 case of *Burgess v. Breakell*.²⁶ A landowner, Burgess, sued his neighbor, Breakell, to enforce a conservation restriction on the Breakell's property. The restriction required the property to be maintained in a "wild, natural and semi-natural open space for scientific, educational, scenic, environmental, aesthetic and cultural purposes, for the preservation of its natural features."²⁷ The restriction also prohibited commercial logging, which Breakell allegedly commenced nonetheless.²⁸ The holder of the restriction was the Connecticut Conservation Commission (CCC), a nonprofit organization; Burgess was not named either as a holder or as a party with enforcement rights in the restriction instrument.²⁹ Breakell filed a motion to dismiss on the grounds that Burgess had no standing to enforce the restriction because he was not the holder.³⁰ Burgess argued that nowhere in the Connecticut statute did it say that one needed to be a holder of a conservation restriction in order to enforce it.³¹ The court found that the Connecticut statute was vague on this point, and noted that Connecticut courts had not previously ruled on the question of who may enforce these restrictions.³² The court went on to say that because the Massachusetts statute "closely resemble[s]" the Connecticut statute, Massachusetts case law may be used to offer guidance in interpretation.³³

Club v. Morton, 405 U.S. 727 (1972) and *United States v. SCRAP*, 412 U.S. 669 (1973). *Id.* at 737 n.13. *Morton* is discussed *infra* notes 136-41 and accompanying text.

25. Massachusetts is largely recognized as one of the leading states, historically speaking, as far as conservation easement use is concerned. *See, e.g.*, Cheever, *supra* note 8, at 1080 ("Although almost all states now have some form of conservation easement or restriction legislation, the oldest identifiable 'conservation easement' statutes were adopted in Massachusetts in 1956 and California in 1959." (citations omitted)). "Private land trusts are older than conservation easements, but not much older. Founded in 1891, Massachusetts' Trustees of Reservations is probably the oldest private land trust in the United States." *Id.* at 1085.

26. No. CV-95-0068033, 1995 Conn. Super. LEXIS 2290 (Conn. Super. Ct. Aug. 7, 1995).

27. *Id.* at *1.

28. *Id.* at *1-2. Interestingly enough, in many recent landscape-wide conservation easements, protecting sometimes hundreds of thousands of acres, holders actually acquire what are known as "working forest easements," which allow traditional logging activities and associated practices, but limit development in other ways. *See* LAND FOR MAINE'S FUTURE PROGRAM, DRAFTING GUIDELINES FOR WORKING FOREST EASEMENTS FUNDED BY THE LAND FOR MAINE'S FUTURE PROGRAM (2002), available at <http://www.state.me.us/spo/lmf/publications/> (last visited April 5, 2005).

29. *Burgess v. Breakell*, 1995 Conn. Super. LEXIS 2290, at *2.

30. *Id.*

31. *Id.* at *4.

32. *Id.* at *5.

33. *Id.* The finding of the court that the Connecticut statute closely resembled the Massachusetts statute is, at the very least, debatable. *Compare, e.g.*, MASS. GEN. LAWS ch. 184, § 31 (West 2003), with CONN. GEN. STAT. § 47-42a (West 2004).

The court relied on language from the Massachusetts case of *Bennett v. Commissioner of Food & Agriculture*,³⁴ which stated that the intent of the legislature was that the holder of the restriction be the only party with enforcement power.³⁵ Therefore, the CCC, as holder of the restriction, was the only party that could enforce it, and the plaintiff lacked standing to bring the current action.³⁶ This case provides a good example of a state court trying to sort through, for the first time, what it means to enforce a conservation restriction. It shows that enabling statutes often provide little guidance when trying to resolve a dispute, and therefore a reliance on public policy arguments, clearly drafted language, and other conservation easement precedent may sway the court one way or another. A question remains whether the court would have come out differently if the language of the document said that the neighbor did have enforcement powers.³⁷

Another Connecticut case, *Conrad v. Mattis*,³⁸ presents what could be a fairly typical dispute among neighboring landowners whose respective properties are subject to a conservation easement. As part of a developer's subdivision plan, the town of South Windsor required a conservation easement be placed on certain portions of each property.³⁹ The two parties to the dispute were subsequent purchasers of the subdivided property, and the back half of each property was subject to a conservation easement.⁴⁰ Over the years, the neighbors apparently feuded over alterations to the landscape, allegedly in violation of the terms of the easement.⁴¹ Then one day, one of the neighbors decided that he had had enough, and sued after the abutting neighbor cleared some trees and shrubs in order to put in a vegetable garden.⁴² The Town was holder of the easement, but the abutting neighbor alleged that it refused to enforce its terms.⁴³ The defendants apparently raised the issue of standing, but by the time the case came

34. 576 N.E. 2d 1365 (Mass. 1991).

35. *Id.* at 1367-68. Although this interpretation by the Connecticut court is certainly valid, it is by far not the only interpretation. The Massachusetts court was not squarely presented with the issue of standing in *Bennett*, and its comments were clearly dicta (the case was an appeal of an administrative decision, so standing was freely granted to the landowner who was seeking relief from the Commissioner's decision). *Id.* at 1367. In fact, the *Bennett* court spoke broadly of the important public policy values inherent in conservation issues and explicitly declined "to apply common law rules requiring privity of contract or estate and that the party seeking to enforce a servitude have an interest in land benefited by it." *Id.*

36. *Burgess v. Breakell*, 1995 Conn. Super. LEXIS 2290, at *8. The CCC filed a motion to intervene, which was not ruled on in this opinion. The CCC also filed a separate action, which is unreported.

37. One commentator suggests how the court could have reached a different result: "In the case of unclear statutory language, the court could have looked to federal environmental laws and cases for guidance on the issue of standing, rather than the laws of Massachusetts." Thompson & Jay, *supra* note 8, at 377. She offers that this approach may have been more consistent with the conservation purposes set out in the statute. *Id.* Further, she states that there is little doubt that the adjacent landowner was harmed by the commercial logging venture, and the public benefit was also likely impaired. *Id.* See also UNIF. CONSERVATION EASEMENT ACT § 1 cmt. ("Under this Act, however, Owner could not grant a similar [enforcement] right to Neighbor, a private person. But whether such a grant might be valid under other applicable law of the adopting state is left to the law of that state.").

38. No. CV000595954S, 2000 Conn. Super. LEXIS 3594 (Conn. Super. Ct. Dec. 19, 2000).

39. *Id.* at *3.

40. *Id.*

41. *Id.*

42. *Id.* at *4.

43. *Id.* at *1.

to trial the issue was either waived or had not been pressed.⁴⁴ Thus, unfortunately, the case does not provide any precedent on the issue of standing by a non-holder neighbor. On the other hand, it does provide a glimpse into a case that could well become the norm: a conservation easement granted upon subdivision of land, which is held by a town that for many reasons may not want to enforce the terms of the easement against feuding neighbors. At that point, there may be no one left to defend the conservation values but a motivated landowner who would not, absent a broad theory of standing, have the power to enforce in court.

Throughout these cases, we see state courts trying to piece together some sort of theory for enforcement of conservation easements, often in the face of unclear statutory language, little or no relevant precedent, and drafting practices that did not do enough to make enforcement power clear in conservation easement instruments.⁴⁵ What follows is a discussion of a recent case that took an expansive view of citizen-standing power, following a broadly written statute that evidenced a legislature recognizing the important public benefits that flow from valid, enforceable conservation easements.

IV. *TENNESSEE ENVIRONMENTAL COUNCIL V. BRIGHT PAR:* THE LIBERAL CONSTRUCTION MODEL

In early 2003, the Tennessee Environmental Council⁴⁶ asked the State's Department of Environment and Conservation (DEC) to review plans for a proposed Wal-Mart Supercenter, focusing on the potential for the destruction of wetlands.⁴⁷ The DEC agreed to a review of the plans and impacts of the development.⁴⁸ The development plan called for a road to be put in through existing wetlands.⁴⁹ A few weeks later, a dozen citizens appeared at a Chattanooga City Council meeting to oppose the development, arguing that it would destroy wetlands and green space, hurt nearby businesses, and conflict with a town plan that called for green space on the area.⁵⁰ Undeterred (or perhaps rushed by the show of opposition), construction on the site began near the end of June, 2003.⁵¹ Soon after, a few Earth First! activists chained themselves to construction equipment at the site as a way of protesting the development, arguing that the site was one of the last green spaces in the community and that "it [was] used as a migratory stop for 180 species of birds in Tennessee, about 45% of the total population

44. *Id.* at *2.

45. It is common, however, for well-drafted easements to have very detailed language about enforcement powers, as it is often in the interests of all parties involved to have those powers clearly delineated.

46. The Tennessee Environmental Council is a nonprofit organization founded in 1970 whose mission is to "educate and advocate for the protection of Tennessee's environment and public health." Tennessee Environmental Council Website, <http://www.tectn.org> (last visited Jan. 16, 2005).

47. Will Callaway, Letter to the Editor, *Don't Let Wal-Mart Destroy Greenspace*, CHATTANOOGA TIMES FREE PRESS (Tenn.), May 30, 2003, at B6.

48. *Id.*

49. Duane W. Gang, *Residents Protest Proposed Wal-Mart*, CHATTANOOGA TIMES FREE PRESS (Tenn.), June 11, 2003, at B5.

50. *Id.*

51. Mike Pare, *Wal-Mart Work Begins at Disputed Brainerd Location*, CHATTANOOGA TIMES FREE PRESS (Tenn.), July 21, 2003, at C1.

of birds in Tennessee.”⁵² The Wal-Mart in Brainerd would be the twelfth Chattanooga-area supercenter.⁵³

The DEC examined the site and uncovered violations of a water discharge permit that it had issued to the developers, finding that “erosion control measures were not properly installed” and that “a sediment treatment system for water pumped out of a detention basin was not constructed as designed.”⁵⁴ The developer worked to fix the violations, and also hired an environmental consultant to work with it throughout the project, giving the consultant the power to halt work in the future if problems arose.⁵⁵

Then, in July of 2003, the Tennessee Environmental Council, along with the group Citizens for Responsible Progress⁵⁶ and citizen Sandy Kurtz, sued Bright Par 3 Associates,⁵⁷ seeking an injunction to stop the development of the new Wal-Mart Supercenter.⁵⁸ The Council alleged that the development property, owned by Bright Par, was adjacent to wetland and conservation easement areas that drained directly into the South Chickamauga Creek, that the development would result in illegal discharges into the Creek and/or illegal alteration of the protected areas, and that site preparation had already damaged the areas.⁵⁹

On July 7, 2003, a temporary restraining order was issued and a hearing was scheduled in the Chancery Court for Hamilton County.⁶⁰ Bright Par “filed motions to dissolve the temporary restraining order, alleging that the [Council could not] succeed on the merits, that there [was] no imminent threat of irreparable injury to the [individuals] or to the protected areas, and that the proposed injunction [was] contrary to the public interest.”⁶¹ At a hearing on July 15, 2003, the only issue that was heard

52. *Three Anti-Wal-Mart Protestors Out on Bond, One Still Held*, THE CHATTANOOGAN.COM, June 27, 2003, http://www.chattanooga.com/articles/article_38125.asp (last visited Feb. 27, 2005). The activists were charged with criminal trespassing. *Id.*

53. Kimberly Starks, *Mountain Creek Residents Upset Over Wal-Mart Plan*, CHATTANOOGA TIMES FREE PRESS (Tenn.), July 30, 2004, at B1.

54. Mike Pare, *Court Temporarily Halts Wal-Mart Project*, CHATTANOOGA TIMES FREE PRESS (Tenn.), July 8, 2003, at B1. In May of 2004, Wal-Mart settled with the Environmental Protection Agency for \$3.1 million for violations of the Clean Water Act as a result of excessive stormwater runoff from its construction sites. *Wal-Mart Fined Over Violations*, CHATTANOOGA TIMES FREE PRESS (Tenn.), May 13, 2004, at C1. The settlement cited violations at over twenty-four construction sites in nine states. *Id.* The construction at the Brainerd site was not included in the settlement. *Id.* The settlement was similar to one reached by Wal-Mart and contractors in 2001, which required Wal-Mart to pay \$1 million for violations. *Id.*

55. Mike Pare, *Developer Says Problems at Wal-Mart Site Fixed*, CHATTANOOGA TIMES FREE PRESS (Tenn.), July 10, 2003, at C1.

56. The Citizens for Responsible Progress described themselves as “an organization of citizens and public interest groups working to address the detrimental impact of development on health and the environment” in the area. *Injunction Halts Work at Super Wal-Mart at Brainerd*, THE CHATTANOOGAN.COM, July 7, 2003, http://www.chattanooga.com/articles/article_38431.asp (last visited Feb. 27, 2005).

57. Other named parties include Corker Group, Inc., Osborne Building Corporation, DBS Corporation, and Wal-Mart Real Estate Business Trust. *Tenn. Env'tl. Council, Inc. v. Bright Par 3 Assocs.*, No. E2003-01982-COA-R3-CV, 2004 Tenn. App. LEXIS 155, at *1 (Tenn. Ct. App. Feb. 6, 2004).

58. *Id.* at *4.

59. *Id.*

60. *Id.* at *5. In Tennessee, the chancery court has “all the powers, privileges, and jurisdiction properly and rightfully incident to a court of equity.” TENN. CODE ANN. § 16-11-101 (West, Westlaw through end of 2005 First Reg. Sess.).

61. *Tenn. Env'tl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155, at *5.

was whether the individual plaintiff, Sandy Kurtz, had standing to maintain the action.⁶² Kurtz testified that she was a devoted environmentalist dedicated to preserving the protected property, that she had conducted nature walks on the property, and “generally enjoy[ed] its solace and solitude.”⁶³

The Chancellor found that Kurtz had suffered no injury “separate or different from an injury that the public at large . . . sustained,” and that under Tennessee law she lacked standing to file the action.⁶⁴ The Chancellor also found that only the grantee of the easement, the City of Chattanooga, had standing to enforce the easement, and dismissed the action.⁶⁵

The Council appealed to the Court of Appeals of Tennessee,⁶⁶ arguing that either the Council or Kurtz had standing to bring the enforcement action.⁶⁷ In the meantime, however, construction continued on the Wal-Mart Supercenter.⁶⁸ As the issue on appeal was a matter of law, there was no presumption of correctness, and the court of appeals reviewed the record *de novo*.⁶⁹ The court began by examining the language of the Tennessee Conservation Easement Act,⁷⁰ which provides that “conservation easements may be enforced by injunction, proceedings in equity, or action at law [either] by the holders and/or beneficiaries of the easement, or their bona fide representatives, heirs, or assigns.”⁷¹ The court, in trying to determine the legislative intent of the Easement Act, found that the inclusion of “beneficiaries” as permissible enforcers must be read as meaning “someone in addition to the grantee.”⁷² The court

62. *Id.*

63. *Id.*

64. *Id.* at *6. The Chancellor was apparently relying on established Tennessee law governing the issue of standing. *See id.* at *6 n.4; *Metro. Air Research Testing Auth., Inc. v. Metro. Gov’t of Nashville*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992) (declaring that standing requires that a party demonstrate “(1) that it sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is apt to be redressed by a remedy that the court is prepared to give.”). In *Metro. Air*, the Court of Appeals of Tennessee relied on both Tennessee law and on relevant United States Supreme Court decisions in order to define what is required in order to show standing. *Id.* The three prongs that the court referred to were taken from *Allen v. Wright*, 468 U.S. 737, 752 (1984).

65. *Tenn. Envtl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155, at *6. The Chancellor described his interpretation of the instrument as follows:

Paragraph 5 [of the easement] . . . sets out the grantee’s remedies. It says this easement may be enforced by its holder or beneficiary. Grantee may bring an action for any remedies provided by Tennessee law. So the deed . . . that creates the easement says the grantee, the City of Chattanooga, is the one who has the right to pursue for a remedy provided by law. The easement is created for the benefit of the citizens of Chattanooga, but they are not designated as beneficiaries. They are not the grantee of the easement. The City of Chattanooga is.

Id. at *7.

66. The Court of Appeals of Tennessee is an intermediate appellate court that generally has jurisdiction over most civil appeals. TENN. CODE ANN. § 16-4-108 (West, Westlaw through end of 2005 First Reg. Sess.).

67. *Tenn. Envtl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155, at *6.

68. *Court OKs Suit Against Brainerd Wal-Mart*, CHATTANOOGA TIMES FREE PRESS (Tenn.), Mar. 9, 2004, at B3.

69. *Tenn. Envtl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155, at *6.

70. *Id.* at *7.

71. Tenn. Code Ann. § 66-9-307 (West, Westlaw through end of 2005 First Reg. Sess.).

72. *Tenn. Envtl. Council, Inc. v. Bright Par 3 Assocs.*, 2004 Tenn. App. LEXIS 155, at *7-8.

then looked to the dictionary meaning of beneficiary, and went back to the statute to determine that conservation easements are “held for the benefit of the people of Tennessee.”⁷³ Completing the analysis, the court held, therefore, that any citizen of Tennessee was a beneficiary to the easement and thus had standing to bring an enforcement action.⁷⁴ The court found that this interpretation was consistent with the liberal construction necessary to give the Act its proper effect and purpose.⁷⁵ Further, the court legitimized its interpretation by pointing out the fact that the legislature refused to adopt the language of the Uniform Conservation Easement Act, which did not contain an explicit provision allowing for enforcement by beneficiaries.⁷⁶

The court refused to issue any ruling on the merits of the case, and with the issue of standing thus decided, the judgment of dismissal was reversed and the case remanded to the chancery court.⁷⁷ Although Bright Par 3 Associates appealed the ruling, the Supreme Court of Tennessee denied the application of appeal.⁷⁸

V. CULTIVATING THEORIES FOR CITIZEN ENFORCEMENT

Tennessee Environmental Council v. Bright Par presents an expansive view of the doctrine of standing to confer enforcement powers on citizens for conservation easements. As the court somewhat understatedly noted, the Tennessee statute is broader than the UCEA and, in fact, is unlike any other statute in the country in providing for beneficiary enforcement.⁷⁹ Not only that, the decision went much farther than any existing case law on the issue in defining the beneficiary of a conservation easement to include any citizen of the state of Tennessee. What the Tennessee case shows, however, is that there is a possibility under many state statutes for citizen enforcement of conservation easements if courts are willing to construe statutes liberally in order to give the statutes the effect intended by the legislatures.

One major way broader citizen enforcement power may be accomplished is through a mechanism provided in most state statutes, especially those following the UCEA, for enforcement actions to be brought by “a person authorized by other law.”⁸⁰

73. *Id.* (quoting TENN. CODE ANN. § 66-9-303 (West, Westlaw through end of 2005 First Reg. Sess.)).

74. *Id.* at *8.

75. *Id.*

76. *Id.*

77. *Id.* at *9. The court also denied the request of Wal-Mart Real Estate Business Trust that it consider the issue of whether dismissal of the complaint as against it was proper even if the plaintiffs had the requisite standing. *Id.* at *9-10. The court declined to do so for two reasons: “First, the Chancellor did not rule on the specific issue, and secondly, it would be meaningless dictum for us to do so.” *Id.* at *10.

78. Tenn. Envtl. Council v. Bright Par 3 Assocs., No. E2003-01982-SC-R11-CV, 2004 Tenn. LEXIS 1200 (Tenn. Oct. 4, 2004).

79. Compare TENN. CODE ANN. § 66-9-303 (West, Westlaw through end of 2005 First Reg. Sess. 2004), with UNIF. CONSERVATION EASEMENT ACT § 3 (1981). Although some state enabling statutes provide broader standing rules than the UCEA, none are as explicitly as broad as the Tennessee statute. See, e.g., VA. CODE ANN. § 10.1-1013 (West, Westlaw through end of the 2005 Regular Session) (providing for standing by the “local government in which the real property is located”).

80. UNIF. CONSERVATION EASEMENT ACT § 3(a)(4). The states with this or similar provision in their enabling legislation include Alaska (ALASKA STAT. § 34.17.020 (West, Westlaw through all 2004 Sessions, Annotations through Opinions Decided as of September 17, 2004)), Arizona (ARIZ. REV. STAT. ANN. § 33-273 (West, westlaw through end of the Forty-Seventh Legislature, First Regular Session (2005))), Arkansas (ARK. CODE ANN. § 15-20-409 (West, Westlaw through 2005 Regular Session. Revisions to Acts from the

By using the language of state statutes and a variety of theories of enforcement, there is a potential in many states to allow citizens to enforce conservation easements. Citizens will often be the first to know if land protected by a conservation easement is threatened. Provided that they know that a conservation easement exists on a parcel in their community, citizens can potentially monitor the land much more frequently and comprehensively than perhaps a small land trust could.⁸¹ If the land appears threatened, the citizen could notify the holder or landowner and, with a well-reasoned argument for standing, could even enforce the terms of the easement in court.

Given the fact that the use of conservation easements has become standard practice across the nation, it makes little sense to have such an expansive rule of standing in one state, while just next door, a different state takes a much more restrictive approach. This is especially problematic considering that many of the statutes are based on the UCEA, the same land trust might hold easements in a number of different states, the public policy behind the easements are similar, the public benefit is often comparable, and the very instruments creating the conservation easements might have very similar provisions.⁸² The court in *Bright Par* defined a solid standing

2005 Regular Session made by the Arkansas Code Revision Commission were unavailable at time of publication)), Delaware (DEL. CODE ANN. tit. 7, § 6903 (West, Westlaw through the First Regular Session of the 143rd General Assembly)), Florida (FLA. STAT. ANN. ch. 704.06 (West, Westlaw through Chapter 352 and H.J.R. No. 1723, H.J.R. 1177 and S.J.R. No. 2144 (End) of the 2005 First Regular Session of the Nineteenth Legislature)), Georgia (GA. CODE ANN. § 44-10-4 (West, Westlaw through end of the 2005 Regular Session)), Idaho (IDAHO CODE ANN. § 55-2103 (West, Westlaw through the 2005 Legislative Session)), Indiana (IND. CODE ANN. § 32-23-5-6 (West, Westlaw through the 2005 First Regular Session)), Kansas (KANS. STAT. ANN. § 58-3812 (West, Westlaw through the 2004 Regular Session)), Kentucky (KY. REV. STAT. ANN. § 382.820 (West, Westlaw through end of 2004 First Extraordinary Session)), Louisiana (LA. REV. STAT. ANN. § 9:1274 (West, Westlaw through all 2004 First Extraordinary and Regular Session Acts)), Minnesota (MINN. STAT. ANN. § 84C.03 (West, Westlaw through laws of the 2005 Regular Session except Chapters 136 and 151, effective through July 1, 2005)), Mississippi (MISS. CODE ANN. § 89-19-7 (West, Westlaw through end of 2005 Reg. and 1st Ex. Sess.)), Nevada (NEV. REV. STAT. ANN. § 111.430 (West, Westlaw through the 2004 21st Special Session of the 72nd Legislature and the 2004 Revisions by the Legislative Counsel Bureau)), Oklahoma (OKLA. STAT. ANN. tit. 60, § 49.4 (West, Westlaw through chapters of the 2005 First Regular Session effective through September 1, 2005)), Oregon (OR. REV. STAT. ANN. § 271.755 (West, Westlaw through end of the 2003 Reg. Sess.)), Pennsylvania (32 PA. CONS. STAT. ANN. § 5055 (West, Westlaw through Act 2005-2)), South Carolina (S.C. CODE ANN. § 27-8-40 (West, Westlaw through end of 2004 Reg. Sess.)), Texas (TEX. NAT. RES. CODE ANN. § 183.003 (West, Westlaw through the end of the 2005 Regular Session of the 79th Legislature)), Virginia (VA. CODE ANN. § 10.1-1013 (West, Westlaw through end of the 2005 Regular Session)), West Virginia (W. VA. CODE ANN. § 20-12-5 (West, Westlaw through end of 2005 Third Ex. Sess.)), and Wisconsin (WIS. STAT. ANN. § 700.40 (West, Westlaw through 2005 Act 21, published 7/22/05)). Note that many statutes that do not have this language are simply silent on the issue, and therefore liberal enforcement arguments may also have a chance in those states.

81. Again, many small land trusts that hold conservation easements, although very dedicated and passionate about land protection, simply do not have the funding to ensure comprehensive monitoring of the properties, let alone the funding necessary to engage in expensive and time-consuming enforcement litigation. Valid arguments exist to make that a more expansive doctrine of standing will only lead to more litigation, which in turn will lead to higher costs and burdens on land trusts and on conservation easements in general. Until more courts deal with the issue of standing and decide whether to expand the doctrine or not, dealing with those arguments at this point seems premature.

82. Indeed, there has been a good deal of momentum in recent years for standardization of practices both within individual states, as well as among the many states, led in large part by national organizations such as the Land Trust Alliance.

rule that will likely help to ensure the public benefit of easements for generations, and other courts should follow the precedent, crafting rules that fit within the given state enabling statutes.

Accordingly, the first step in evaluating a citizen-enforcement action⁸³ is to look at the language of the state enabling statute to determine whether a broad citizen-standing provision was specifically adopted, or otherwise intended by the state legislature. Although in most states there is no explicit provision granting broad citizen standing, some states do automatically grant standing to parties other than the holder or landowner. For example, the Illinois enabling statute grants enforcement power to any person owning real property within 500 feet of the land subject to the conservation easement.⁸⁴

Many state enabling statutes allow for third-party enforcement provisions to be included in the terms of the easement.⁸⁵ If this is so, the next step would be to look at the easement document itself, which may grant a third-party right of enforcement. It is unlikely that third-party enforcement provisions will benefit citizen-enforcers, however, given the standard requirement that the third-party enforcer be qualified to be a holder of easements.⁸⁶ Because individuals generally cannot qualify as holders, there would be no ability to grant a third-party enforcement right to citizens. The exception may be in states that do not have a third-party enforcement provision in the enabling statute; in this case, it may be possible to draft a third-party enforcement right into the instrument regardless of statutory silence. In these states, perhaps it would be possible to grant a third-party enforcement right to the citizens of [state], as beneficiaries of the conservation easement.⁸⁷

If the statute is ambiguous,⁸⁸ or allows, as most do, for enforcement by persons authorized under “any other law,” the citizen-enforcer has a number of options for arguments that would provide for standing to bring the enforcement action: (i) the

83. The term “citizen-enforcer,” as used in this Note, is intended to indicate, generally, someone other than the holder of the easement, the owner of the encumbered land, or a government organization.

84. See 765 ILL. COMP. STAT. ANN. § 120/4 (West, Westlaw through P.A. 94-259 of the 2005 Reg. Sess.).

85. See UNIF. CONSERVATION EASEMENT ACT § 1(3) (1981). “Despite the lack of statutory authority for third-party enforcement rights in many states, the use of third-party enforcement rights appears widespread throughout the nation.” Todd D. Mayo, *A Holistic Examination of the Law of Conservation Easements*, in PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE 50 (Julie Ann Gustanski & Roderick H. Squires eds., 2000).

86. UNIF. CONSERVATION EASEMENT ACT § 1(3) (1981).

87. There is no evidence of this sort of drafting, and, although suggested hypothetically here, it may not be advisable to include such a provision, given that such a clause could open up the holder of the easement to any number of lawsuits concerning the easement.

88. Professor Nancy McLaughlin argues that even if the statute is unambiguous, then:

[I]n the case of a conservation easement donated to a government agency or charitable organization, the stated purpose of which is the protection of certain conservation attributes of the encumbered land forever or in perpetuity, and that grants the donee the discretion to amend the easement only in manners consistent with its stated purpose, the equitable rules governing a donee’s use and disposition of charitable assets should apply *in addition or as an overlay* to the provisions in the easement enabling statute addressing modification or termination.

Nancy A. McLaughlin, *Rethinking the Perpetual Nature of Conservation Easements*, 29 HARV. ENVTL. L. REV. 421, 450 (2005)(emphasis added).

citizen may look to the common law to make analogies to standing rules based on classic servitudes, (ii) the citizen may rely on the “charitable trust” doctrine, which grants standing to the state attorney general as a representative of the public, a co-trustee, and any party with a “special interest” in the performance of a charitable trust, and (iii) the citizen could look to federal environmental laws to make an overarching policy argument for citizen enforcement of important publicly beneficial environmental policy, especially in the absence of governmental action.⁸⁹

Under any of these theories, the fundamental element of a successful standing argument for citizen-enforcement of a conservation easement would be a strong showing of public benefit. In many situations, a showing of public benefit may be possible by reference to the state enabling statute, many of which directly evidence the legislature’s assumption that an easement provides benefits to the public.⁹⁰ If the protected land specifically provides for public access, the public benefit would be apparent from the face of the conservation easement instrument.⁹¹ Additionally, a citizen plaintiff may make reference to the federal tax code, which requires that an “open space” easement “yield a significant public benefit.”⁹² In *Bright Par*, the court had little problem finding a public benefit because of the clear language of the statute declaring that conservation easements are held for the benefit of the public.⁹³

The following sections discuss the three arguments that a citizen may make in asserting standing to enforce a conservation easement.

A. The Common Law

The early common law rules that governed what are now known generally as “servitudes”⁹⁴ were rather restrictive on issues of enforcement powers. It is fair to say,

89. See *supra* note 24 and accompanying text for a case in which this argument was attempted.

90. See, e.g., R.I. GEN. LAWS § 34-39-1 (West, Westlaw through January 2004 Session) (“The purpose of this chapter is to grant a special legal status to conservation restrictions . . . [and] to provide the people of Rhode Island with the continued diversity of history and landscape that is unique to this state without great expenditures of public funds.”).

91. Obviously, the issue of public access on conservation easement lands is a complex one. Many governmental easement holders either require, or at least strongly prefer public access on the land that they acquire. On the other hand, public access may directly contravene the conservation purposes of an easement. These issues become particularly difficult when, for example, easements are acquired by governments on land that has traditionally been used for hunting, or in areas that depend on snowmobile recreation; the structure of the easements often comes down to a delicate balancing of the interests of multiple parties. Even the IRS regulations recognize this inherent conflict where an easement provides for habitat protection. The IRS regulations provide that:

[L]imitations on public access to property that is the subject of a donation under this paragraph (d)(3) shall not render the donation nondeductible. For example, a restriction on all public access to the habitat of a threatened native animal species protected by a donation under this paragraph (d)(3) would not cause the donation to be nondeductible.

Treas. Reg. § 1.170A-14(d)-3(iii) (2005).

92. I.R.C. § 170(h)(4)(A) (2005).

93. See TENN. CODE ANN. § 66-9-303(1)(A)(i) (West, Westlaw through end of 2005 First Reg. Sess.) (describing a conservation easement as an easement that “[i]s held for the benefit of the people of Tennessee”).

94. The Restatement now groups many of the common law interests in land, which traditionally came in many different forms, under the unifying “servitude” label:

This Restatement presents a comprehensive modern treatment of the law of servitudes that

however, that the restrictive rules that govern servitudes have been relaxed. Upon reflection, it is hard to pin down one particular common law theory that forms the complete basis for the evolution of conservation easements. Although labeled an “easement” in most jurisdictions (a conservation “restriction” in others),⁹⁵ they share fewer characteristics with traditional common law easements than they do with other servitudes.

If modern conservation easements were, in fact, “easements,” under a common law theory they would likely be described in a rather cumbersome manner as “negative easements in gross,” which were of questionable validity under common law theories.⁹⁶ According to English law, only four types of negative easements were allowed by the courts, and those easements were appurtenant in nature; a landowner could keep his neighbor from “1) blocking [his] windows, 2) interfering with air flowing to [his] land . . . , 3) removing the support of [his] building . . . , and 4) interfering with the flow of water in an artificial stream.”⁹⁷ According to the theory of negative easements, generally the only person who would have standing to enforce an easement would be the owner of the appurtenant estate, because he would be the only person who could make a showing of some sort of injury as a result of the violation of the easement.

On the other hand, if conservation easements were considered to fall under the common law of real covenants, it is probable that any enforcement actions would be unsuccessful because the majority rule was that real covenants with benefits in gross could not run.⁹⁸ Although there were courts that allowed these types of covenants to be enforced, the covenants were more often than not more akin to appurtenant benefits than benefits in gross.⁹⁹ In recent years, however, there have been courts willing to use real covenant contract theories to enforce benefits in gross;¹⁰⁰ as of yet, these enforcement actions have only been initiated by parties to the original contract (the “easement” holders).

Finally, there is the theory of equitable servitudes, which is probably closest in most ways to the modern conservation easement. The most widely cited case for this

substantially simplifies and clarifies one of the most complex and archaic bodies of 20th century American law. Treating the law of easements, profits, and covenants as an integrated body of doctrine, this Restatement eliminates needless distinctions, archaic terminology, and obsolete requirements. It is designed to allow both traditional and innovative land-development practices using servitudes without imposing artificial constraints as to form or arbitrary limitations as to substance.

RESTATEMENT (THIRD) OF SERVITUDES, Introduction to Volume 1 (2000).

95. See, e.g., MASS. GEN. LAWS ANN. ch. 184, § 31 (West 2003).

96. But see *United States v. Blackman*, 613 S.E.2d 442, 449 (2005) (holding that a negative easement in gross, created more than a decade before the enactment of the Virginia Conservation Easement Act was valid).

97. JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 855 (5th ed. 2002).

98. See Korngold, *supra* note 12, at 470-73.

99. See *id.* at 473-76. Korngold discusses the case of *Inhabitants of Middlefield v. Church Mills Knitting Co.*, 35 N.E. 780 (1894), in which Justice Holmes recognized, “that when servitudes in gross fill a particular public need, they merit enforcement rather than an inflexible denial based on precedent.” *Id.* at 476.

100. See, e.g., *Bagley v. Found. for the Pres. of Historic Georgetown*, 647 A.2d 1110 (D.C. 1994) (enforcing the terms of a historic preservation easement through a traditional contract theory; the group bringing the enforcement action was the holder of the easement).

doctrine is the English case of *Tulk v. Moxhay*.¹⁰¹ In that case, the court of chancery issued an injunction against a property owner who had been conveyed a deed that contained a prohibition against the erection of any buildings.¹⁰² Most courts required (and may still require) an appurtenant benefit in order to enforce an equitable servitude.¹⁰³

In general, the common law provided strict rules on enforceability of servitudes, requiring showings of privity, notice, and benefits in order for a party to have standing. Under a more modern view, according to the Restatement (Third) of Servitudes, “[a] person who holds the benefit of a servitude under any provision of this Restatement has a legal right to enforce the servitude.”¹⁰⁴ Both the language of the Restatement and the comment make clear that the intent of the rule was to eliminate the common law restriction that gave standing only to those who owned the land “intended to benefit from enforcement.”¹⁰⁵ The common law rule was a result of the general prohibition against covenant benefits in gross.¹⁰⁶ The Restatement does provide, however, that anyone who holds the benefit of a covenant in gross is required to show “a legitimate interest in enforcing the covenant.”¹⁰⁷ The comment to the rule further clarifies this rule as it relates to conservation servitudes:

Some covenant benefits in gross . . . are similar to appurtenant benefits in providing valuable benefits that are difficult to monetize and difficult or impossible to replace. To establish a legitimate interest in the enforcement of such covenant, the beneficiary need not establish that he or she will suffer economic harm from covenant violation, but rather, that he or she seeks enforcement to advance the purpose for which the servitude was created.¹⁰⁸

Most conservation servitudes, being held by a governmental body or a conservation organization, would also fall under the rule described in the Restatement that provides that a conservation servitude “is enforceable by coercive remedies and other relief designed to give full effect to the purpose of the servitude.”¹⁰⁹ The rationale behind this permissive view of enforcement remedies is the “strong public interest in conservation servitudes.”¹¹⁰ Of course, the Restatement just outlines the general common law rules governing servitudes; as it notes, most states have enacted statutory provisions explicitly dealing with enforcement, the most common model for legislative enactment being the UCEA.

But the UCEA also provides that enforcement actions may be brought by “a person authorized by other law,” and additionally notes that the traditional common law restrictions associated with servitudes will not cause a conservation easement to

101. 41 Eng. Rep. 1143 (1848).

102. *Id.* at 1143.

103. *See* Dana & Ramsey, *supra* note 8, at 17.

104. RESTATEMENT (THIRD) OF SERVITUDES § 8.1 (2000).

105. *Id.* § 8.1, cmt. a.

106. *Id.*

107. *Id.* § 8.1.

108. *Id.* § 8.1, cmt. c.

109. *Id.* § 8.5, cmt. a.

110. *Id.*

fail.¹¹¹ The modern trend, as evidenced by the Restatement and the UCEA, is to do away with the common law rules that called into question the validity and enforceability of many servitudes.¹¹² Armed with the developing legal doctrines in this area, a citizen-enforcer may have a number of arguments for a broader theory of standing. It does not make sense, legally, that a neighboring landowner cannot enforce a conservation easement on his neighbor's land simply because the "benefits" are deemed to be "in gross." After *Bright Par*, a citizen in Tennessee may now enforce a conservation easement against a landowner halfway across the state, while a citizen in another state may not be able to enforce the terms of a conservation easement against his neighbor, even where the neighbor will likely suffer more "harm" or "injury" as a result of the violations. A neighboring landowner will usually gain "appurtenant" benefits that are equal to or greater than general benefits "in gross," in the form of scenic views, increase in property values, recreational opportunities, and others.

On the other hand, it may be beneficial in some instances to revert to a more traditional common law argument to argue for enforcement power. For example, in the case of an easement granted as a condition to subdivision of land, one landowner trying to enforce the terms of the easement against another may try to analogize the conservation easement to a reciprocal negative easement.¹¹³ Under this common law theory, the easement would be enforceable by one neighbor as against the other; by arguing that the easement fit into this common law category, a broader enforcement power might actually be granted than would otherwise be allowed from a strict interpretation of the conservation easement statute.

B. The Charitable Trust Theory

Commentators have advanced one prominent additional theory of standing for enforcement actions; it focuses on the treatment of the conservation easement as a "charitable trust" and hinges on the role of state Attorneys General as supervisors of charitable trusts on behalf of the public.¹¹⁴ Unfortunately, due to the relative novelty

111. The UCEA provides:

A conservation easement is valid even though:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) the benefit does not touch or concern real property; or
- (7) there is no privity of estate or of contract.

UNIF. CONSERVATION EASEMENT ACT § 4 (1981).

112. See *United States v. Blackman*, 613 S.E.2d 442, 446-47 (Va. 2005) (finding that Virginia had long recognized the public benefit of negative easements in gross and had therefore abandoned the common law restrictions on transferability).

113. See *Sanborn v. McLean*, 206 N.W. 496, 497 (Mich. 1926) (finding a negative reciprocal easement where one neighbor tried to build a gas station in a residential neighborhood).

114. See Alexander R. Arpad, *Private Transactions, Public Benefits, and Perpetual Control Over the Use of Real Property: Interpreting Conservation Easements as Charitable Trusts*, 37 REAL PROP. PROB. & TR. J. 91 (2002) (suggesting that a conservation easement is substantially similar to a charitable trust, and evaluating the consequences of this treatment); Cheever, *supra* note 8, at 1101 ("The obvious 'public'

of conservation easements, there has been little opportunity to put this theory to the test in actual litigation.

The “charitable trust” theory of conservation easement enforcement was outlined in a comment to the UCEA.¹¹⁵ The drafters discuss the doctrine of *cy pres*¹¹⁶ as it relates to charitable trusts, and states that the act “leaves intact the existing case and statute law of adopting states as it relates to the modification and termination of easements and the enforcement of charitable trusts.”¹¹⁷ According to the Restatement (Second) of Trusts, a charitable trust is “a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose.”¹¹⁸ Charitable trusts do not fail because the beneficiaries are “indefinite”¹¹⁹ or because they may last for an “unlimited period.”¹²⁰ This is one of the main differences between a charitable trust and a private trust.¹²¹ The Attorney General of a state, a co-trustee, or a person who has a “special interest” in enforcement has standing to enforce the terms of a trust.¹²² Note that the mere fact that a person is a possible beneficiary does not give him standing to enforce a charitable trust—this is not sufficient to show a “special interest”¹²³—and the settlor of the trust does not have a power of enforcement, but may maintain a suit if the trust has failed.¹²⁴

Most of these requirements square with the intent and purpose of a conservation easement, which is why the theory of conservation easement as charitable trust has been advocated. The public, in general, is typically thought of as a primary beneficiary of a conservation easement, even though there is often no requirement that landowners

solution to the remaining problems is creation of a government right, and duty, to third-party enforcement of easement conditions.”); Jeffrey M. Tapick, Note, *Threats to the Continued Existence of Conservation Easements*, 27 COLUM. J. ENVTL. L. 257, 289 (2002) (“If a court could be convinced that a conservation easement is indeed a ‘charitable trust,’ then it could thwart an effort to terminate or release the easement by ordering that the terms of the trust be enforced in equity.”).

115. UNIF. CONSERVATION EASEMENT ACT § 3, cmt. (1981).

116. *Cy pres* is a French phrase, meaning “as near as;” it is an equitable doctrine whereby a court will reform a gift to a charity as closely to the donor’s intention as possible, in order to prevent the gift from failing. BLACK’S LAW DICTIONARY 392 (7th ed. 1999).

117. UNIF. CONSERVATION EASEMENT ACT § 3, cmt. (1981) (“Under the doctrine of *cy pres*, if the purposes of a charitable trust cannot be carried out . . . courts under their equitable powers may prescribe terms and conditions that may best enable the general charitable objective to be achieved So, also, in cases where a charitable trustee ceases to exist or cannot carry out its responsibilities, the court will appoint a substitute trustee upon proper application and will not allow the trust to fail.”) For more on the charitable trust theory and the doctrine of *cy pres* and how they relate to conservation easements, see McLaughlin, *supra* note 87.

118. RESTATEMENT (SECOND) OF TRUSTS § 348 (1959).

119. *Id.* § 364.

120. *Id.* § 365.

121. See Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. HAW. L. REV. 593, 618 (1999) (“A charity organized as a trust does not have beneficiaries in the sense that a private trust has beneficiaries.”).

122. RESTATEMENT (SECOND) OF TRUSTS § 391 (1959).

123. *Id.* at 391 cmt. c. “The mere fact that as members of the public they benefit from the enforcement of the trust is not sufficient ground to entitle them to sue, since a suit on their behalf can be maintained by the Attorney General.” *Id.* cmt. d.

124. *Id.* at § 391, cmt. e, cmt. f.

allow access to the burdened land by the public.¹²⁵ The general enforcement provisions of the UCEA, as mentioned above, give standing to enforce to the holder of the easement (who assumes a role similar to a trustee),¹²⁶ and, by operation of existing law, to the state's Attorney General. The UCEA differs from the general charitable trust theory in allowing the landowner, essentially a settlor of the trust, to maintain an action.¹²⁷ Of course, state laws vary, and often differ considerably from both the Restatement's pronouncement of charitable trust law and the UCEA.

As an example, Tennessee, like many states, has now adopted the Uniform Trust Code, which governs trust law within the state.¹²⁸ Under that law, a charitable trust is a trust created for "the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community."¹²⁹ If the trust does not indicate a charitable purpose or beneficiary, "the court may select one (1) or more charitable purposes or beneficiaries" that are "consistent with the settlor's intention to the extent it can be ascertained."¹³⁰ Of significance for this discussion, the Uniform Trust Code provides that "[t]he settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust."¹³¹ The comment to this section of the Code specifically recognizes that the provision is contrary to that described in the Restatement (Second) of Trusts § 391.¹³² The phrase "among others" was apparently included so as not to eliminate the traditional ability of the "attorney general or persons with special interests to enforce either the trust or their interests."¹³³

Although there is still some debate about whether state attorneys general may enforce conservation easements under a charitable trust theory, it may be possible for some citizens to have standing to enforce under the same doctrine. Under the common

125. Tapick, *supra* note 114, at 264 ("[T]he easement itself creates a benefit that is inherently public in nature. The general public stands to gain from the achievement of an easement's conservation purpose Indeed, each of the statutorily recognized conservation purposes of an easement is considered to be a public benefit."); John Walliser, *Conservation Servitudes*, 13 J. NAT. RESOURCES & ENVTL. L. 47, 86 (1997) ("Considered against a backdrop of direct public and legislative support for conservation servitudes, including favorable tax relief at both the state and federal level, there is definitive evidence that conservation servitudes have recognized public benefit."). Courts have also gone along with this view. See *Bennett v. Comm'r of Food & Agric.*, 576 N.E.2d 1365, 1367 (Mass. 1991) (upholding enforcement of a conservation easement "[w]here the beneficiary of the restriction is the public and the restriction reinforces a legislatively stated public purpose").

126. See Arpad, *supra* note 114 at 91 (discussing the elements of charitable trusts, the fiduciary relationship created by a charitable trust, and how this relates to the theories underlying a conservation easement).

127. The UCEA grants standing to an owner of an interest in the land, which may not necessarily be the donor if the donor transfers that interest to another party.

128. TENN. CODE ANN. § 35-15-101 (West, Westlaw through end of 2005 First Reg. Sess.). Note that the Tennessee Uniform Trust Code became effective on July 1, 2004, a few months after the decision in *Tenn. Envtl. Council, Inc. v. Bright Par 3 Ass'n* was handed down. 2004 Tenn. Pub. Acts 537. The law is simply used for discussion purposes here; obviously, after *Bright Par*, citizens of Tennessee would not have to resort to this theory in order to enforce a conservation easement.

129. TENN. CODE ANN. § 35-15-405(a) (West, Westlaw through end of 2005 First Reg. Sess.).

130. *Id.* § 35-15-405(b).

131. *Id.* § 35-15-405(c).

132. *Id.* § 35-15-405, cmt.

133. *Id.*

law, as well as the Restatement (Second) of Trusts and the Uniform Trust Code, beneficiaries with a special interest in the charitable trust have standing to enforce the trust. Arguably, citizens that can make a strong showing of public benefit, and perhaps even a showing of personal benefit, may be entitled to enforce a conservation easement under this theory. Exactly what would be needed to show a “special interest” is not clear, and will likely have to be determined through judicial decisions. Perhaps, after *Bright Par*, where the term “beneficiary” was specifically used and given an expansive meaning, citizens of other states may argue that their status as a citizen of that state and as a “beneficiary” of the conservation easement satisfies the “special interest” test sufficiently to allow standing to enforce.

C. Citizen Standing in Federal Environmental Laws

The requirement of standing is a threshold test for any person wishing for judicial enforcement through the courts. In recent decades, the law of standing has played out more in the environmental law context than perhaps in any other area. Environmental law lends itself well to citizen involvement and enforcement.¹³⁴ Particularly at the federal level, a showing of standing has become a necessary inclusion in a well-drafted complaint as well as a capable sword in the hands of legal defense. Although citizen enforcers of conservation easements generally will not look to federal environmental law for a specific grant of standing, a decision to grant standing may be effectively supported by arguments concerning the national policy of environmental laws.

Citizen enforcement of environmental laws attained its first milestone during the mid-1960s in the *Storm King* case.¹³⁵ The case involved a proposed project by Consolidated Edison to put a huge reservoir on top of Storm King Mountain along the Hudson River, which would have generated electricity for New York City during peak load periods, and would have involved drawing 1,080,000 cubic feet of water per minute from the Hudson, and discharging 1,620,000 cubic feet of water per minute into the river when generating.¹³⁶ Conservation groups and affected towns joined together and sued the Federal Power Commission under section 313(b) of the Federal Power Act.¹³⁷ The Federal Power Commission argued that the citizen groups did not have standing to bring the suit because they had no claim of personal economic injury.¹³⁸ Judge Hays for the Second Circuit Court of Appeals rejected this argument, stating that those persons who, through their behavior, have established a special interest in “the aesthetic, conservational, and recreational aspects of power development . . . must be

134. See generally ZYGMUNT J.B. PLATER ET AL., ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY 398-428 (3rd ed. 2004).

135. *Scenic Hudson Pres. Conference v. Fed. Power Comm’n*, 354 F.2d 608 (2d Cir. 1965). The *Storm King* case is well-documented in ALLAN R. TALBOT, POWER ALONG THE HUDSON: THE STORM KING CASE AND THE BIRTH OF ENVIRONMENTALISM (1972).

136. *Scenic Hudson Pres. Conference v. Fed. Power Comm’n*, 354 F.2d at 612.

137. *Id.* at 611. Section 313(b) of the Act reads: “Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located” 16 U.S.C. § 8251(b) (2000).

138. *Scenic Hudson Pres. Conference v. Fed. Power Comm’n*, 354 F.2d at 615.

held to be included in the class of 'aggrieved' parties under § 313(b)."¹³⁹ Furthermore, the court stated that "[a] party acting as a 'private attorney general' can raise issues that are not personal to it."¹⁴⁰

The *Storm King* case was followed a few years later by Judge Skelley Wright's bold declaration, in the context of a citizen suit against the Atomic Energy Commission, that one of the court's duties was to "see that important legislative purposes, heralded in the halls of Congress, are not lost or misdirected in the vast hallways of the federal bureaucracy."¹⁴¹

In 1972, the Supreme Court issued an opinion that expanded judicial standing for citizen suits in *Sierra Club v. Morton*.¹⁴² The case involved a challenge by the Sierra Club of a development proposal on national forest public lands by the Walt Disney Corporation.¹⁴³ In addressing a challenge to the standing of the Sierra Club to bring suit, the Court observed, "[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process."¹⁴⁴ However, the Court held that "the party seeking review [must] be himself among the injured."¹⁴⁵ Accordingly, the Court rejected a "private attorney general" theory, denying standing to environmental groups unless they could show that members of the group would be harmed by the action.¹⁴⁶ Justice Douglas, in his dissent advocated for the adoption of a federal rule that would grant standing to "inanimate object[s] about to be despoiled, defaced, or invaded by roads and bulldozers . . . where injury is the subject of public outrage."¹⁴⁷

During the 1970s, as Congress was enacting most of the nation's major federal environmental laws, it appeared as though citizen suits had garnered a strong position in the field. Many of the statutes enacted contained explicit citizen-suit provisions: the Endangered Species Act,¹⁴⁸ the Clean Water Act,¹⁴⁹ the Safe Drinking Water Act,¹⁵⁰ and the Clean Air Act¹⁵¹ all contain such provisions, just to name a few.

Then, beginning in the 1980s, the Supreme Court appeared to retreat from the more expansive view of standing that it had espoused just a few years earlier. In

139. *Id.* at 616.

140. *Id.* at 619.

141. *Calvert Cliffs' Coordinating Comm. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1111 (D.C. Cir. 1971). The *Calvert Cliffs'* case was a milestone in early NEPA litigation, a signal to federal agencies that the requirements of NEPA would have to be taken seriously. "In short, Congress placed the ambitious environmental statutes on the books in the 1970s, but it was the judiciary, led by judges like Judge Skelley Wright, who made it actually happen. They invited and spurred the filing of environmental citizen suits." Richard J. Lazarus, *Judging Environmental Law*, 18 TUL. ENVTL. L.J. 201, 211 (2004).

142. 405 U.S. 727 (1972).

143. *Id.* at 729-30.

144. *Id.* at 734.

145. *Id.* at 735.

146. *Id.* at 739-41 (Douglas, J., dissenting).

147. *Id.* at 741.

148. 16 U.S.C. § 1540(g)(2000).

149. 33 U.S.C. § 1365 (2000).

150. 42 U.S.C. § 300j-8 (2000).

151. 42 U.S.C. § 7604 (2000).

Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.,¹⁵² the Court strictly construed the Clean Water Act's citizen-suit provision to deny standing to a citizen group challenging illegal discharges by a swine-processing plant.¹⁵³ The Court held that a citizen suit could only proceed in the face of an ongoing violation or proof of future likelihood of violations.¹⁵⁴

In its opinions during the early 1990s the Court required showings of highly particularized injuries to environmental plaintiffs in order to obtain standing.¹⁵⁵ The Court denied standing to a citizen's group after plaintiffs alleged harm to their "recreational use and aesthetic enjoyment" of an area of land, finding that the affidavits only stated use of a small portion of the "immense tract of territory" at issue.¹⁵⁶ The Court also denied citizen standing under the Endangered Species Act, even in the face of statutory language that granted an enforcement right to "any person" because the plaintiffs did not show that their injury would be "imminent."¹⁵⁷

In an unexpected turn, however, the Court upheld a citizen's right to enforce violations of a Clean Water Act permit in *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*¹⁵⁸ The Court found that the actions of the polluter directly affected the citizen plaintiffs' "recreational, aesthetic, and economic interests."¹⁵⁹ It went on to hold that the State's settlement with the polluter did not bar the citizen action,¹⁶⁰ the injuries were redressable by the suit,¹⁶¹ and the issue was not moot.¹⁶²

The Supreme Court's environmental standing jurisprudence shows a recognition that when a citizen is sufficiently harmed by the actions of a party violating the environmental laws of the country, a liberal interpretation of standing doctrine is often necessary to redress those harms. It has been the policy of Congress, since the 1970s, to allow citizens to enforce important environmental laws when other enforcement mechanisms do not effectively address the problem. The problem presented when an easement holder either refuses to or is unable to enforce a conservation easement is similar, in many respects, to a state refusing to enforce the requirements of the Clean Air Act or other environmental statute. In both cases, it is the public (who depends on government to act on their behalf and for their benefit) that loses out. If a town is unwilling to enforce the terms of an easement because of various political pressures the easement will be lost and the conservation values destroyed. The public subsidy will cease producing returns. Given the national scope of conservation easement use and acceptance, the analogy between conservation easements statutes and the federal-based environmental statutes is not a stretch. If citizens can sufficiently allege specific injuries that will result from the breach of a conservation easement provision, they

152. 484 U.S. 49 (1987).

153. *Id.* at 60-61.

154. *Id.* at 57-59.

155. See *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

156. *Lujan v. Nat'l Wildlife Federation*, 497 U.S. at 886, 89.

157. *Lujan v. Defenders of Wildlife*, 504 U.S. at 571-2, 578.

158. 528 U.S. 167 (2000).

159. *Id.* at 184.

160. *Id.* at 177-78, 189.

161. *Id.* at 185-188.

162. *Id.* at 189-94.

should be allowed to defend the terms of the easement if other parties with enforcement powers are unwilling or unable to do so. In the conservation easement context, a factual showing of some sort of individual benefit, such as recreation, aesthetic, or economic interest, derived from the use of easement-protected land, and a subsequent frustration of that benefit due to easement violations, will help the plaintiff establish a sufficient injury that should be allowed to be redressed through court action.

VI. CONCLUSION

The continuing validity of conservation easements depends, in large part, on the ability of those with an interest in conservation to enforce the terms of the easements. Enforcement case law thus far has come out in a number of different directions concerning the fundamental question of who may enforce a conservation easement. In order to ensure that conservation easements last in perpetuity, courts should give liberal construction to enforcement provisions in order to carry out the policy objectives behind conservation easement statutes. One example of this interpretation was seen in *Bright Par*, where the court liberally construed the word “beneficiary” to include all citizens of the state of Tennessee. Where statutory language is not as clear, however, there are a number of possible legal frameworks that would allow broad citizen enforcement of conservation easements. It is necessary that courts allow broader enforcement powers in order to protect the public benefits of conservation easements, lest those benefits be lost forever.

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