

1 **UNIFORM ENVIRONMENTAL COVENANTS ACT**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lyle W. Hillyard**

5 House Sponsor: Fred R. Hunsaker

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Uniform Environmental Covenants Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ identifies who may be a holder of an environmental covenant;
- 14 ▶ defines the rights of a holder of an environmental covenant;
- 15 ▶ outlines the required and optional elements of an environmental covenant;
- 16 ▶ describes the effect of an environmental covenant on other interests and
- 17 instruments;
- 18 ▶ provides that the chapter does not authorize a use of real property prohibited by:
 - 19 • a zoning law;
 - 20 • other land use law; or
 - 21 • a recorded instrument with priority over an environmental covenant;
- 22 ▶ provides a notice requirement for an environmental covenant;
- 23 ▶ provides for the recording of an environmental covenant;
- 24 ▶ provides for determining the duration of an environmental covenant;
- 25 ▶ provides for amendments to or termination of an environmental covenant;
- 26 ▶ provides for civil enforcement of an environmental covenant;
- 27 ▶ includes provisions regarding interpretation of the chapter and its relation to certain
- 28 federal laws; and
- 29 ▶ contains a severability clause.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **19-10-101**, as enacted by Chapter 44, Laws of Utah 2003

37 ENACTS:

38 **57-25-101**, Utah Code Annotated 1953

39 **57-25-102**, Utah Code Annotated 1953

40 **57-25-103**, Utah Code Annotated 1953

41 **57-25-104**, Utah Code Annotated 1953

42 **57-25-105**, Utah Code Annotated 1953

43 **57-25-106**, Utah Code Annotated 1953

44 **57-25-107**, Utah Code Annotated 1953

45 **57-25-108**, Utah Code Annotated 1953

46 **57-25-109**, Utah Code Annotated 1953

47 **57-25-110**, Utah Code Annotated 1953

48 **57-25-111**, Utah Code Annotated 1953

49 **57-25-112**, Utah Code Annotated 1953

50 **57-25-113**, Utah Code Annotated 1953

51 **57-25-114**, Utah Code Annotated 1953



53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **19-10-101** is amended to read:

55 **19-10-101. Title -- Scope.**

56 (1) This chapter is known as the "Environmental Institutional Control Act."

57 (2) (a) This chapter applies to an environmental institutional control created before

58 May 1, 2006.

59 (b) Title 57, Chapter 25, Uniform Environmental Covenants Act, governs an
60 environmental covenant created on or after May 1, 2006.

61 Section 2. Section **57-25-101** is enacted to read:

62 **CHAPTER 25. UNIFORM ENVIRONMENTAL COVENANTS ACT**

63 **57-25-101. Title -- Scope.**

64 (1) This chapter is known as the "Uniform Environmental Covenants Act."

65 (2) (a) This chapter applies to an environmental covenant created on or after May 1,
66 2006.

67 (b) Title 19, Chapter 10, Environmental Institutional Control Act, applies to an
68 environmental covenant created before May 1, 2006.

69 (3) For the purposes of this chapter and Title 19, Chapter 10, Environmental
70 Institutional Control Act, an environmental institutional control, as defined in Section
71 19-10-102, is considered an environmental covenant.

72 Section 3. Section **57-25-102** is enacted to read:

73 **57-25-102. Definitions.**

74 As used in this chapter:

75 (1) "Activity and use limitations" means restrictions or obligations created under this
76 chapter with respect to real property.

77 (2) "Agency" means the Utah Department of Environmental Quality or other state or
78 federal agency that determines or approves the environmental response project under which the
79 environmental covenant is created.

80 (3) "Common interest community" means a condominium, cooperative, or other real
81 property with respect to which a person, by virtue of the person's ownership of a parcel of real
82 property, is obligated to pay property taxes or insurance premiums, or for maintenance, or
83 improvement of other real property described in a recorded covenant that creates the common
84 interest community.

85 (4) "Environmental covenant" means a servitude arising under an environmental

86 response project that imposes activity and use limitations.

87 (5) "Environmental response project" means a plan, risk assessment, or work
88 performed for environmental remediation of real property or surface and groundwater on or
89 beneath the real property and conducted:

90 (a) under a federal or state program governing environmental remediation of real
91 property, including under Title 19, Environmental Quality Code;

92 (b) incident to closure of a solid or hazardous waste management unit, if the closure is
93 conducted with approval of an agency; or

94 (c) under the state voluntary clean-up program authorized in Title 19, Chapter 8,
95 Voluntary Cleanup Program.

96 (6) "Holder" means the grantee of an environmental covenant as specified in
97 Subsection 57-25-103(1).

98 (7) "Jurisdiction" means a state of the United States, the District of Columbia, Puerto
99 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
100 jurisdiction of the United States.

101 (8) "Record," used as a noun, means information that is inscribed on a tangible medium
102 or that is stored in an electronic or other medium and is retrievable in perceivable form.

103 Section 4. Section **57-25-103** is enacted to read:

104 **57-25-103. Nature of rights -- Subordination of interests.**

105 (1) (a) Any person, including a person that owns an interest in the real property, the
106 agency, or a municipality or other unit of local government, may be a holder.

107 (b) An environmental covenant may identify more than one holder.

108 (c) The interest of a holder is an interest in real property.

109 (2) A right of an agency under this chapter or under an environmental covenant, other
110 than a right as a holder, is not an interest in real property.

111 (3) (a) An agency is bound by any obligation it affirmatively assumes in an
112 environmental covenant, but an agency does not assume obligations merely by signing an
113 environmental covenant.

114 (b) Any other person that signs an environmental covenant is bound by the obligations
115 the person assumes in the covenant, but signing the covenant does not change obligations,
116 rights, or protections granted or imposed under law other than this chapter except as provided
117 in the covenant.

118 (4) The following requirements apply to interests in real property in existence at the
119 time an environmental covenant is created or amended:

120 (a) An interest that has priority under other law is not affected by an environmental
121 covenant unless the person that owns the interest subordinates that interest to the covenant.

122 (b) This chapter does not require a person that owns a prior interest to subordinate that
123 interest to an environmental covenant or to agree to be bound by the covenant.

124 (c) (i) A subordination agreement may be contained in an environmental covenant
125 covering real property or in a separate record.

126 (ii) If the environmental covenant covers commonly owned property in a common
127 interest community, the record may be signed by any person authorized by the governing board
128 of the owners' association.

129 (d) An agreement by a person to subordinate a prior interest to an environmental
130 covenant affects the priority of that person's interest but does not by itself impose any
131 affirmative obligation on the person with respect to the environmental covenant.

132 Section 5. Section **57-25-104** is enacted to read:

133 **57-25-104. Contents of environmental covenant.**

134 (1) An environmental covenant must:

135 (a) state that the instrument is an environmental covenant executed under this chapter;

136 (b) contain a legally sufficient description of the real property subject to the covenant;

137 (c) describe the activity and use limitations on the real property;

138 (d) identify every holder;

139 (e) be signed by the agency, every holder, and unless waived by the agency, every
140 owner of the fee simple of the real property subject to the covenant; and

141 (f) identify the name and location of any administrative record for the environmental

142 response project reflected in the environmental covenant.

143 (2) In addition to the information required by Subsection (1), an environmental
144 covenant may contain other information, restrictions, and requirements agreed to by the
145 persons who signed it, including any:

146 (a) requirements for notice following transfer of a specified interest in, or concerning
147 proposed changes in use of, applications for building permits for, or proposals for any site work
148 affecting the contamination on, the property subject to the covenant;

149 (b) requirements for periodic reporting describing compliance with the covenant;

150 (c) rights of access to the property granted in connection with implementation or
151 enforcement of the covenant;

152 (d) a brief narrative description of the contamination and remedy, including:

153 (i) the contaminants of concern;

154 (ii) the pathways of exposure;

155 (iii) limits on exposure; and

156 (iv) the location and extent of the contamination;

157 (e) limitation on amendment or termination of the covenant in addition to those
158 contained in Sections 57-25-109 and 57-25-110; and

159 (f) rights of the holder in addition to its right to enforce the covenant under Section
160 57-25-111.

161 (3) In addition to other conditions for its approval of an environmental covenant, the
162 agency may require those persons specified by the agency who have interests in the real
163 property to sign the covenant.

164 Section 6. Section **57-25-105** is enacted to read:

165 **57-25-105. Validity -- Effect on other instruments.**

166 (1) An environmental covenant that complies with this chapter runs with the land.

167 (2) An environmental covenant that is otherwise effective is valid and enforceable even
168 if:

169 (a) it is not appurtenant to an interest in real property;

- 170 (b) it can be or has been assigned to a person other than the original holder;
- 171 (c) it is not of a character that has been recognized traditionally at common law;
- 172 (d) it imposes a negative burden;
- 173 (e) it imposes an affirmative obligation on a person having an interest in the real
- 174 property or on the holder;
- 175 (f) the benefit or burden does not touch or concern real property;
- 176 (g) there is no privity of estate or contract;
- 177 (h) the holder dies, ceases to exist, resigns, or is replaced; or
- 178 (i) the owner of an interest subject to the environmental covenant and the holder are the
- 179 same person.

180 (3) (a) An instrument that creates restrictions or obligations with respect to real
181 property that would qualify as activity and use limitations except for the fact that the
182 instrument was recorded before the effective date of this chapter is not invalid or unenforceable
183 because of any of the limitations on enforcement of interests described in Subsection (2) or
184 because it was identified as an easement, servitude, deed restriction, or other interest.

185 (b) This chapter does not apply in any other respect to an instrument covered under
186 Subsection (3)(a).

187 (4) This chapter does not invalidate or render unenforceable any interest, whether
188 designated as an environmental covenant or other interest, that is otherwise enforceable under
189 Utah law.

190 Section 7. Section **57-25-106** is enacted to read:

191 **57-25-106. Relationship to other land use law.**

192 (1) This chapter does not authorize a use of real property that is otherwise prohibited
193 by:

- 194 (a) a zoning law;
- 195 (b) law other than this chapter regulating use of real property; or
- 196 (c) a recorded instrument that has priority over the environmental covenant.

197 (2) An environmental covenant may prohibit or restrict uses of real property that are

198 authorized by zoning or by law other than this chapter.

199 Section 8. Section **57-25-107** is enacted to read:

200 **57-25-107. Notice.**

201 (1) A copy of an environmental covenant shall be provided by the persons and in the
202 manner required by the agency to:

203 (a) each person that signed the covenant;

204 (b) each person holding a recorded interest in the real property subject to the covenant;

205 (c) each person in possession of the real property subject to the covenant;

206 (d) each municipality or other unit of local government in which real property subject
207 to the covenant is located; and

208 (e) any other person that the agency requires.

209 (2) The validity of a covenant is not affected by failure to provide a copy of the
210 covenant as required under this section.

211 Section 9. Section **57-25-108** is enacted to read:

212 **57-25-108. Recording.**

213 (1) (a) An environmental covenant and any amendment or termination of the covenant
214 must be recorded in every county in which any portion of the real property subject to the
215 covenant is located.

216 (b) For purposes of indexing, a holder shall be treated as a grantee.

217 (2) Except as otherwise provided in Subsection 57-25-109(3), an environmental
218 covenant is subject to Utah laws governing recording and priority of interests in real property.

219 Section 10. Section **57-25-109** is enacted to read:

220 **57-25-109. Duration -- Amendment by court action.**

221 (1) An environmental covenant is perpetual unless it is:

222 (a) (i) limited to a specific duration by its terms; or

223 (ii) terminated by the occurrence of a specific event;

224 (b) terminated by consent under Section 57-25-110;

225 (c) terminated under Subsection (2);

226 (d) terminated by foreclosure of an interest that has priority over the environmental
227 covenant; or

228 (e) terminated or modified in an eminent domain proceeding, but only if:

229 (i) the agency that signed the covenant is a party to the proceeding;

230 (ii) all persons identified in Subsections 57-25-110(1) and (2) are given notice of the
231 pendency of the proceeding; and

232 (iii) the court determines, after hearing, that the termination or modification will not
233 adversely affect human health or the environment.

234 (2) (a) If the agency that signed an environmental covenant has determined that the
235 intended benefits of the covenant can no longer be realized, a court, under the doctrine of
236 changed circumstances, in an action in which all persons identified in Subsections
237 57-25-110(1) and (2) have been given notice, may terminate the covenant or reduce its burden
238 on the real property subject to the covenant.

239 (b) The Department of Environmental Quality's determination under Subsection (2)(a)
240 or its failure to make a determination upon request is subject to review under Title 63, Chapter
241 46b, Administrative Procedures Act.

242 (c) A federal agency's determination under Subsection (2)(a) or its failure to make a
243 determination upon request is subject to review under applicable federal law.

244 (3) Except as otherwise provided in Subsections (1) and (2), an environmental
245 covenant may not be extinguished, limited, or impaired through issuance of a tax deed,
246 foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription,
247 abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

248 (4) An environmental covenant may not be extinguished, limited, or impaired by
249 application of Title 57, Chapter 9, Marketable Record Title.

250 Section 11. Section **57-25-110** is enacted to read:

251 **57-25-110. Amendment or termination by consent.**

252 (1) An environmental covenant may be amended or terminated by consent only if the
253 amendment or termination is signed by:

- 254 (a) the agency;
- 255 (b) unless waived by the agency, the current owner of the fee simple of the real
- 256 property subject to the covenant;
- 257 (c) each person that originally signed the covenant, unless:
- 258 (i) the person waived in a signed record the right to consent;
- 259 (ii) the executive director of the Department of Environmental Quality finds that the
- 260 person:
- 261 (A) no longer exists;
- 262 (B) is not legally competent to sign the amendment or termination; or
- 263 (C) cannot be located or identified with the exercise of reasonable diligence; or
- 264 (iii) a court finds that the person no longer exists or cannot be located or identified with
- 265 the exercise of reasonable diligence; and
- 266 (d) except as otherwise provided in Subsection (4)(b), the holder.
- 267 (2) If an interest in real property is subject to an environmental covenant, the interest is
- 268 not affected by an amendment of the covenant unless the current owner of the interest consents
- 269 to the amendment or has waived in a signed record the right to consent to amendments.
- 270 (3) Except for an assignment undertaken under a governmental reorganization,
- 271 assignment of an environmental covenant to a new holder is an amendment.
- 272 (4) Except as otherwise provided in an environmental covenant:
- 273 (a) a holder may not assign its interest without consent of the other parties; and
- 274 (b) a holder may be removed and replaced by agreement of the other parties specified
- 275 in Subsection (1).
- 276 (5) A court of competent jurisdiction may fill a vacancy in the position of holder.
- 277 (6) A person required by Subsection (1) to sign the amendment or termination may
- 278 authorize in writing another person to sign the amendment or termination on the person's
- 279 behalf.
- 280 Section 12. Section **57-25-111** is enacted to read:
- 281 **57-25-111. Enforcement of environmental covenant.**

282 (1) A civil action for injunctive or other equitable relief for violation of an
283 environmental covenant may be maintained by:
284 (a) a party to the covenant;
285 (b) the agency;
286 (c) any person to whom the covenant expressly grants power to enforce;
287 (d) a person whose interest in the real property or whose collateral or liability may be
288 affected by the alleged violation of the covenant; or
289 (e) a municipality or other unit of local government in which the real property subject
290 to the covenant is located.

291 (2) This chapter does not limit the regulatory authority of the agency under law other
292 than this chapter with respect to an environmental response project.

293 (3) A person is not responsible for or subject to liability for environmental remediation
294 solely because the person has the right to enforce an environmental covenant.

295 (4) In addition to Subsection (1), an agency may recover its costs for actions which, in
296 its discretion, it may take to enforce or protect the environmental covenant.

297 Section 13. Section **57-25-112** is enacted to read:

298 **57-25-112. Uniformity of application and construction.**

299 In applying and construing this chapter, consideration must be given to the need to
300 promote uniformity of the law with respect to its subject matter among jurisdictions that enact
301 it.

302 Section 14. Section **57-25-113** is enacted to read:

303 **57-25-113. Relation to electronic signatures in global and national commerce act.**

304 This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global
305 and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or
306 supersede Section 101 of that Act, 15 U.S.C. Section 7001(a), or authorize electronic delivery
307 of any of the notices described in Section 103 of that Act, 15 U.S.C. Section 7003(b).

308 Section 15. Section **57-25-114** is enacted to read:

309 **57-25-114. Severability.**

310 If any provision of this chapter or its application to any person or circumstance is held
311 invalid, the invalidity does not affect other provisions or applications of this chapter that can be
312 given effect without the invalid provision or application, and to this end the provisions of this
313 chapter are severable.