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Editorial: Trusting in Conservation

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Suppose you want to conserve your land, protecting it from development forever. You decide to donate it to a land trust or some other nonprofit organization that will act as steward of the property in accordance with your wishes. But what if you later learned that this conservation easement wasn't in fact binding, and the steward could seek to amend its terms, or even terminate it? That's not our idea of forever, and it's not our idea of trust.

And yet the Vermont Land Trust, the Nature Conservancy and other proponents of a so-called conservation bill (S.119) think that easement holders should be given more flexibility to change the terms and conditions of conservation agreements after those agreements have been signed. They argue that while land trusts in Vermont have legal authority to amend easements, the criteria for doing so aren't clear and that the state would benefit from a more transparent process by which to make changes as land use evolves. The bill proposes to have major amendments to conservation easements reviewed and approved by either the state's Environmental Court or by a special panel of the Vermont Natural Resources Board. The panels would have to conclude that any changes were consistent with conservation purposes and with the public interest.

Whatever the seemingly benign intent of this bill — passed by the state Senate last year and now before the House Judiciary Committee — its likely effect would be to scare off donors and thwart conservation efforts, as the Upper Valley Land Trust and a cadre of land-use experts at Vermont Law School point out. That's because the bill appears to dismiss the contractual nature of, well, the contract that is a conservation easement. Landowners donate land with the expectation that it will be conserved in perpetuity — that is, forever. Even the Vermont Land Trust website explains that easements dedicate “your property, forever, to

being a part of Vermont's rural, productive, and natural landscape." This bill would redefine "forever" to mean something like "until our conservation interests supersede yours and we decide what's best."

"Landowners are encouraged to make donations of easements on the promise that their land will be protected," said John Echeverria, a professor at Vermont Law School and a vocal critic of the bill. "If they don't have assurance that their land will be protected, I think landowners will be much more reluctant to give."

That's especially true in this context, because one provision of the bill would allow a land trust and future owner to modify an easement in a manner contrary to the aims of conservation, for example by permitting subdivision or development, provided that some other parcel in another location was protected. Substitution of a new easement for an existing one would allow land trusts to swap conserved land as they see fit. Perhaps advocates of the bill would like swapping rights in order to make boundary adjustments or to rationalize the current patchwork of conserved land. But by breaking promises to donors, land trusts would undermine their mission and make a mockery of the "trust" in their name.

There's another hitch, which is that the Internal Revenue Service gives tax breaks to those who conserve land in perpetuity. This bill, therefore, may not comply with federal requirements. Furthermore, favorable federal tax incentives are one reason that landowners donate in the first place; without them, conservation efforts might stall.

This bill goes too far. Most landowners are moved to donate because of their love of a particular piece of land, and while many share a desire to conserve Vermont's landscape, that goal doesn't trump a personal desire to protect specific property. If land trusts really need new tools to amend easements in light of changing circumstances — and it's not apparent to us that they do — then legislators should take a more cautious, conservative approach.

EDITOR'S NOTE

This editorial published in the *Valley News* on March 15 and the commentaries published in the *Perspectives* section on March 16 about conservation easements were written before the Vermont Land Trust modified its position on Senate Bill 119, which would give holders of land conservation easements more flexibility to change the terms of such agreements. On March 14, Vermont Land Trust President Gil Livingston issued a statement announcing that the organization, in response to reaction from its members, regarded the bill as too broad and would work to significantly reduce its scope.

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