

Conservation Easements are Permanent and Careful Public Review Will Allow Them to Evolve.

The February 10 commentary by three law school professors does not provide a complete picture of a new law that would create a transparent, rigorous process through which conservation easements could evolve over time:

- 1) The commentators fail to confront the reality that the characteristics and the use of conserved land in Vermont evolve over time. For example, the needs of family farms change as farming practices evolve, and Vermont needs a rigorous system to evaluate whether and how conservation easements should change too.
- 2) The legislation was drafted by a 16-member working group, established by the Legislature, which included representatives from the Attorney General, four State agencies and boards, land trusts of all sizes, Vermont Bar Association, Vermont Farm Bureau, sportsmen and recreation organizations, and owners of conserved land.
- 3) Vermont law currently permits easement amendments, but there are only vague standards and the amendment process is not accessible to the public. The new law would create an open, public process and would impose clear, rigorous standards.
- 4) The new law would permit an easement amendment only if approved by a special panel of the Vermont Natural Resources Board or, alternatively, by the Vermont Environmental Court. This ensures that the decision makers will have expertise in issues relating to the use and management of the land and waters of our state.
- 5) No significant amendment to an easement is allowed unless the panel first concludes, based on clear and convincing evidence, that the change would:
 - Be consistent with the public conservation interest,
 - Be consistent with the conservation purposes and intent expressed in the easement,
 - Comply with all applicable local, state and federal laws, and
 - Not result in any impermissible private financial gain.
- 6) The new law requires notice to and the right to participate by the Attorney General, the Agency of Natural Resources, the Agency of Agriculture, town officials, the regional planning commission, neighboring landowners and the person who originally conveyed the conservation easement. In addition, members of the public will have an opportunity to voice their support or opposition to major amendments without first having to establish legal “standing.”

In short, the new law creates a Vermont solution in the spirit of our town meeting form of democracy, that would honor the original objectives of conservation easements while creating a rigorous, accessible process to decide if and how easements should evolve over time. Vermonters who conserve their land

should have confidence that their conservation goals will be honored forever, but they will not be handcuffed by legal instruments fixed in one point in time. More information can be found on this topic at VLT's website www.vlt.org by clicking on "New Initiatives" at the top of the Home Page.

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