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March 25, 2015

William Lippert, Chair and the
House Judiciary Committee
115 State Street, Room 30
Montpelier, VT 05633-5401
and via email KWilson@leg.state.vt.us

Tony Klein, Chair and the
House Natural Resources Committee
via email crussell@leg.state.vt.us

Robert Hartwell, Chair and the
Senate Natural Resources Committee
via email kpickens@leg.state.vt.us

Dear William, together with other Chairs, Committee Members and Legislators:

As an attorney practicing law in Vermont and New Hampshire and having represented many families who have donated conservation easements, and as a member of my family who donated a conservation easement on a twenty-acre open meadow of the ridgeline in Wilmington, I want to relate my concern and objection to the present provisions of the proposed legislation: S.119. (Vermont Senate Bill 119.)

My concerns and objection are based on the following:

1. Families who donate conservation easements usually do so because they believe their real estate is unique, and they wish to protect the vision and values they have relating to their land for themselves and others forever.
2. Adopting S.119 in its present form would undermine the binding written contract, understanding and trust the donor's had when they granted the conservation easements.
3. There is a well established judicial method to address new and changed circumstances which most, if not all, states successfully follow.

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4. The proposed legislation probably does violate the IRS regulations which only allows the gift tax charitable deduction if the conservation easement is permanent and "in perpetuity."
5. The proposed legislation would substantially reduce the interest of prospective donors if they knew the conservation easement on their unique parcel could be modified in the future based on the interests and values of others or by a Board.

I suggest that before this legislation is adopted, if it is adopted - which I do not recommend - the following occur:

1. A definitive written opinion be obtained from the IRS specifically stating if S.119 is adopted, the gift tax charitable deduction would still be allowed for donors.
2. S.119, if adopted only apply to future conservation easements so that a new law would not violate and undermine the understanding and trust that prior generous donors had at the time they made their conservation easement gifts.

I also believe that the position that has been taken by the Vermont Land Trust in supporting S.119 understates the long-term adverse impact S.119 would have and does not accurately describe the very effective role our Vermont courts have taken in the past and can take in the future if modifications of an existing conservation easement are required.

On a personal note, my family donated a conservation easement in 2001 on a beautiful 20-acre field on White Road and Stowe Hill Road in Wilmington so that the land would always remain open for the magnificent view of Haystack Mountain and the ridgeline for Wilmington residents and others to enjoy. In the Vermont Land Trust Autumn Report, 2001 it stated:

Protecting the Character of Wilmington

"The Harvey family has enjoyed the rural, open westerly views from their hilltop property across the Deerfield Valley to Haystack Mountain and the ridgeline that forms the spine of the Green Mountains. Held in a trust, family members wanted to ensure the public would benefit forever from this land remaining open in agricultural or forest use without any further development.

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This twenty-acre property, visibly prominent from two town highways identified as scenic roads in the Wilmington Town Plan, is currently an open meadow. Several town officials expressed strong support for the conservation of this property as it makes a significant contribution to the rural and scenic character of Wilmington.”

We granted this easement because, as noted, - we “wanted to ensure the public would benefit forever.” Had S.119 then been in effect, or if said legislation is passed to apply retroactively to our conservation easement, that assurance could not have been made, or alternatively, would no longer be true.

As S.119 is considered, please focus these issues along with those more fully and accurately expressed by Professor John Echeverria of the Vermont Law School and Jeanie McIntyre of the Upper Valley Land Trust.

Respectfully Submitted,

/s/ Nicholas D. N. Harvey, Jr.

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