

MEMO TO: Rep. Bill Lippert, Chair, House Judiciary Committee
Aaron Adler, Legislative Council

CC: Sen. Bob Hartwell and Rep. Rebecca Ellis (sponsors of S.119 and H.185)
Members of the Easement Amendment Working Group

FROM: Darby Bradley for the Vermont Land Trust

SUBJECT: Proposed Revisions to Easement Amendment
Legislation (S.119, as passed by the Senate) – REVISED

DATE: January 8, 2014

We would like to suggest that the House Judiciary Committee incorporate the following changes into S.119, as passed by the Senate. I have circulated these proposals to the Easement Amendment Working Group, which developed S.119 and its companion bill H.185, as introduced last year. To date, I have not heard any objections from the members of the Working Group, and believe that these changes are consistent with the overall intent of their recommendations.

I would be happy to provide an explanation for each of these proposed revisions.

Section 13(b) – Change the Effective Date to **July 1, 2014**.

Section 12 – Change date of the Governor’s Initial Appointments to the Panel to **June 1, 2014**.

Emergency Rules – Add a new section stating: **“Notwithstanding title 3 VSA section 844(a), the panel may adopted emergency rules to carry out the provisions of this action, pending the adoption of rules of procedure and substantive rules in accordance with the provisions of title 3 VSA Chapter 25.”**

Section 6301a(7) – In the definition of “conservation easement”, change “timber harvesting rights” to **“timber and mining rights”**.

Section 6323(a)(3) – change the subsection to state: **“Each member or alternate of the Natural Resources Board not appointed to the Panel shall be an alternate to the Panel and.....”**

Section 6325(a)(8) – add **“or”** after the first clause ending “...into a single easement” and remove the third clause **“or adjusting the boundaries of areas excluded from the easement resulting from the merger,”**.

Section 6326(b)(1) – In the Holder’s Certification for Category #2 amendments, add a sentence at the end of this subsection stating: **“The holder may certify the amendment as consistent with the public conservation purpose, if the amendment serves a public non-conservation purpose, provided that it has not more than a de minimis negative impact on the conservation purposes of the existing easement.”**

Section 6328(a)(1)(H) – In the Panel’s Notice of Category #3 Amendment Requests, add a new subsection (H) stating: **“if applicable, a statement as to whether the easement was originally conveyed**

with any restrictions imposed on the holders by the donor and accepted by the holder in exchange for the easement.”

Section 6328(h)(2) – In the Panel’s application of restrictions imposed by the donor and accepted by the holder, substitute this existing language to state: **“In the event the conservation easement subject to the petition requires that an amendment comply with conditions that conflict with the criteria listed in this subsection, the Panel shall apply the more restrictive requirement.”**

Section 6329(c) – In the Court’s application of restrictions imposed by the donor and accepted by the holder, substitute the existing language to state: **“In the event the conservation easement subject to the petition requires that any amendment comply with conditions that conflict with the criteria applied by the Panel, the Division shall apply the more restrictive requirement.”**

Section 6328(g)(7) – Regarding information provided to the Panel for a Category #3 amendment, add a sentence stating: **“Where certain evidence, such as an appraisal or survey, is unnecessary to the Panel’s decision on whether the amendment is consistent with the public conservation interest, and where the production of that evidence in advance of an approval of an amendment request would place an undue financial burden on the petitioners, the Panel may issue a partial decision on the application, addressing factors for which the evidence is not necessary. If the application is partially approved, the applicant may produce the evidence for a complete decision.”**