Treatment of Conservation Easements re Doctrine of Merger in Vermont
Upper Valley Land Trust
April 24, 2015

Current Situation: Pursuant to the doctrine of merger, an easement is extinguished if the owner of the dominant estate obtains title to the servient estate. This is true for right-of-way easements, waterline easements etc. If the party who is benefited by the easement later acquires the underlying land, then they hold the "full bundle of rights" and there is no need for the easement to remain. When the doctrine of merger is applied to conservation easements, problems arise.

Conservation easements are intended to be permanent. Under existing law, a person who owns land subject to a conservation easement cannot be assured that the terms of the easement will remain in force if the land is sold or donated to the conservation group that holds the easement. This uncertainty has been problematic for land trusts that are engaged in farm and forestry transfers to support new working lands enterprises. It dampens the confidence of those considering bequests and donations of conserved land.

Proposal:
I support the provision in S.138 as passed by the Senate regarding conservation easements. This language would create a specific exemption from the merger doctrine.

> 10 V.S.A. § 6310 is added to read:
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> § 6310. EASEMENT HOLDER; FEE INTEREST; NONMERGER
> If a holder of a conservation easement is or becomes the owner in fee simple of property subject to the easement, the easement shall continue in effect and shall not be extinguished.

This text was included in last year's S.119 and was unanimously supported by the study committee prior to the introduction of S.119.