

# CONNECTICUT Land Conservation Council

Testimony in Opposition to Raised Senate Bill No. 144  
Judiciary Committee  
Submitted by Amy Blaymore Paterson, Esq., Executive Director  
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Co-Chairs Coleman, Tong, Ranking Members Kissel, Rebimbas and members of the Judiciary Committee:

Thank you for this opportunity to present testimony on behalf of the Connecticut Land Conservation Council (CLCC) in strong opposition to Raised Senate Bill No. 144, AAC Land That Is Subject to a Conservation Restriction Held by a Nonprofit Land-Holding Organization.

As the state's umbrella organization for the land conservation community, the Connecticut Land Conservation Council (CLCC) works with the state's land trusts (now numbering 137+), state conservation and advocacy organizations, government entities and landowners to increase the pace, quality, scale and permanency of land conservation in Connecticut while assuring the perpetual, high quality stewardship of conserved lands in the state.

CLCC strongly opposes Raised Bill No. 144 because it would rollback protections to lands conserved by a conservation easement and enable someone to claim title to such conserved lands by adverse possession.

#### Connecticut's Land Trust Community

Land trusts are private non-profit organizations whose central mission is to actively conserve land, by taking title to the land or by holding a conservation restriction in the land. What distinguishes a land trust from other non-profit charities is that they were created for the very purpose of upholding their mission *in perpetuity*.

There are 137 land trusts in Connecticut, the third most in the country. Together they have conserved over 100,000 acres, drawing upon the work of close to 3,600 active volunteers and the contributions of over 37,000 members and financial supporters. As a signal of the land trust community's commitment to excellence, there are now 14 accredited land trusts in Connecticut.

#### Conservation Easements and Land Protection

A conservation easement is a voluntary legal agreement between a landowner and a land trust (or government entity) that permanently restricts certain uses of land in order to protect the conservation values of the land. In 1971, the Connecticut General Assembly passed Public Act 173 (C.G.S. Sections 47-42a through 47-42c), authorizing the creation and enforcement of conservation restrictions, including conservation easements.

Conservation restrictions are an essential and effective tool to ensuring that Connecticut's special places are conserved forever. Approximately 105,655 acres of land in Connecticut are protected by an estimated 2,207 conservation easements, the majority of which (61%) are held by non-profit conservation organizations. (McLaughlin, "Conservation Easements in the United States, (Low) Estimates as of April 2014")

Conservation restrictions enable landowners to achieve their conservation goals, while still retaining title to the land. The organization holding the easement shares the responsibility to make sure the terms of the easement are upheld. For land trusts, the job of monitoring for violations of the easements, encroachments and other activity prohibited under the terms of the easement or that is illegal, is one that is taken seriously and central to the perpetual nature of their mission.



### Adverse Possession Statute

Adverse possession (sometimes referred to as “squatter’s rights”) is a principle of real estate law that allows a person who possesses someone else’s land for an extended period of time (15 years) to claim legal title to that land. In 1999, C.G.S. Section 47-27 was amended (Public Act [PA] No. 99-64) to prohibit the taking of title to land “belonging to” land trusts by adverse possession (C.G.S. Section 47-27(b)). In passing PA 99-64, the General Assembly recognized the unique nature of land trust property, including its purpose of protecting lands valuable for conservation, recreation and other public and charitable purposes, and the difficulty land trusts have in protecting such lands from trespass and other encroachments. The General Assembly also recognized the unique role that land trusts – as public charities – have in protecting land for the public benefit *in perpetuity*.

In 2015, CLCC sought clarification of the statute to ensure the terms of PA 99-64 extended not only to lands owned by land trusts but also those protected by conservation restrictions held by land trusts. The amendment, approved by the General Assembly and signed into law by Governor Malloy (Senate Bill 1105, Section 30(b) (PA 15-211), clarified that all lands belonging to land trusts, whether held in fee or through a grant of a conservation easement, are protected from a claim of adverse possession.

Raised Bill No.144 deletes that clarification, thereby rolling back protections from adverse possession accorded by PA 99-64, as clarified by the General Assembly last session through PA 15-211, to protect all lands belonging to land trusts, whether held in fee or through a grant of a conservation restriction.

### CLCC strongly opposes Raised Bill No. 144 which:

- Weakens protections on conserved lands by allowing title to all or a portion of the property subject to the conservation restriction to pass by adverse possession to an owner who likely has neither a connection to the land trust nor an awareness of the purposes, terms and conditions, or even the existence, of the conservation restriction;
- Increases the likelihood of encroachments and other violations of the terms of the conservation restriction, and rewards those who intentionally commit such illegal acts with the intention of expropriating land or extorting financial settlements for contrived disputes;
- Increases the financial burden on land trusts which have an obligation under the easement to enforce its terms and defend against violations;
- Increases the financial burden on the landowners themselves, who also may not be aware of a trespass or other encroachment on areas of their land which may be subject to a claim of adverse possession; and
- Is contrary to the intent of C.G.S. Section 52-560a, “*Damages for encroachment on state, municipal or nonprofit land conservation organization open space land. Attorney General enforcement. Civil action*” (2006), which allows for punitive damages for encroachments on conservation lands, including those protected by conservation easements.

We are at a pivotal time in our land protection efforts in Connecticut. Raised Bill No.144 will not only serve to further set the state back in its already challenged efforts to meet its land conservation goals, but also runs contrary to the intent behind legislative efforts to provide enhanced protections to public conservation, recreation and agricultural lands.

On behalf of the Connecticut Land Conservation Council, we respectfully request that the Committee support the important conservation work of Connecticut’s land trusts by voting against Raised Bill No. 144.