

## Lake Champlain Phosphorus Initiative

### Meeting of the Agricultural Innovations Group 1/7/14

This summary reflects a range of views expressed on the issues as discussed during meetings of the Agricultural Innovations Group (AgInG), they do not reflect the formal or public position of any one group of people, organization or coalition. All errors and omissions are the sole responsibility of EMC/CBI.

Attendees: 14

These notes and the presentations that were given will be posted on the Environmental Mediation Center's website: <http://www.emcenter.org/lake-champlain-phosphorus-pollution-initiative/>

#### I. *Introductions and Background Information on Vermont Land Trust (VLT) and Vermont Housing and Conservation Board (VHCB)*

The AgInG requested more background information on the conservation work being done by the Vermont Land Trust and the Vermont Housing and Conservation Board and wanted to explore incorporation and promotion of water quality initiatives in the context of the conservation work done by these organizations.

Siobhan Smith and Tyler Miller from VLT were present as was Nancy Everhart from VHCB. Both organizations have mission goals that include supporting sustainable working landscapes in Vermont. Each organization reports that they work with approximately 25 farms each year. When a landowner sells a conservation easement, usually the land owner is selling the future development rights for the land and retaining a lesser interest in the land that allows the owner to continue agrarian use of the land. The retained interest by the land owner is of lesser value than an unencumbered parcel without such restrictions placed on it.

The state of Vermont's Current Use Program is a separate program that is not administered by either VHCB or VLT. Under the Current Use Program, real estate taxes are reduced in exchange for a landowner who owns 25 or more acres pledging not to develop the land. Land enrolled in Current Use for forestry must have a forestry plan approved by the county forester and the landowner must be in compliance with the plan each year to remain in the program, for agricultural lands there is no similar plan requirement for continued enrollment. Often, land with conservation easements, will also be land that is enrolled in Current Use, but not always. While conservation is important in both spheres, the sale of a

conservation easement and development rights is not the same thing as being enrolled in the Current Use Program.

A landowner in Current Use retains all rights to do as he will with the land. In the event he wants to develop all or a part of the land, he can un-enroll from Current Use, pay a penalty as mandated by statutory law, and develop the land or sell the land to another who can develop the land because the land owner has retained the right to do so. When a landowner sells the development rights and a conservation easement to VLT and/or VHCB, the landowner has sold and permanently given up his or her rights to develop the land and after the land is sold to another, the purchaser is also bound by those legal restrictions. In addition, when a landowner sells these rights, usually the entity or entities purchasing the conservation easements and development rights own a right of first refusal on the land so before it can be sold, these organizations have the right to purchase the land under the same terms as a third party.

Both organizations report that planning and conserving lands is a dynamic process and they frequently review and revisit their own goals and the criteria they use to evaluate the conservation value of land being offered to them. As conservation practices including water quality initiatives, have evolved over time, so have the easements being sought by these organizations.

There is continued strong interest from land owners in conservation of their land, there is usually more interest in selling a conservation easement to either VLT or VHCB than there is funding to meet the demand.

VHCB receives funding, in part, from governmental sources (primarily the USDA). VLT uses a combination of governmental and private funding. Many conservation easements are a joint endeavor between VLT and VHCB but not all such agreements are jointly pursued. VHCB must pay a landowner the difference between the appraised value of the land with no conservation easements in place and the value of the land with development restrictions and conservation easements in place. Thus by law, the appraisal mechanism is the only mechanism available for VHCB to value the bundle of rights being conveyed. VLT has more funding flexibility in some cases.

AgInG members asked about the evaluation process for determining whether to provide a conservation easement on a given farm or not. The process is a combination of site visit and “desktop” review of the land in which there is an assessment of the natural resource values of a given parcel using ecological and

geographic criteria. When the land in question is a working farm, VHCB does a compliance check with the Agency of Agriculture to ensure that there are no open violations of the AAPs or ongoing enforcement action on the land. In terms of supporting water quality initiatives independent of this inquiry, VLT states that it often will incorporate additional water quality measures into the conservation easements on the land. For example, buffers incorporated into easements are usually wider than the AAPs would require. Often, farmers will make infrastructure improvements that benefit water quality initiatives as part of the conservation process and will enroll in programs such as CREP or EQIP if they have not already done so.

VLT reports that they are involved in projects that do specifically address water quality initiatives. For example, in their Gateway to Bristol, conserving a mile of frontage on Baldwin Creek with a vegetative buffer not only provides species habitat protection but also protects against erosion during flood events.

VLT and VHCB are not enforcement or compliance oriented entities. The DEC and the Agency are the entities that are charged with these tasks and therefore they must continue to fulfill their rolls in this regard. Site visits are performed on land under review by VLT and VHCB for the program, but they are not seeking to replace the Agency of Agriculture and DEC in their work. The same regulations apply to a farm regardless of whether the land is conserved or not. VLT and VHCB have a goal of keeping land productive and in agriculture and doing so requires that landowners with conservation easements are able to be competitive and productive in comparison with their non-conserved competitors. Improvements on the farm that enhance conservation goals and productivity become part of the agreement between VLT/VHCB and the landowner. VLT/VHCB are very interested in ensuring the landowners they work with are in compliance and following the AAPs. The involvement of VLT/VHCB allows them to bring education and technical assistance to the farms they are conserving, but they are not equipped or designed to require or demand higher compliance standards over and above existing regulations for water quality measures.

The AgInG participants wondered whether the fact that such landowners were receiving public funds did not also confer upon either VLT or VHCB or the landowner an additional onus to ensure compliance with the AAPs and noted that there was a real difference between a landowner with no open violations or enforcement actions and one who was affirmatively in compliance with the AAPs. The current inspection regime has inspections of medium and large dairy farms on a regular basis but no other routine inspections for other farms and any

inspections of smaller operations comes from a complaint driven system. Thus, it was seen as more likely than not that a farm would have a clean report from the Agency whether actually in compliance with the AAPs or not. Given the fact that the VLT and VHCB is not an enforcement or regulatory agency, the group felt there was not a robust mechanism to check for water quality compliance.

The absence of ongoing regulatory action is seen by AgInG members as less reassuring than an actual clean inspection report. AgInG members wondered if entities like VHCB or VLT could require the farms receiving state and/or federal funding to produce a certification of compliance with the AAPs based on a recent (between one and three years perhaps) inspection by DEC or the Agency of Agriculture. The group discussed whether requiring inspections for AAP compliance would dampen enthusiasm to participate or place conservation farms at a competitive disadvantage because they would be under greater scrutiny than other farms. However, the ongoing strong interest in selling conservation easements to the VLT and VHCB despite the fact that there were already several steps required by these organizations prior to closing on conservation easement sales coupled with the fact that the entities were getting governmental funding resulted in the feeling that farms motivated to sell conservation easements would be similarly motivated to ensure they were meeting the AAPs and able to arrange for such a certification of compliance prior to a closing.

The group also considered whether VLT and VHCB would be open to looking at additional water quality measures that were not yet required under the AAPs (although the AWG made several suggestions to enhance and strengthen the water quality measures by revising the AAPs) and incorporating those measures into their conservation easements. There was a discussion regarding whether the easement language would be changed or whether the changes would be put into the agreement between the organization and the land owner instead. It was seen as preferable to keep conservation easement language broad and flexible to adapt to changes in technology, programs and regulations rather than narrowly tailor language that eliminated flexibility and the opportunity for future change. Such requirements might be that farmers on conservation lands agree wider buffers, reducing erosion to T and excluding livestock from waterways of concern – all of which are changes to the AAPs recommended by the AWG. While the attendees at the AgInG could not speak for their organizations, they were open to continuing the conversation and looking for opportunities to strengthen their water quality initiatives.

II. *Review of Draft Recommendations*

Group reviewed draft recommendations that had been previously circulated and a revised draft will be circulated again and the AgInG will continue to work on it until it is in final form and approved by the group.

Next meeting will be 1-15-14. The group would like to be able to present its work to the legislature while it is still in session and will discuss ways to do this at the next meeting.