

H.289 - Establishment of an Easement Registry for Conservation Rights and Interests
Summary Prepared by Upper Valley Land Trust
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The Need for an Easement Registry

Every conservation easement represents a permanent public interest in real estate. The land involved becomes a complex mix of private and public interests. They are a very efficient tool to protect many different public interests in land, whether by keeping farmland economically viable, protecting scenic views or open space, providing public trails, or protecting important habitat. They are likely to continue to be used for years to come as an important compliment to zoning and other land use planning tools.

Good public policy and transparency should dictate that the state have a viable, permanent means to easily account for these public interests. By doing so, the first generation practitioners, who have taken easements from their infancy to a well-understood, effective conservation tool, will leave a legacy of an organized system to future generations.

Currently there is no official record as to how many easements there are in Vermont, nor how many acres are protected for the public benefit. There is voluntary centralized mapping of easements by land trusts and public agencies in partnership with Vermont Center for Geographic Information (VCGI). Someone skilled in GIS could derive a count from the data layer, however, it is known to be incomplete, particularly when it comes to identifying town-held easements.

The permanency given to conservation easements by statutes is really only as good as the ongoing monitoring of the easements. At the heart of permanency is the registry of deeds, and yet Vermont's is highly decentralized and only partially digitally searchable. Statute doesn't even require easements be monitored. It is a system where monitoring is widely spread among many entities, done on a voluntary basis, with no public means to track whether it actually is happening for all public interests. In actuality monitoring is done well right now, but it would not be the system one would design to ensure stability over perpetuity.

A registry would ensure that the monitoring of the public interests represented by easements was required, and it would create a means to determine whether it is actually being done by all easement holders. Registries can be easy to use and cost effective. Experience in Maine has shown that development and maintenance of a registry has been relatively simple and not a great burden.

10 V.S.A. § 824 – Conservation Right and Interest Registry

Definitions

- “Perpetual trail easement” means a conservation right and interest in a trail that endures forever and under which the public may walk and otherwise use the trail for recreational, educational, or interpretive purposes.
 - Trail easements are included in H.289, because they are important public benefits that may not all be written to fall under the easement enabling statute, and to make it clear that they are also public rights that need regular monitoring so they are not inadvertently lost.
- “Primary qualified holder” means a holder, among a group of holders, that has been delegated monitoring responsibilities

- Qualified holders include all land trusts or other organizations with easement holdings organized as 501(c)3 charities, and all governmental units.

Agency of Natural Resources

The Agency of Natural Resources shall establish and maintain a registry to create a permanent electronic record of existing and future conservation rights and interests, including perpetual trail easements.

- Because Vermont does not have a centralized land records system the easement registry needs to be maintained by a stable State entity. Because the ANR is a conservation land holding entity it is likely to be highly stable over 100s of years, and because it also holds easements it understands the registry oversight. Tracking of current use parcels is also similar in many ways to the registry. In other states the registry is housed in a similar agency.

Perpetual Easements

H.289 only affects those trails that are perpetual, or permanent, and includes any type of trail use. Those easements that are not perpetually protected by a recorded document, or that provide access for a term of ownership or a term of years, would not be part of the registry.

Minimizing Administrative Burden and Duplication

This language is borrowed from Maine's easement registry statutes. It is designed to force the registry to connect with the existing collection of much of the same data by forms filed with the state when an easement deed is recorded. Since the recording of deeds is a permanent feature of our land tenure system, this seems to be a stable and timely connection for collecting data for the registry.

Multiple Holders

If there are multiple holders to a conservation right and interest, the primary qualified holder shall bear the responsibility of establishing an online account and registering the right and interest.

- A fundamental goal of the registry is to bring clear systematic tracking of easements, so there must be only one entity responsible for tracking each easement in the registry.
- Because so many easements in Vermont involve VHCB funding, there are clearly defined relationships as to what entity is the primary holder.
 - Lacking that VHCB connection, the primary holder is the entity which has the monitoring responsibilities, and if that is not clearly defined (some federal easements are monitored by both a land trust and a federal agency), then the holders must agree as to which will be considered the primary holder for registry purposes.

Registry Items

H.289 sets forth 13 items that must be included in the Registry.

- Items 1-7, identifying information, are already collected by the state forms filed in a real estate closing involving an easement.
- Item 8, primary purpose, would be a check box type of entry from a relatively short selection types (such as farm, working forest, natural area, specialized habitat, riparian buffer)
- Items 9-10, public benefits, will be a simple check-box form, identifying whether the easement provides protection for rare species or natural communities, provides public access, or involved an acquisition by public money (federal, state or local).
- Item 11 represents the heart of the registry, specifically tracking that there is regular monitoring of the public interest over time so that it is not lost to encroachment, confusion, uninformed new owners or other means.
- Item 12 provides information regarding amendments.

- Item 13 is the mapping information of the registry. This only requires the mapping of land area. It is designed to keep the land use planning mapping tools up to date, not be a source the public can use to locate recreation land. The data collected here is exactly what is collected now.

Fee

There is an annual registration fee of \$30 (similar to Maine). This is to cover the Agency's long-term operating costs of maintaining the database

Updates

Once an easement is in the registry, the only updates would be the annual entry of monitoring date and type of monitoring done (personal visit, aerial overflight, maybe drones in the future, etc). The February date is used to make it a calendar year cycle.

10 V.S.A. § 825 Monitoring

Under current law, there is no requirement to actually track and monitor these partial interests in land.

- Under H.289, all holders of permanent trail easements and all the qualified easement holders must monitor the property subject to the easements at least every two years.
 - 2 years was chosen because it would be too burdensome to do it annually, and too much can change in 3 years.
- The qualified holder must create some contemporaneous document that clearly shows there were no problems on the land, or in some cases it will provide early warning of a potential problem.
- The language gives the property owner the right to request a copy of the report so they know the history of the qualified entity's monitoring if they want. This is important as the property changes hands because the new property owner often has little connection to the original documents. Title searches document the easement itself, but the maps and other materials in most monitoring reports help in understanding the process.

It is important to note that the privacy of the landowner is being protected by the proposed legislation. Neither the registry itself, nor the requirement to monitor, is changing the status quo concerning privacy.

10 V.S.A. § 826 - Failures

This section defines the penalty and gives the Agency the power to enforce the statute. This is different than Maine's statute, which does not have any penalties. Conversations with Maine indicated that implementation had been slow because there were no penalties and the recommendation was to include them.

Effective Dates

This statute would take effect the next fiscal year, but any penalties would not take effect for 2 years. Towns may need time to create new processes.