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II. A brief history of the Ancient Roads issue

1. Where did the issue of ancient roads come from?
 - a. Roads have been legally established in Vermont for centuries, spanning back to the time when America was still a British colony.
 - b. Some roads, for example, were established to serve farms or other residences that, for a number of reasons, have faded back into the landscape. What was left behind was a network of roads that existed somewhere on paper and somewhat on the ground, but not clearly in either place.
 - c. Because of that uncertainty, questions over whether or not certain roads existed and where they were if they did exist became contentious in a number of towns. Chittenden, Barnard, and Bethel are three towns that, for many, are most closely associated with the issue.
 - d. In some towns, these disputes over whether or not a road ever existed on a resident's property resulted in protracted legal battles between the towns and property owners.
2. What led to the Legislature's intervention?
 - a. Disputes over the legal status of these so-called ancient roads caused a problem for the real estate industry (realtors, title insurers and attorneys, banks, and so on) in Vermont. Those groups sought a legislative remedy

for their problem. Title searches in Vermont must only look 40 years into the past, and in most cases these ancient roads would have been missed. In a couple of cases, poor title work was one of the causes for the disagreements over whether a road existed on a property (and where).

b. Initial proposals for a legislative remedy, from a municipal perspective, were less than equitable to towns, recreational users of these public rights-of-way, and the residents of Vermont generally. For example, one bill introduced would have eliminated large sets of roads – retroactively and without any public process – if they met a standard proposed in one bill introduced at the behest of the real estate industry. Thankfully, that bill died rather quickly.

c. The wrangling for an equitable legislative solution began in earnest at that time, and the resulting action taken (Act 178), is the result of as many as three years of discussion.

3. What was the outcome of that legislative intervention?

a. As was alluded to above, the Legislature passed Act 178 in 2006. In doing so, an attempt was made to establish a both the process and timeline through which the debate over ancient roads could be brought to a close.

b. The act, while making its way through the Legislature, was examined by six different committees. Those committees heard from countless interested parties and private citizens. The debate was lengthy and fairly inclusive.

c. Act 178 contains changes to general highway law, as well as the researching and mapping tasks that are of more immediate concern to local officials.

III. Act 178 – 2006 through 2010

1. Researching and Mapping

a. Act 178 establishes a new category of town highway: the unidentified corridor. **Unidentified corridors do not officially come into existence until July 1, 2010.** To become an unidentified corridor, a highway must meet **ALL** four of the following criteria:

- i. they must have been legally established;
- ii. they do not appear on a town highway map as of July 1, 2010;
- iii. are not “otherwise clearly observable by physical evidence of their use as a highway or trail;
- iv. are not legal trails.

b. Once unidentified corridors come into existence, the municipality has no responsibility for maintenance. Any usage of the corridor is limited to the uses of the decade preceding January 1, 2006. Who determines how a town highway had been used between 1996 and 2006 is not addressed in Act 178.

c. Unidentified corridors do not create subdivisions with respect to zoning, tax, and/or septic issues.

d. This is very important to remember: **Until July 1, 2010, all town highways are and remain whatever classification of highway they have always been. If a road is a Class 4 road, it will remain so unless it meets ALL four of the criteria (outlined in subsection a above) to become an unidentified corridor in 2010.**

e. To keep a town highway from becoming an unidentified corridor, a town must simply add the highway to its town highway map and sworn certificate. The sworn certificate is filed annually with the Agency of Transportation (and in the town clerk's office) on or before February 10th.

f. To add a highway that may become an unidentified corridor to your town highway map and sworn certificate, Act 178 requires a town to provide the Agency of Transportation with the following:

- i. a description of the highway or trail;
- ii. a copy of any surveys (if they exist and can be located) of the highway or trail;
- iii. minutes from the meeting where the Selectboard decided to make the addition;
- iv. a current town highway map with the additions (or deletions) sketched on it.

g. If a municipality is adding a town highway or trail that may otherwise become an unidentified corridor to its sworn certificate and town highway map, it must provide affected landowners (abutters or those whose land the highway or trail passes through) with written notice 45 days before making the decision on whether or not to add it. The Selectboard must also provide an opportunity to be heard at a duly warned meeting.

h. The legislative body can perform an inspection to see if a town highway is "clearly observable" or not, but it must provide the property owner(s) with at least 14 days written notice.

i. The period between 2006 and 2010 will be the busiest for cities and towns, since it requires that much of the researching and mapping work be conducted within this period. That researching and mapping work will be

used by municipalities as they determine which potentially forgotten highways to keep – or conversely, which ones they would like to see disappear.

j. Act 178 also includes a “mass discontinuance” procedure, which is only available to towns until July 1, 2010. The mass discontinuance procedure allows a town to discontinue all of the legally established town highways it does not want to keep in one fell swoop. However, a modification made by Act 158 of 2008 limits the use of the mass discontinuance procedure to only those highways, “not otherwise clearly observable by physical evidence of their use as a highway or trail.” That change rather drastically restricts the use of a tool designed to introduce certainty with regards to which roads exist – and where – before the 2015 expiration date.

k. To utilize the mass discontinuance procedure, a town must hold a public information hearing at least 10 days before taking final action on the proposed discontinuances. Towns are required to post warnings in two public places and the town clerk’s office at least 30 days before the hearing. The notices must include a town highway map that shows all of the town’s highways most recently filed with the Agency of Transportation.

l. If the discontinuances are approved, the land for the right-of-way is given to the affected landowner. If there are two land owners, the right-of-way is split and each land owner is given half.

m. As established by Act 178, the mass discontinuance procedure also allows for the decision of the Selectboard to be challenged by residents, who can file a petition seeking to overturn a decision about highways or trails included (or even those not included).

n. A town may discontinue a highway or just a portion of it and make it a trail.

o. Any highway or trail that is used by a land owner as a sole access to their property or a portion of that property will be retained as a private right-of-way should that highway or trail be discontinued.

IV. The Town Highway Map – What AOT Will Need

1. Act 178 utilizes the sworn certificate of highway mileage and the town highway map subsequently produced to help provide clarity in the discussion over what highways and legal trails are part of a town’s network. This is an expansion of the purpose of the maps and certificates, whose sole function until the passage of Act 178 was to be used in the determination of state highway aid allocated to municipalities.

a. 19 V.S.A. § 305 (b) states: “Annually, on or before February 10, the selectboard shall file with the town clerk a statement of the description and measurements of all class 1, 2, 3, and 4 town highways, and trails then in existence, including any special designation such as a throughway or scenic highway. When class 1, 2, 3, or 4 town highways, trails, or unidentified corridors are accepted, discontinued, or reclassified, a copy of the proceedings shall be filed in the town clerk’s office and a copy shall be forwarded to the agency.”

b. The filing requirements established in Act 178 for the addition of what might become an unidentified corridor were covered in section III (f) of this document. There are four items required by the new law.

c. Any CADD, GPS, or GIS data layers that exist are welcome and accepted by the Agency of Transportation.

d. The Legislature requires the Agency’s mapping division to report back to them annually. The report is designed to inform lawmakers of the “effectiveness” of Act 178, any recommendations for “additional measures” that may be needed to meet the Act’s goals, identify which towns have done what with regards to mapping, and which towns have utilized the mass discontinuance procedures. AOT is actively seeking feedback from local officials on these topics.

e. Included in this packet is a helpful handout prepared by the Agency of Transportation that includes more detail and contact information.

V. Act 178 – 2010 through 2015

1. Reclaiming an unidentified corridor.

a. In the period between July 1, 2010 and July 1, 2015, a town has an opportunity to add any unidentified corridors back into its highway network as either highways or trails. If they do not, then on July 1, 2015, unidentified corridors – **and only unidentified corridors** – are automatically discontinued.

b. To reclassify an unidentified corridor as either a highway or trail, a town must follow the process established for laying out or altering highways established in Title 19, Chapter 7 of Vermont law.

c. That process may include compensating landowners for the right-of-way in question, and in essence, means that a town could end up paying for the same road twice.

VI. Other key provisions of Act 178

1. There are a number of other items included in Act 178 that are tangential to the ancient roads debate, but no less important for the cities and towns of Vermont.

a. Act 178 contains a request by the Legislature for ALL town highways and trails to appear on the town highway maps by July 1, 2015. The act specifies no consequence for failing to meet that deadline, but it represents a major shift in the reporting requirements for towns. Previously, there has been no mandate to map Class 4 highways or trails since they were not used in the calculations to determine state highway aid.

b. The act also codifies any good faith attempt by a Selectboard to discontinue a road. This is for those circumstances where a town tried to follow the road discontinuance procedure set forth in Title 19, but failed for some reason to meet all of the technical requirements. If the highway in question has not been kept passable for the past 30 years (or more) and an attempt was made to discontinue that highway – it is now considered discontinued.

VII. Helpful (hopefully) hints on how and where to start

1. Towns will use a variety of methods and resources as they look to tackle the issue.

a. A good place to start is by setting goals: is your community one that wants to retain every road ever established? Do you want to get rid of any roads that you currently do not know are out there? Does your community fall somewhere in between? Is there a region of town in which you may look for potential ancient roads/unidentified corridors due to future development considerations? Are you looking to bolster your network of recreational facilities? A broad discussion of your community's goals can go a long way in determining how you begin this task.

b. Some have advocated a systematic approach, which includes the researching of every town highway ever laid out, compiling that information, and then making the determination as to whether or not some should/will be kept or should not/will not.

2. Volunteer help.

a. With limited financial resources available and a constricted time frame, many municipalities will look to volunteers to help perform the needed research tasks – both in the field and in the town vault (sifting through the stacks of town records).

b. Consider putting together an ancient roads committee, or assign the task to a conservation or planning commission.

c. Look to involve citizens who may have experience in the real estate industry, such as retired surveyors.

3. Helpful Resources.

a. A series of “atlases” and maps were produced in the mid to late 1800s. Among them are the Beers Atlas, McClellan, Doten, and Wallings maps, and some of them are even available on-line. These documents provide a snapshot of what roads may have existed then, and approximately where they were.

b. The Agency of Transportation began creating the town highway maps in 1931, and have most, if not all, of the maps dating back to that time.

c. Tax maps and aerial photography may provide some initial evidence as to where a road may have traveled.

d. The memories of “37th generation Vermonters.” Paul Hannan, a surveyor by trade and also a selectman in Calais, coined the phrase to refer to older citizens whose knowledge of where many of these roads are or were could prove very useful throughout the research process.