

Adding Ancient Roads to the General Highway Map
Understanding How Act 178 of 2006 and Parts of V.S.A. Title 19 Work
An Ancient Road Practicum

1) Act 178 Overview and History

Act 178 of 2006 added the requirement for municipalities to account for class 4 town highways and legal trails with the following amendment to 19 V.S.A. § 305(c): “All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015.”

The Vermont Agency of Transportation (VTrans) Mapping Unit produces the General Highway Maps, also referred to as the Town Highway Maps, documenting the classification, location, and mileage of highways and legal trails.

Annually, the VTrans Mapping Unit supplies municipalities with a Certificate of Highway Mileage showing the total mileage for class 1, 2, 3, 4 town highways and legal trails on record from the previous year. The Certificate of Highway Mileage is the avenue for a legislative body to make changes to the General Highway Map by documenting any additions, alterations, reclassifications, or discontinuances that have occurred over the course of the year. Annually, on or before February 10th, the municipality files a copy of the Certificate in the clerk’s office and forwards the Certificate of Highway Mileage to VTrans for processing. This process is defined in 19 V.S.A. § 305(b) as follows:

Annually, on or before February 10, the selectboard shall file with the town clerk a sworn 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.

The Mileage Certificate process has been used to account for changes to mileage and the update of the General Highway Maps for many years. However, because towns do not receive any state aid for class 4 town highways or for legal trails, the General Highway Maps for many towns did not include all the class 4 town highways and legal trails claimed by the towns. Act 178 of 2006 added the requirement to map all class 4 town highways and legal trails by July 1, 2015. These categories have been added to the Certificate of Highway Mileage to account for the mileage and changes.

Class 4 town highways are all legally established town highways that are not class 1, 2, or 3. This is essentially the default category. If a highway was legally established through a formal laying out process or “dedication and acceptance,” not discontinued and has not been included in the class 1, 2 or 3 town highway mileages on the Certificate of Highway Mileage, then the town highway, by default, is classified as class 4.

The term “legal trail” is used to describe a trail that is defined by the following statute and is different from a foot trail or other trail that has not been legally established. According to 19 V.S.A. § 301(8):

“Trail” means a public right-of-way which is not a highway and which:

(A) previously was a designated town highway having the same width as the designated town highway, or a lesser width if so designated; or

(B) a new public right-of-way laid out as a trail by the selectmen for the purpose of providing access to abutting properties or for recreational use. Nothing in this section shall be deemed to independently authorize the condemnation of land for recreational purposes or to affect the authority of selectmen to reasonably regulate the uses of recreational trails. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1991, No. 47, § 1.)

As a result of Act 178 of 2006, and subsequent amendments to the statute in Act 158 of 2008, municipalities have a requirement to map all class 1, 2, 3, and 4 town highways and legal trails for which the town wishes to retain public access rights. This process includes accounting for highways that have been legally established over the 250 plus year history of Vermont's towns, cities, villages, gores, and grant, starting with the reign of King George II, to the Republic of Vermont, and finally to the State of Vermont.

2) "Unidentified Corridors"

Act 178 created a new category of highway, "unidentified corridor" which, according to statute will be created on July 1, 2010. This category is defined in 19 V.S.A. § 305(6) as follows:

Unidentified corridors.

(A) Unidentified corridors are town highways that:

(i) have been laid out as highways by proper authority through the process provided by law at the time they were created or by dedication and acceptance; and

(ii) do not, as of July 1, 2010, appear on the town highway map prepared pursuant to section 305 of this title; and

(iii) are not otherwise clearly observable by physical evidence of their use as a highway or trail; and

(iv) are not legal trails.

(B) If the conditions in subdivisions (A)(i) and (A)(ii) of this subdivision (6) are met, the legislative body of a municipality or its appointee may, after providing 14 days' advance written notice to the owners of the land upon which the unidentified corridor is located, enter private property to determine whether clearly observable physical evidence exists.

(C) Unidentified corridors shall be open to use by the public, but only in the same manner as they were used during the 10 years prior to January 1, 2006.

(D) A municipality shall not be responsible for maintenance of an unidentified corridor.

(E) Neither the municipality nor any person owning a legal interest in land through which an unidentified corridor may pass or abut shall have a duty of care to persons using the corridor.

(F) An unidentified corridor shall not be deemed to be a subdivision with respect to zoning, tax, and septic issues.

(G) After July 1, 2015, an unidentified corridor shall be discontinued, and the right-of-way shall belong to the owner of the adjoining land. If the right-of-way is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side.

(H) An unidentified corridor shall not create a subdivision with respect to zoning, tax, and septic issues. If the unidentified corridor is reclassified as a class 1, 2, 3, or 4 highway or as a trail, the then- highway or trail shall be recognized as any other highway or trail for the purpose of creating a subdivision with respect to zoning, tax, and septic issues.

(7) Reclassification of unidentified corridors. On or by July 1, 2015 and pursuant to subchapter 2 of chapter 7 of this title, an unidentified corridor may be reclassified as a class 1, 2, 3, or 4 highway or as a trail.

The category of “unidentified corridor” does not come into existence until July 1, 2010, and the highways remain part of the class 4 town highways until that date. After July 1, 2010, highways meeting the criteria for “unidentified corridor” become this separate category. There is an additional process that is required for “unidentified corridors” or any highway that will become an “unidentified corridors”.

If a highway meets the criteria for an “unidentified corridor”, the municipality is required to follow an additional procedure to add this mileage to the Mileage Certificate and the highway added to the General Highway Map. The initial requirements are defined in 19 V.S.A. § 305(d).

At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement required under subsection (b) of this section, the legislative body of the municipality shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning lands through which a highway or trail passes or abuts.

If the municipality chooses to retain an “unidentified corridor” and does not add the highway before July 1, 2010, the municipality must follow the reclassification process defined in 19 V.S.A. § 708 and the following statutes in Chapter 7. This process also requires notice to adjoining landowners, public hearing, and the potential payment of compensation for damages. The submission of documents to the VTTrans Mapping Unit would include the records and documentation generated through the process defined in 19 V.S.A. Chapter 7. This also may include the need to re-survey the highway.

If an “unidentified corridor” is not reclassified by the municipality as a highway or trail, it will be discontinued by statute on July 1, 2015, pursuant to 19 V.S.A. § 302(6)(G).

3) Mass Discontinuance

Municipalities currently have the ability for mass discontinuance of any highways that will become “unidentified corridors” on July 1, 2010. The mass discontinuance of highways only covers those highways that meet the criteria defined in 19 V.S.A. § 302(6). The provision for mass discontinuance is available until July 1, 2010 and is defined in statute as 19 V.S.A. §§ 305(h) - 305(n). 19 V.S.A. § 305(h) provides as follows:

Notwithstanding the provisions of subchapter 7 of chapter 7 of this title, on or before July 1, 2010, a municipality's legislative body may vote to discontinue all town highways that are not otherwise clearly observable by physical evidence of their use as a highway or trail and that are not included as such on the sworn certificate of the description and measurement of town highways filed with the town clerk on February 10 of that year pursuant to subsection (b) of this section...

If a municipality does not undertake a mass discontinuance the highways and does not reclassify the "unidentified corridors", the "unidentified corridors" are discontinued by statute on July 1, 2015 as defined in 19 V.S.A. § 302(6)(G):

After July 1, 2015, an unidentified corridor shall be discontinued, and the right-of-way shall belong to the owner of the adjoining land. If the right-of-way is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side.

Act 178 included a provision regarding access to parcels that could potentially be landlocked due to a discontinuance of a town highway or unidentified corridor. Private rights-of-way would be retained over the previous alignment of the public right-of-way, subject to the provision included in 19 V.S.A. § 717(c):

A person whose sole means of access to a parcel of land or portion thereof owned by that person is by way of a town highway or unidentified corridor that is subsequently discontinued shall retain a private right-of-way over the former town highway or unidentified corridor for any necessary access to the parcel of land or portion thereof and maintenance of his or her right-of-way.

4) Mileage Certificates & Town Highway Mapping Process

Updates to the General Highway Maps follow a defined process when related to town highways and legal trails. For the VTrans Mapping Unit, this process starts with the Certificate of Highway Mileage. At the municipal level, the process precedes state mapping, but the process starts earlier at the municipal level.

Modern changes to highways and trails are defined for municipalities in 19 V.S.A. Title 19 – Chapter 7. This section addresses the laying out, alteration, reclassification, or discontinuance of a public right of way. This process requires certain documents to be filed in the clerk's office and subsequently submitted to VTrans with the Mileage Certificate.

For highways from the early 20th and 19th centuries or earlier, the process is slightly different. This difference is due to what documentation was required at the time of the laying out, what documentation can be produced by the municipality based on research of the municipal record, whether the highway or trail is clearly observable, and the requirements set forth in Act 178.

According to statute a municipality is required to map all class 1, 2, 3, and 4 town highways and trails by July 1, 2015. This requirement includes the mapping of all highways and trails that have been legally established and not discontinued throughout the history of the municipality. Essentially, once a highway or trail is legally established, it does not cease to be a public right of way until formally

discontinued by the legislative body through substantial compliance with applicable statutes. Thus a highway laid out in the 1700's and not formally discontinued should be accounted for on the Certificate of Highway Mileage and added to the General Highway Map by 2015. To date municipalities may not have mapped out all their town highways because this was not a requirement for town roadway funding. Municipalities have had different approaches to addressing the requirements of Act 178. The level of effort for research and mapping of the town highways and trails to meet

the requirement of Act 178 is subject to the discretion of the municipal legislative body. While some municipalities have chosen not to partake in the process and thereby accept the currently mapped highway network, while other municipalities are performing extensive research of the municipal record to find each document related to laying out, surveying, and discontinuing highways and trails. Many municipalities have chosen to take on a process somewhere in between, performing research on select highways and trails.

Once a municipality identifies town highways and trails that have been legally established, not discontinued, and not included on the General Highway Map, it is time to submit the additions to the VTrans Mapping Unit.

The submission of the additions for inclusion on the General Highway Map starts with the Certificate of Highway Mileage, with all accompanying documentation required in 19 V.S.A. § 305(e). This provision is discussed in more detail in Section 5.

In early January of each year, a Certificate is sent by VTrans to each municipality showing the mileage totals on record from the previous year, with a space for notation of addition and deletion of mileage, and the total for class 1, 2, 3 and 4 and legal trails. A set of guidelines regarding the Mileage Certificate is also provided to municipalities. VTrans also includes state highway mileage on the Certificates and provides notations of alterations to this mileage category.

5) Municipal Responsibilities for Highway Additions & Documentation

A municipality can add highways and trails not newly established as class 4 town highways or legal trails by an addition to the Mileage Certificate. The municipality needs to complete this effort by July 1, 2015 to meet the requirements of 19 V.S.A. § 305(c). Due to the timing of this process, the functional date is February 10, 2015 and the filing of the Mileage Certificate.

The Timeline

- February 10, 2010** – Deadline for filing of the Certificate of Highway Mileage in the municipal office
- February 20, 2010** – Deadline for submittal of the Certificate and documentation to VTrans Mapping Unit
- July 1, 2010** – End of Mass Discontinuance provision
- July 1, 2010** – Creation of the “unidentified corridor” category
- February 10, 2015** – Deadline for filing of the Certificate of Highway Mileage in the municipal office
- February 20, 2015** – Deadline for submittal of the Certificate and documentation to VTrans Mapping Unit
- July 1, 2015** – Deadline for municipalities to have mapped all class 1, 2, 3, 4 town highways and legal trails
- July 1, 2015** – “Unidentified Corridors” are discontinued by statute

If a highway is not clearly observable as a highway or a trail and will become an “unidentified corridor” on July 1, 2010, there are additional requirements in statute that a municipality must follow to add these highways.

If a highway is clearly observable, the municipality may add the highway to the Mileage Certificate, noting the length of the section to be added on the Certificate and supplying the appropriate documentation.

For a modern laying out, there is a significant amount of documentation generated and filed in the clerk’s office, including petitions, minutes of the legislative body, surveys, notice to petitioners and adjoining landowners, orders of discontinuance, public hearing minutes, and more.

Highways that are not newly established and fall into the class 4 town highway category do not require the same level of documentation as a newly established highway, but are not exempt from filing documents or some level of evidence of legal establishment. Act 178 requires the following to be submitted with each addition as defined in 19 V.S.A. § 305(e):

The agency shall not accept any change in mileage until the records required to be filed in the town clerk’s office by this section are received by the agency. A request by a municipality to the agency for a change in mileage shall include a description of the affected highway or trail, a copy of any surveys of the affected highway or trail, minutes of meetings at which the legislative body took action with respect to the changes, and a current town highway map with the requested deletions and additions sketched on it. A survey shall not be required for class 4 town highways that are legally established prior to February 10, 2006. All records filed with the agency are subject to verification in accordance with subsection (a) of this section.

The items defined in this section of statute are interpreted and defined by the VTrans Mapping Unit as follows:

- A description of the affected highway or trail

The description is a modern reference to the location of the highway or trail that is being added. The description should define where the road is located with beginning point, general direction, and ending point, allowing the highway or trail to be easily defined on a General Highway Map. An example of a description is as follows:

New Road starts at a point on TH-15 (Start Rd), being a point 500 feet south of the intersection of TH-10 (Sample Hill Rd) and TH-15 (Start Rd), extending in a northeasterly direction for 1.56 miles to a point on TH-16 (End Rd), being a point 2.1 miles north of the intersection of TH-11 (Example Rd) and TH-16 (End Rd).

- A copy of any surveys of the affected highway or trail

A copy of the documents that record the laying out of the road, if the original documents are difficult to read, it would be beneficial to include a transcription.

Surveys include any metes and bounds descriptions and plats of a highway or trail. Due to the multiple methods that a highway or trail can be established, a survey may not exist for a highway or trail.

It should be noted that a municipality does not need to have a new survey completed for class 4 town highways that are legally established prior to February 10, 2006.

- Minutes of meetings at which the legislative body took action with respect to the changes

A copy of any documents that show the legislative body took action on the highway or trail. These documents may include minutes to meetings where a highway or trail may have been laid out, accepted, altered, or other public hearing addressing the highway or trail. Orders by the Selectboard, road calls, and documents related to any awards of compensation may also be submitted.

It would also be beneficial to also receive documents that evidence the town highway or trail addition was addressed and approved by the current municipal legislative body.

This provision is to have the municipality provide documentation that the evidences that the highway or trail was legally established.

- A current town highway map with the requested deletions and additions sketched on it

A sketch of the changes on a copy of the current town highway map will provide the Mapping Unit the ability to locate and understand the necessary changes. Coupled with the description listed above, the Mapping Unit should be able to plot the changes on the General Highway Map for those highways and trails that are accepted.

Current copies of the General Highway Maps can be found on-line in a PDF format at http://www.aot.state.vt.us/planning/MapGIS/Town_Maps1.htm or copies may be requested from the VTrans Mapping Unit.

Some advice that has been provided to municipalities in submission of class 4 town highway for addition to the General Highway Maps is to provide enough documentation to weather any challenges that may arise.

6) “Unidentified Corridors” and the General Highway Maps

Currently, there is no formal provision in statute requiring the mapping of “unidentified corridors” on the General Highway Maps, or the mileage accounted for on the Certificates of Highway Mileage. If a municipality chooses to depict this category of highway on the General Highway Maps, the municipality should supply the same level of documentation to VTrans as required for addition of class 4 town highway mileage. The “unidentified corridors” will be added to the General Highway Maps as a distinct and separate category, and will exist on the maps until July 1, 2015, when the category will be added to the discontinued highway category in the master road centerline data layer within the geographic information system (GIS).

7) Previously Mapped Legal Trails

The VTrans Mapping Unit currently has record of nearly 400 miles of legal trails, but only 175.05 miles have been accounted for by municipalities on the Mileage Certificates. The remaining mileage needs to be acknowledged by municipalities and mileage added to the Certificates. Once the trail is

accounted for on the Certificate, the General Highway Map will be updated to reflect a legal trail number and mileage. The mileage was not required for this category prior to Act 178 of 2006 and has only been recorded when changes were supplied to VTrans.

Since many of these legal trails were once town highways and were reclassified, VTrans has record of the changes and requests that the municipality add the mileage to the Certificate. This process does not require a significant effort on behalf of the municipality.

A series of maps showing the legal trails, mileage, and former town highway designation has been forwarded to all municipalities with previously mapped trails. This map provides a basis for the decisions to add the trails to the Certificate by the legislative body and what the history of the trails.

8) Legal Trail Additions to the Mileage Certificate & Documentation

Trails are not considered highways. If a highway was laid out as a highway and the municipality now wants to add it to the highway map as a trail, the presumption is the municipality should reclassify the highway to a trail before adding the trail to the Mileage Certificates and General Highway Map. The reclassification process is defined in 19 V.S.A. Chapter 7.

The municipality should submit the same documentation defined for highways to evidence the trail was legally established and not discontinued. Any documents showing the legislative body reclassified a highway to a trail should be provided with the documentation packet.

9) General Highway Map Update Process

The functional process followed by the VTrans Mapping Unit is to review all changes noted on the Mileage Certificates supplied by the municipalities, request additional information or clarification when needed, and update with General Highway Maps with accepted changes.

If a change is found to meet the requirements defined in statute and can be mapped by VTrans, the change is made to the General Highway Map.

If portions of the documentation are either absent, or difficult to understand, the municipality will be provided an opportunity to provide additional details, the necessary documentation, and clarification. If this is not forthcoming in the allotted timeframe, the changes may not be made during the annual Mileage Certificate and General Highway Map update cycle.

VTrans seeks to work with the municipalities to update the General Highway Maps to make them as accurate and comprehensive as possible relative to the public highway and legal trail system.

10) Summary

The requirements set forth in 19 V.S.A. § 305(c) – “All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015” seem to be a simple task at first blush, but when given a closer look, this could potentially be a Herculean effort. There is over a 200 year history for many municipalities, with highways being laid out, altered, and discontinued, and a multitude of records generated, stored and possibly lost in this time period.

A municipality that has taken on the effort to research and map the town highways and trails can attest to the complexities that may arise.

This document attempts to provide some clarity to current statutes regarding adding town highways and trails that have been legally established and not discontinued, and some insight to the necessary documentation to be supplied with the Mileage Certificates.

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Act 178 and “Ancient Roads” Resources

Learn more about Ancient Roads, Act 178, and Town Highways:

- The text of Act 178 of 2006 can be found on-line at the Vermont State Legislatures web page at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT178.HTM>
- The text of Act 158 of 2008 can be found on-line at the Vermont State Legislatures web page at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT158.htm>
- Ancient Roads Listserv – a resource to discuss issues, pose questions, and seek solutions from the community researching and mapping ancient roads. More information is available at <http://www.dhca.state.vt.us/Planning/ListservAncientRoads.htm> or <http://list.uvm.edu/cgi-bin/wa?A0=ANCIENTROADS>
- Mapping Unit Publication Links available on-line can be found at http://www.aot.state.vt.us/planning/Documents/Mapping/Publications/mapping_pubs.htm, http://www.aot.state.vt.us/planning/MapGIS/mapping_otherlinks.htm and at http://www.aot.state.vt.us/planning/MapGIS/mapping_ancientroads.htm
- Vermont Institute for Government pamphlet compiled by Paul Gillies – “How to Find Ancient Roads” available at <http://crs.uvm.edu/citizens/ancientroads.pdf>
- Ancient Roads Research and Mapping Grant site at the Agency of Commerce & Community Development - <http://www.dhca.state.vt.us/Planning/AncientRoadsGrantProgram.htm>
- The Vermont League of Cities and Towns has a Resource Library containing a lot of documentation regarding ancient roads. The link is <http://resources.vlct.org/> and the documents can be found by using “ancient roads” in the search tool.
- The current series of Town Highway Maps available on-line at - http://www.aot.state.vt.us/planning/MapGIS/Town_Maps1.htm
- The Map Archive of older Town Highway Maps - <http://www.mtbytes.com/vtrans/>
- The Handbook for Local Officials (“The Orange Book”) is available on-line at <http://www.aot.state.vt.us/maint/Documents/book.pdf>
- The Vermont Local Roads Program host information about local roads and has some informative fact sheets at <http://personalweb.smcvt.edu/vermontlocalroads/default.htm>
- Regional Planning Commission Web Sites - <http://www.aot.state.vt.us/Planning/Links.htm>
- Vermont State Archives – Lotting Plans - <http://vermont-archives.org/lottingplans.asp>

Town Highway/Legal Trails Addition Checklist

The following includes a checklist of the documentation to be supplied to VTrans when adding highways and trails that have not been previously mapped and are required to be mapped under the provisions of Act 178 of 2006. The documentation is subject to verification by VTrans.

Check the box if the information is included as part of the documentation submitted.

- A description of the affected highway or trail
 - A copy of any surveys of the affected highway or trail*
 - Minutes of meetings at which the legislative body took action with respect to the changes
 - A current town highway map with the requested deletions and additions sketched on it
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- If the highway or trail to be added is “not clearly observable by physical evidence of its use as a highway or trail”, then supply the additional documentation pursuant to the following statute:

19 V.S.A. § 305(d) - At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement required under subsection (b) of this section, the legislative body of the municipality shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning lands through which a highway or trail passes or abuts.
 - Evidence of written notice to adjoining landowners
 - Minutes of the public hearing at which the legislative body took action with respect to the addition of the town highway or trail

*Note: A survey shall not be required for class 4 town highways that are legally established prior to February 10, 2006.

All records filed with the agency are subject to verification in accordance with 19 V.S.A. § 305 (a) and 19 V.S.A. § 305 (e).