

Legislative Report

UNIDENTIFIED CORRIDORS

**Pursuant to
Act 178 of 2006, Section 12(a)**

**By the
Vermont Agency of Transportation
(VTrans)**



By: VTrans Mapping Unit

February 15, 2011

Act 178 of 2006 – An Act Relating to Unidentified Corridors – Status Update

Overview

On July 1, 2006, Act 178 was enacted, setting into motion the mapping of highways and trails that had been lost to the ages. The primary requirement defined in Act 178 of 2006 is for municipalities to map all class 1, 2, 3 and 4 town highways and legal trails by July 1, 2015. Municipalities have decided at the local level to what extent they would adhere to the new requirements. Some municipalities have decided to “let sleeping dogs lie” and not pursue this effort, whereas other municipalities have been active, forming ancient road committees, doing extensive research, and forging ahead by adding the highways and trails back to the map.

Act 178 of 2006 and the companion legislation, Act 158 of 2008, have made substantial modifications to 19 V.S.A. Chapters 3 and 7. The changes include the requirement for municipalities to map all class 1, 2, 3 and 4 town highways and legal trails by July 1, 2015, the creation of a new category called “unidentified corridors,” the creation of a process of municipalities to mass discontinue highways that will become “unidentified corridors,” creation of private rights of way over discontinued town highways, and affirming the discontinuance of highways that may have small technical defects in the discontinuance process.

The Agency of Transportation (VTrans) Mapping Unit has been following the progress of Act 178 and Act 158 since they were enacted. This report is provided as a requirement of Act 178 of 2006, Section 12(a). Please find below the required sections and information regarding the status and observations regarding Act 178 of 2006 and Act 158 of 2008. It should be noted that many of the issues and observations have been articulated in preceding annual reports, and may continue to be included in this report.

1) Evaluates the effectiveness of this act

In 2010, the VTrans Mapping Unit saw an up-tick in the number of highway and trail additions that were directly attributed to compliance with Act 178 of 2006. On July 1, 2010, the mass discontinuance provision ceased to be an option for municipalities and this date also brought the creation of the new category, “unidentified corridor.” In an effort to avoid class 4 town highways becoming “unidentified corridors,” or to avoid the potential ambiguity of this new classification, municipalities submitted class 4 town highway additions on the 2010 Certificates of Highway Mileage.

One of the goals of the Act was to have municipalities map all the town highways and legal trails by July 1, 2015. Towards that goal, many municipalities have worked to research, document, and map their public rights of way from origin to current status. The municipalities that have opted to embark on this endeavor have encountered a significant amount of effort in the research and identifying which laying-out documents relate to which segment of highway. The Act has provided impetus for municipalities to add clarity to what is the public highway and trail network. There have been issues that have arisen throughout the process, with disputes between municipalities and landowners. These issues may have arisen at some point in the future, but Act 178 seems to have accelerated the disputes over ownership and use.

For municipalities that have worked on identifying the highway and trail network, and submitting the additions, reclassifications, and discontinuances, the town highway maps are more complete and there is a clearer inventory of the public rights of way.

To date, the VTrans Mapping Unit has received the following mileage additions for class 4 town highways and legal trails, as a direct result of Act 178.

Ancient Road Additions by Class & Year

Year	Class 4 TH	Legal Trail	# of Towns
2006	11.00	6.75	2
2007	23.85	136.20	41
2008	10.63	26.29	19
2009	11.05	1.75	6
<u>2010</u>	<u>95.17</u>	<u>78.52</u>	<u>42</u>
Total	151.7 mi.	249.51 mi.	99*

Notes - * 99 total municipalities submitted changes over the course of the 5 years, several municipalities submitting changes in multiple years, thus the column does not add up to 110.

One unexpected outcome of Act 178 was the addition of 3.66 miles of class 3 town highway. There were 6 municipalities that had legally established class 3 town highways that had never been submitted to VTrans for addition to the mileage certificates or maps. As part of the research and mapping process, the municipalities identified the missing highways and added them. In some cases, it may have been many years that the municipalities were maintaining the highways and not receiving state aid for these segments.

At the end of 2010, due to reclassifications, alterations, and discontinuances, the current totals for each classification related to ancient roads by category are as follows:

Class 3 TH	Class 4 TH	Legal Trail	# of Towns
3.66 mi.	148.44 mi.	248.93 mi.	99

The majority of legal trails that have been added were ones that have been previously shown on the town highway maps and, as a result of the requirements in Act 178, the mileage has been added to the mileage certificates and the maps. There are an additional 162.09 miles of legal trail within 55 municipalities that have been mapped and VTrans Mapping has recorded, but have yet to be added by municipal officials to the mileage certificates. Documentation exists regarding the reclassification to legal trail from town highways and VTrans awaits acknowledgement by the municipalities.

The 2011 Certificates of Highway Mileage are required to be filed in the municipal office on or before February 10, 2011 and VTrans has yet to see the full impact of this year's submittals, but it appears to be fewer additions of ancient roads than in 2010.

One of the reasons Act 178 was enacted was to provide "clarity" to the public highway networks and allow municipalities, title insurance corporations, and the public to readily know the ownership status of the highways and trails within a municipality. This "clarity" would then mitigate the potential for litigation due to ownership disputes.

VTrans has seen an increase in the number of concerns expressed by landowners who have been informed by a municipality of a highway crossing their land, yet there is limited or non-existent documentation to support that the highway or trail was legally established. It is not known how many court cases have resulted since 2006, but there are several current disputes that could result in litigation. These issues suggest that Act 178 may create more litigation than it resolved.

The unfortunate development related to Act 178 of 2006, is that municipalities are in the process of adding highways to the map and this has accelerated litigation regarding the public status of these highways. As towns have brought forward information regarding highways, there have been challenges regarding the validity of the rights of way.

Additional cases, aside from early litigation in the Towns of Chittenden, Barnard, and Bethel, have been brought forward in several towns already, including Pownal and Plymouth. There also has been a relevant case in Middlesex, *Austin v. Town of Middlesex*, 2009 VT 102 (Oct. 27, 2009), that alters perspective on what documentation is needed.

2) Recommends additional measures necessary to meet the goals of this act

Municipalities expressed the need for additional time to research and map the town highways and legal trails, prior to the creation of the “unidentified corridor” category on July 1, 2010. No additional time was added to the process and the July 1, 2010 interim deadline was unchanged in the last legislative session, thus this issue is no longer germane.

The other measure that continues to be a recurring issue for municipalities for compliance with Act 178 is the cost of research and mapping. The process is time consuming and challenging, and in some cases, more than what the ancient road committees volunteered for. The ancient road grants provided by the Agency of Commerce and Community Development (ACCD) for research and mapping provided a start for 89 municipalities, but did not necessarily cover the full cost of the work. Funding for the research and mapping is an area that could be beneficial to municipalities, with additional funding providing impetus for some municipalities to move forward.

Act 158 of 2008 altered the mass discontinuance provision, allowing for the mass discontinuance of only highways that will become “unidentified corridors.” This modification limits municipalities from completely mass discontinuing all highways and trails not accounted for on the Certificate of Highway Mileage and the General Highway Map. A full mass discontinuance would have allowed for clarity and eliminate the ambiguity of what remains and what has been discontinued due to whether or not a highway or trail is observable.

The municipalities are required to map all class 1, 2, 3 and 4 town highways and legal trails by July 1, 2015, as defined in 19 V.S.A § 305 (c). On July 1, 2015, the “unidentified corridors” are discontinued by statute and revert to the adjoining landowners. For those class 4 town highways that have been legally established, never discontinued, and are clearly visible as a highway or trail by physical evidence, nothing in statute defines what happens to these highways that are not added to the map. A municipality is required to map all Class 1, 2, 3, and 4 highways, but there is no direction on what happens to the visible class 4 town highways that go unmapped and without mileage reflected on the Mileage Certificate after July 1, 2015. The presumption is that they persist as public rights of way, as class 4 town highways and could perpetuate the issue of ancient roads into the future. There is also a presumption that since statute does not define what happens, there will be litigation that will provide direction, as it is conceivable that a municipality will be sued because they failed to add a highway to the Mileage Certificate and Town Highway Map by July 1, 2015 and thus chose not to retain the public right of way. Closing the loophole on the ambiguity of what happens to the clearly visible class 4 town highways after July 1, 2015 would be beneficial and remove the notion that ancient roads will need to be revisited in the future.

3) Identifies which municipalities have mapped all of their town highways and trails

VTrans can report that 97 municipalities have completed the mapping to date, which includes the 23 municipalities that have utilized the mass discontinuance provision. A full listing of municipalities that have mapped all their town highways and trails is incomplete, as many municipalities are still adding highways and have not fully completed the process. It has become apparent that some municipalities mapping class 4 town highways and legal trails are using an iterative approach, providing additions over the course of several years as the research and mapping is completed. There are also municipalities that have responded that the mapping is complete and they have not undertaken a research and mapping effort.

Appendix 1 – The Act 178 of 2006, Status of Highway Mapping Map shows the status of municipalities based on a number of information sources. This includes recent information from municipalities on the level of completeness of the mapping effort, the municipalities that have performed the mass discontinuance, and the towns reporting the mapping was complete from several surveys.

4) Identifies which municipalities availed themselves of the provisions of 19 V.S.A. § 305(h), relating to mass discontinuances of unidentified corridors

On July 1, 2010, the mass discontinuance provision defined in 19 V.S.A. § 305(h) ceased to be an option for municipalities.

To date, VTrans Mapping Unit is aware of 23 municipalities that have availed themselves of the mass discontinuance provisions of 19 V.S.A. § 305(h). Below is a list of the municipalities and the effective date of the mass discontinuance:

Benson	2/18/2008
Tinmouth	8/14/2008
Shoreham	10/8/2008
Swanton	12/17/2008
Maidstone	2/2/2009
Barton	8/3/2009
Orwell	9/14/2009
Newfane	9/14/2009
Wallingford	10/5/2009
Brookline	12/9/2009
Sunderland	12/15/2009
Shelburne	3/9/2010
North Hero	4/5/2010
Richmond	4/19/2010
Calais	6/17/2010
Plainfield	6/28/2010
Baltimore	Effective date uncertain – Hearing Date 12/2/2009
Monkton	Effective date uncertain – Hearing Date 11/23/2009
Huntington	Effective date uncertain – Hearing Date 01/12/2010
Lowell	Voted at Town Meeting
Leicester	Effective date uncertain
Pawlet	Effective date uncertain
Townshend	Effective date uncertain

There is a chance that additional municipalities have availed themselves of the mass discontinuance provision, but have not provided any information to VTrans regarding their decisions.

It should be noted that due to the adjustments that were made by Act 158 of 2008 to the 19 V.S.A. § 305(h), only those highways that would become “unidentified corridors” have been mass discontinued by municipalities using this provision. The only exception is the Town of Benson, which utilized 19 V.S.A. § 305(h) prior to the alteration by Act 158 of 2008, and all unmapped highways were discontinued.

Summary

Municipalities continue to provide additions of highways and trails that fall into the category of “ancient roads.” The 2010 Certificate of Highway Mileage submittals show a significant surge in additions, mostly due to the July 1, 2010 date marking the creation of the “unidentified corridor” category. It has been observed that municipalities have done extensive research on highways and trails with impunity, but when the recommendations and documentation are turned over to the Selectboards, challenges emerge.

Decisions from the courts, such as in *Austin v. Town of Middlesex* have clarified the need for documentation and added more definition to the issue. There are more outstanding issues that may be decided through litigation, or possibly resolved through legislation that will provide a remedy.

There are several issues that continue, including:

- The concern that the mass discontinuance does not provide as much “clarity” as some municipalities expect, because mass discontinuance is limited to only highways that will become “unidentified corridors.” As noted on page 3, municipalities may expect to be able to fully discontinue any un-mapped highways and the mass discontinue provision does not currently allow this.
- What happens to observable class 4 town highways after July 1, 2015 if not added to the map remains a question. Currently statute only specifies that highways that become “unidentified corridors” will be discontinued after July 1, 2015, and the presumption is that observable class 4 town highways persist. If all class 4 town highways are not mapped by July 1, 2015, will it be necessary to go through this research and mapping exercise again in 25 years? Please see page 3 for more details.

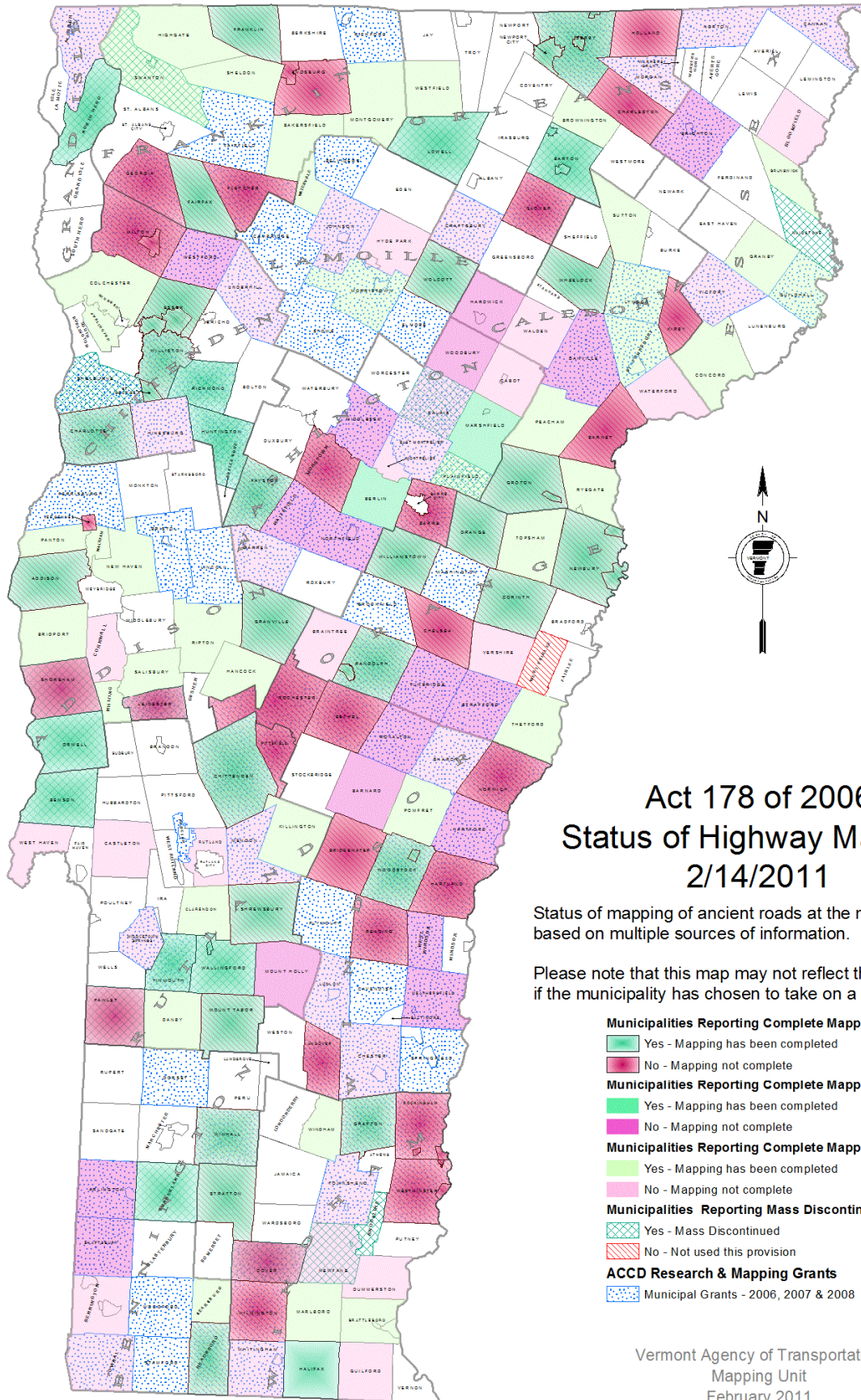
To date, the total number of municipalities that have completed mapping all the class 1, 2, 3, and 4 town highways and legal trails is not fully defined, but the number is growing. More municipalities made submittals in 2010, with many of them completing the mapping process.

Act 178 was enacted to provide “clarity” to the public highway networks and municipalities are working toward this effort. The research and mapping effort has generated issues in some municipalities, at times creating friction between landowners and the governing bodies, with litigation resulting in some cases. It is expected that more challenges will surface as municipalities work toward meeting the requirements of Act 178.

There may be several legislative means to mitigate some of the issues that have surfaced, with potential relief to municipalities through the clarification of the process and removal of ambiguities.



Appendix 1 Act 178 – Status of Towns Map



Act 178 of 2006 Status of Highway Mapping 2/14/2011

Status of mapping of ancient roads at the municipal level, based on multiple sources of information.

Please note that this map may not reflect the complete situation, if the municipality has chosen to take on a mapping effort.

Municipalities Reporting Complete Mapping - 2011 Survey

- Yes - Mapping has been completed
- No - Mapping not complete

Municipalities Reporting Complete Mapping - 2010 Survey

- Yes - Mapping has been completed
- No - Mapping not complete

Municipalities Reporting Complete Mapping - 2007 Survey

- Yes - Mapping has been completed
- No - Mapping not complete

Municipalities Reporting Mass Discontinuance

- Yes - Mass Discontinued
- No - Not used this provision

ACCD Research & Mapping Grants

- Municipal Grants - 2006, 2007 & 2008

Vermont Agency of Transportation
Mapping Unit
February 2011



Act 178 – “Ancient Roads” Resources

Learn more about Ancient Roads, Act 178, Act 158, and Town Highways:

- The text of Act 178 of 2006 and Act 158 of 2008 can be at the Vermont State Legislatures web page at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT178.HTM>
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT158.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>
- VTrans Mapping Unit Links available on-line can be found at http://www.aot.state.vt.us/planning/MapGIS/mapping_maparchive.htm and at http://www.aot.state.vt.us/planning/MapGIS/mapping_ancientroads.htm
- The Vermont League of Cities and Towns has a Resource Library contains documentation at <http://resources.vlct.org/results/?s=label:Ancient+Roads>
- 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>
- The current series of Town Highway Maps available on-line at - http://www.aot.state.vt.us/planning/MapGIS/Town_Maps1.htm
- Town Examples of Research and Mapping Efforts – <http://www.ruralvt.com/ancientroads/>, <http://www.waitsfieldvt.us/roads/ancient/index.cfm>,
- The Vermont Local Roads Program host information about local roads and has some informative fact sheets at <http://personalweb.smcvt.edu/vermontlocalroads/default.htm>
- Vermont State Archives – Lotting Plans - <http://vermont-archives.org/lottingplans.asp>
- A presentation using GIS to assist in research and mapping ancient roads - <http://www.vcgi.org/commres/vsdp/archive/ExploringAncientRoad.pdf>
- Paper - “Twists and Turns in Ancient Roads: As Unidentified Corridors Become a Reality in 2010, Act 178’s Shortcomings Come into Focus” by Alexander Hood (April 25, 2010) <http://ssrn.com/abstract=1697836>