

To: The House Committee on Transportation

Date: May 15<sup>th</sup>, 2025

From: Peter Hayden

Please accept this as written testimony regarding the authority of towns to maintain Legal Trails. I request that the House include the S.4 proposed language in the next bill to make it effective as soon as possible. It's time for the State to stand up for its Towns rather than rely on one Town to stand up for the whole State.

Of all the people who have testified or provided public comment on this topic in both the Senate and House hearings, and all the comments from Senators and Representative, I have heard only one person who believes Towns don't have maintenance authority, and that is the plaintiff in the Tunbridge legal case. And despite 4 visits to the courts, no judge has agreed with him either.

The ONLY hesitation to passing this clarifying legislation is because the same plaintiff has spooked some law makers that passing language clarifying that Towns have maintenance authority will create some sort of mass taking across the state. Do not confuse his testimony with learned, objective analysis from a law professor. Interpret it only as one-sided, advocating his position in the case. As Mike Covey pointed out in his testimony, in the unlikely case that the courts side with the plaintiff, all the communities that maintain trails today may be subject to a takings claim regardless of whether the legislature passes clarifying language. Adding language now doesn't enlarge any theoretical takings claim, so there really is no downside to adding it now.

On the contrary, passing language now has several significant advantages. First, it clarifies that towns can proceed with maintenance of legal trails. Without the language, many towns will halt maintenance until the legal case concludes, which will take years when you consider that it has been ongoing for 3 years so far, any forthcoming decision will surely be appealed, then an inverse condemnation claim has to be made, work it's way through the courts, and then go to appeal. "Waiting" means waiting for a VERY long time, and in the mean time gives the plaintiff exactly what he wants - restricted use of the Legal Trails through his property.

And this brings us to what is probably the most compelling reason for the legislature to pass the proposed language as quickly as possible; it shifts defense of any takings case from Tunbridge over to the State. So far the Town of Tunbridge has fought this cause on behalf of the whole State. With legislation clarifying that Towns have maintenance authority, any resulting taking claim would be against the State. The State would be defending this on behalf of all the Towns rather than one Town defending it on behalf of the whole State. Most Towns just give-in when faced with legal challenges like this, but Tunbridge has not. Since this is clearly a State-wide issue, it's time for the State to step in, and passing this legislation is the way to do it.

Thank you,

Peter Hayden  
Tunbridge Resident