

May 14, 2025

Hello,

I am submitting this testimony on behalf of the Vermont Traditions Coalition regarding the conversation about maintenance of legal trails. My first read on this topic, several months ago, was that the lawsuit was spurious at best, and that has not changed. The law is permissive by virtue of what it does. As this committee is aware, municipalities in Vermont have a stringent duty to maintain roads. Even class four roads have some, although greatly reduced, potential to be subjected to a duty of care through agreements within the town; so the only reason to have the “legal trail” designation is to relieve all duty to maintain specific rights-of-way held by the municipality.

If municipalities are legally protected from a duty to maintain these public rights of way, then they clearly have the authority to maintain them. In the absence of authority, there can be no duty, and, therefore, the legislature would have had no cause to relieve them of it.

Further confirmation can be found in Act 178 of 2006, where the legislature created deadlines for adding roads, including legal trails, to town highway maps. They did this to settle disputes over ownership of these public rights of way. This is an incredibly clear indicator of legislative intent on this topic, making the argument that we need to look back to 1986 moot. I went to the archives and looked at the records from 1986, and they are so spotty that virtually nothing remains, but the 2006 law is incontrovertible.

Act 178 created a new, and temporary, kind of road classification, “unidentified corridors.” Act 178 was written to eliminate any dispute between private landowners and municipalities that might arise when historical documents surface that indicate a public road once existed and was never discontinued on a particular site. Under the act, an unidentified corridor met certain criteria and was created by a lawful process that included some official town documentation.

The legislation created a deadline of July 1, 2010 to ensure that “unidentified corridors” were determined, and July 1, 2015 to assign them a classification and add them to town highway maps. Any corridors (roads or legal trails) that were not added as of this date were considered abandoned and reverted to the property owners. This further cements the spurious nature of the ongoing lawsuit and should give this body the confidence to move forward with language to clarify that municipalities have always had the right to maintain legal trails and allow others to maintain them.

With this deadline in place, mapping these corridors as legal trails would have been an incredibly practical approach to ensuring the public good and options for future utilization, while not encumbering municipalities with a duty to maintain them. This may explain the incredible amount of legal trail in Jamaica.

Legal trails are a public right of way. There is no dispute of this, and the argument that maintenance is precluded defies logic. I have a 50 foot right of way along the north edge of my property. It has never been cleared, and has several large trees on it, but it exists in the deed as a right way. If the holder of that right of way were to begin clearing it while I was on vacation, would this body contemplate the idea that I should be able to sue them for the value of the land or timber trespass?

As a public resource, legal trails are used by many communities around the state, snowmobilers, ATVers, hikers, bikers, skiers, and our community of hunters, anglers, and trappers. Most of us use mapping apps, and class four roads and legal trails are great points of access throughout the state. Perhaps more importantly, they are great means of egress. One day this past January, I found myself on top of a mountain, miles from the nearest road, at about 4 o'clock in the afternoon and 4° below zero. I didn't follow a trail up, I followed deer to learn about them, but I did shift my return route to a nearby trail that I found on my app for the sake of ease, efficiency, and safety in descending. Not only was I able to find the trail, I was able to determine the distance to it and the most efficient approach to get on it. Rather than having to take the risk of descending the way I had come up, which was heavily littered with glacial till and very steep, I was able to walk at a relatively quick pace while remaining safe and get back to a passable road where a friend picked me up. It is not uncommon for outdoor enthusiasts to have time get away from us. The reason we are out there is for the catharsis of it, and occasionally we find ourselves seeking the most efficient route out for various reasons. Legal trails provide one such route.

Hunting, including trapping, and fishing are significant drivers within our outdoor recreational economy, and they are accessible to all. Historically, it was common for roads to follow waterways, providing great opportunities for anglers to access them. Many legal trails provide easier access for hunters and anglers to get away from development. Some of us are very comfortable being off the beaten path, but some people are not. Whether they have mobility issues, small children, or are simply uncomfortable deep in the woods, a legal trail can provide an opportunity for a more remote feeling hunting or fishing experience that still feels safe and manageable for those with special considerations. Furthermore, we find a notable example of this not far from where we sit in the fishing access at Berlin Pond. That access exists within an ancient road that was mapped, and kept by the town of Berlin.

Legal trails can provide easier passage and better access for search and rescue or emergency personnel to reach outdoor enthusiasts who have an accident or other crisis. The maintenance regimens on these rights-of-way, as you have heard, vary from no maintenance at all to passable by vehicles. Should a town wish to restore one of these rights of way as a matter of public safety due to increased recreational opportunities in an area that is serviced by one, would we be debating it?

We have experienced several weather events since hurricane Irene, but I remember that one being notable for the response in Rochester and other areas. Vermont pulled together, and we dug out our ATVs, UTVs, four-wheel drives, tractors, construction and logging equipment, and even purpose-built mud trucks and rock crawlers in some cases to get to our neighbors and provide them assistance. All bets were off and helping each other was the primary consideration. I would be curious to know how often legal trails were part of that access. Many roads were completely destroyed and impassable. Had a legal trail been passable, but overgrown, clearing it to allow at least ATV passage would have been unquestionably in the public good. With 547 miles of legal trail in the state, it's entirely possible that happened and nobody thought twice about it. Would this body submit to the idea that in the aftermath of Irene, a municipality who cleared a legal trail that hadn't recently been used would then be liable to pay the abutting landowners for a taking?

A citizen has asked a question, and he deserves an answer to that question. Now is the time to answer it by asserting that it is this body's intent that rights-of-way designated as legal trails, may be maintained at the discretion of the municipalities they lie within. Keeping in mind how often volunteers and trail groups are maintaining these rights of way, the language needs to be inclusive of the ability not only for municipalities to maintain them, but also for other groups, organizations, or individuals to do so under the municipality's authority.

The legislative hesitation around passing language to assert this authority, which we almost universally agree makes sense, seems to hinge on a nebulous fear that maybe, perhaps, if the court finds in favor of the plaintiff, towns might be liable for public takings for maintaining legal trails. I submit that this fear is irrelevant.

Legal trails are currently being maintained statewide. Not all of them, but enough to be very significant. If the court finds in favor of the plaintiff, every single legal trail that is currently being maintained will immediately be liable for compensation as a public taking. Whether this body does or does not clarify the authority to maintain legal trails by passing some language to that effect is completely irrelevant to any expenses municipalities may incur as a result of the outcome of this lawsuit, but incredibly significant to both future discussions and the future of outdoor recreation of all kinds in Vermont.

I respectfully, and strongly suggest that you pass language into law, now, this session. Clarify beyond any doubt that municipalities have the authority to maintain and to allow maintenance of legal trails. It is important that the language be passed in such a manner as to ensure that not only municipalities, but trail groups and others under municipal authority are in a position to conduct maintenance as needed due to their dedication to stewarding these public resources.

Respectfully,

Mike

Mike Covey

Executive Director

Vermont Traditions Coalition

(802) 461-3786