

May 19, 2025

# **Testimony by Josh Hanford to the House Transportation Committee Regarding Trails Language in H.488, 5/15/25**



**Testimony to the House Committee on Transportation  
Regarding Trails Language in H.488 and the Risk it May Pose to Municipalities if the  
Tunbridge Case is Resolved in Favor of the Landowner  
Josh Hanford, Director, Intergovernmental Affairs, VLCT  
May 15, 2025**

## **What is a Legal Trail?**

Legal trails are a ***public right of way*** that is not a highway and that previously was a designated town highway OR a new public right-of-way laid out as a trail by the municipal legislative body to provide access to abutting properties or for recreational use.

- [Act 178 of 2006](#) required all municipalities to map all class 1, 2, 3 and 4 town highways and legal trails by 2015 and allowed for the mass discontinuation of town highways between 2006 and 2011.



- This process of researching, identifying, planning, and mapping Ancient Roads established hundreds of new miles of legal trail and Class 4 road throughout Vermont.
- [According to VTrans](#), 248 miles of legal trail were established 2006-2011, 148 miles of Class 4.
- ACCD provided grants for research and mapping for 89 municipalities for this work.

## **Protect Access to Legal Trails and Conserved Public Lands**

Legal trails provide critical access to state, municipal, and federal public lands throughout Vermont. Many legal trails connect to larger multi-use trail networks that are the backbone of our rural outdoor recreation economy.

According to the Vermont Agency of Transportation, municipalities currently maintain authority over 547.22 miles of mapped Legal Trails:

- Stowe 10.8 miles
- Strafford 10.45 miles
- Cabot 18.2 miles
- Rockingham 23.42 miles
- Chittenden 41.82 miles
- Rochester 6.65 miles

## **Municipalities Currently Maintain Trails for a Variety of Uses**



Municipalities invest public resources in maintaining legal trails to clear brush and trees, provide signage, grading, ditching, and more. Of the 45 municipalities that responded to a survey:

- 44 actively maintain trails for public use
- 33 coordinate maintenance with volunteer groups
- 70% are open to bikes, 60% to snowmobiles, 40% to ATV's
- Costs are shared by municipalities, non-profits, landowners, and businesses

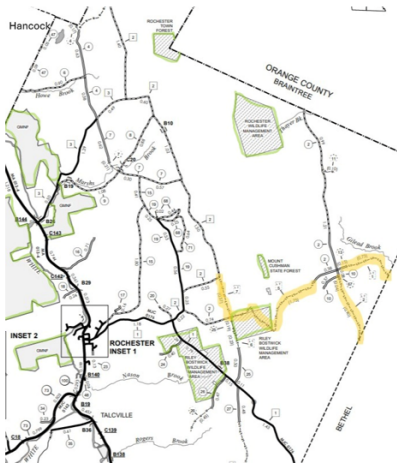
## **The Senate Language Would Clarify Municipal Authority to Maintain Trails**

It is VLCT's position that municipalities have the exclusive authority to maintain the legal trails they are explicitly authorized to regulate.

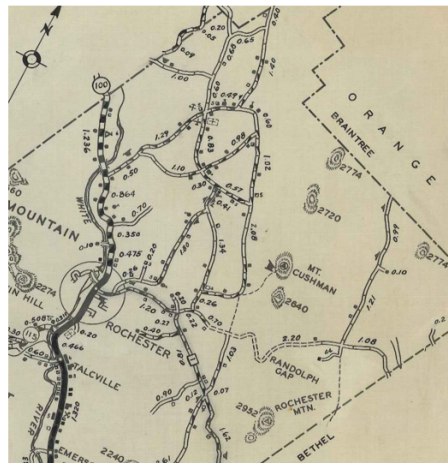
- Municipal legislative bodies implicitly retain control over all municipal property through their powers under Title 24 over the "general supervision of the affairs of the town".
- Municipalities that want to permit hiking, hunting, cross-country skiing, biking, or ATV use on their legal trails would be powerless to do so if a trail falls into disrepair
- 70% of all public trails in Vermont are located on private land and are available to the public only by permission of the land owner, unlike Municipal Legal Trails which are a public right of way.



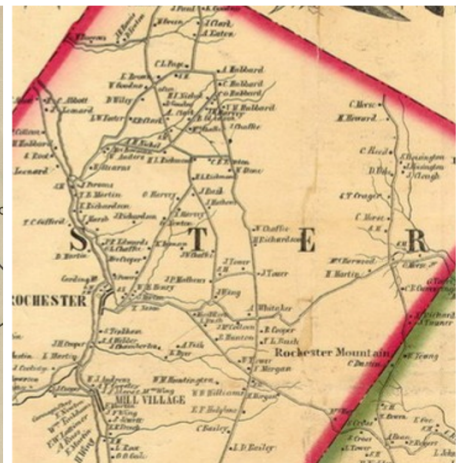
2004



1941



1869



## Current Legal Elements

### Dillon's Rule

- The Vermont Supreme Court has "*consistently adhered to the so-called Dillon's rule that 'a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof.'*" (emphasis added)
- Petition of Ball Mountain Dam Hydroelectric Project, 154 Vt. 189, 192, 576 A.2d 124, 126 (1990) (Citing Hinesburg Sand & Gravel Co. v. Town of Hinesburg, 135 Vt. 484, 486, 380 A.2d 64, 66 (1977)).

### Common Law Right to Maintain

- *e. Maintenance, repair, and improvement of the servient estate. Unless the parties clearly intended to deny the easement owner the right to maintain or repair the easement, a servitude should be interpreted to include the right to keep the easement*



*and any improvements used in connection with it in repair. This rule extends to easements created by adverse use, as well as to those created by other means. The rule promotes productive land use without imposing additional burdens on the servient estate.*

- *Restatement (Third) of Property (Servitudes) § 4.10(e) (2000)*

### **Statutory Right to Regulate**

- [19 V.S.A. § 304\(a\)\(5\)](#), "Duties of selectboard . . . (5) Grant permission to enclose pent roads and trails by the owner of the land during any part of the year, by erecting stiles, unlocked gates, and bars in the places designated and **to make regulations governing the use of pent roads and trails** and to establish penalties not to exceed \$50.00, for noncompliance." (Emphasis added)
- [19 V.S.A. § 301\(8\)\(B\)](#), "'Trail' means a public right-of-way that is not a highway and that: . . . (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." (Emphasis added).

### **Statutory Protection of Liability**

- 19 V.S.A. § 310(c), "A town shall not be liable for construction, maintenance, repair, or safety of trails."

Attachments

[Presentation that was the basis of Josh Hanford's testimony](#)

