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AGENDA

October 26, 2021 1:00 pm

- A. Welcome and Introductions (Chair and subcommittee members)
- B. Follow up to 1st Meeting (OPLA analyst)
- C. Subcommittee Discussion
- D. Next Steps
- E. Adjourn

Topics from 1 st Meeting	Additional Information
Legal Enforcement for Damage to PE (Attachment A)	<ul style="list-style-type: none"> ➤ Class E crime ➤ Civil cause of action for damage + attorneys' fees
Disclosure to Purchaser (33 MRSA §173 and §33 MRSA §193)	<p>Seller of residential and nonresidential real estate is required to disclose information describing the means of accessing the property by:</p> <ul style="list-style-type: none"> ➤ A public way, as defined in Title 29-A, section 101, subsection 59; and ➤ Any means other than a public way, in which case the seller shall disclose information about who is responsible for maintenance of the means of access, including any responsible road association, if known by the seller.
Municipal Rights and Obligations (Attachment B)	<ul style="list-style-type: none"> ➤ Prevent storm water runoff near great pond ➤ Fire and police protection ➤ Weight restrictions ➤ Seasonal or temporary road closures ➤ Limit use of public easement
Scope of problem / process to resolve disputes on public use causing damage	update from MMA on survey
Roads Inventory	<ul style="list-style-type: none"> ➤ ME 9-1-1 Mapping https://www.maine.gov/maine911/community-addressing ➤ MDOT Mapping / Inventory ➤ Vermont example – See Attachment C
Clarify existing laws	<ul style="list-style-type: none"> ➤ Definitions – See Attachment D ➤ ATVs on public easements
Promote release or restriction of existing public easements	<ul style="list-style-type: none"> ➤ Education ➤ Formal Process <ul style="list-style-type: none"> ▪ Who may initiate the process? <ul style="list-style-type: none"> ✓ abutting property owners who agree to execute private easements and maintenance agreements? ✓ residents / tax payers? ✓ municipal officers/officials? ▪ Municipal responsibility for repairs, maintenance, ? ▪ Due process (notice, hearing, appeal)?

CRIMINAL CAUSE OF ACTION

17 MRSA §3853-D. OPERATING A MOTOR VEHICLE ON LAND OF ANOTHER

1. *Damage or destruction to farmland, forest land or public easement.* A person who, as a result of operating a motor vehicle on farmland, forest land or a public easement in fact, damages or destroys crops, forest products, personal property or roads on that farmland, forest land or public easement, commits a Class E crime.

2. *Definitions.* As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

...

- B. "Motor vehicle" means any self-propelled vehicle not operated exclusively on tracks, including all-terrain vehicles as defined in Title 12, section 13001, but not including snowmobiles.
- C. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2¹.

CIVIL CAUSE OF ACTION

23 MRSA §3029-A. DAMAGE TO PUBLIC EASEMENT; CAUSE OF ACTION

1. *Cause of action.* An owner of property abutting a discontinued or abandoned road in which a public easement exists may bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road in a manner that impedes reasonable access by the property owner to the property owner's property by motor vehicle as defined in Title 29-A, section 101, subsection 4².

2. *Damages.* Damages may be sought pursuant to subsection 1 in an amount reasonably necessary to restore the road to its condition prior to the use by the person against whom the action is brought.

3. *Attorney's fees and costs.* If the plaintiff under subsection 1 is the prevailing party, the plaintiff may be awarded reasonable attorney's fees and costs.

¹ "an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976."

² "Motor vehicle" means a self-propelled vehicle not operated exclusively on railroad tracks, but does not include: a snowmobile; an all-terrain vehicle; or a motorized wheelchair, an electric personal assistive mobility device or an electric bicycle.

MUNICIPALITIES RIGHTS AND OBLIGATIONS

Protecting or Restoring a great pondⁱ (23 MRSA §3106)***Municipal assistance for purposes of protecting or restoring a great pond***

1. Repairs to a private road. For the purpose of protecting or restoring a great pond, as defined in Title 38, section 480-B, subsection 5, a municipality may appropriate funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching a great pond if:

Fire and Police Protectionⁱⁱ (23 MRSA §3105-A)***Use of town equipment***

The inhabitants of any town or village corporation at a legal town or village corporation meeting U the municipal officers of the town or assessors of the village corporation to use its highway equipment on private ways within such town or village corporation whenever such municipal officers or assessors consider it advisable in the best interest of the town or village corporation for fire and police protection.

Restrict Weight or Passage of Vehicleⁱⁱⁱ (29-A MRSA §2395)

Designation by Department of Transportation. The Department of Transportation may designate state and state aid highways and bridges over which restrictions on gross weight, speed, operation and equipment apply during periods of the year determined by the Department. It is unlawful for any vehicle to travel over public ways with a gross registered weight exceeding that prescribed by the Department and traveling with a load other than tools or equipment necessary for operation of the vehicle.

Designation by counties and municipalities. County commissioners and municipal officers may designate public ways other than those in subsection 3 and impose restrictions within their respective jurisdictions similar to those made by the Department of Transportation under subsection 3.

Winter Road Closures^{iv} (23 MRSA §2953)***Closing of roads in winter***

“The municipal officers may on their own initiative, or upon petition by 7 legal voters of the municipality, at any time between May 1st and October 1st of any year, set forth that any road or roads, or portion thereof, in the municipality are so located with reference to population, use and travel thereon, that it is unnecessary to keep the road or roads maintained and open for travel during the months of November, December, January, February, March and April or any part of these months.”

Limit Use of Public Easement

ⁱ Limited to “private road, way or bridge”

ⁱⁱ Limited to “private way”

ⁱⁱⁱ Limited to “public ways”

^{iv} Limited to “roads”

VERMONT'S ROAD INVENTORY ACTVERMONT ACT 178 OF 2006

In 2006, Vermont enacted a law requiring municipalities to map all class 1, 2, 3, and 4 town highways and legal trails by July 1, 2015.¹

Inventory and Classification

Class 1 town highways are highways which form the extension of a state highway route

Class 2 town highways are those highways selected by town selectman, with approval of the Vermont Agency of Transportation, as the most important highways in each town (purpose of securing trunk lines of improved highways from town to town and to places which by their nature have more than normal amount of traffic

Class 3 highways are travelled town highways other than class 1 or 2 as determined by the selectmen after conference with the Vermont Agency of Transportation. Minimum standards for Class 3 highways are:

“negotiable under normal conditions all reasons of the year by a standard manufactured pleasure car. This would include but not be limited to sufficient surface and base, adequate drainage, and sufficient width capable to provide winter maintenance, except that based on safety considerations for the traveling public and municipal employees, the selectboard shall, by rule adopted under 24 V.S.A. chapter 59, and after following the process for providing notice and hearing in section 709 of this title, have authority to determine whether a class 3 highway, or section of highway, should be plowed and made negotiable during the winter. However, a property owner aggrieved by a decision of the selectboard may appeal to the transportation board pursuant to subdivision 5(d)(9) of this title.”

Class 4 highways are town highways that are not class 1, 2 or 3 town highways or unidentified corridors as determined by the selectmen.

A trail is “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.²

Towns are not responsible for maintenance of trails.³

¹ <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT178.HTM>

² <https://legislature.vermont.gov/statutes/section/19/003/00301>

³ <https://legislature.vermont.gov/statutes/section/19/003/00302>

Mass Discontinuation

The 2006 law also allowed for mass discontinuation by a municipality of any highway or trail that had not been mapped. The discontinued highway was no longer public and ownership reverted to the adjoining landowners.

VERMONT ACT 158 OF 2008⁴

In 2008, the Vermont legislature enacted Act 158 which made some small changes to the provisions of 2006 law and reduced what highways could be mass discontinued to only those that fit into the new “unidentified corridor” category. An unidentified corridor is a town highway that is not a legal trail, does not appear on the town highway map as of 7/1/10 and is not otherwise clearly observable by physical evidence of their use as a highway or trail.⁵

COMMENTS FROM VERMONT AGENCY

Act 178 of 2006 and Act 158 of 2008 set into motion a process of municipalities at that point in time. Each town took a slightly different approach on how to research what highways had been legally established and were not on the town highway maps. Some reviewed every laying out, alteration and discontinuance document in the town records and matched them to the road network to assess what was missing, then hold public hearings, worked with landowners and added highways back to the map or discontinued them. Other towns did nothing, with many of the towns in between.

The Vermont law created significant title issues and sparked the ancient road issue that Act 178 and Act 158 intended to resolve which lead to litigation. VTrans Mapping provided guidance to municipalities and ultimately the addition of these highways to the town highway maps. VTrans Mapping has a web page set up with information about the process and resources on the “ancient roads” issue.⁶

⁴ <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT158.HTM>

⁵ 19 V.S.A. § 302(a)(6)(A)

⁶ <https://vtrans.vermont.gov/planning/maps/ancient-roads>

Eminent Domain – Public Easement (23 MRSA §3022)

“After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, public easements laid out under this section are limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42.”

“Public Easement” – defined (23 MRSA § 3021, sub-§2)

“an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976. Private ways created pursuant to former sections 3001 and 3004 prior to July 29, 1976 are public easements.”

“Private Way” - defined (23 MRSA §1903, sub-§10-A)

“Private way” means a private road, driveway or public easement as defined in section 3021.”

“Private Way” - defined (29-A MRSA §101, sub-§58)

“Private way” means a way privately owned and maintained over which the owner may restrict use or passage and includes a discontinued way even if a public recreation easement has been reserved.”

“Public way” - defined (29-A MRSA §101, sub-§59)

“means a way, owned and maintained by the State, a county or a municipality, over which the general public has a right to pass.”

“Repair and maintenance” – defined (23 MRSA § 3101, sub-§1, ¶B)

“Does not include paving, ... includes, but is not limited to snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and clearing brush, trees and vegetation in the right-of-way.”

“Way” – defined (29-A MRSA §101, sub-§92)

means the entire width between boundary lines of a road, highway, parkway, street or bridge used for vehicular traffic, whether public or private.”