

Old Centre Turnpike Preservation Study Report

Paul S. Gillies, Esq. and Kevin Russell

Supported by LandWorks



by direction of the Selectmen a highway barrier
standing on the east side of the highway
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thence Left 21 Rods to a Blue oak tree,
thence North 80 Left 14 Rods to a



Left 46 Rods to a Beach tree, thence Left 67 Rods
to Left 24 Rods to a Birch tree, thence North 50 Left
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Ripton, R highway being, six Rods wide. Surveyed by
Middlebury May 8th 1794 then led the foregoing
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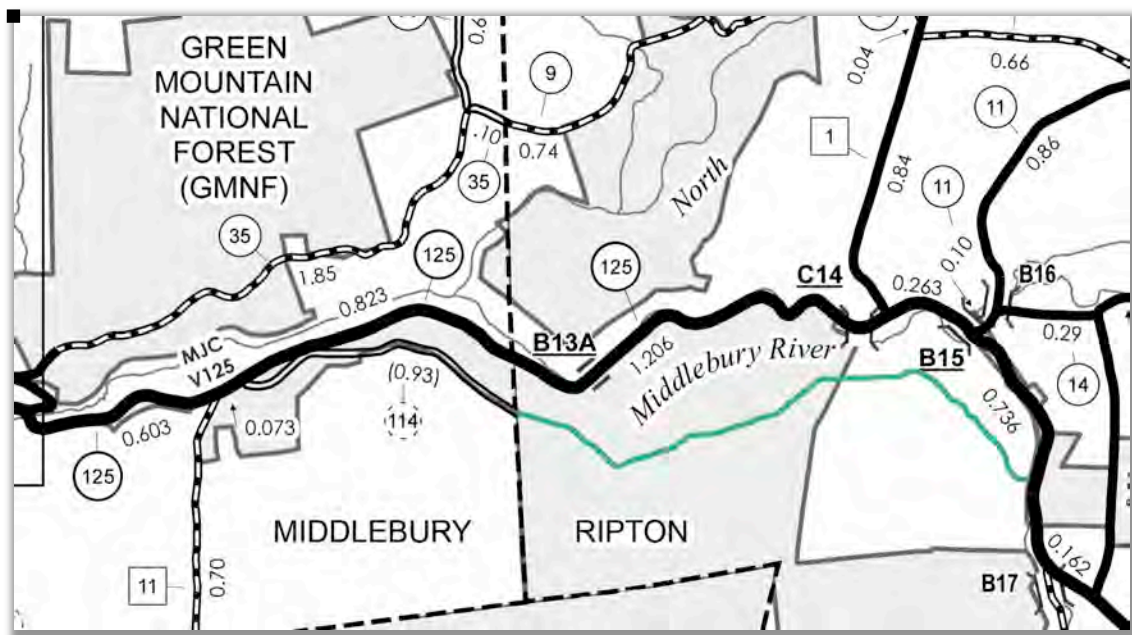


Final Report
September 25, 2014

Addison County Regional Planning Commission • Town of Ripton
Vermont Agency of Transportation • Federal Highway Administration

Introduction

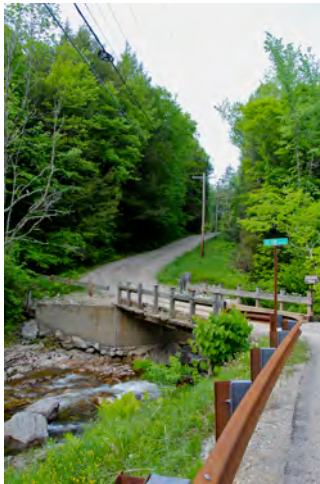
The Town of Ripton received support from the Addison County Regional Planning Commission (ACRPC) to conduct a study of an historic transportation corridor commonly known as Old Centre Turnpike and Old Town Road and to preserve the corridor for public use. The goal of the preservation study was to determine the current legal status of the corridor and make recommendations on measures necessary to preserve the permanent control of the public right-of-way of the Town of Ripton. On behalf of the Town, the ACRPC issued a request for proposals for professional consultants to conduct the study, provide a legal opinion and produce a report with recommendations to provide certainty and direction on the issue. The ACRPC and Town selected the consulting team of Paul Gillies of Tarrant, Gillies, Merriman and Richardson of Montpelier, and Kevin Russell of Community Development Services of Waitsfield to conduct the study, research the topic and prepare this report. LandWorks of Middlebury provided valuable mapping resources, accurately compiling the relevant information on a comprehensive Base Map (Appendix B). Through research of the legal record the project team has found that the Town has legal control of the corridor for current and future use by the public. A formal legal opinion that asserts that **the road was legally established and never legally discontinued** can be found on page 6.



Purpose and Need Statement

The purpose of the study is to confirm, or provide a strategy to obtain, the legal public right-of-way of the former Centre Turnpike as laid out, constructed and in use since 1808 within the Town of Ripton. The *Old Centre Turnpike Preservation Study Report* will provide a legal opinion and an outline of the steps necessary for the Town to add the road to its Certificate of Highway Mileage and General Highway Map, preserving the corridor for public use.

The need for legal control of the right-of-way is for the Town to utilize the corridor for future needs that benefit the public, including emergency access in the event of a closure of State Route 125.



Recent and historic floods of the Middlebury River have caused road closures in the past and additional events are predicted to increase in frequency and impact in the future. A benefit-cost analysis that was conducted in 2010 concluded that it might be cost effective to employ the corridor of the Old Centre Turnpike/Old Town Road as an alternative route to the existing vulnerable roadway. Formally acknowledging the road as a legal public right-of-way will enable the Town to take action as necessary.

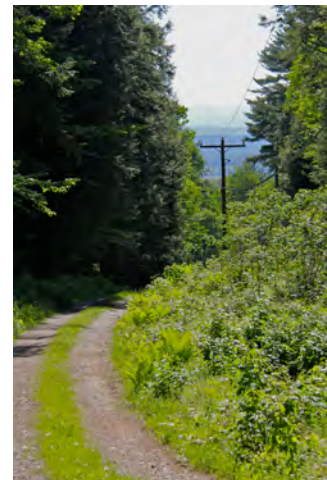
Furthermore, the Town has until July 1, 2015 to add the road to its Certificate of Mileage and General Highway Map or risk losing the public right-of-way as a consequence of ACT-178 of 2006, a law that requires all town roads and trails to be added to the official Town Highway Map by July 1, 2015. The study report outlines the steps necessary to comply with this Act.

Project History

A detailed chronology of the history of the corridor is found in the “History of Centre Turnpike/Old Town Road in Ripton, VT from 1793 to 2008” by Charles Billings and provided valuable background information for the preservation study (Attachment A). In 1793, John Foot surveyed a road from the Middlebury Court House easterly through what is now Ripton. In 1794, the Middlebury Selectboard recorded this layout in the land records on May 8 (Book 2, pages 221 and 222). On November 4, 1800, the Centre Turnpike Company was chartered by the Vermont Legislature to provide a toll road from Middlebury to Woodstock. Among the incorporators were Gamaliel Painter and Daniel Chipman. The road was built in 1808 along the corridor of an above-mentioned road survey recorded by the Town of Middlebury.

The original road survey and the route of the early turnpike within the Towns of Middlebury and Ripton followed a different alignment than the current Robert Frost Memorial Drive, State Route 125. As with all early Vermont turnpikes, there were changes made to its alignment due to challenging topography and developing land use patterns. Around 1825, approximately 2½ miles of the road became little used when the main turnpike was relocated downslope, adjacent to the Middlebury River to provide a connection to the commerce along the river and the growing village of Ripton. The piece of the former 1793-surveyed road that became bypassed, now known as Old Centre Turnpike in Middlebury and Old Town Road in Ripton, is the topic of this study.

Today the entire length of the Old Centre Turnpike corridor is also a right-of-way for an overhead utility line that was originally established by Joseph Battell, a notable landowner during the late 19th and early 20th century. This easement is recorded in the Middlebury Land Records. Due to this continued use, the corridor is open and passable in both towns. For the purpose of this study, we will refer to the entire corridor as the presumed Old Centre Turnpike. Much of the land surrounding the corridor is land that was donated to Middlebury College by Joseph Battell and later became the Green Mountain National Forest.



The legal status of the Ripton portion has been in question and was the primary focus of the preservation study. In 1981, the US Forest Services (USFS) investigated the status of the road and determined that it was still a public highway. At the time, the Town of Ripton took no formal action to acknowledge the road due to uncertainty of the legal status. However, the Town of Middlebury acknowledged its section of the corridor and added it to its General Highway Map. Thus, the USFS was provided access for forest management from that end of the corridor. The Middlebury road was upgraded to its current condition.

Recent events and other planning efforts including a 2010 study - *Middlebury River/Route 125 Benefit-Cost Study* - have identified the need to preserve this former road for current and future uses. The study identified the need to preserve the old corridor for emergency purposes and to reestablish the route for transportation in the event of another catastrophic flood of the Middlebury River and washout of the current Route 125. If this were to happen, the Towns would need to demonstrate the legal right-of-way of the route for public uses as a highway. In Middlebury, Old Centre Turnpike is shown on its General Highway Map as TH114. The US Forest Services maintains this road (FS#296) for forest access and recreation usage including a trail known as the Oak Ridge Trail. In Ripton however, Old Town Road is not shown on the highway mileage map.

Through a collaborative effort working with representatives from the Town of Ripton, Addison County Regional Planning Commission, National Forest Service and other stakeholders, the project team researched the current status and provided a legal opinion that asserts that Old Town Road is, and always has been, a Ripton public highway. This report recommends strategies to preserve the legal right-of-way and utility of Old Town Road including the steps necessary to satisfy Act 178 “Ancient Roads” legislation.

Existing Conditions

The Old Centre Turnpike and its attending power line deviate to the right from Route 125 just uphill of Upper Plains Road in Middlebury. There is a US Forest Service parking area and trailhead for the Oak Ridge Trail that provides recreation within the Green Mountain National Forest. The road/trail ascends at a moderate to steep incline as it wends its way above and away from the current highway. The corridor is uncharacteristically open for an old road in the woods due to the generous clearing required



by the power line. It is quite visible by statewide aerial photography and satellite. This road has a locked gate just uphill from the trailhead. Large hardwood forests guard the entire length including many oak, maple, ash and yellow birch. Wild turkey can be heard and sign of deer and moose can be seen. The clearing provides an edge habitat for diverse wildlife including lots of berries for black bears. The road is well maintained in Middlebury with a crushed marble and gravel surface. The wheel tracks are bright in the green grass of June. The ditches and few culverts are well maintained making for a dry and stable road suitable for heavy vehicles required for logging and utility operations. Boulders are strewn along the way. Some not moved far from where the glacier left them, other avoided by the early road builders. The road is a recreation corridor and used by hikers, bicyclists and skiers. It is an important link to the Catamount Trail.



The Middlebury Class 4 Road ends at just less than one mile at the Ripton border. At 1.25 miles the road bends sharply to the left and summits, crossing the one main stream by way of a metal culvert. This culvert in Ripton has been maintained in recent years, presumably by the USFS. Here the Oak Ridge Trail turns off from the road easterly toward Mount Moosalamoo on a single track. Just beyond, there is a level clearing and the well-maintained road ends. Now the road takes a straight line along level ground for some distance. The gravel is replaced by soft boggy soil providing good wildlife tracks to observe. Wheel tracks from ATVs are also present. Verdant are the plants that envelope the road/trail within the wetland. The power line is noticeably lower. The public land ends at the Green Mountain National Forest boundary, within view of a residence that is at the top of Old Town Road.

The section of the Old Centre Turnpike in Ripton, now named Old Town Road, is accessed from the east over a bridge (Potash Bridge) across the Middlebury River. There are a number of private lots and residences that are served by this bridge and road. The property owners have maintained Old Town Road and its bridge in recent years, with some assistance from the Town. The USFS owns land on the east side of Route 125 where the Old Town Road meets the main road. The boundary line for this piece is the center of the Middlebury River. Otherwise, there are no public lands on either side of the road from its junction with Rt. 125 to where the road terminates at the Green Mountain National Forest boundary at the west end of Old Town Road. This is where the road transitions to the previously described section leading back toward Middlebury. The power line continues along this road. The characteristic boulders punctuate. Previous legal investigations and efforts to confirm the public right-of-way of this piece of Old Centre Turnpike have been inconclusive to date. This study rectifies that.

Natural and Cultural Resources

In addition to the observations above, the project team conducted a desktop review of the natural and cultural resources. The known resources are shown on the base map (see Attachment B). Any construction project to improve the corridor funded by Federal Highway Administration (FHWA) would trigger a National Environmental Policy Act (NEPA) assessment. This would require a comprehensive review of several natural and cultural resources to rule out any adverse impacts from the future construction and development of the corridor.

Study Approach

The approach to the study included collaborating with a project advisory committee consisting of the ACRPC staff, members of the Ripton Selectboard and staff, a representative from the Town of Middlebury and the project's consulting team. Additionally, the USFS provided valuable information from the research that was performed in the 1980's. The project team conducted important research of the public record, developed a comprehensive base map, documented important supporting exhibits (here within) and produced this written report with a legal opinion and recommendations.

Kick off Meeting – July 26

The project team and advisory committee met to initiate the project in July. At this meeting, the team reviewed a draft purpose and need statement, a draft outline of the steps necessary to comply with Act 178 and a draft base map. The team confirmed the scope of work and the direction of the study. Complete notes from the meeting are in Appendix C.

Legal Research

Following the Kick off Meeting, the team began to research the historic and legal record on the road. Paul Gillies, Esq. did a comprehensive review of:

- Centre Turnpike Corporate Records – Sheldon Museum
- Middlebury Land Records
- Ripton Land Records, and
- USFS File on research conducted in the 1980's

The Town of Ripton Land Records is not complete with missing records earlier than 1830. The record of the Town of Ripton voting in favor of spending funds to purchase and maintain the turnpike at a Town Meeting in 1853 (see Exhibits 4 and 5) was critical, along with the early laying out of the highway by the Town of Middlebury, before the boundary adjustment leaving the land covered by the 1793 road in Ripton. The USFS did similar research in 1981 and maintains an extensive file on the road in their offices in Rutland. The USFS also did a complete resurvey of the road at that time. This survey was recorded in the Middlebury Land Records on Slides 373 and 374 (shown on base map).

Second Advisory Committee Meeting - August 12

The project team and advisory committee met again in August to review a draft legal opinion provided by Paul Gillies and confirm the next steps to meet the goal of the project. The committee reviewed an outline of the necessary steps to add the road to the Town's General Highway and Certificate of Mileage. The base map was reviewed with suggestions from the committee on additional features to be added. The project team will plot and match the 1793 survey, add the historic Town boundaries and label the parcels and other features. Complete notes from the meeting are in Appendix C.

Legal Opinion

The following legal opinion of Paul Gillies, Esq. confirms that the corridor in question is a legal Ripton Town Highway.

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September 22, 2014

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OF COUNSEL
STEPHEN A. REYNES

Laureen Cox, Chair
Ripton Selectboard
1311 Vermont 125
Ripton, Vermont 05766

Re: Old Centre Turnpike/Town Highway

Dear Laureen:

The issue is whether the road that runs off of Route 125 easterly along the height of land in Ripton—the track of the former Centre Turnpike—is a town highway. This has been a subject of considerable research, surveying, and struggle over the years, but the evidence is clear enough for me to conclude that the track is a Class 4 town highway of Ripton. Here's how I get to that conclusion:

The highway was laid out by Middlebury Selectmen in 1793 to the town border with Ripton. Exhibit 1. This road was never discontinued, and as the land over which it travels is, since 1814 and 1829, located in Ripton, it is a town road in that town. Exhibits 2 and 3.

Discussion of the creation of the Centre Turnpike Company and its doings over its history are, for purposes of this conclusion, irrelevant. The Company had control over the route for 53 years, but in 1853 sold its interests to Ripton. Exhibits 4 and 5.

The records of the Town of Ripton prior to 1830 are lost, and no survey of that portion of the route that runs from the old town line of Middlebury to the road to Goshen has been located. But that problem is solved by evidence that Ripton spent funds to improve the road in 1853. Exhibit 6. In highway law, that is evidence of dedication and acceptance, which would be an alternative basis to conclude it is a town highway in lieu of a survey and on top of the 1853 purchase of the route from the Turnpike Company.

There is a lot of information on this issue in the U.S. Forest Service Office in Rutland, including surveys tracking the 1793 route with ground evidence. The Sheldon Museum has the corporation records of the Center Turnpike Company, and the Ripton and Middlebury town land records have even more information, but nothing in any of it suggests that the road is not a Ripton town road. Middlebury recognized it as a town road as it runs through that municipality, in 1982. It's time for Ripton to do the same.

Ripton has had opportunities in the 1980s to take this step, but its Selectboard was cautious and resistant, largely because of a concern that landowners along the route would be upset. Apparently there are successor landowners who have a similar idea, including one who has erected signs insisting that the road is not a public highway. This resistance does not change the underlying fact that the road is a highway, however. Road easements can't be extinguished the way private easements can. 19 V.S.A. § 1102.

Some have complained that they spent money improving the road, and hinted that this changes things, but that is a mistaken theory. That they went ahead and made improvements without the approval of the Selectboard has no impact on the underlying facts either.

The running of utility lines along the route, beginning in 1881, is of some value in confirming that it is a town highway, but that is not determinative either.

What matters is the 1793 survey and the 1853 purchase of the route and payment of funds to improve it by the Town of Ripton, plus a lack of any evidence of discontinuance. The lesson of the ancient roads law and the various cases that have come from fights between landowners and towns on old roads is that a highway never ceases to exist without some affirmative act of the Selectboard, discontinuing the public interest in the road. There is no evidence that that has occurred. There is neglect and a failure to acknowledge, but no discontinuance.

The Town should, however, ensure that the highway is placed on the official town highway map, by providing the evidence of its creation to the Agency of Transportation Mapping Division.

The survey that has been completed for this study plots the 1793 survey accurately, although the rendition shows the road stopping short of the Ripton line and diverges in places from the track of the road as located on the ground. The differences may be attributable to small lapses in surveying or the choices made by those who built the road following the original survey. These inconsistencies should not be of great concern to the Selectboard. When a road has moved out of its original, surveyed track, the Vermont Supreme Court has recognized that fact and not held towns to strict adherence to the original position. *Town of Ludlow v. Watson*, 153 Vt. 437, 441-442 (1990) (applicable to the extent that original metes and bounds cannot be determined, relying on 19 V.S.A. § 32). This is partly due to the concept of dedication and acceptance, which justifies and validates changes in road location when there is maintenance and no objection by the landowner for a period of years. *Town of Springfield v. Newton*, 115 Vt. 39, 43-44 (1947). Complementing these factors is the 1853 purchase of the land over which the road runs from the Turnpike Company, as discussed above. If a challenge comes to the Town's decision to have the route included as a Class 4 highway on the official town highway map, these elements should provide a satisfactory explanation to the conclusion that this is a town road.

Thank you.

Sincerely,



Paul Gillies

See Appendix D

Exhibit 1 – 1793 Survey of John Foot – recorded on May 8, 1794 in the Middlebury Land Records - Book 2, Pages 221 and 222, and a transcript excerpt from the Middlebury Road Book.

Exhibit 2 – 1814 Laws Passed by the Vermont Legislature, page 141 - Middlebury to Ripton boundary change documentation.

Exhibit 3 – 1829 Acts Passed by the Vermont Legislature, page 20 - Middlebury to Ripton boundary change documentation.

Exhibit 4 – 1800 to 1808 Acts Passed by the Vermont Legislature– excerpts related to the Charter of the Centre Turnpike.

Exhibit 5 – March 30, 1853 Ripton Town Meeting Proceedings, page 126 – action taken regarding purchase and maintenance of the Centre Turnpike.

Exhibit 6 – April 15, 1853 Ripton Town Meeting Proceedings, page 126 and 127 – action taken regarding purchase and maintenance of the Centre Turnpike.

Corridor Preservation Recommendations

Complying with Act 178:

In 2006, the Vermont Legislature enacted a law that required all town-owned roads to be shown and listed on the General Highway Map and Certificate of Mileage. Old Town Road is not currently acknowledged as a town-owned road and is not on the Ripton map or certificate. The above legal opinion concludes that the road is a Town Highway. In order for the road to remain a legal Town right-of-way and comply with Act 178, the Town will need to take the necessary steps to add it to the Town's Certificate of Highway Mileage and General Highway Map. This is detailed in 19 V.S.A. § 305(c). The Vermont Agency of Transportation (VTrans) has published a practicum and checklist on compliance with Act 178 and describes the process on adding existing roads that are not on the General Highway Map (See appendix E). Here is a summary of these steps and important date:

- **February 10, 2015** (on or before) - The Town Selectboard files with the Clerk the annual Certificate of Highway Mileage to include the Centre Turnpike mileage and forwards a copy to the VTrans Mapping Section by February 20.
- In addition to the Certificate of Highway Mileage, the Town will need to provide documentation that includes a description of the affected highway, minutes of meetings at which the Selectboard took action to acknowledge the highway, and a copy of the General Highway Map with the road sketched on it.
- A copy of the historic and USFS surveys can provide additional evidence but are not required for roads that were established prior to February 10, 2006.
- VTrans will review the submission and request any additional information. If the documentation is timely and complete, the Agency will add the road to the General Highway Map prior to the deadline of July 1, 2015.

According to the VTrans practicum, if the Town wishes to reclassify the highway to a Town Trail, then the presumption is the Town will reclassify the highway to a trail before adding it to the Mileage Certificate and General Highway Map.

Future Considerations

Maintenance:

The Town's responsibility for maintaining Class 4 highways is described in 19 V.S.A. § 310. "Highways, bridges and trails - (b) Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways and meeting the standards set forth in section 302 of this title." However, codes and standards apply to the drainage structures on Class 4 Highways, in the same manner as Class 3, so culverts and bridges should be maintained. Damaged structures from flooding on Class 4 highways and bridges are eligible for FEMA providing the Town has a policy to maintain the structures on Class 4 highways. Towns are not bound to maintain town trails – "Trails shall not be considered highways and the town shall not be responsible for any maintenance including culverts and bridges." 19 V.S.A. § 302(c)(5).

The bridge over the Middlebury River to Old Town Road, known as the Potash Bridge, is a major structure along the highway and represents a significant responsibility and potential future cost to

the Town and/or residents along the road. This study did not investigate the condition of the bridge nor does this report provide any engineering opinion or estimates of repairs or replacement. This report makes no recommendations on maintenance of the highway and the attending structures beyond suggesting that the Town work with the affected landowners on all matters related to the highway, its future uses and ongoing maintenance. The project team recommends developing a written management plan in collaboration with residents and other stakeholders to guide future actions regarding the road/trail.

Town Trail:

The advisory committee and project team discussed the possibility of reclassifying the road as a legal Town Trail in order to control the uses and work with the property owners to minimize any adverse impacts. Before the corridor is formally added to the Highway Mileage Certificate, the Town can take action to reclassify the highway to a Town Trail. The Town may choose to reclassify only a portion of the road to a trail. If so, then adding the highway to the map may be the first step. The reclassification process is defined in 19 V.S.A. §§ 708 – 712 and 771 – 775. Here is a summary of the steps:

- The Selectboard initiates the proceedings. Or, by request of an abutting property owner, or by petition of 5% of the voters.
- The Selectboard holds a public hearing to examine the premises and hear concerns by properly posting with the Clerk, advertising in a local newspaper of record and notifying affected landowners with 30 days notices.
- The Selectboard votes to reclassify and prepares a survey of the highway to be reclassified.
- Within 60 days of the hearing, the Selectboard reports the action to the interested parties and the Clerk. The order to reclassify the highway and the survey are recorded in the Town land records.
- The Town notifies VTTrans Mapping Section at the next annual cycle for updating the Certificate of Mileage and General Highway Map.

In consideration of the Town Trail, the Selectboard could work collaboratively with the landowners and others to establish a management plan for the highway/trail. The plan can include specific management and maintenance responsibilities, establish the legal uses, reroute portions of the trail to avoid impacts to property owners and other important considerations.

Conclusion

The local communities and other important stakeholders are interested in preserving the corridor of the Old Centre Turnpike and Old Town Road in the towns of Middlebury and Ripton. Emergency access to the corridor in the event of another catastrophic flood of Route 125 is a real need, particularly to the residents of Old Town Road should the Potash Bridge be lost. This study provides important clarity and certainty to the legal status of the route and recommendations on preserving control of the corridor for the public's use. The project team thoroughly investigated the public record and researched the legal status of the road in question. The legal opinion concludes that Old Town Road was legally established and never legally discontinued. The status and future uses of the corridor are under the control of the governing body of the Town of Ripton. This study recommends that the Town take the steps outlined to preserve the public road by adding it to the Certificate of Mileage and General Highway Map and work closely with property owners, the USFS and others as necessary and maintain the utility of the corridor.

Appendices

- A. *History of Centre Turnpike/Old Town Road in Ripton, VT from 1793 to 2008* by Billings
- B. Base Map
- C. Advisory Committee Meeting Notes
- D. Exhibits 1-6 in support of the legal opinion
- E. VTrans – *An Ancient Roads Practicum*

