

Legislative Report

UNIDENTIFIED CORRIDORS

**Pursuant to
Act 178 of 2006, Section 12(a)**

**By the
Vermont Agency
of
Transportation
(VTrans)**



Act 178 of 2006 – An Act Relating to Unidentified Corridors – Status Update

Overview

On July 1, 2006, Act 178 was enacted, setting into motion the mapping of highways and trails that had been lost to the ages. The primary requirement defined in Act 178 of 2006 is for municipalities to map all class 1, 2, 3 and 4 town highways and legal trails by July 1, 2015. Municipalities have decided at the local level to what extent they would adhere to the new requirements. Some municipalities have decided to “let sleeping dogs lie” and not pursue this effort, whereas other municipalities have been active, forming ancient road committees, doing extensive research, and forging ahead with bringing highways and trails back.

Act 178 of 2006 and the companion legislation, Act 158 of 2008, have made substantial modifications to 19 V.S.A. Chapters 3 and 7. The changes include the requirement for municipalities to map all class 1, 2, 3 and 4 town highways and legal trails by July 1, 2015, the creation of a new category called “unidentified corridors”, the creation of a process of municipalities to mass discontinue highways that will become “unidentified corridors”, and completely discontinuing highways that may have small technical defects in the discontinuance process.

The Agency of Transportation (VTrans) Mapping Unit has been following the progress of Act 178 and Act 158 since they were enacted. This report is being provided as a requirement of Act 178 of 2006, Section 12(a). Please find below the required sections and information regarding the status and observations regarding Act 178 of 2006 and Act 158 of 2008.

1.) Evaluates the effectiveness of this act:

There continues to be significant activity related to “ancient roads” and Act 178, with municipalities continuing efforts to research and map legally established highways and trails. Municipalities, including several of the 89 municipalities that received research and mapping grants from the Agency of Commerce and Community Development (ACCD), are beginning to make submittals of class 4 town highways and legal trails on the Certificates of Highway Mileage.

To date, the VTrans Mapping Unit has received the following mileage additions for Class 4 Town Highways and Legal Trails, as a direct result of Act 178.

Ancient Road Additions by Class & Year			
Year	Class 4 TH	Legal Trail	# of Towns
2006	11.00	6.75	2
2007	23.85	136.20	41
2008	10.63	26.29	19
<u>2009</u>	<u>11.05</u>	<u>1.75</u>	<u>6</u>
Total	56.53	170.99	63*

Note s - * 63 total towns submitted changes over the course of the 4 years, several towns submitted changes in multiple years, thus the column does not add up to 68.

The 2010 Certificates of Highway Mileage are required to be filed in the municipal office on or before February 10, 2010 and VTrans has yet to see the full impact of the this year’s submittals. Due to the interim deadline of July 1, 2010 for the creation of the “unidentified corridor” category and the end of the mass discontinuance provision, the Agency expects a significantly higher return of Certificates with changes and additions this year.

One of the reasons Act 178 was enacted was to provide “clarity” to the public highway networks and allow municipalities, title insurance corporations, and the public to readily know the ownership status of the highways and trails within a municipality. This “clarity” would then mitigate the potential for litigation due to ownership disputes.

VTrans has seen an increase in the number of concerns expressed by landowners who have been informed by a municipality of a highway crossing their land, yet there is limited or non-existent documentation to support that the highway or trail was legally established. It is not known the number of court cases that have resulted since 2006, but there are several disputes currently that could result in litigation. These issues feed the adage that Act 178 will create more litigation than it resolved.

The unfortunate development related to Act 178 of 2006, is that municipalities are in the process of adding highways to the map and this has accelerated litigation regarding the public status of these highways. As towns have brought forward information regarding highways, there have been challenges regarding the validity of the rights of way.

Additional cases, aside from early litigation in the Towns of Chittenden, Barnard, and Bethel, have been brought forward in several towns already, including Pownal, and Plymouth. There has also been a relevant case in Middlesex, *Austin v. Town of Middlesex*, 2009 VT 102 (Oct. 27, 2009), that alters perspective on what documentation is needed.

2.) Recommends additional measures necessary to meet the goals of this act;

As municipalities have been working toward implementing Act 178 of 2006, there have been several issues that have surfaced that could be mitigated with alterations to current statutes.

The two measures that continue to be main themes for municipalities are the addition of time to the process and the addition of funding to meet the necessary requirements. Act 158 of 2008 provided a partial remedy to the timeline for the process and an additional round of ancient road grants through ACCD, which provided additional funding. It would be beneficial to have an additional source of funds for the research and mapping or technical assistance, which could provide impetus for some municipalities to move forward.

The ultimate deadline for mapping all classes of town highways and legal trails remains as July 1, 2015, but the interim date of July 1, 2009 was extended to July 1, 2010. This added an additional year before the creation of the “unidentified corridor” category and the end of the mass discontinuance provision.

Funding for the research and mapping is an area that could be beneficial to municipalities, with additional funding providing impetus for some municipalities to move forward.

An issue has been identified regarding the timeline for the implementation of Act 178 of 2006. One of the dates is creating a hardship at the municipal level. There is over a four-month time period that exists between February 10, 2010 and July 1, 2010, which is the date that after which municipalities are unable to add highways that will become “unidentified corridors.” The hardship is created by two statutory dates: February 10th which is the filing date for the sworn statement, and July 1st which is the date that the “unidentified corridor” category comes into existence.

There has been a considerable amount of effort set forth by municipalities in the research and mapping of ancient roads, including hundreds of hours of volunteer time, as well as funds expended on professional assistance and legal advice.

Now that this work is nearing completion in many towns, it is time to start the next phase of the process. This phase includes both review and action by Selectboards on town highways and trails uncovered

in the research process. These legislative bodies need time to review each highway and make a decision to either add the highway back to the map or to discontinue it. This process takes time to adequately deliberate the public good and necessity of each highway.

Due to the current statutory language, a 45-day notice is required (19 V.S.A. § 305(d)) prior to adding a highway to the sworn statement, also called the Mileage Certificate, for any highway that is not clearly observable as a highway or trail. Essentially, all highways that meet the criteria for an “unidentified corridor” require notice to have been filed by December 28, 2009 for inclusion on this year’s Mileage Certificate. This must be done by December 28th because the statutory date for filing the Mileage Certificate is on or before February 10, 2010. In addition, a statutory 15-day notice is required to inform a landowner of a site visit by an Ancient Roads Committee, the purpose of which is to gather evidence of pre-existing highway features. As 2009 was no different than most years, there was a good snow cover in December, hampering both the landowner and Committee a fair assessment of conditions on the ground.

Unfortunately, many municipalities either have not completed, or are just completing, the research phase of the process and have yet to have their legislative body act on the information provided by the Ancient Road Committees. In some cases, municipalities have researched the legal establishment of a highway through the municipal records, but are unable to do field work, in part as previously described, to determine whether a highway is identifiable or not.

The rights-of-way will not be lost for these highways if they are not added on this year’s Mileage Certificate, but the municipalities will need to go through a reclassification process, as defined in 19 V. S. A Chapter 7, which could include the payment of damages to adjoining landowners.

There is no formal process defined in statute that allows for highway additions, alterations, or discontinuances to be made to the Mileage Certificate between February 10th and July 1st. The Mileage Certificate is the document that defines the mileage and changes to be made to the General Highway Maps, also known as the Town Highway Maps. This creates a situation where the statutory date for the creation for “unidentified corridors” is July 1, 2010, but the functional date for the addition of highways to the map is February 10, 2010. This essentially cuts four months out of the process for municipalities, a time period that many municipalities believe is critical to properly complete their process.

One means of addressing this issue is to alter the July 1, 2010 date for the creation of the “unidentified corridor” category and move this to February 10, 2011, thus synchronizing the timing with the filing of the Mileage Certificate.

Act 158 of 2008 altered the mass discontinuance provision, allowing for the mass discontinuance of only highways that will become “unidentified corridors.” This modification limits municipalities from completely mass discontinuing all highways and trails not accounted for on the Certificate of Highway Mileage and the General Highway Map. A full mass discontinuance would allow for clarity and eliminate the ambiguity of what remains and what has been discontinued due to whether a highway or trail is observable or not.

The municipalities are required to map all class 1, 2, 3 and 4 town highways and legal trails by July 1, 2015, as defined in 19 V.S.A § 305 (c). On July 1, 2015, the “unidentified corridors” are discontinued by statute and revert to the adjoining landowners. For those class 4 town highways that have been legally established, never discontinued, and are clearly visible as a highway or trail by physical evidence, nothing in statute defines what happens to these highways that are not added to the map. A municipality is required to map all Class 1, 2, 3, and 4 highways, but there is no direction on what happens to the visible class 4 town highways that go unmapped and without mileage reflected on the Mileage Certificate after July 1, 2015. The presumption is that they persist as public rights of way, as class 4 town highways and could perpetuate the issue of ancient roads into the future. There is also a presumption that since statute does not define what happens, there will be litigation that will provide direction, as it is conceivable that a municipality will be sued because they failed to add a highway to the Mileage Certificate and Town Highway Map by July 1,

2015 and thus chose not to retain the public right of way. Closing the loophole on the ambiguity of what happens to the clearly visible class 4 town highways after July 1, 2015 would be beneficial and remove the notion that ancient roads will need to be revisited 25 years from now.

The VTrans Mapping Unit is comprised of 3 professional staff and oversees the processing of the Certificate of Highway Mileage, publication of the Summary of Highway Mileage, and the update, production of the Town Highway Maps, as well as other mapping functions. Based on the language in Act 178 of 2006 and the alterations from Act 158 of 2008, it is inferred that the 2010 maps series will be completed by July 1st. Based on the unprecedented volume of changes in 2010 expected and the amount of supporting documentation that requires review by the Mapping Unit, the ability to complete all the maps by July 1st may not be attainable. A nuance related to this uncertainty to complete the maps is the creation of the “unidentified corridor” category and a technical detail in current statute. Municipalities may submit class 4 town highways that meet the criteria of an “unidentified corridor,” and even though the highways are on the Certificate and slated for inclusion on the Town Highway Map, they could technically become “unidentified corridors,” if not added to the map by July 1, 2010. The Certificate of Highway Mileage is the sworn statement regarding the additions, reclassifications, alterations, and discontinuances of highways and trails within a municipality. To correct this issue, the Legislature could alter the existing definition of an “unidentified corridor” to include a clause stating the municipality had added the highway to the Mileage Certificate. Potential language to modify 19 V.S.A. § 302 (a)(6) is as follows:

19 V.S.A. § 302 (a)(6) Unidentified corridors.

(A) Unidentified corridors are town highways that:

(i) have been laid out as highways by proper authority through the process provided by law at the time they were created or by dedication and acceptance; and

(ii) do not, as of July 1, 2010, appear on the town highway map prepared pursuant to section 305 of this title, or is included as an addition of the sworn statement filed on or before February 10; and

(iii) are not otherwise clearly observable by physical evidence of their use as a highway or trail; and

(iv) are not legal trails.

Since this issue is very technical in nature, it does present a valid concern about the classification of a highway that is intended to be added as class 4 if the VTrans Mapping Unit can not update the Town Highway Maps by July 1, 2010. This detail potentially jeopardizes the classification, at no fault to the municipality, and should receive some level of consideration.

3.) Identifies which municipalities have mapped all of their town highways and trails;

VTrans can report that only 16 municipalities have completed the mapping to date, those being 12 the municipalities that have utilized the mass discontinuance provision, plus 4 towns with no highways or trails to add. A full listing of municipalities that have mapped all their town highways and trails is incomplete, as many municipalities are still in the adding highways and have not fully completed the process.

As of the end of 2009, of the 89 municipalities that had received the ACCD research and mapping grants, VTrans has received additions of class 4 town highway from only 6 of these municipalities. We anticipate the remaining 83 municipalities to begin submitting the results of their research this year, before the creation of the “unidentified corridor” category.

Appendix 1 – The Act 178 of 2006, Status of Highway Mapping Map shows the status of municipalities based on a number of information sources. This includes recent information from municipalities on the level of completeness of the mapping effort, the municipalities that have performed the mass discontinuance, and the towns reporting the mapping was complete from a 2007 survey.

4.) Identifies which municipalities availed themselves of the provisions of 19 V.S.A. § 305(h), relating to mass discontinuances of unidentified corridors.

In 2008, the VTrans Mapping Unit created a mechanism for notification of the municipalities utilizing the mass discontinuance provisions of 19 V.S.A. § 305(h). A blank Certificate of Mass Discontinuance has been provided to each municipality and those completing the process have been requested to return this certificate.

To date, VTrans Mapping Unit is aware of 12 municipalities that have availed themselves of the mass discontinuance provisions of 19 V.S.A. § 305(h). Below is a list of the municipalities and the effective date of the mass discontinuance:

Benson	2/18/2008
Tinmouth	8/14/2008
Shoreham	10/8/2008
Swanton	12/17/2008
Maidstone	2/2/2009
Orwell	9/14/2009
Newfane	9/14/2009
Wallingford	10/5/2009
Sunderland	12/15/2009
Monkton	In process
Baltimore	In process
Brookline	In process

VTrans has been made aware of other municipalities that have expressed interest in mass discontinuance, but has yet to receive formal information regarding completion of the process.

The Village of Enosburg Falls had started the process for mass discontinuance, but has since altered course and is re-evaluating their highway network.

VTrans expects more municipalities to utilize the mass discontinuance provision in 19 V.S.A. § 305(h) before July 1, 2010.

Adjustments that were made by Act 158 of 2008 removed a part of the Act 178 mass discontinuance provision, limiting the ability of the legislative body to fully discontinue all unmapped highways to only those that would become “unidentified corridors.” This has created a situation where municipalities have questioned why go through the mass discontinuance process now, when they can wait and the highways will be discontinued by statute.

Summary

In summary, municipalities are continuing efforts to research and map legally established highways and trails and submitting the changes on the Certificates of Highway Mileage. More municipalities are expected to submit additions this year, due to the upcoming interim deadline of July 1, 2010 and the creation of the “unidentified corridor” category.

Act 178 has been effective in prompting municipalities to review and research public rights of way and make additions, although due to the timeline, some municipalities are unable to make the submission of Certificate of Highway Mileage in 2010. A common request made by towns is to extend the deadline,

allowing additional time for the submittal of additions and documentation. One solution could be to move the July 1, 2010 deadline to February 10, 2011, synchronizing dates and adding the needed time.

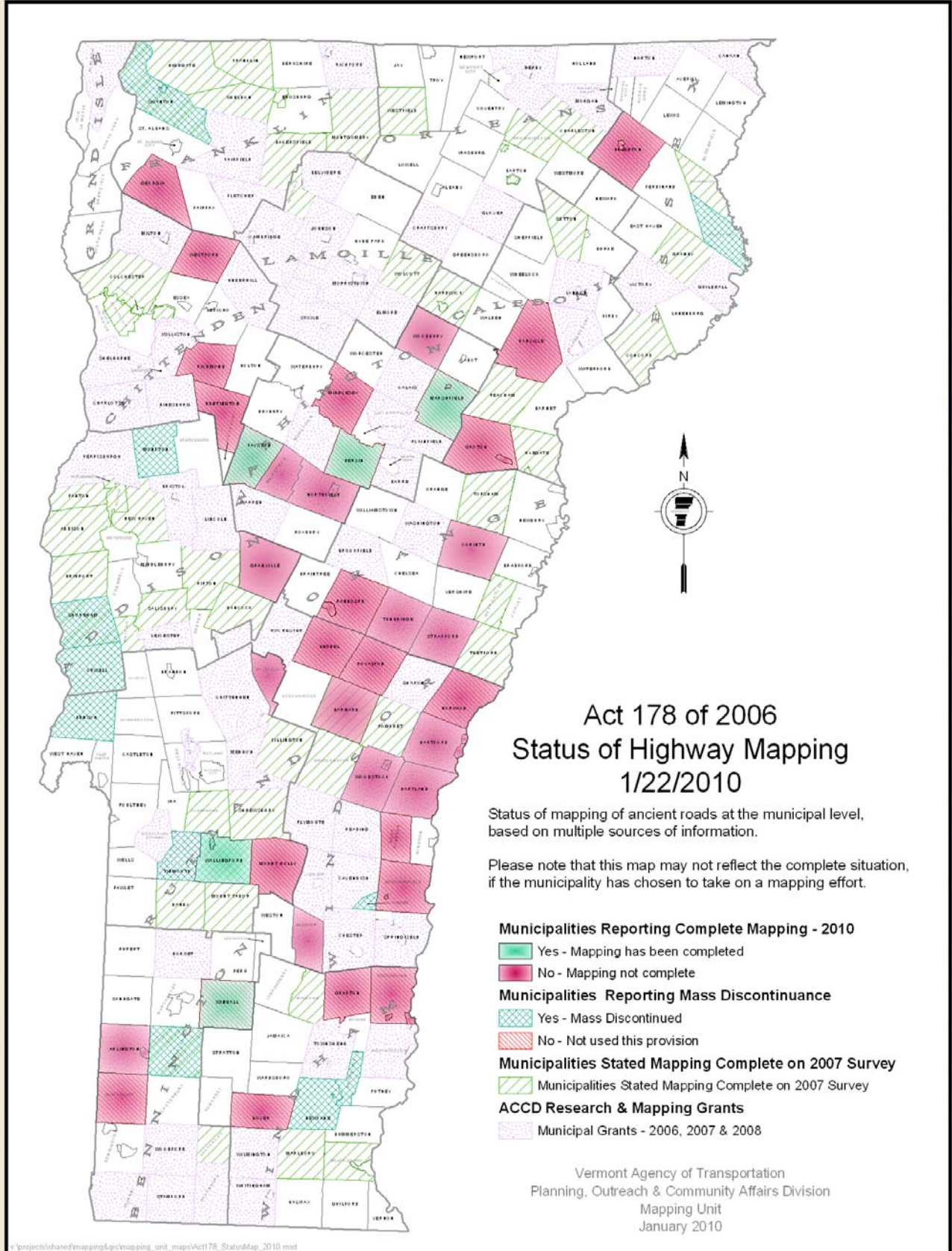
Several other issues exist including:

- The concern that the mass discontinuance does not provide as much “clarity” as some municipalities expect, as mass discontinuance is limited to only highways that will become “unidentified corridors.” As noted on page 3, municipalities may expect to be able to fully discontinue any un-mapped highways and the mass discontinue provision does not currently allow this.
- What happens to observable class 4 town highways after July 1, 2015 if not added to the map remains a question? Currently statute only specifies that highways that become “unidentified corridors” will be discontinued after July 1, 2015, and the presumption is that observable class 4 town highways persist. If all class 4 town highways are not mapped by July 1, 2015, will it be necessary to go through this research and mapping exercise again in 25 years? Please see the bottom of page 3 and the top of page 4 for more details.
- There is a nuance in the definition of “unidentified corridor” regarding not being on the map by July 1, 2010. If VTrans is unable to get the maps completed by July 1, 2010, as noted on page 4, would class 4 town highways that towns have added to the Mileage Certificates become “unidentified corridors?”

To date, the full number of municipalities that have completed mapping all the class 1, 2, 3, and 4 town highways and legal trails is limited to only those that have gone through the mass discontinuance process, which are only 12 towns. It is expected that many municipalities involved with ancient roads will be making submissions this year and will be completing the process.

Act 178 was enacted to provide “clarity” to the public highway networks and municipalities are working toward this effort. The research and mapping effort has generated issues in some municipalities, creating friction between landowners and the governing bodies, with litigation resulting in some cases. It is expected that more challenges will surface as municipalities work toward meeting the requirements of Act 178.

There may be several legislative means to mitigate some of the issues that have surfaced, with potential relief to municipalities through the clarification of the process, extension of the interim timeline, and removal of some ambiguities.





Act 178 – “Ancient Roads” Resources

Learn more about Ancient Roads, Act 178, Act 158, and Town Highways:

- The text of Act 178 of 2006 and Act 158 of 2008 can be at the Vermont State Legislatures web page at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT178.HTM>
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT158.HTM>
- Vermont Institute for Government pamphlet compiled by Paul Gillies – “How to Find Ancient Roads” available at <http://crs.uvm.edu/citizens/ancientroads.pdf>
- Ancient Roads Research and Mapping Grant site at the Agency of Commerce & Community Development - <http://www.dhca.state.vt.us/Planning/AncientRoadsGrantProgram.htm>
- VTans Mapping Unit Links available on-line can be found at http://www.aot.state.vt.us/planning/MapGIS/mapping_maparchive.htm and at http://www.aot.state.vt.us/planning/MapGIS/mapping_ancientroads.htm
- The Vermont League of Cities and Towns has a Resource Library contains documentation at <http://resources.vlct.org/results/?s=label:Ancient+Roads>
- Ancient Roads Listserv – a resource to discuss issues, pose questions, and seek solutions from the community researching and mapping ancient roads. More information is available at <http://www.dhca.state.vt.us/Planning/ListservAncientRoads.htm> or <http://list.uvm.edu/cgi-bin/wa?A0=ANCIENTROADS>
- The current series of Town Highway Maps available on-line at - http://www.aot.state.vt.us/planning/MapGIS/Town_Maps1.htm
- Town Examples of Research and Mapping Efforts – <http://www.ruralvt.com/ancientroads/>, <http://www.waitsfieldvt.us/roads/ancient/index.cfm>,
- The Vermont Local Roads Program host information about local roads and has some informative fact sheets at <http://personalweb.smcvt.edu/vermontlocalroads/default.htm>
- Regional Planning Commission Web Sites - <http://www.aot.state.vt.us/Planning/Links.htm>
- Vermont State Archives – Lotting Plans - <http://vermont-archives.org/lottingplans.asp>
- A presentation using GIS to assist in research and mapping ancient roads - <http://www.vcgi.org/commres/vsdp/roundtable/archive/ExploringAncientRoad.pdf>