



Vermont Local Roads FACT SHEET

SAINT MICHAEL'S COLLEGE

ONE WINOOSKI PARK, BOX 260

COLCHESTER, VERMONT 05439

TOWN POLICY ON CLASS 4 ROADS AND TRAILS A MODEL FOR VERMONT TOWNS

The following model policy is similar to one adopted by the Town of Barre in April 1991. The text of the policy is in the left column with comments in the right column. The commentary sections are merely explanatory. Each municipality must determine what its own policy should be. This model may not reflect the desires of other towns nor does it address every issue pertaining to class 4 roads and trails.

Why is it important to keep Class 4 Highways and Trails?

There are approximately 1,700 miles of class 4 highways and trails in Vermont. Almost every town has at least a couple of miles of them, usually in the more remote section of town. With the population growing and the interest in outdoor recreation also increasing, it is important to keep class 4 highways and trails as public resources. As private land

is further developed, there will be less access for snowmobiling, cross-country skiing, walking, bicycling, horseback riding, fishing, hunting and other outdoor recreation. Town-controlled corridors will help to ensure that there will continue to be a place to enjoy these activities. They also often serve as important links to more extensive trail systems that are on private lands.

Class 4 highways and trails provide important transportation access for forest and agriculture management.

Finally, as communities grow, these rights-of-ways may be needed to provide for development, and may be upgraded accordingly. It would be costly to the town to pay landowners for a right-of-way. If the town retains the right-of-way, reclassification to class 3 for instance would involve virtually no cost beyond the cost of the survey and notice.

A letter from the Vermont Trails and Greenways Council

February 19, 1993

Dear Town Official:

Class 4 Highways and Trails are one of the many complex issues with which you must deal. We hope that the enclosed Model Town Policy will help make that part of your work easier.

The policy is the result of two years of careful analysis by a task group of the Vermont Trails and Greenways Council. Represented on the task group were a wide variety of interest groups related to Class 4 Highways and Trails. We believe that adopting this, or a similar policy, will help to protect the town's interest and assure that these valuable resources remain available to the public.

If you adopt a policy, we would appreciate receiving a copy. If you have any suggestions on how our model could be improved, they would be most welcome.

Sincerely,

(Signature)

Anne Lusk
Chair

Text

1. Definition:

Class 4 highways are all other highways not falling under definitions of class 1, 2, and 3 highways. Class 1, 2, and 3 are defined for the purpose of receiving state aid and are passable with a pleasure vehicle on a year-round basis.

Trail means a public right-of-way which is not a highway and which: (A) previously was a designated 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 Selectboard for the purpose of providing access to abutting properties or for recreational use.

2. Existing Use:

Existing rights-of-way of class 4 highways and trails as of the date of adoption of this policy shall be retained by the Town for purposes of recreational multi-use activities, access to private property, and agricultural and forest management.

3. Maintenance:

The Town shall not provide any maintenance or upkeep on trails.

Permission for repair, maintenance, improvement, or restoration shall not be unreasonably withheld by the Selectboard. The road shall be left in as good or better condition as when permission is granted.

Commentary

This reflects Vermont Statutes Annotated Title 19, §302.

See VSA Title 19, §301.

The town is saying it will keep all rights-of-way under its jurisdiction and for the purposes described. It's a good idea for a town to retain rights-of-way. A municipality has authority to abandon or "throw up" a road. But once a road is gone, it will be difficult and costly to get the right-of-way back at a later date.

This reflects T. 19, VSA, §302(a)(5) and T. 19, VSA, §310(c) which assert that towns have no obligation to maintain trails.

This addresses the situation where farmers or loggers want to upgrade and maintain a class 4 road in order to extract agricultural or forest products from their land.

A reasonable response by the Selectboard is to allow for this work to take place. It's a good idea first to define maintenance

The Town shall not provide any summer maintenance of class 4 highways except as required by necessity, and the public good and convenience of the inhabitants, such as bridges, culverts and ditches to control erosion of highways or runoff to adjacent property, and removal of obstructions.

The Town shall not provide any winter maintenance on class 4 highways and trails. Plowing by private parties shall be only with the permission of the Selectboard.

standards such as ditches, culvert size, bridges and snow plowing to avoid excess upgrading of the road. The standards should protect the integrity of the road, but should be of sufficient scale to allow for the use of modern farm and forest machinery.

By this language the Town has decided to provide a minimal level of summer maintenance and no winter maintenance on class 4 roads. Title 19, VSA, §310 (b) states “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...” This broad language had caused considerable confusion for Vermont town officials over their duty to maintain class 4 roads.

Two Vermont Supreme Court cases provide some direction. Gilbert v. Town of Brookfield 1976 and Catlin v. Town of Hartland 1979 make the point: towns ought to use equal treatment in deciding which class 4 roads will receive year round maintenance. It's important to apply maintenance policies and practices fairly among all class 4 roads in town. If a town plows a class 4 road it should be aware that people on other class 4 roads might demand the same level of services.

Some people have argued that T. 19, VSA, §304(a)(1) requires a more vigorous level of maintenance. Paul Gillies, a former attorney in the Secretary of State's office who is now in private practice in Montpelier, maintains that the statutes calling for uniform maintenance standards do not mean 'no maintenance'. He wrote in January, 1992: “There's nothing wrong with (class 4 highway maintenance standards) being flexible, and a whole lot wrong with being categorical. ... Let the

needs of the highway itself define the (level of) maintenance.” Some, however, interpret the court cases cited above as limiting a town’s flexibility to provide winter maintenance of class 4 roads.

At issue in many communities is the desire to control or discourage development on class 4 roads. Consequently, class 4 maintenance policies become substitutes for good planning and zoning, a practice that might not be a sound municipal practice.

Towns should research this point carefully before deciding what level of maintenance they will provide on class 4 roads, taking into consideration the town plan, growth patterns, terrain, connecting roads from neighboring towns, whether there are existing residences or potential development, forestry industries, recreational uses and other matters.

This section of the statute pertains to snowmobile use. “A snowmobile may not be operated – along a public highway unless it is not being maintained during the snow season or unless the operator is not closer than five feet from the plowed portion or unless the highway has been opened to snowmobile travel by the Selectboard or Trustees or local governing body and is so posted by the municipality.”

By this language the Selectboard is stating that the town takes seriously its responsibility to insure that class 4 roads and trails are not unnecessarily or irresponsibly damaged. Selectboards have this authority under State law and by the Department of Motor Vehicles regulations.

Any winter plowing of a class 4 road allowed by the Selectboard to parties other than a municipality shall not nullify the privileges under 23 VSA §3206(b)(2).

4. Control:

The Selectboard shall exercise control of class 4 highways and trails to ensure their integrity as a public right-of-way by means which may include, but are not limited to, the following:

- a) establishment of vehicle weight limits;

- b) prohibition or restriction of wheeled vehicle use during mud and snow season; signs and barriers may be utilized to accomplish this purpose;
- c) requirements for temporary permits for heavy equipment access may be imposed and the stipulation included that any highway damaged will be repaired by or at the expense of the user; posting of bond or other security to guarantee that repairs are made may be required as a condition of any permits;
- d) Speed limits may be established.

5. Change in Classification:

Class 4 highways may be reclassified to trail status, discontinued, or upgraded to class 3 or higher status. Trails may be discontinued or upgraded to class 4 or higher status. Reclassification will be done in accordance with Title 19, VSA, §§708-716 and upon findings by the Selectboard that the public interests will be substantially advanced by such change in status and that reasonable measures are taken to replace, substitute, or avoid the loss of public and commercial travel, intrinsic, aesthetic and recreational value, or other public interests afforded by the existing class 4 highway or trail.

At a minimum, no class 4 highway or trail may be upgraded in status or discontinued without the permission of the Selectboard. The Selectboard may provide for an alternative travel easement or right-of-way replacing the travel route upgraded or discontinued to insure that users and landowners have uninterrupted access.

The Selectboard may require that the cost of upgrading a trail to a class 4 highway or a class 4 highway to a class 3 highway be assigned to the petitioner(s).

This language seeks to insure no net loss of right-of-way for public and commercial uses. If class 4 roads and trails are reclassified the town wants to insure reasonable access for the existing landowner and user of the class 4 road.

The Vermont General Assembly in 1991 added Subsection (b) to Title 19, VSA, §711 to allow Selectboards to order the petitioner to bear the cost of upgrading a class 4 town highway to class 3. The statute does not address the issue of costs for upgrading a trail to a class 4 highway.

6. New Structures:

New structures on lots fronting on a class 4 highway are subject to the requirements of applicable town ordinances.

No structures can be built without also complying with town ordinances and bylaws.

7. Right-of-Way Access:

Selectboards shall control access into the road right-of-way for the installation or repair of utilities and for access of driveways, entrances, and approaches.

This restates the authority Selectboards have under Title 19, VSA, §§303, 304(a)(21) and (22) and §§1105, 1108, and 1111.

Notwithstanding the above, nothing herein shall be deemed to negate or repeal the effect of Chapter _____ of the _____ Town Code, Articles _____ relating to permit requirements for working in or adjacent to highway rights-of-way.

Town permit procedures must be followed for work in or near the town right-of-way.

8. Overweight Vehicles:

Pursuant to 23 VSA, Chapter 13, Subchapter 15, vehicular use of highways and bridges is subject to limitation and regulation regarding gross vehicle weights, tire and axle weights, and overall length and width.

Subchapter 15 of Title 23, VSA, Chapter 13 is comprised of §§1391-1399 and 1401-1492. They, with regulations issued by the Motor Vehicle Department, describe vehicle weights and procedures.

Written approval of the Selectboard, or their authorized agent, may be granted for use or travel over highways and by and between the Selectboard and applicant for compensation for wear and tear on highways anticipated or caused by use of highways in excess of the legal weight and size limitations. Vehicles used for agricultural or forest management shall not be held to a higher standard than other vehicles.

Permits for use of town highways by overweight vehicles are issued by the State commissioner of motor vehicles. Before signing the permit, the commissioner takes into consideration the comments and stipulations written on the form by the Selectboard. Before signing the form and sending it to the state commissioner, Selectboards can negotiate with the vehicle owner and then stipulate on the form various conditions for use of the highway (payment for road damage, fees per load, promise to repair damaged road, use during certain hours, etc.). A fee is assessed to help cover town administrative costs.

9. Posting:

No highway of any class may be intentionally closed by a gate or other obstruction except upon approval of the Selectboard (19 VSA, §1105). The Selectboard may post a road in accordance with 19, VSA, §1110. The Selectboard may post a highway for the purposes of preserving the integrity of the road (19 VSA §304).

10. Compliance with other Regulations:

This policy is written to establish and clarify standards of construction and the authority of the Selectboard and their agents.

All other ordinances and regulations adopted by the Town of _____ shall remain in full force and effect, including without limitation:

Note: *This model ordinance is based on one adopted by the Town of Barre in April 1991.*

This fact sheet was developed by the Class 4 Highways Task Group represented by:

- *VT Agency of Transportation*
- *VT Trails & Greenways Council*
- *VT Timber Truckers & Producers Association*
- * Associated Industries of Vermont*
- *VT Department of Forests, Parks & Recreation*
- *VT Local Roads Program*
- *VT Association of Snow Travelers*

March, 1993

February, 1993

Dear Town Official:

For your information, the Department of Forests, Parks and Recreation has adopted its own policy relative to Class 4 Highways and Trails which is attached.

You will note that according to 19 VSA §775, if a highway is proposed for discontinuance, then this Department needs to be notified. We will respond according to the policy and the specifics of the situation involved.

You should also know that funds are available from the National Recreational Trails Fund to help communities develop and maintain trails. Please contact 244-8713 for more details.

Sincerely,

(Signature)

Conrad M. Motyka
Commissioner
Department of Forests, Parks and Recreation
Agency of Natural Resources

(Original is on official State of Vermont letterhead.)

FPR POICY #14

DISCONTINUANCE OF CLASS 4 HIGHWAYS AND TRAILS

Philosophy:

Class 4 town highways often provide some of the best opportunities in Vermont for public right-of-way uses, including recreation opportunities, access for forest management activities and firefighting, and access to agricultural lands. They often serve as important links to more developed trail systems, such as snowmobile corridor trails and long-distance horseback riding trails. They may also provide important access to public lands, such as state forests. Finally, they could lay the foundation for multi-purpose “greenways” for towns and regions.

As the state becomes more developed these rights-of-way will become ever more valuable as multi-use public corridors.

Policy:

It is the policy of the department to encourage municipalities, where appropriate, to continue class 4 town roads as public rights-of-way, serving a variety of important public uses such as recreation, access for forest management, access to agricultural lands, and travel-ways for private property protection.

Procedure for Implementation:

Pursuant to 19 VSA §775, town selectboards must notify the department when they have filed a petition to discontinue a highway.

When the department receives notice this way or otherwise, the Commissioner will coordinate a response with the appropriate central office and District/Regional staffs. If necessary, District/Regional staff may be requested to attend the public hearing.

Depending on the highway's relationship to state lands, the procedure will then take one of two courses:

- (1) Class 4 highways directly connecting to or traveling through state-owned lands.
The department will work actively with the towns to encourage and support them in retaining Class 4 highway status or, where such roads are discontinued, in reclassifying them to "trails", thereby maintaining the right-of-way for public use.

- (2) Class 4 highway not directly connecting to or travelling through state lands. The department will work with appropriate groups to encourage retention of these rights-of-way; the groups, in turn, can work with the towns (for example, where there is a recreation trail issue, the Vermont Trails and Greenways Council might be involved). In such cases, the Commissioner will task the staff to notify the appropriate interest group(s), for further action on their part.

The Department will encourage towns to notify and involve interested parties in the process, including adjacent landowners.

(Signature)

Conrad M. Motyka, Commissioner

Effective Date of First Revision: November 16, 1992

Original Effective Date - May 15, 1991