

## CLASS 4 HIGHWAYS AND TRAILS In Vermont:

### FREQUENTLY ASKED QUESTIONS

Towns are encouraged to obtain legal counsel when making decisions about Class 4 highways and trails.

**What is a Class 4 highway?** Class 4 town highways are the responsibility of the municipality, including pent roads (public roads that may be gated by permission of the governing body). Some former highways, through legal proceedings, may have been designated as legal trails and are not Class 4 town highways. A Class 4 town highway is a legally established town highway that is not classified as Class 1, 2, or 3.

Additional information:

- A highway not meeting Class 3 standards may be reclassified as a provisional class 3 highway if, within five years of the determination, it will meet all Class 3 highway standards.
- The selectboard shall determine which highways are Class 4 town highways.
- Trails shall not be considered highways and the town shall not be responsible for any maintenance including culverts and bridges.
- Additionally a Class 4 highway:
  1. is 3 rods or 49.5' (unless otherwise recorded) – 19 V.S.A. § 702;
  2. is not eligible for state aid funds – 19 V.S.A. § 306;
  3. is usually not maintained for winter use – 19 V.S.A. § 302 (a) (3) (b);
  4. may be reclassified or discontinued – 19 V.S.A., Chapter. 7.

**What is a trail?** Trails are public rights-of-way which are not highways and are generally used for recreational purposes. They may be previously designated town highways or may be newly laid out (19 V.S.A. § 301(8) and 775). There is no minimum width required, and the ROW may be the full width of a section of highway or the width needed for a foot path. The municipality has no statutory maintenance obligations for trails, even as to bridges and culverts.

Additional information:

- is a public right-of-way and not a highway – 19 V.S.A. § 302 (a)(5);
- is not a responsibility of the town for construction, maintenance, repair or safety – 19 V.S. A. § 310.

### **Why is it important to keep Class 4 highways and trails?**

In 1992, a committee consisting of the VT Agency of Transportation; VT Trails and Greenways Council; VT Timber Truckers and Producers Association; Associated Industries of Vermont; VT Department of Forests, Parks and Recreation; VT Local Roads Program; and VT Association of Snow Travelers determined:

There are approximately 1,700 miles of Class 4 highways and trails in Vermont. Almost every town has at least a couple 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-way 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.

### **Do Class 4 highways and trails have to be maintained?**

According to 19 V.S.A. § 310:

"(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 § 302 of this title.

(c ) A town shall not be liable for construction, maintenance, repair or safety of trails." According to 19 V.S.A. § 302 (c ) (5):

"Trails shall not be considered highways and the town shall not be responsible for any maintenance including culverts and bridges."

### **Do Class 4 highways and trails have to be upgraded on request?**

According to 19 V.S.A. § 708 (b):

"A class 4 highway need not be reclassified to class 3 merely because there exists within a town one or more class 3 highways with characteristics similar to the class 4 highway. In considering whether to reclassify a class 4 highway to class 3, consideration may be given as to whether the increased traffic and development potential likely to result from the reclassification is desirable or is in accordance with the town plan."

Additionally, 19 V.S.A. § 711 (b) states:

"As part of the report of findings provided for in subsection (a) of this section, the selectboard may order that the petitioner bear the cost of upgrading a class 4 town highway to the class 3 town highway standards established in 19 VSA § 302 (a) (3) (B.) Nothing in this section shall be construed to require a town to maintain a class 4 highway or to upgrade a highway from class 4 to class 3."

Finally, 19 V.S.A. § 710 states:

"After examining the premises and hearing any interested parties, and if the selectmen judge that the public good, necessity and convenience of the inhabitants of the municipality require the highway to be laid out, altered or reclassified as claimed in the petition, they shall cause the highway to be surveyed in accordance with the provisions of § 33 of this title if the highway right-of-way cannot be determined and shall place suitable monuments to properly mark the bounds of the survey. If they decide to discontinue a highway, the discontinuance shall be in writing setting forth a completed description of the highway."

### **What is the process for altering, reclassifying or discontinuing?**

This process is spelled out in detail in 19 V.S.A. § 708-712 and 771-775. These statutes should be reviewed for a full understanding. A brief summary of the process is described earlier in this section. To temporarily close a Town Highway (for example – Seasonally) see 19 V.S.A.

### **Can the town regulate the types, season, or condition of use?**

Selectboards clearly have the authority under 19 V.S.A. § 304 (a) (2) to:

"take any action consistent with the provisions of law, which are necessary for or incidental to the proper management and administration of town highways."

Also, under 19 V.S.A. § 304 (5) selectboards may:

"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 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. Permission shall be in writing and recorded in the town clerk's office."

The selectboard can limit types of use such as snowmobiles, ATVs and 4x4s; season of use such as restricting motorized vehicles during muddy periods; or condition of use such as speed and weight limits.

### **How can towns best manage Class 4 highways and trails?**

One way to manage these resources is to address Class 4 roads and trails in a town highway policy and in the town plan.

### **Does the town have any legal rights if someone blocks a highway or trail?**

According to 19 V.S.A. §1105:

"A person who places or causes to be placed an obstruction or encroachment in a public highway or trail, so as to hinder or prevent public travel, or to injure or impede a person traveling on the highway or trail, shall be fined not more than \$1,000 plus the actual costs of repairing the damage and a reasonable attorney's fee, to be recovered in a civil action in the name of the town or state. One or more items of logging or other equipment temporarily within the right-of-way of a trail shall not be actionable under this section if located in such a way as not to unreasonably impede passage. If the court finds that an action under this section was brought without substantial basis, the court may award a reasonable attorney's fee against the person bringing the action." (Added by 1991 legislature.)

### **What is a pent road?**

According to 19 V.S.A. § 301 (4):

'Pent road' is any town highway which, by written allowance of the selectboard, is enclosed and occupied by the adjoining landowner with unlocked stiles, gates and bars in such places as the selectboard designates."