

Section 13

Highway Classification

Classes of Highways:

Town highways are classified as either Class 1, 2, 3, or 4. The process for reporting mileage for Town Highways is defined in 19 V.S.A. § 305 - Measurement and inspection, where “*Annually, on or before February 10, the selectboard shall file with the town clerk a sworn statement of the description and measurements of all class 1, 2, 3, and 4 town highways and trails then in existence, including any special designation such as a throughway or scenic highway.*” The “sworn statement” is also referred to as the Certificate of Highway Mileage, which shows the number of miles in each class of town highway, and mileage for legal trails and state highway. The certificate is the document that is used to note any changes in mileage, through new roads or trails, reclassifications, or discontinuances that have occurred during the year. The municipality is required to file the certificate on or before February 10th in the municipal clerk’s office and then submits the Certificate of Highway Mileage to VTrans for incorporation of the changes into a mileage summary, and also to make updates to the General Highway Map. A sample of the certificate and supporting documentation is found beginning on page 13-7. Many issues are dependent on the classification assigned, including the amount and type of state assistance which is provided, and the routine responsibilities of the municipality. Sometimes, it is the exclusive duty of the governing body to make the decisions.

The “State of Vermont – Highway Mileage Summary” can be viewed on-line at: <http://vtransplanning.vermont.gov/maps/publications>

Information regarding town mileage and reimbursement rates can be found at: <http://apps.vtrans.vermont.gov/THGProgram/currentrates.aspx>

The current General Highway Maps can also be found on-line at: http://vtransplanning.vermont.gov/maps/town_maps

Each class of town highway is defined in 19 V.S.A. § 302.

Class 1 town highways are subject to concurrent responsibility and jurisdiction between the municipality and VTrans on several matters. The state is responsible for scheduled surface maintenance or resurfacing (19 V.S.A. § 306(a)) while the municipality is responsible for pot hole patching, crack filling, etc.; the state is responsible for center line pavement markings (19 V.S.A. § 311), while the municipality is responsible for crosswalks and parking; and there is joint (concurrent) authority on highway protection matters such as obstructing travel, marking of hazards, injuring the highway, installing utilities, etc. (19 V.S.A. Chapter 11). The Agency shall determine which highways are to be class 1 highways (19 V.S.A. § 302(a)(1)).

Class 2 town highways are primarily the responsibility of the municipality. The state is responsible for center line pavement markings if the municipality notifies VTrans of the need to replace

them (19 V.S.A. § 311). The municipality designates highways as Class 2, but approval of VTrans is required (19 V.S.A. § 302(a)(2)). File requests for reclassification to Class 2 with your local DTA.

VTrans *Guidelines for Transfers to Class 2 Town Highways* are on page 13-4. Class 2 mileage normally may not exceed 25 percent of the total Class 2 and Class 3 mileage in the municipality. The highway should have a rating of not less than 70 points (see rating form on page 13-9 which shows the facts considered). The DTA can provide detailed guidance.

Class 3 town highways are the responsibility of the municipality. The governing body designates which highways are to be Class 3 town highways. Based on 19 V.S.A. § 302(3)(b),

“The minimum standards for class 3 highways are a highway negotiable under normal conditions all seasons 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, ...” Class 3 town highways to be up to standard need to be maintained sufficiently for travel by pleasure car during all seasons of the year. If a Class 3 is not maintained to this standard, the highway may be deemed “Not Up To Standard” and subject to being functionally classed as Class 4 with removal of state aid for the affected mileage.

All other highways are **Class 4** and 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.

“Ancient Road” Legislation

On July 1, 2010, a new class of highway was created or “carved out” of the Class 4 category. This new classification is called “unidentified corridors” and was created under Act 178 of 2006. This category of highway has the following definition as defined in 19 V.S.A. § 302(6) –

(A) Unidentified corridors are town highways that:

- 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
- do not, as of July 1, 2010, appear on the town highway map prepared pursuant to § 305 of this title; and
- are not otherwise clearly observable by physical evidence of their use as a highway or trail; and
- are not legal trails.

(B) If the conditions in subdivisions (A)(i) and (A)(ii) of this subdivision (6) are met, the legislative body of a municipality or its appointee may, after providing 14 days advance written notice to the owners of the land upon which the unidentified corridor is located, enter private property to determine whether clearly observable physical evidence exists.

(C) Unidentified corridors shall be open to use by the public, but only in the same manner as they were used during the 10 years prior to January 1, 2006.

(D)) A municipality shall not be responsible for maintenance of an unidentified corridor.

(E) Neither the municipality nor any person owning a legal interest in land through which an unidentified corridor may pass or abut shall have a duty of care to persons using the corridor.

(F) An unidentified corridor shall not be deemed to be a subdivision with respect to zoning, tax, and septic issues.

(G) After July 1, 2015, an unidentified corridor shall be discontinued, and the right-of-way shall belong to the owner of the adjoining land. If the right-of-way is located between the lands of two different owners, it shall be returned to the lots to which it originally belonged, if they can be determined; if not, it shall be equally divided between the owners of the lands on each side.

(H) An unidentified corridor shall not create a subdivision with respect to zoning, tax, and septic issues. If the unidentified corridor is reclassified as a class 1, 2, 3, or 4 highway or as a trail, the then highway or trail shall be recognized as any other highway or trail for the purpose of creating a subdivision with respect to zoning, tax, and septic issues.

On or by July 1, 2015 and pursuant to subchapter 2 of chapter 7 of this title, an unidentified corridor may be reclassified as a class 1, 2, 3, or 4 highway or as a trail.

Additional information and guidelines related to “ancient roads” can be found on-line at http://vtransplanning.vermont.gov/maps/ancient_roads

Reclassification (Class 3 or Class 4 Town Highways):

The process for laying out, reclassifying, altering, or discontinuing a town highway is defined in 19 V.S.A. Chapter 7. This chapter provides detail on all the steps necessary to lay out, alter, reclassify, or discontinue a highway. The procedure for changing the designation (reclassification) is contained in 19 V.S.A. § 708 and following sections, and is briefly outlined as follows:

1. Petition to the governing body, signed by at least 5 percent of the voters or landowners, is received. The governing body may act on its own motion without a petition.
2. Hold hearing, giving 30 days’ notice to petitioners and the town planning commission. View the highway in question. Receive testimony from interested parties. Generally board members should refrain from carrying on a discussion with the parties, except to clarify facts and issues.
3. Render a written decision, giving the public good, necessity and convenience of the inhabitant’s proper consideration. The decision should set out the reason or logic behind the action taken. The action should occur at a duly called meeting of the governing body, and within 60 days after the hearing.
4. A person not satisfied with the decision may appeal to the district court (19 V.S.A. § 726) or the superior court (19 V.S.A. § 740).

The above procedure is generally the one used in any action, including:

1. Acceptance of a new highway
2. Reclassification
3. Discontinuance of highway

Any mileage changes made during the year are supplied to the Agency on the Certificate of Highway Mileage with any supporting documentation that was generated by the statutory process. Guidelines for filing the Certificate of Highway Mileage and processing the changes are available from the VTrans Mapping Unit.

Reclassification (Class 1 or State Highways):

Except in the case of relinquishments authorized by the Superior Court when a state highway is relocated (see 19 V.S.A. § 516), only the General Assembly may transfer a highway from/to state responsibility (19 V.S.A. § 15). A municipality may request that the Agency review a proposal for the state to take over a town highway by addressing the DTA in writing, stating the basis for the request. If, after analyzing the situation, VTrans feels the suggestion has merit, then it may make a recommendation to the General Assembly supporting the take-over. If VTrans does not agree, the municipality may request that its elected representatives to the General Assembly take direct action by sponsoring legislation authorizing the takeover.

Reclassification (Class 3 to Class 2):

The municipality needs to present the DTA with a letter indicating a formal request. The DTA will forward the request to the Highway Research Unit of the Policy, Planning & Intermodal Development Division for review. All requests for transfer have to be received into Highway Research by December 1 of each year. Failure to meet that deadline may result in that request not being reviewed for that year. NOTE: If a request is filed in the late fall or early winter, and no Average Annual Daily Traffic (AADT) count is available, the request may not be reviewed for that year. AADT is a significant part of the analysis, and if data is not provided in the original request (or cannot be determined from VTrans' in-house database) then the review cannot be completed.

Also provided on page 13-10 is a check sheet entitled "Class 2 TH Transfer Data: Municipal Input" that is helpful in the review of the transfer request. This should accompany the official letter of request by the municipality for the transfer review as well as a map indicating the highway location.

VTrans GUIDELINES for Transfers to Class 2 Town Highway System

1. Serves Region - from town to town
2. Minimum of three rods (49.5 feet) right-of-way - Certified by Selectboard
3. 70 points needed (Classification Rating)
4. Total Mileage of Class 2 Town Highways to Total Mileage of Class 2 and Class 3 Town Highways should not exceed 25%.
5. Gravel typical: 20' shoulder to shoulder
Paved typical: 22' shoulder to shoulder
6. Any transfers from Class 3 to Class 2 Town Highways approved by VTrans would usually be effective on the first day of the subsequent state fiscal year.

Reclassification from Class 4 to Class 3: Upgrading is a common issue, faced by the governing body as landowners often now locate homes in remote locations. There is no statutory requirement that such requests must be granted by the governing body; however, there may be an issue of constitutional equal protection if the municipality can be shown to be disparate in its treatment of similar highways. The governing body may grant the request, but order that the petitioner bear the cost of the upgrade (19 V.S.A. § 711(b)).

Discontinuance proceedings must include a notice to the Commissioner of Forests, Parks and Recreation before the right-of-way (ROW) is abandoned so that there is opportunity for the former highway to be designated as a trail. If the discontinued highway is not designated as a trail, the ROW shall belong to the owners of the adjoining lands (19 V.S.A. § 775)

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.

New Highways and property or easements on existing highways should have a complete and precise survey, with permanent monuments, and description for permanent filing in the municipal records (19 V.S.A § 33 and 704). Acquisition of land and rights may be voluntary if the owners are willing to transfer their interests to the municipality. If owners are not so willing, then the governing body must determine an appropriate amount of damages, and the date for removal of timber, buildings and other improvements (19 V.S.A. § 712 through 714). To complete the process, after the highway is opened for use of the public, the governing body may file a certificate of completion with the town clerk. This document is no longer required by statute, as 19 V.S.A. § 715 was repealed in 1999.

Due to the complexity of the issues and the opportunity to make a procedural error, it is recommended that an attorney versed in this area of the law advise the municipality throughout the course of proceedings to layout, discontinue, or reclassify highways.