

Town of Johnson, Vermont
Policy Regarding Class IV Highways & Trails

Background Data:

The Town has the following miles of road by Classification as of January 1st, 2013:

Class II	13.13
Class III	36.41
Class IV	12.36
Total all miles	61.9

Total Miles Maintained by the Town

Class II & III	49.54
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% of Class IV miles to Class II & III = 25%

State Aid to Highways payment to Town (data from 2012)

Class II rate	\$3,973.95/mi	x 13.13 mi =	\$52,178.00
Class III rate	\$1,464.80/mi	x 36.41 mi =	\$53,333.00
Class IV rate	\$0	x 12.36 mi =	\$0
Total			\$105,511.00

Total Highway Budget \$851,395.00 (data from 2012)

% of town highway budget received as State Aid 12.4%

Basis for Establishment of Policy:

The Class IV highways in Johnson vary in condition from being passable with a car to being little more than tracks through the woods. Class IV highways and trails receive no state aid to highways contributions, and are not eligible for FEMA reimbursements in event of loss or damage in a federally declared disaster. Therefore, all maintenance costs are borne by the local property tax.

Class IV highways and legal trails do provide public rights of way as well as access to private land and therefore do provide a public benefit.

State statute provides some guidance on the use and maintenance of Class IV highways and legal trails, which has been subject to interpretation and legal challenge over the years. The statutes allow Towns to provide maintenance to bridges and culverts on Class IV highways (though the statutes do not specifically require or identify any specific level of maintenance) and no maintenance at all on Legal Trails.

The Courts have opined that a clearly written policy applied uniformly is highly desirable.

Given these factors, this policy is adopted to provide standards of maintenance provided by the Town, maintenance by others, process for re-classification, permit process for work within the right of way, control and protection of highways and general guidance to those seeking to use Class IV highways and/or legal trails for access, recreation, development, or improvements.

1. **Definitions:**

Class IV Highway: Class IV highways are all other highways not falling under definitions of Class I, II, and III highways. Class I, II, and III are defined in Vermont Statutes for the purpose of receiving state aid and are passable by a pleasure vehicle on a

year-round basis.

Class IV Roads are herein further described as follows:

Class IV highways currently provide access for a range of land uses from full time permanent residences, part time or seasonal residence and structures, farming and forestry activities and recreational uses. The condition of these roads also ranges from relatively good condition to little more than barely identifiable as roads. The use and condition of roads may be considered by the Selectboard when determining maintenance to be performed.

Trail: Trail means a public right-of-way which is not a highway and which:

(A) previously was a designated highway and 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. Change in Classification:

It is the general policy of the Selectboard to discourage the reclassification and/or upgrading of Class IV highways and trails unless there is a demonstrated public benefit to doing so. However, it is the right of an abutting landowner to request changes in highway status. The Selectboard, if so petitioned, will follow the procedures set out in 19 VSA §708-716.

Under Vermont Statutes, Class IV highways may be reclassified to trail status, discontinued, or upgraded to Class III or higher status. Trails may be discontinued or upgraded to Class IV or higher status. Reclassification will be done in accordance with 19 VSA §708-716 and upon findings by the Selectboard that such reclassification is in the public good.

At a minimum, any work performed on or within the right of ways of a Class IV highway or trail requires a Right of Way Permit from the Town as per 19 VSA §1111.

The full costs (including any surveys and legal costs) of upgrading a trail to a Class IV highway, or a Class IV highway to a Class III highway for the purpose of reclassification, shall be the sole responsibility of the petitioners. Any reclassification to Class III shall conform to the Town Codes and Standards and Development Road Policy as then currently in effect.

3. It is the policy of the Selectboard to retain Class IV highways and trails for the public good, including multiple recreational uses, and retention of the right of way for potential future development.

4. Maintenance by the Town:

A. Trails. The Town shall not provide any summer or winter maintenance, or upkeep on trails.

B. Class IV Highways

Requirements of Statute: 19 VSA **§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 §302 of this title.

(c) The Town shall not be liable for construction, maintenance, repair, or safety of trails.

Town Policy: Summer & Winter Maintenance. The Town shall not provide any summer or winter maintenance on any Class IV highways, beyond that required by statute.

- 1) Notwithstanding the above, the Selectboard may, at its sole discretion and judgment, authorize repair of a Class IV highway if the following conditions are met:
 - a) Highway crews have the time to do the work without impacting work on Class II and III highways
 - b) There are funds available in the budget to perform the work without impacting Class II and III maintenance obligations.
 - c) The repair work to be done is essential for the preservation or protection of the highway.

Any such requests shall be evaluated on an individual basis with consideration given to the existing use and condition of the Class IV road and the cost/benefit of the maintenance proposed. Such work shall in no way obligate the Town to perform any future maintenance or repairs of any nature.

Class II and III highways shall receive highest priority for all maintenance operations and budgeted funds.

The Selectboard will establish a line item in the Highway Budget and annually propose a sum of money, as in its judgment is necessary to meet statutory required maintenance of Class IV highways, which shall be subject to voter approval.

Notwithstanding the fact that no summer or winter maintenance is performed by the Town as above, in the event of an emergency such as a fire or medical emergency and if requested, the Town may make reasonable attempts to assist emergency vehicles to access properties located on Class IV roads, but shall accept no responsibility for the inability of emergency vehicles to access such properties due to road conditions, weather conditions or any other factors.

C. Maintenance Work by Others:

1. Permit Required

- A. No work or maintenance on a trail or Class IV highways is to commence without a signed permit from the Town.

Any person wishing to perform or arrange for the performance of maintenance work or improvements on a Class IV Town Highway, or Trail, or within the right of way of same must make written application on a Highway and Right of Way Access Permit form proscribed by the Town prior to commencing with any work. The application shall contain drawings and descriptions of the work sufficient to review the requested work and make a determination on it.

- B. All such work shall maintain the pre-existing dimensions, physical character and use of the trail or Class IV highway unless otherwise permitted by the Selectboard.

Stone walls within the right-of-way shall not be damaged, altered or removed except as permitted by the Selectboard.

- C. By submission of a Right of Way Permit application and issuance of same, the applicant agrees that all the requirements for signage, work safety, and public safety required by law or reasonable prudence will be adhered to in connection with the work, that the road work will be done in accordance with specifications established by the Town and or the permit, that the applicant and applicant's agents shall not hold the Town responsible for any claims or injuries, which may arise out of the work within the right of way, and agrees to indemnify and save the Town and its agents harmless against legal responsibility for any and all damage, loss or claim associated with this work. The landowner shall bear any and all costs associated with said Class IV highway or trail project.

A surety bond or damage deposit may be required for alterations and repairs, as well as use of rights of way in existing condition by equipment or other means, which may cause damage such as logging, horse or bike tours or other commercial enterprises. The amount of surety shall reflect reasonable estimates of repairs that may be necessary in the event of noncompliance with the provisions of this policy or permit conditions issued for the project.

The applicant shall notify the Town upon completion of work subject to

the permit, as noted in section 3 below. Once the Town is satisfied that all conditions of the permit have been met, and the Class IV highway or trail is left in proper condition, the surety or deposit will be returned within 30 days, unless the Right of Way Permit specifies a longer period of time for retention of a damage deposit. The Town shall retain any interest on deposits or surety held for this purpose.

2. Inspection: Upon completion of the work, the Town Road Foreman, Road Commissioner or other appropriate agent of the Town shall be notified in writing to arrange for inspection and approval of the work.

3. Permission: Permission for plowing, repair, maintenance, improvement, or restoration, which does not adversely affect the highway or trail, will not be unreasonably withheld by the Town. The highway shall be left in as good or better condition as existed prior to starting work.

4. Any winter plowing of Class IV highways allowed by the Town to parties other than a municipality shall not negate the privileges under 23 VSA. §3206(b)(2).

(Note: 23 V.S.A. 3206(b)(2) states:

(b) A snowmobile shall not be operated:

(2) On a public highway, unless it is not being maintained and plowed for use by motor vehicles during the snow season.)

5. Control and Protection:

The Selectboard shall strive to preserve the integrity of Class IV highways and trails as public rights-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 barricades 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) establishment of speed limits;
- e) limitations on plowing.

6. Right-of-Way Access: The Selectboard shall control access into the highway right-of-way for the installation or repair of utilities and for access of driveways, entrances, and approaches through the Right of Access Permit process as defined in 19 VSA §1111.

