

TOWN OF JOHNSON
HIGHWAY ACCESS & WORK IN THE RIGHT OF WAY POLICY

Section 1 -- Authority.

This Highway Access Policy (hereafter "Policy") is enacted pursuant to the authority granted to the Town under 19 V.S.A. §§ 303 and 1111.

Section 2 -- Purpose.

This Policy regulates work within the right of way of the Town highway system. It is the purpose of this Policy to protect and preserve the safety and convenience of the inhabitants of the Town and the traveling public and to protect the public investment in the Town highway system through the management of all non-municipal work performed in the Town highway right of way.

Section 3 -- Definitions.

For the purpose of this Policy the terms defined in this Policy shall have the following meanings:

"Highway" means the highway system for the Town of Johnson, which includes the public rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures.

"Notice of Permission to Proceed" or "Notice" means the written Notice of Permission to Proceed, described in Section 5c of this Policy, issued by the Public Works Supervisor after an application for a Right of Way Project Permit is approved.

"Person" means an individual corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or other legal entity.

"Public Works Supervisor" means the Public Works Supervisor of the Town of Johnson.

"Right of Way Project Permit" or "Permit" means the permit issued by the Public Works Supervisor to perform a project within the Town's right of way after following the procedural requirements of this Policy.

"Selectboard" means the Selectboard of the Town of Johnson.

"Town" means the Town of Johnson.

"Vermont Agency of Transportation Standards B-71 and A-76" shall mean the most recent versions of the Vermont Agency of Transportation standard sheets B-71, Standards for Residential and Commercial Drives and A-76, Standards for Town and Development Roads.

Section 4 -- Permit required.

Permits are required for any work that takes place within class II and class III highway rights of ways. Work within class IV highway rights of way are governed by the Town of Johnson Class IV Road.

No person shall install, develop, construct, regrade, or resurface any driveway, entrance, or approach, or build a fence or building, or deposit material of any kind within, or to in any way affect the grade of a highway right of way, or obstruct a ditch, culvert, or drainage course that drains a highway, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right of way, within the Town unless a Right of Way Project Permit has been obtained from the Public Works Supervisor in accordance with this Policy.

No person shall install, remove, or in any way alter any pipes, wires, conduits, cables, or other utilities or structures within the highway right of way unless a Right of Way Project Permit has been obtained from the Public Works Supervisor in accordance with this Policy.

Notwithstanding the stated restrictions on work in the right of way, the following are considered permissible projects and do not require a permit:

- Access plowing.
- Access maintenance (regrading, resurfacing, repaving) that in no way alters the flow of water into or out of the road or right of way.
- Landscaping that in no way alters the flow of water into or out of the road or right of way.

Section 5 -- Process.

a. Application. A person may apply for a Right of Way Project Permit from the Town using the Right of Way Project Permit Application form provided by the Town Clerk's Office. The application shall be in writing and shall be signed by the applicant or an individual authorized to act for the applicant. A fee of \$65 shall be paid at the time the application is submitted. A completed application must be submitted to the Public Works Supervisor at least 15 days before work is scheduled to begin. The Public Works Supervisor may modify the time requirements of this Policy for good cause shown provided the public health and safety will not be jeopardized by such action.

b. Consideration. The Public Works Supervisor will consider a completed application. The Public Works Supervisor may approve, approve with conditions/modifications, or deny an application upon consideration of the approval standards set forth in Section 7 of this Policy.

c. Notice of Permission to Proceed. If an application is approved, the Public Works Supervisor will issue written permission in the form of a Notice of Permission to Proceed ("Notice"). The Notice will list the specifications, requirements, and restrictions for the

work. The Notice may require supervision and/or inspection by the Town. The Notice will state the date on which construction / development of the project may proceed.

d. Notification of completion. The applicant shall notify the Public Works Supervisor within 30 days after construction is completed.

e. Final inspection. The Public Works Supervisor shall conduct a final inspection to determine if the work has been completed according to the requirements listed in the Notice.

f. Issuance of Permit. If, after inspection, it is determined that the work has been constructed / developed in compliance with the Notice, a written Permit shall be issued by the Public Works Supervisor within 30 days after final inspection.

g. Recording of Permit. A Permit shall not be valid until recorded in the Town Land Records at the expense of the Permittee.

Section 6 -- Contents of Application.

An application for a Right of Way Project Permit shall be on the form provided by the Town and shall be deemed to be complete if it includes the following:

(1) The name, address, and telephone number of the applicant, the principal officers of the applicant, the individual making the application, and any other individual authorized to represent the person applying for the Permit;

(2) If the applicant is not the owner of the premises where the project is to be constructed, the name and contact information of the owner or other person that has the authority to consent to the use and development of the premises, and a signed statement from that person stating that consent is given to the applicant;

(3) The location of the access, including street address (if any), and parcel ID # of the property which is the subject of the proposed development;

(4) The date on which construction is proposed to begin;

(5) A visual depiction of the proposed project indicating location, layout, adjacent state and local highways, entrances and exits, traffic flow patterns, parking and land uses of the surrounding area;

(6) Any additional information the applicant wishes to furnish that assists the the Public Works Supervisor in determining that the proposed access will comply with the applicable standards; and

(7) The signature of the applicant or an individual authorized to act for the applicant.

(8) The requisite application fee and damage deposit.

Section 7 -- Approval Conditions.

When issuing a Notice under this Policy, the Public Works Supervisor shall require that the proposed project will be constructed or developed according to the Johnson Town Road and Bridge Standards as well as Vermont Agency of Transportation Standards B-71 and A-76. See Appendix D for a culvert installation diagram.

In addition, the Public Works Supervisor shall require conditions to avoid: (1) undue adverse traffic congestion and unsafe conditions regarding the use of public roads, sidewalks and other public rights-of-ways; (2) unhealthy conditions regarding water supply, sewage disposal or solid waste disposal; and (3) adverse effects on drainage ditches, culverts or other drainage facilities.

In addition, a security deposit or the establishment of an escrow account to ensure compliance with the conditions of the Notice or Permit and protection of the Town highway system will be required. The minimum deposit is \$500.00 to be paid prior to the consideration of the application and will be held for a minimum of 1 year after the completion of the project. The deposit amount or length may be increased, when, in the judgement of the Public Works Supervisor, the nature of the project and potential for damage to the Town highway system warrants such action. Public Works Supervisor The Public Works Supervisor may waive the fee for projects deemed to have a low risk of damage to public infrastructure.

In addition, the Public Works Supervisor may attach any such reasonable conditions as he/she may deem appropriate to mitigate or eliminate any impacts reviewable under the approval standards set forth above.

Section 8 -- Expiration of Notice of Permission to Proceed.

The authorization conveyed by a Notice of Permission to Proceed shall expire 90 days after the issuance of that Notice unless the work authorized by such Notice has been substantially commenced.

Section 9 -- Damage to Town highways.

In the event that damage to a Town highway is caused by improper construction, maintenance, or grading of a driveway or other highway access point, it shall be the responsibility of the property owner to compensate the Town for any expenses involved in restoring that highway to its original condition.

Section 10 -- Revocation of Permit; Frontage road.

As per 19 V.S.A § 111(f), the Selectboard or Public Works Supervisor may, as development occurs on land abutting a Town Highway, require the elimination of an access previously permitted and require the construction of a common frontage road or other access improvements which may serve more than one property or lot.

Section 11 -- Responsibility for culverts and headwalls

Culverts and headwalls installed on private property, even when located within the Town right of way, are the responsibility of the property owner. Property owner retains exclusive legal and financial responsibility to repair, replace, and maintain those culverts and headwalls. Nevertheless, property owner must obtain permission from the Town in the form of a written Notice of Permission to Proceed before any repair or replacement may take place.

Section 12 -- Applicability of other laws and ordinances.

The Permit required under this Policy shall not replace or eliminate any requirement to obtain approval under any other applicable State laws or Town land use ordinances. Applicants and Permittees are solely responsible for ensuring that their access is in compliance with applicable State laws and municipal land use ordinances.

Section 13 -- Enforcement and Penalties.

In the event that a person fails to obtain a Notice or Permit as required by this Policy, fails to abide by the terms and/or conditions of a Notice or Permit, or misrepresents any information contained within or in support of a Notice or Permit application, the Selectboard or Public Works Supervisor may resort to any or all of the following enforcement options:

a. Optional Notice of Violation

Prior to instituting any legal action or proceeding to enforce this Policy, the Selectboard or Public Works Supervisor may issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and notice of intention to institute an action or proceeding against the person responsible for the violation. The Selectboard must within thirty (30) calendar days provide the person with notice, an opportunity to be heard and an opportunity to settle the matter before instituting a court action or proceeding. 19 V.S.A. § 1111(i).

b. Assurance of Discontinuance

The Selectboard or Public Works Supervisor may accept an "assurance of discontinuance" of any violation of this Policy, including a schedule for abatement of a violation. 19 V.S.A. § 1111(i). When such assurances are allowed, they must be in writing and must be filed not only with the Town, but also with the attorney general, the Superior Court, and the Town clerk's land records.

c. Permit Suspension

The Selectboard or Public Works Supervisor designee may suspend a Permit until compliance with State statute and this Policy is obtained. 19 V.S.A. § 1111(g). The Public Works Supervisor may physically close the driveway or access point, if there is continued use or activity after suspension of a Permit, and in the opinion of the Public Works Supervisor, the safety of highway users is or may be affected. 19 V.S.A. § 1111(g).

d. Injunction

If the Selectboard believes that any person is in violation of the provisions of Title 19 V.S.A. §§ 1111 *et seq.*, it may bring an action in the name of the Town against the person to collect civil penalties as provided in 19 V.S.A. § 1111(j) and to restrain by temporary or permanent injunction the continuation or repetition of the violation. 19 V.S.A. § 1111(h).

e. Civil Penalties

Persons who violate the requirements of this Policy or fail to adhere to Notice of Permit conditions, or the terms of an order issued by a court of law may be subject to civil penalties of not less than \$100.00 and not more than \$10,000.00 for each violation. When the violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for correction or termination of the violation constitutes an additional separate and distinct offense except during the time an appeal from the order may be taken or is pending.

Section 14 -- Appeals

A permit applicant or permittee shall have the right to appeal a determination of the Public Works Supervisor in granting, denying, suspending, revoking, or establishing the conditions of a Notice of Permit. An appeal of an action or decision by the Public Works Supervisor shall be submitted in writing to the Town Administrator within ten (10) business days following the date of the Public Works Supervisor's action or decision and shall set forth the factual and/or legal grounds in support of the appeal. The Selectboard shall consider the appeal and issue a decision in writing with its reasons in favor or against the Public Works Supervisor's action or decision after its next regularly scheduled meeting or no later than forty-five (45) calendar days following the Board's receipt of the appeal.

Section 15 -- Severability.

If any section of this Policy is held by a court of competent jurisdiction to be invalid such finding shall not invalidate any other part of this Policy.

Section 16 -- Effective Date.

This Policy shall become effective upon adoption by the Selectboard.

Adopted this 18th day of February , 2020.

APPENDIX A
Town of Johnson
Right of Way Project Permit Application Form

Application # _____

NOTICE TO APPLICANT: This form is for use in conjunction with the Town's Highway Access & Work in the Right of Way Policy. Before submitting an application, applicants are urged to review the Town's Highway Access & Work in the Right of Way Policy in full.

If an application is approved, the Public Works Supervisor will issue written permission in the form of a Notice of Permission to Proceed ("Notice"). The Notice will list the specifications, requirements, and restrictions for the work. The Notice may require supervision and/or inspection by the Town. The Notice will state the date on which construction / development of the project may proceed.

Once construction/development is completed, the Public Works Supervisor shall conduct a final inspection to determine if the work has been completed according to the requirements listed in the Notice.

If, after inspection, it is determined that the project has been constructed / developed in compliance with the Notice, a written Right of Way Project Permit shall be issued by the Public Works Supervisor within 30 days after final inspection. An access is not considered legally permitted until the written Right of Way Project Permit has been recorded in the Town Land Records at the expense of the Permittee.

Name of Applicant: _____

Address and telephone number of Applicant: _____

If Applicant is an organization or corporate entity, list the principal officers of Applicant and any other individual authorized to represent the applicant group or entity applying for the Right of Way Project Permit:

If Applicant is an organization or corporate entity, list the name address, email and telephone number of individual making the application:

Location of the proposed project: _____

If the applicant is not the owner of the premises where the proposed project will be conducted, list the name and contact information of the owner or other person that has the authority to consent to the use of the premises and attach a signed statement from that person stating that

consent is given to the applicant to have the project constructed on those premises:

The date on which construction is proposed to begin: _____

Attach a visual depiction of the premises indicating location, layout, state and local highways, entrances and exits, traffic flow patterns, parking and land uses of the surrounding area.

Describe the arrangements that have been made to protect the public health, safety, welfare and convenience of the traveling public during construction including, but not limited to, arrangements for traffic control, crowd control, waste and sanitation facilities:

Applicant may provide any additional information that may assist the Public Works Supervisor.

Signature of the applicant
or an individual authorized to act for the applicant

Date

FOR TOWN USE ONLY:

Application received by _____ [town official] on _____ [date]

Application fee of \$ _____, received by _____ [form of payment]

APPENDIX B
Town of Johnson
Notice of Permission to Proceed with Right of Way Project

Notice is hereby given to _____ [name of Applicant / Property Owner] that the Selectboard of the Town of _____ hereby grants permission to proceed with the construction / development of the proposed project at _____ [parcel # and street address or property, if any], described in the Right of Way Project Permit Application # _____, submitted to the Town on _____ [date]. Construction / development may begin on or after _____ [date] and must proceed according to the following conditions and restrictions:

[insert conditions or restrictions]

Permission granted in this Notice will expire 90 days from the date of issuance and is not transferrable.

This Notice does not constitute a Right of Way Project Permit. A Right of Way Project Permit authorizing the use of the access and recognizing completion of the project will be issued and become effective only after it is determined that compliance with all conditions, specifications, and restrictions described in this Notice to Proceed are met. The Selectboard for the Town of Johnson, with the assistance of the Public Works Supervisor, will have the authority and responsibility to determine when the conditions, restrictions, and specifications above are met.

Upon receipt of this Notice, you are hereby authorized to proceed with the project in accord with the conditions, specifications, and restrictions described herein. Approval covers only the work described in your Right of Way Project Permit Application, as modified by the conditions, restrictions, and specifications listed above. You will be held financially responsible for any damage caused to the Town highway system resulting from the any project, regardless of whether such project has been authorized by the Town.

This Notice does not relieve you from any requirements imposed by other local, regional, or State agencies.

Issued on: _____ [date]

By: _____

APPENDIX C
Town of Johnson
Right of Way Project Permit

It is the determination of the Selectboard of the Town of _____ that all of the conditions, restrictions, and specifications described in Right of Way Project Permit Application # _____, as modified by the relevant Notice to Proceed, which was issued by the Town on _____ [date], have been met.

Therefore, Permit # _____ is hereby issued to _____
[Applicant / Property Owner], as Permittee for the project located at _____
[parcel # and street address or property, if any], which _____

_____ [description of project]. All of the conditions, restrictions, and specifications described in Right of Way Project Permit Application # _____, as modified by the relevant Notice to Proceed, which was issued by the Town on _____ [date], remain in force as conditions of this Permit as long as the present land use continues. Any change in the present land use will require a new Right of Way Project Permit.

This Permit shall not be valid until recorded in the Town Land Records at the expense of the Permittee.

The issuance of this Permit does not relieve Permittee from any requirements imposed by other local, regional, or State agencies.

In the event that there is a failure to adhere to the conditions, restrictions, and specifications described above, this Permit may be suspended by the Selectboard until compliance is obtained. If there is continued use or activity after suspension, the Selectboard may physically close the driveway or access point if, in the opinion of the Selectboard, the safety of highway users is or may be affected.

As per 19 V.S.A § 111(f), the Selectboard may, as development occurs on land abutting a Town Highway, require the elimination of an access previously permitted and require the construction of a common frontage road or other access improvements which may serve more than one property or lot.

Right of Way Project Permit issued on _____ [date]
By: _____ [Selectboard or its designee]

Received for recording on _____ [date], with applicable recording fees paid.
By: _____ [Town Clerk]