



Class 4 Highways and Trails Top 10 Questions

A supplement to the Vermont Trails & Greenways Spring, 2004 Newsletter

This fact sheet is an attempt to answer some of the frequently asked questions about class 4 highways and trails in Vermont. It's a good idea to obtain legal counsel when making decisions about class 4 highways and trails. The following is comes from Hank Lambert at the Vermont Local Roads Program, 802-654-2652, <http://personalweb.smcvt.edu/vermontlocalroads>.

1. What is a class 4 highway?

According to VSA T19 #302 (c), Classification of town highways: (a) For the purposes of this section and receiving state aid, all town highways shall be categorized into one or another of the following classes:

Class 1 town highways are those town highways which form the extension of a state highway route and which carry a state highway route number. The Agency shall determine which highways are to be class 1 highways.

Class 2 town highways are those town highways selected as the most important highways in each town. As far as practicable they shall be selected with the purposes of securing trunk lines of improved highways from town to town and to places which by their nature have more than normal amount of traffic. The selectmen, with the approval of the Agency, shall determine which highways are to be class 2 highways.

Class 3 town highways are all traveled town highways other than class 1 Or 2 highways. The selectmen, after conference with a representative of the agency shall determine which highways are class 3 town highways. The minimum standards for class 3 highways are a highway negotiable under normal conditions all season 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. A highway meeting these 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.

All other town highways are Class 4 town highways. The selectmen shall determine which 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:

- is 3 rods or 49.5' (unless otherwise recorded) – T19 #702;
- is not eligible for state aid funds – T19 #306;
- is usually not maintained for winter use – T19 #302 (a) (3) (b);
- may be reclassified or discontinued – T19 Ch. 7.

2. What is a trail?

According to VSA T19 #301 (8), "Trail means a public right-of-way which is not a highway and which: "(A) previously was a designed town 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 selectmen for the purpose of providing access to abutting properties or for recreational use. Nothing in this section shall be deemed to independently authorize the condemnation of land for recreation purposes or to affect the authority of selectmen to reasonably regulate the uses of recreational trails."

Additionally, a trail:

- is a public right-of-way and not a highway – T19 #302 (a)(5);
- is not a responsibility of the town for construction, maintenance, repair or safety – T19 #310.

3. Why is it important to keep class 4 highways and trails?

A committee composed of seven Vermont groups drew up the following response to this question in 1992 (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, VT Association of Snow Travelers).

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

continued on back

continued from front

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 here 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.

4. Do class 4 highways and trails have to be maintained?

According to VSA T19 #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 section 302 of this title. (c) A town shall not be liable for construction, maintenance, repair or safety of trails." According to VSA T19 #302 (c) (5): "Trails shall not be considered highways and the town shall not be responsible for any maintenance including culverts and bridges."

5. Do class 4 highways and trails have to be upgraded on request?

According to T19 #708 (b): "A class 4 highway need not be reclassified to class 3 merely because there exists within a won 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, T19 #711 (b) states: "As part of the report of findings provided for in subsection (a) of this section, the selectmen 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, T19 #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 if the highway right-of-way cannot be determined and shall place suitable monuments to properly make 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."

6. What is the process for altering, reclassifying or discontinuing?

This process is spelled out in detail in T19 #708-712 and #771-775. These statutes should be reviewed for a full understanding. A brief summary of the process is as follows:

Landowners or voters (at least 5% of voters) petition the selectmen or the selectmen initiate on their own. Selectmen set a time and date for visiting premises and hold a hearing. Thirty days notice must be given to petitioners, abutting land owners or persons having and interest and planning commission. Notice must also be posted and published not less than 10 days before hearing. The Vermont Department of Forests, Parks and Recreation must also be sent a notice when a petition is filed. (T19 #775) The Department will notify the state trails organizations and, if the proposed discontinuance appears to have recreational value, will urge the town to retain in trail status. Within 60 days after the examination and hearing the selectmen must make a decision, notify the parties, and the action recorded by the clerk.

7. Can the town regulate the types, season, or condition of use?

Selectmen clearly have the authority under T19 #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 T19 #304 (5) selectmen 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." They can limit types of use such as snowmobiles, ATV's and 4x4's; season of use such as restricting motorized vehicles during muddy periods; or condition of use such as speed and weight limits.

8. 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.

9. Does the town have any legal rights if someone blocks a highway or trail?

According to VSA T19 #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.)

10. What is a pent road?

According to T19 #301 (4): "'Pent road' is any town highway which, by written allowance of the selectmen, is enclosed and occupied by the adjoining landowner with unlocked stiles, gates and bars in such places as the selectmen designate."