

Town of Johnson, Vermont

Policy Regarding Class IV Highways & Trails

Background Data:

The Town has the following miles (Town and Village) of road by Classification as of

January 1st, 2023:	Town	Village	Total
Class II	12.50	1.64	14.14
Class III	37.19	4.78	41.97
Class IV	12.21	0.02	12.23
Legal Trail	0.32		
Total all miles	62.22	6.44	68.34

Total Miles maintained by the Town (including Village), Class II and III = 56.11

% of Class IV miles to Class II & III = 21.8 %

State Aid to Highways payment to Town (data from 2023)

Class II rate	\$4916.01/mi	x 14.14 mi =	\$69,512.38
Class III rate	\$1825.44/mi	x 41.97 mi =	\$76,613.71
Class IV rate	\$0	x 12.23 mi =	\$0
Total			\$146,126.09

Total Highway Budget \$1,423,839.00 (data from 2023)

% of town highway budget received as State Aid 10.26%

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 highway contribution, and have very limited eligibility for FEMA reimbursements in the event of loss or damage in a federally declared disaster.

Therefore, maintenance costs are borne by the local property tax.

Class IV highways and legal trails provide public rights of way as well as access to private land and therefore 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 have been interpreted to require 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 reclassification, 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.

Following the adoption by the Vt Legislature of Act 64 in 2015 and the subsequent rule making process undertaken by the Agency of Natural Resources, resulting in General Permit #3-9040, all towns in Vermont are subject to Municipal Roads General Permits (MRGP). These permits require certain work to be performed to all municipal roads, including identified hydrologically connected sections of Class IV roads. If there is a conflict between this policy and the Town of Johnson's MRGP, the requirements of the MRGP shall govern.

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 has been the general policy of the Selectboard not to reclassify Class IV highways or 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.

In light of the passage of Act 64, the rules set forth by the Agency of Natural Resources (General Permit #3.9040), it's Municipal Roads General Permit, and the specific requirements regarding Class IV roads, the Selectboard has to weigh the benefits to the public of retaining Class IV classification, and may consider reclassification to legal Trail status for some Class IV highways.

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.

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

At a minimum, any road structure or subsurface work performed on or within the right of ways of a Class IV highway or trail for reclassification or any other reason (except as defined in Section 4 B 1&2) requires a Right of Way Permit from the Town as per 19 VSA §1111.

3. Town Policy

It has been 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, except as described above with regard to the requirements of the MRGP as relates to hydrologically connected sections.

Further, while the Town is not obligated to maintain Class IV roads, except as required by statute and the MGRP, or trails, it is the intent of the Town to have the Road Foreperson inspect Class IV roads annually to determine the extent of work required, if any, for compliance with any requirements of the aforementioned MRGP. In making such a determination, the town may consider performing preventative maintenance, where in it's sole judgment such preventative maintenance is likely to prevent significant future damage, thereby saving money. The Town will make every effort to perform such work.

4. Maintenance by the Town

A. Trails

1. The Town shall not provide any summer or winter maintenance, or upkeep on trails.
2. The Town shall not be liable for construction, maintenance, repair, or safety of 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 procedure as for laying out highways and meeting standards set forth in §302 of this article.

1. The Town shall not provide any regular summer or winter maintenance of Class IV highways except as the town may determine to be required for the necessity of the Town, the public good and the convenience of the inhabitants of the Town, the requirements of the MRGP and when staff and financial resources allow (see #2 below). Such work will in no way obligate the Town to perform any additional maintenance or repairs of any nature.
2. Notwithstanding the above, the Selectboard, at it's sole discretion and judgment, may authorize repairs to a Class IV highway (or at it's sole discretion delegate such authority to the Highway Foreman), if the following conditions are met:
 - a. The Highway crew has the capacity to perform the work without impacting work on Class III and Class II highways and other obligations they may have;
 - b. Funds are available to perform the work without impacting Class II and III highway maintenance obligations;
 - c. The repairs are either required by the MRGP or are deemed essential for the protection or preservation of the highway.

Any such requests shall be evaluated on an individual basis with consideration given to the use and condition of the highway and the cost/benefit to the public. Any such work shall not obligate the town for any future repairs or maintenance.

5. Emergency Access

Notwithstanding the fact that the town shall provide no summer or winter maintenance as described above, in the event of an emergency such as a fire or medical emergency and if requested, the Town may (but shall not be required to) make attempts to assist emergency vehicles to access properties located on Class IV roads but the Town shall accept no responsibility for the inability of emergency vehicles to access such properties due to road conditions, weather conditions or any other factors.

6. Maintenance Work by Others

NOTE: It is recommended that any subsurface road or ditch work be preceded by notification to DigSafe (Call 811 or 888-DIG-SAFE or see <http://www.digsafe.com>).

1. Repair and maintenance which does not adversely affect the highway or trail, will be allowed without a permit by the Town. The highway shall be left in as good or better condition as existed prior to beginning any such work. Repair and maintenance activities shall be limited to generally accepted practices such as grading and shaping and crowning the roadbed, addition (6" or less) of gravel to the wear surface, establishing or repairing water bars, and cleaning ditches (requiring 6" or less of excavation). While no permit is required, Notification to the Road Foreman and or Road Commissioner is required prior to commencing work.
2. Snow plowing (snow removal by any usual means) of Class IV roads or legal trails by abutting landowners, tenants and/or their contracted help shall also be allowed without a permit. Any damage done to the road, bridges, culverts, etc. is the responsibility of the snowplow operator, and may be recoverable by the town. Any winter plowing of a class IV highway granted by the Selectboard or this policy to parties other than a municipality shall not nullify the snowmobiling privileges under 23 V.S.A. § 3206(b)(2).
3. Permits required: Anything other than general maintenance and repair and snow plowing as described in Section 6. 1 and 2 above, shall require a ROW Permit, including but not limited to, construction requiring excavations of more than 6", the installations of culverts, the addition of more than 6" of gravel, widening or otherwise changing the character of the highway or similar construction, in accordance with the ROW permit process of the Town.
4. The physical character (width and drainage) and general use of the highway shall be maintained unless otherwise permitted by the Selectboard.
5. Stonewalls can provide valuable historic markers for establishing the locations of the highway rights of way and shall not be removed without the written consent of the Selectboard.

6. A surety bond or damage deposit may be required by the town in conjunction with the ROW Permit for any repairs, alterations, construction or use of the highway which may be deemed to cause or have a high chance of causing damage to said highway. The bond or deposit shall reflect a reasonable estimate of repairs for potential damage. Upon satisfactory completion of the work, Notice to the Town, inspection of the work by the Town, and any retention requirements from the permit, the funds (less interest) will be returned to the applicant.

See the Town's Work in the Right of Way policy for all questions related to work done in the road or the town's right of way adjacent to the road.

7. 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 (including non-exempt sap haulers); 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.

8. 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 Highway and Right of Access Permit process as defined in 19 VSA §1111.

Notwithstanding the above, nothing herein shall be deemed to negate or repeal permit requirements for working in or adjacent to highway rights-of-way.

9. Posting and Gating of Highway

No highway of any Class may be closed by a gate or other obstruction except upon approval of the Selectboard (see: 19 VSA §§304 and 1105). The Selectboard may post a highway in accordance with 19 VSA §1110. The Selectboard may post a highway for the purposes of preserving the integrity of the road (see 19 VSA §304).

10. Disputed Right of Way Situation

It is recommended that any person(s) or entity(s) considering any road work requiring a Town Permit first consult with the Town regarding the Right of Way (ROW) location. 19 VSA Section 32 states that the right of way shall be assumed to 1.5 rods either side of the centerline of the existing road, whenever the original survey was not properly recorded, or the records preserved, or the terminations and boundaries cannot be determined. Right of Way disputes shall be resolved in accordance with the provisions of 19VSA Section 33.

11. Compliance with other Regulations

This policy is written to establish and clarify standards of construction and the authority of the Selectboard and its authorized representatives.

All other policies and regulations adopted by the Town of Johnson shall remain in full force and effect.

The foregoing Policy is hereby adopted by the Selectboard of the Town of Johnson, Vermont, this 20th day of May, 2024 and is effective as of this date until amended or repealed.

SIGNATURES.



Eben Patch, Selectboard Chair



Adrienne Parker, Selectboard Vice
Chair



Michael Dunham, Selectboard



Peter Hammond, Selectboard



Paul Warden, Selectboard

1-5-26

Date

1/5/26

Date

1-5-26

Date

1/5/26

Date

1-5-26

Date