

MEMORANDUM

To: Interested Persons
From: John Echeverria
Re: Trails vs. Class 4 Roads
Date: May 5, 2021

There has been some discussion about trails and class 4 roads in Tunbridge and whether and to what extent the rules governing use and management of each type of corridor are or should be the same. My reading of the Vermont statutes (mainly Title 19) indicates that there are important differences between these two types of corridors. These conclusions apply regardless of what public uses are authorized on trails and/or class 4 roads.

Attached to this short memo is an appendix including the most pertinent provisions of Title 19 relating to trails and class 4 roads.

First, public legal trails are open to public use only when and to the extent the town has adopted a regulation specifying the authorized public uses of the trail. For many years, Tunbridge has had no regulation defining the permitted public uses of the trails. By contrast, highways are, by default, generally open to the public traveling in motor vehicles (and other less intensive forms of transportation, including bicycles and walking), subject to various possible seasonal and other restrictions. The grounds for this conclusion are set forth in two opinion letters produced by my attorney, Jack Candon, previously provided to the Planning Commission, and attached to this memorandum.

Second, whereas the town has extensive discretion to decide whether and to what extent to maintain class 4 roads, it has no statutory authority to maintain trails. Various provisions of Title 19 confirm the town's broad discretionary authority to maintain class 4 roads: 19 VSA § 1(28) ("Town highways' are class 1, 2, 3 and 4 highways . . . that the towns have authority to exclusively or cooperatively maintain"); 19 VSA § 303 ("Town highways shall be under the general supervision and control of the selectman of the town where the roads are located.") 19 VSA § 304 (a) ("It shall be the duty and responsibility of the selectboard of the town to, or acting as a board, it shall have the authority to . . . see that town highways and bridges are properly laid out, constructed, maintained, altered, widened, vacated, discontinued and operated, when the safety of the public requires, in accordance with the provisions of this title"); 19 VSA § 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.")

None of these statutory grants of authority to towns to maintain highways apply to trails. To the contrary, several provisions of Title 19 affirmatively deny towns the authority to maintain trails: 19 VSA § 302 (a)(5) ("Trails shall *not* be considered highways and the town shall *not* be

responsible for any maintenance, including culverts and bridges.”) (emphases added); 19 VSA § 310 (c) (“A town shall *not* be liable for construction, maintenance, repair, or safety of trails.”) (emphasis added). A town’s authority with respect to a legal trail is limited to adopting regulations governing the permitted uses of the trails. *See* 19 VSA § 304 (a) (“It shall be the duty and responsibility of the selectboard of the town to, or acting as a board, it shall have the authority to make regulations governing the use of . . . trails”); *see also* 19 VSA § 301 (8). (“Nothing in this section shall be deemed to . . . affect the authority of selectman to reasonably regulate the uses of recreational trails.”)

The assignment of different levels of responsibility and authority to towns with respect to trails and class 4 roads makes sense in the context of the general categorization of VT transportation corridors. Title 19 provides that towns have a mandatory *duty* to maintain class 1, 2 and 3 roads. *See* 19 VSA § 310 (a) (“A town *shall* keep its class 1, 2 and 3 highways and bridges in good and sufficient repair during all seasons of the year.”) (emphasis added). By contrast, the towns *may* maintain class 4 roads, but are not under a duty to do so. *See* 19 VSA § 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.”) (emphasis added). Finally, the statutory provisions governing trails do not authorize towns to maintain trails and indeed affirmatively deny towns the authority to maintain trails. *See* 19 VSA § 302 (a)(5) (“the town shall not be responsible for any maintenance [of trails], including culverts and bridges”); In sum, the statutory scheme establishes three distinct levels of authority and responsibility with respect to corridor maintenance: towns *must* maintain certain corridors, *may* maintain other corridors, and has *no authority* to maintain still other corridors. This statutory scheme serves the goals of limiting municipal financial exposure to the costs of maintaining transportation corridors and shifting these cost to landowners in certain instances.

When a town chooses not to maintain a transportation corridor (in the case of a class 4 road), or lacks the authority to maintain a corridor (in the case of trails), the responsibility for maintenance of the corridor rests with the landowner(s) subject to the trails. *Cf. Town of Calais v. County Board of Commissioners*, 173 Vt. 620 (Vt. 2002) (affirming town’s class 4 trail policy that town generally does not maintain class 4 road, leaving trail maintenance of class 4 roads to adjacent landowners). In modern terminology, the statutory scheme establishes a “public – private partnership” between the town and landowners with respect to the management of these corridors. In the case of trails, the town has the legal authority to identify and regulate public uses of the trails, while legal responsibility for trail maintenance rests with the landowner.

APPENDIX

Key Statutory Provisions Relating to Town Highways, Trails and Other Corridors.

Title 19, 19 VSA § 302, categorizes town highways and other transportation corridors into six categories:

- (1) Class 1 highways, “those town highways which form the extension of a state highway route and which carry a state highway route number.”
- (2) Class 2 highways, which are “those town highways selected as the most important highways in each town.”
- (3) Class 3 town highways, which “are all traveled town highways other than class 1 or 2 highways.”
- (4) Class 4 highways, which “are all town highways that are not class 1, 2, or 3 town highways or unidentified corridors.”
- (5) trails, which “shall not be considered highways,” and
- (6) “unidentified corridors,” which are “town highways” that meet four specific criteria and which, prior to July 1, 2015, were to be discontinued or reclassified as a class 1, 2, 3 or 4 highway or as a trail.

Class 4 roads are, by definition “highways,” whereas trails, by definition, are *not* “highways,” meaning that various provisions of Title 19 applicable to highways apply to class 4 roads, but not to trails. Some of the provisions applicable exclusively to highways include the following

19 VSA § 1(12). “‘Highways’ are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the State by deed of a fee or easement interest, or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located, or such as may be from time to time laid out by the Agency or town.”

19 VSA § 1(23). “‘Town highways’ are class 1, 2, 3 and 4 highways:

- (A) that the towns have authority to exclusively or cooperatively maintain; or
- (B) that are maintained by the towns except for scheduled surface maintenance performed by the Agency pursuant to section 306a of this title.”

The same language appears at 19 VSA 301(7)

19 VSA § 303. “Town highways shall be under the general supervision and control of the selectmen of the town where the roads are located.”

19 VSA § 304 (a) “It shall be the duty and responsibility of the selectboard of the town to, or acting as a board, it shall have the authority to:

(1) see that town highways and bridges are properly laid out, constructed, maintained, altered, widened, vacated, discontinued and operated, when the safety of the public requires, in accordance with the provisions of this title:

....

(6) make special regulations as to the operation, use, and parking of motor vehicles on highways under their jurisdiction, as provided in Title 23.

(7) make special regulations as to the speed of motor vehicles using the highways under their jurisdiction, as provided in Title 23.”

19 VSA § 310 (a) “A town shall keep its class 1, 2 and 3 highways and bridges in good and sufficient repair during all seasons of the year, except [a town may decide not to plow a class 2 or 3 highway during the winter]

19 VSA § 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”

19 VSA § 971. “When a highway or bridge is out of repair or unsafe for travel, any three citizens or taxpayers in the State may give written and signed notice of the insufficiency to the selectmen of the town in which the highway or bridge is situated, setting forth in general terms the location of the highway or bridge and the nature of the insufficiency. If the town neglects for seventy-two hours to respond by either denying the allegation or to commence work upon the highway or bridge, or fails to continue the work in good faith and with reasonable dispatch until the highway or bridge is put in good and sufficient repair, the citizens may file with one of the County Road Commissioners or the Superior Court for the county in which the highway or bridge is situated, a written complaint signed and sworn to, setting forth in general terms the location of the highway or bridge and the nature of the insufficiency.”

In contrast to the numerous statutory provisions that apply specifically and exclusively to highways including class 4 roads, the provisions governing trails are relatively spare and quite different from those governing highways:

19 VSA § 301 (8). “‘Trail’ means a public right-of-way which is not a highway and which:

(A) previously was a designated 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 recreational purposes or to affect the authority of selectmen to reasonably regulate the uses of recreational trails.”

19 VSA § 302 (a)(5) “Trails shall not be considered highways and the town shall not be responsible for any maintenance, including culverts and bridges.”

19 VSA § 304 (a) “It shall be the duty and responsibility of the selectboard of the town to, or acting as a board, it shall have the authority to:

....

(5) 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 the 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.”

19 VSA § 310 (c) “A town shall not be liable for construction, maintenance, repair, or safety of trails.”