

August 18, 2021

To: Laura Gensburg

From: Paul Gillies

RE: Initial thoughts on Class IV Road Policy

Here are a few reactions to the draft policy:

1. Decision-making. Only the Selectboard can make enforceable policies. The Planning Commission can make recommendations, but the Selectboard has the exclusive power, through its Title 19 authority. The Planning Commission may approve routes, parking plans, and other details, subject to ratification by the Selectboard.
2. Ordinance and policy. There is a fundamental difference between the two. A policy is not enforceable; an ordinance is. Ordinances are adopted through a process described in 24 V.S.A. § 1971 and following. The Selectboard preliminarily adopts it, then publishes and posts a notice inviting a petition signed by five percent of the voters to disapprove it, if filed within 44 days of the adoption of the ordinance; otherwise, without a petition, the ordinance takes effect on the 60th day following adoption.
3. Insurance. Requiring insurance coverage approved by the Selectboard for events on public property is common and legitimate.
4. Which roads are suitable. This is a decision for experts in wetlands, erosion, wildlife, and topography. It makes sense to have an inventory of suitable roads, but then to require separate approval depending on the season, the type of event, and historical experience, as well as public (and private landowners') opinions.

Shouldn't the policy cover trails as well as Class IV highways? There's just as much a risk of erosion damage or wetlands or stream crossing damage on the one as the other. Leaving the trails open without regulation seems to defeat the purpose of the regulation.
5. Paying for damages. This may be included in the ordinance, although there ought to be some objective measure of what constitutes damage and the process of assessing the cost of repair.
6. Hearings. These should be held for the adoption of the ordinance, first before the

Planning Commission, then when the Selectboard is considering the ordinance, and also whenever there's a specific application. Enforcement decisions also need an opportunity for hearing.

7. The Class IV Road policy might address other issues than just recreational use of the roads.

August 28, 2021

To: Laura Ginsberg

From: Paul Gillies

RE: John Echeverria and Carlin Pratt's letter

The Town should adopt regulations for the use of trails. I don't believe that in lieu of regulations that public use of trails is prohibited, however. Trails in my experience are open to anyone and any vehicle or device (ATVs, snowmobiles), which is why regulations are so important, to keep the land from overuse and erosion, and the waters clear of silt and oils. The town plan's view that trails should be used for hiking is an important policy statement. It isn't enforceable, but it can give the Town a direct to follow in writing regulations. As I mentioned earlier, an ordinance is necessary to authorize enforcement of regulations.

September 1, 2021

Email from Laura Ginsburg to Paul Gilles:

Hi Paul-

A few questions from tonight's meeting about trails:

We have one landowner who asserts that legal trails can only be maintained by the landowner and not the town (or other groups at the towns discretion). Is this true?

Have towns ever turned a legal trail back into a class IV road? Are there any financial benefits to the town to have additional mileage in roads and not trails?

Paul Gillies response on 9/2/21:

A town is not obliged to do maintenance on trails, but it's not forbidden to do so. Many towns have done work, usually on an ad hoc basis, to address erosion problems and curb cuts off of trails.

It's rare, but some towns have reclassified trails into Class 4s, when landowners have had plans to develop the land served by the trail. There's no financial advantage to the town, since the town gets nothing from the state for Class 4s.

One objection of a road policy is to avoid unnecessary confusion over the use of roads. Once somebody wants to develop land served by a trail, and is given authority by the Selectboard to develop the road as a driveway, there's bound to be trouble. Even though the landowner is obliged to maintain the road (not the town in other words), people assume it is a town highway, drive up and park, and everybody gets excited and contentious. Then, when the town authorizes the establishment of a locked gate to prevent motor vehicles using it, other than the landowner, there's even more confusion and controversy.

One advantage to having a right-of-way be a trail, and not a Class 4, is drainage. While the law does not required a town to maintain Class 4s (apparently not even bridges and culverts), neglect and damage can cause damage to streams and wetlands, and the State might become involved in requiring correction. That wouldn't be true on a trail.

Paul