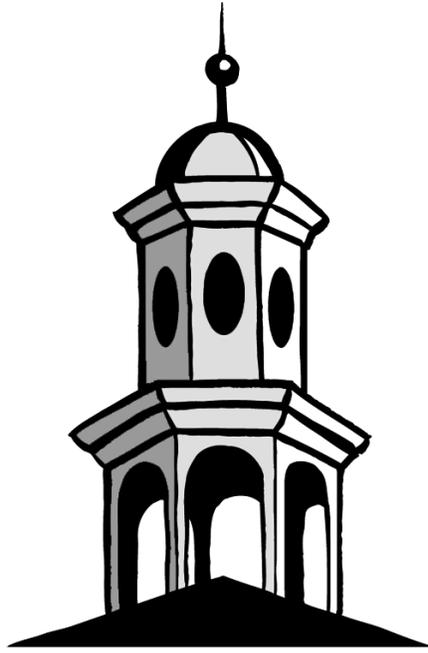


THE HIGHWAY HANDBOOK



**VERMONT LEAGUE
OF CITIES & TOWNS**

A Guide to Vermont's Highway Laws

2001

The **Vermont League of Cities and Towns (VLCT)** was founded in 1967 as a nonprofit, nonpartisan organization dedicated to serving and strengthening Vermont local government. Today, VLCT supports its member municipalities by offering them a comprehensive insurance program, representation before the state and federal governments, and an extensive educational and technical assistance program.

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In 2003, VLCT added a new level of service for its member municipalities when it opened the **VLCT Municipal Assistance Center (MAC)**. The Center provides local officials with technical assistance, legal counsel, and educational workshops that increase the ability of local officials to serve their citizens. MAC staff have diverse backgrounds in public administration, municipal law, human resources, public finance, and planning and zoning. The Center also publishes handbooks for all major town officers and annual surveys on municipal salaries and benefits and current municipal practices.

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PROLOGUE

The purpose of this handbook is to provide municipal officials with a concise and understandable guide to the laws governing the use and maintenance of Vermont's local roads. Additional sources of information are provided throughout the text, and more detailed resource materials are provided in the appendices.

Reasonable efforts have been made to ensure that the information provided in this publication is accurate and complete; however, the Vermont League of Cities and Towns' Municipal Law Center makes no warranty, express or implied, or any representation that such information is suitable for any particular purpose or may be relied on for any specific act, undertaking or course of conduct.

This program represents a joint effort of the VLCT Municipal Law Center and the Vermont Local Roads Program. The VLCT Municipal Law Center thanks Vermont Local Roads for the opportunity to create a publication that, for the first time, sets forth a comprehensive guide to Vermont's highway laws. The VLCT Municipal Law Center also thanks Gil Whittemore, Esq., for his hard work and research on this handbook.

Jon Groveman, Esq.
Director, VLCT Municipal Law Center
April 2001

I. INTRODUCTION

As any municipal official responsible for overseeing town roads knows, locating and interpreting Vermont laws relating to town highways is no easy task. There are numerous statutes that govern the use and maintenance of Vermont's local roads, and these laws are scattered throughout Vermont's statute books. Moreover, the Vermont Supreme Court has issued rulings in a variety of cases that have significantly affected the obligations of municipalities with regard to managing its local roads.

This handbook consolidates Vermont's highway statutes, key Vermont Supreme Court cases relating to local roads, and even applicable federal law, into one comprehensive resource guide for municipal officials. The handbook also discusses the roles of various municipal officials in Vermont with respect to managing local roads. The VLCT Municipal Law Center is confident that the handbook will be an excellent resource for selectboard members, road commissioners and municipal attorneys faced with complex questions regarding the use and maintenance of local roads.

Vermont statutes often refer to the "municipal legislative body," which includes town selectboards, city councils and village trustees. In such cases this handbook uses the term "selectboard" instead of "municipal legislative body."

II. SOURCES OF LEGAL AUTHORITY

A. General Laws Related to Managing Roads

There are four basic levels of legal authority that govern the management of local roads: federal law, state law, local law, and private contracts and agreements.

Federal law may govern some actions of a town official responsible for managing roads, such as a road commissioner. For example, federal law may affect employment conditions, workplace safety, and highway design. Almost always, a federal law will pre-empt any state law, unless the state law is more specific.

A town or city is a "municipal corporation" created by the *state* legislature. The municipality has only those powers given to it by the state legislature, either by statute or charter. Its actions, including the actions of officials such as the road commissioner, are limited to powers granted by state law. These powers may be found in state statutes and the regulations applying to those statutes, plus any governance charter issued to the municipality by the state legislature.

In addition, as a municipal corporation, the town has the authority to enact some types of *local* laws within its boundaries. Sign and parking ordinances are typical examples of local road regulations. Once it has enacted such a local law, the town (including its officials) is bound to follow it.

Finally, a municipality has the authority to enter into *contracts* of many types. Insurance, employment, and subcontracts for highway work are three types closely related to the road commissioner's work. As a party to a contract, the municipality is bound to honor the contract, or face damage claims for breach of contract.

B. Federal Statutes and Regulations Related to Managing Local Roads

At the federal level, there are three types of legal authority: constitutional, statutory, and regulatory.

The *U.S. Constitution* is the highest level of authority. Specific provisions of the constitution relevant to managing local roads include those provisions requiring compensation for the taking of property for a public use (as in condemnation procedures to widen or alter a road) or limiting entry upon private property. Determining how these or other constitutional requirements apply in a specific instance requires analyzing past court cases as well as the Constitution itself, and should only be done by an attorney for the town. Municipal officials should be aware of this need, and be familiar with the town's procedure's for obtaining legal advice on such matters.

Federal *statutes* may affect many aspects of managing local roads, such as federal aid for highways, design requirements for highways and bridges, vehicle requirements, licensing requirements for operators of commercial motor vehicles, employee relations, minimum wage requirements and tax withholding.

*The text of a federal statute can be obtained over the internet at <http://thomas.loc.gov> or <http://uscode.house.gov/usc.htm>. Federal statutes are cited by title number and section. For example, "12 U.S.C.A. § 576" refers to **section 576** of **title 12** of the United States Code Annotated. But, as with the U.S. Constitution, determining how a statute applies in a specific instance should be done by consulting the Municipal Law Center of the Vermont League of Cities and Towns (802-229-9111 or 800-649-7915), by following the town's procedures for consulting the town attorney, or, in some instances, by seeking the advice of a state agency which routinely works with the federal statute in question.*

The *U.S. Code of Federal Regulations* contains the rules issued by federal agencies to provide the details of how a specific statute is applied. Those applicable to the work of a road commissioner include regulations governing vehicle use, highway design, emergency management, and employment.

*The text of the U.S. Code can be found at <http://www.access.gpo.gov>. Federal regulations are cited by title number and section. For example, "12 C.F.R. § 576" refers to **section 576** of **title 12** of the Code of Federal Regulations. Determining how such a regulation applies in a specific instance should be done by consulting the Municipal Law Center of the Vermont League of Cities and Towns, by following the town's procedures for consulting the town attorney or, in some instances, by seeking the advice of a state agency which routinely works with the federal regulation in question.*

C. Vermont Statutes and Regulations Related to Managing Local Roads

There are numerous Vermont statutes relating to highways. These statutes cover such subject areas as the town officers responsible for managing roads, funding for highways, regulation of highways and highway maintenance.

Under state law, the selectboard has the responsibility for general supervision and control of town highways. 19 V.S.A. § 303. Note especially that the selectboard shall “*supervise all expenditures*” relating to town highways. 19 V.S.A. § 303. The numerous duties of the selectboard concerning highways are set forth in 19 V.S.A. § 304. Nineteen V.S.A. § 304(16) empowers the selectboard to appoint a road commissioner under 17 V.S.A. § 2646, unless the town electorate has voted otherwise. The Agency of Transportation (VTrans) has the same powers with respect to state highways that a selectboard has. 19 V.S.A. § 10(14).

Detailed information regarding the powers and duties of the selectboard, road commissioners, county commissioners and VTrans is provided in the sections that follow.

*Each town office should have a copy of the “Vermont Statutes Annotated.” This includes the language of the Vermont Constitution and statutes, plus brief summaries of court cases interpreting them. When checking a statute, always be sure to check the “pocket part” inserted inside the back cover. This provides any recent amendments or cases related to a specific statute. Current statutes and bills pending before the Legislature can also be found on the Internet at <http://www.leg.state.vt.us>. State statutes are cited by title number and section. For example, “19 V.S.A. § 301” refers to **section 301** of **title 19** of the Vermont Statutes Annotated. In many cases, interpretation of a statute is straightforward. However, if the language is at all ambiguous, you should consult with the Municipal Law Center of the Vermont League of Cities and Towns (802-229-9111 or 800-649-7915) or follow the town’s procedures for consulting the town attorney.*

III. MUNICIPAL AND STATE OFFICIALS RESPONSIBLE FOR MANAGING ROADS

A. Selectboard Authority/Responsibility Regarding Town Highways

1. Basic Duties

Under state law, the selectboard has the responsibility for general supervision and control of town highways and for highway expenditures. The basic duties of the selectboard concerning highways are set forth in 19 V.S.A. § 304(a). These duties are summarized as follows:

1. “see that town highways are properly laid out, constructed, maintained altered, widened, vacated, discontinued and operated, when the safety of the public requires;
2. take any actions consistent with the provisions of law which are necessary for or incidental to the proper management and administration of town highways;

3. purchase tools, equipment and materials;
4. order hills graded, surfaces graveled, or treated with a dust layer, or surface treated with bituminous material...;
5. grant permission for landowners to enclose pent roads and trails;
6. regulate the operation, use and parking of motor vehicles on town highways;
7. regulate the speed of motor vehicles on town highways;
8. lay out winter roads and lumber roads;
9. change the course of a stream;
10. erect embankments on a stream;
11. construct a watercourse, drain or ditch from a highway across private land;
12. lay out, alter, classify and discontinue town highways;
13. forward the town's annual plan for construction and maintenance of town highways to the state Agency of Transportation [VTrans];
14. keep accurate accounts;
15. receive grant funds and gifts;
16. appoint and remove road commissioners, unless the town has voted to elect road commissioners;
17. number houses and name highways;
18. participate in cooperative purchasing plans with other municipalities;
19. prepare a transportation plan and capital budget for transportation for voter approval;
20. retain staff and consultant assistance;
21. issue permits for highway right-of-way work;
22. regulate the location and relocation of utility wires and poles;
23. promulgate and adopt, after public hearing, road specifications for highways to be built or rebuilt within the town."

2. Unorganized Town or Gore

In unorganized towns and gores the secretary of the Vermont Agency of Transportation (VTrans) has the same powers as a selectboard. 19 V.S.A. § 16. The State Transportation Board provides appellate review of the secretary's decisions in such situations. 19 V.S.A. § 5(d)(3).

B. Road Commissioners

1. Elected or Appointed

The selectboard appoints one or two road commissioners, unless the town has voted to elect road commissioners. 17 V.S.A. §§ 2646(16), 2651; 19 V.S.A. § 304(a)(16). An article on the question of whether to elect road commissioners may be inserted in the warning for the annual town meeting by the selectboard on its own initiative or when requested to do so by at least five percent of the legal voters of a town at least 40 days prior to the annual town meeting. 17 V.S.A. § 2652. If a road commissioner is appointed by the selectboard, the selectboard also has the power to remove the road commissioner. 17 V.S.A. § 2651. A selectboard may appoint one or two of its own members to serve as road commissioners. 17 V.S.A. § 2651. An auditor may not be a road commissioner. 17 V.S.A. § 2647.

2. Authority

Road commissioners, whether elected or appointed, “*shall have only the powers and authority granted to them by the selectmen.*” 19 V.S.A. § 304(16). Road commissioners should have a copy of the documents in which the selectboard delegated powers. In addition, much of a road commissioner’s responsibilities are governed by other legal documents created by the municipality, such as deeds, selectboard orders laying out roads, ordinances governing traffic, and contracts entered into by the town. The road commissioner should know where these are filed in the town office and who in the office to ask for copies. Ideally, the road commissioner’s own office should have an up-to-date copy of those ordinances, regulations, contracts and policies directly related to town highways.

C. Tree Warden

The tree warden is appointed by the selectboard from among the qualified voters of the town. 24 V.S.A. § 871. The tree warden serves until a successor is appointed. 24 V.S.A. § 871. The tree warden has control over all “shade and ornamental trees within the limits of public ways and places.” 24 V.S.A. § 2501. The warden is empowered to implement a town shade tree preservation program. 24 V.S.A. § 2502. This includes planting, maintenance, and removal of diseased, dying or dead trees. 24 V.S.A. § 2502. However, the tree warden may not remove from the highway right-of-way trees and plants upon which noxious insects naturally breed if the adjoining landowner annually controls insect pests to the satisfaction of the tree warden. 24 V.S.A. § 2504.

“*Unless otherwise provided*” a public shade tree may not be cut or removed, in whole or in part, except by a tree warden or deputy tree warden, or with the written permission of the tree warden. 24 V.S.A. § 2508. There are no reported court cases determining whether the phrase “*unless otherwise provided*” exempts the maintenance activities of 19 V.S.A. § 904 from this provision. Nineteen V.S.A. § 904 provides, in part, that the selectboard, “if necessary, shall cause to be cut and burned, or removed from within the limits of the highways under their care, trees and bushes which obstruct the view of the highway ahead or that cause damage to the highway or that are objectionable from a material or scenic standpoint.” An argument can be made that under 19 V.S.A. § 904 the selectboard can authorize the removal of trees and bushes that are obstructing or damaging the highway without obtaining the permission of the tree warden. This is currently an open legal question.

Even a tree warden may not remove a public shade tree “within the residential part of a municipality” without first holding a public hearing. 24 V.S.A. § 2509. A “party in interest” may request that the final decision be made by the selectboard, not the tree warden. 24 V.S.A. § 2509.

D. County Road Commissioners

1. Appointed

Three county road commissioners are appointed annually by the superior court in each county. 19 V.S.A. § 970(a). County road commissioners serve for one year or until their successors are appointed. 19 V.S.A. § 970(a).

2. Authority

Vermont statutes provide county road commissioners with various responsibilities. In general, county road commissioners may sign subpoenas requiring witnesses to appear before them and administer oaths. 19 V.S.A. § 970(b).

County road commissioners may be appointed by the supreme or superior court to “build or repair a bridge, or lay out, alter or discontinue a highway. If so appointed, a county road commissioner may order the town or towns, in or through which they lay out or alter a highway, to grade hills to such an inclination as they deem proper, and to gravel the portions they deem necessary.” 19 V.S.A. § 706. The commissioners must report to the court, which then accepts or rejects the report in whole or in part and orders the towns to undertake the work which the court deems proper. 19 V.S.A. § 706. The supreme or superior court may also issue such an order in response to a petition, without appointing commissioners. 19 V.S.A. § 707.

In addition county road commissioners play a role in determining whether a town highway bridge is defective and must be repaired. (See Section V(G)(4) in this Handbook.)

E. The Vermont Agency of Transportation

The Vermont Agency of Transportation (VTrans) plays a role in the management of state and town highways. For example, VTrans has concurrent authority and jurisdiction with the selectboard on all class 1 highways in matters concerning protection of the highways. 19 V.S.A. Chapter 11, § 1101.

VTrans has the authority to inspect class 1, 2, and 3 town highways to verify the accuracy of records with regard to the mileage of such highways in a town that are on file with the agency. 19 V.S.A. § 305(a). As part of its review, VTrans may determine that a town highway does not meet the standards for its classification. 19 V.S.A. § 305(a). VTrans uses this information to appropriate money to towns for managing its highways. 19 V.S.A. § 306.

IV. LEGAL DEFINITIONS AND CLASSIFICATIONS REGARDING HIGHWAYS

A. Definitions

1. Highway

There are several legal definitions for a highway: it is (1) a road laid out as prescribed by statute; (2) roads conveyed to and accepted by a municipality or the state for public use; (3) roads dedicated to public use and accepted by a city or town; or (4) roads laid out by [VTrans] or a town. 19 V.S.A. § 1(12). As used in the statutes, the term “highway” or “road” also includes bridges and the approach to bridges. 1 V.S.A. § 119.

The legal definition of a highway includes “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.” 19 V.S.A. § 1(12).

2. Throughway

A throughway is a highway “specially designated giving traffic traveling on the throughway the right-of-way at all intersections.” 19 V.S.A. §§ 1(19), 302(5).

3. State Highway

State highways are “those designated on a map entitled “Vermont State Highways,” filed in the office of the Secretary of State on June 30, 1997, as subsequently modified by VTrans. 19 V.S.A. § 14(a). When modifications are made, VTrans must file a mileage certificate with both the secretary of state and the town clerk’s office in the town where the affected highways are located. State highways are exclusively maintained by VTrans. 19 V.S.A. § 18. VTrans has the same powers with respect to state highways that a selectboard has regarding town highways. 19 V.S.A. § 10(14).

4. Town Highway

Town highways are “those highways exclusively maintained by the towns” and “those maintained by the towns except for scheduled surface maintenance” by the state. 19 V.S.A. §§ 1(21), 301(7). The term “towns” includes incorporated villages and cities. 19 V.S.A. § 301(6). As noted herein, the selectboard has the “general supervision and control” of town highways. 19 V.S.A. § 303.

5. Highway Right-of-Way

The right-of-way of a specific highway is that which is recorded in the original survey laying out the highway or deed(s) conveying the highway to the town. However, in many instances, such records are either not available or do not specify the width of the right-of-way. In such cases, “a roadway width of one and one half rods [24'9"; 1 rod = 16½ feet]

on each side of the center of the existing traveled way can be assumed and controlled for highway purposes.” 19 V.S.A. §§ 32, 702. See *Town of Ludlow v. Watson* (1990), 153 Vt. 437, 571 A. 2d 67.

The right-of-way for a trail is “three rods unless otherwise properly recorded.” 19 V.S.A. § 702.

B. Highway Classifications

1. The Four Main Classifications of Town Highways

Nineteen V.S.A. § 302 classifies every town highway into one of four classes:

1. “Town highways which form an extension of a state highway route and which carry a state route number.” VTrans determines which highways are **class 1**. 19 V.S.A. § 302(a)(1).
2. “Those town highways selected as the most important highways in each town.” The selectboard, with the approval of VTrans, determines which highways are **class 2**. 19 V.S.A. § 302(a)(2).
3. “All traveled town highways other than class 1 or 2 highways.” The selectboard, after a conference with a representative of the Vermont Transportation Board, determines which highways are **class 3**. A “provisional class 3 highway” is one which does not currently meet class 3 standards, but, “within five years of the determination, it will meet all class 3 highway standards.” 19 V.S.A. § 302(a)(3)(C). If the town fails to comply with this provisional class 3 commitment, VTrans may require the town to return all state aid generated by the highway involved. 19 V.S.A. § 302(b).
- 4: “All other town highways.” The selectboard determines which highways are **class 4**. The process for reclassifying a highway is discussed in Section IX of this Handbook.

2. Trails

A trail is a public right-of-way which is “not a highway.” 19 V.S.A. § 301(8). The right-of-way for a trail is “three rods unless otherwise properly recorded.” 19 V.S.A. § 702. A trail may be either a former town highway which has been reclassified as a trail, or a new right-of-way laid out as a trail to provide access to abutting properties or for recreational use. 19 V.S.A. § 301(8). A trail may be part of the “Vermont trails system” administered by the Agency of Natural Resources under 10 V.S.A. §§ 441-449. The definition of trail in the Vermont trails system is “land used for hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding and other similar activities.” 10 V.S.A. § 442(3). The statutory definition of trail as a public right-of-way for recreational use does not expand the town’s authority to condemn land 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 V.S.A. § 301(8)(B).

3. Pent Roads

A pent road is a town highway which, under written permission of the selectboard, is enclosed by adjoining landowners with unlocked stiles, gates and bars. 19 V.S.A. § 301(4). Unlike the four classes of highways and trails, pent road is not a separate classification of highway.

4. Public Recreation Paths and Bicycle Routes

There are several different classifications of right-of-ways reserved specifically for recreation use by the public. A *bicycle route* is “any lane, way or path, designated by appropriate signs, that explicitly provides for bicycle travel.” 19 V.S.A. § 2301(2). A *bicycle lane* is “a portion of the roadway which has been designated for preferential or exclusive use of bicycles.” 19 V.S.A. § 2301(3). A *bicycle path* is “a separate trail or path which is for the exclusive use of bicycles.” 19 V.S.A. § 2301(4).

The selectboard may “construct and maintain suitable footpaths, bicycle paths or sidewalks, or any combination of these, within the limits of town highways where they do not conflict with travel on the highway.” 19 V.S.A. § 905. VTrans has authority to grant permission for construction of such facilities on state highways. 19 V.S.A. § 905. The role of the road commissioner in constructing and maintaining these must be specified by the selectboard. 19 V.S.A. § 304(16).

The town selectboard may construct and maintain footpaths and bicycle paths “within the limits of town highways where they do not conflict with travel on the highway.” 19 V.S.A. § 905; 24 V.S.A. § 2291(1). The selectboard may use “funds from any available source” for the construction of bicycle routes, including funds appropriated to municipalities under 19 V.S.A. § 306. 19 V.S.A. § 2307(a), applying 19 V.S.A. § 2302. When taking private land for a bicycle route, the town must use the procedures in 19 V.S.A. chapter 5 or 7 for taking private land for highways. 19 V.S.A. § 2307(b).

V. HIGHWAY MAINTENANCE OBLIGATIONS

A. Maintenance Standards Based on Classification of the Highway

1. Class 1 Town Highways

A town must keep class 1 highways “in good and sufficient repair during all seasons of the year.” 19 V.S.A. § 310(a). However, some maintenance is directly done by the state. Under 19 V.S.A. § 306a(a), VTrans has “direct responsibility for scheduled surface maintenance of all class 1 town highways, at no expense to the municipality,” unless otherwise directed by the selectboard. VTrans also has responsibility for marking class 1

and 2 highways with painted center lines under 19 V.S.A. § 311. The town remains responsible for general maintenance, “including, but not limited to, spot patching, traffic control devices, curbs, sidewalks, drainage and snow removal,” and major reconstruction. 19 V.S.A. § 306(a)-(c). The town is also responsible for notifying VTrans when painted center lines have been obliterated by resurfacing. 19 V.S.A. § 311.

2. Class 2 Town Highways

A town must keep class 2 highways “in good and sufficient repair during all seasons of the year.” 19 V.S.A. § 310(a). VTrans has responsibility for marking class 2 highways with painted center lines; the town is responsible for notifying VTrans when center lines have been obliterated by resurfacing. 19 V.S.A. § 311.

The selectboard may decide not to plow a class 2 road in winter based upon “safety considerations for the traveling public and municipal employees.” 19 V.S.A. § 310(a). If the road was not routinely plowed before July 1, 2000, the selectboard may make such a decision without notice and hearing. 19 V.S.A. § 310(d). If the road was routinely plowed prior to July 1, 2000, the decision can be made only after notice and hearing. 19 V.S.A. § 310(a). In both instances, an aggrieved property owner may appeal to the Transportation Board. 19 V.S.A. § 310(a) and (d).

3. Class 3 Town Highways

A town must keep class 3 highways “in good and sufficient repair during all seasons of the year.” 19 V.S.A. § 310(a). In addition, “The minimum standards for class 3 highways are a highway negotiable under normal conditions all seasons 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.” 19 V.S.A. § 302(3)(B). If a town fails to properly maintain a class 3 highway, the Vermont Transportation Board may require the town to return all state aid generated by that portion of highway. 19 V.S.A. § 302(b).

The selectboard may decide not to plow a class 3 road in winter based upon “safety considerations for the traveling public and municipal employees.” 19 V.S.A. § 302(a)(3)(B). If the road was not routinely plowed before July 1, 2000, the selectboard may make such a decision without notice and hearing. 19 V.S.A. § 310(d). If the road was routinely plowed prior to July 1, 2000, the decision can be made only after notice and hearing. 19 V.S.A. § 302(a)(3)(B). In both instances, an aggrieved property owner may appeal to the Transportation Board. 19 V.S.A. §§ 302(a)(3)(B) and 310(d).

4. Class 4 Town Highways

A class 4 highway 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 V.S.A. § 310(b). Accordingly, the town is not required to regularly maintain a class 4 highway. However, VLCT interprets state law to require towns to maintain culverts and bridges on

class 4 highways. VLCT bases its interpretation on 19 V.S.A. § 302(a)(5), which says that towns are not responsible for any maintenance on trails including culverts and bridges. This provision implies that towns are responsible for maintaining culverts and bridges on class 4 roads. While this is VLCT’s legal opinion regarding this issue, this legal question has not been addressed by the Vermont Supreme Court.

In addition, towns may be obligated to repair an out of repair or unsafe class four highway if a petition to repair the road is filed by three citizens or taxpayers in the state in accordance with 19 V.S.A. § 971. For more information regarding this issue, see Section V(G)(4) of this handbook, which discusses the authority of county road commissioners.

5. Trails

A town shall “not be responsible for any maintenance including culverts and bridges” on trails under 19 V.S.A. § 302(a)(5); a town “shall not be liable for construction, maintenance, repair or safety of trails.” 19 V.S.A. § 310(c).

An excellent tool available to towns for clarifying its obligation to maintain its highways is to develop a road policy. These policies clearly communicate to the community the level of maintenance the town will conduct on all town highways. Contact Vermont Local Roads at 802-654-2652 for a sample road policy.

6. Bridges

As noted herein, towns are required to maintain bridges on class 1, 2, 3, and 4 highways. With regard to replacing bridges, it is the policy of the state, by statute, to “favor the rehabilitation of existing bridges.” 19 V.S.A. § 10c(f). When rehabilitation or replacement is to be done on a bridge on a municipal highway, the municipality must conduct a hearing “as early as is feasible in the project scoping process, to identify pertinent issues.” 19 V.S.A. § 10c(h)(1). VTrans will present “feasible alternative solutions,” including cost estimates, to the municipality before the agency prepares conceptual plans for the project. The municipality may ask VTrans to adhere to one or more of the following guidelines concerning a bridge on a municipal highway:

1. Where feasible, the rehabilitated or replacement bridge shall occupy the same curb-to-curb width or alignment, or both, as the existing bridge or approaches to the existing bridge, or both;
2. Unless otherwise required by law, a bridge that does not already carry a sidewalk may be rehabilitated without adding a sidewalk, and a replacement bridge may be built without a sidewalk or with a sidewalk on only one side;
3. In rehabilitating a historically significant bridge, the design of the rehabilitated bridge must retain the bridge’s historic character, to the extent feasible.

19 V.S.A. § 10c(g).

VTrans has authority to transfer funds to the State Division for Historic Preservation for repair, rehabilitation, restoration and maintenance of historic bridges, including grants to municipalities. 19 V.S.A. § 11d(a).

The Division for Historic Preservation of the Agency of Commerce and Community Development may accept transfer of bridges deemed appropriate for preservation by the secretary of Transportation and the secretary of Commerce and Community Development. 19 V.S.A. § 317(a). Such a transfer “shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of the right-of-way for highway or railroad purposes.” 19 V.S.A. § 317(b).

7. Covered Bridges

A town must provide 90 days notice to the Governor and the State Division for Historic Preservation prior to removing or destroying a covered bridge. 19 V.S.A. § 316. When a town or VTrans decides that the destruction or removal of a covered bridge is necessary, notice must be posted in three public places in the town and published on two consecutive days in a newspaper of general circulation in the town. Copies of the notice must be sent to the Governor and the director of the Division for Historic Preservation not less than 90 days before the destruction or removal is to be started. 19 V.S.A. § 316.

B. Duty to Maintain the Road Surface

Pursuant to Vermont law, towns have certain basic responsibilities to maintain the traveled portion of town highways. The selectboard has the “duty and responsibility” to “see that town highways and bridges are properly ... maintained ... when the safety of the public requires.” 19 V.S.A. § 304(a)(1). To do so, the selectboard is granted the general authority 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” (19 V.S.A. § 304(a)(2)), plus specific powers related to maintenance, such as the power to purchase tools and equipment and materials, to contract for maintenance or repair, to order hills graded, and to order surfaces reconstructed, graveled or paved. 19 V.S.A. § 304(a)(3) and (4).

C. Maintaining the Highway Right-of-Way

A selectboard may widen a highway when the “width of a highway as laid out is less than the law or the public convenience requires.” 19 V.S.A. § 703. A permit is required for any use of the highway right-of-way. 19 V.S.A. § 1111. (See Section VII(I)(1) of this Handbook.)

D. Applying Gravel and Grading to Maintain Highways

1. Using Gravel from Highways

A town may “take gravel, earth, stone or other material, needed to repair or build highways, that lies within the limits of the highway, whether the material is to be used at the place where taken or elsewhere on town highways.” 19 V.S.A. § 916.

2. Changing Road Grade

The grade in front of a dwelling or other building adjacent to the road cannot be changed by more than three feet without following the quasi-judicial procedures set forth in 19 V.S.A. § 923. 19 V.S.A. § 924.

3. Role of County Road Commissioners/Superior Courts

The county road commissioners and the superior court each have the authority to order a town to grade hills and gravel roads. 19 V.S.A. §§ 706, 707. The county commissioners and the superior court each have the authority to order a town to grade hills and gravel roads. 19 V.S.A. §§ 706, 707. (See Section III(D)(2) of this Handbook for more information.)

E. Maintaining Trees and Shrubs in the Right-of-Way

1. Selectboard and Tree Warden

The town selectboard is empowered to “provide for the location, protection, maintenance and removal of trees, plants and shrubs, and buildings or other structures on or above public highways, sidewalks or other property of the municipality.” 24 V.S.A. § 2291(3). The selectboard may “enter into agreements with individuals or organizations who wish to plant grasses, shrubs, vines, trees or flowers within highway limits.” 19 V.S.A. § 902.

The selectboard must remove all trees or bushes within the limits of the highway “which obstruct the view of the highway ahead or that cause material damage to the highway or that are objectionable from a material or scenic standpoint.” 19 V.S.A. § 904. However, this power is subject to the following limitations:

- Shade or fruit trees set out by adjoining landowners shall be preserved “if the usefulness or safety of the highway is not impaired.” 19 V.S.A. § 904.
- “Young trees standing at a proper distance from the road bed and from each other, and banks and hedges of bushes that serve as protection to the highway or add beauty to the roadside, shall be preserved. 19 V.S.A. § 904.
- “Unless otherwise provided” a public shade tree may not be cut or removed, in whole or in part, except by a tree warden or deputy tree warden, or with the written

permission of the tree warden. 24 V.S.A. § 2508. As discussed in Section III(C) of this Handbook, there are no reported court cases determining whether the phrase *unless otherwise provided* exempts the maintenance activities of 19 V.S.A. § 904 from this provision.

- Even a tree warden may not remove a public shade tree “within the residential part of a municipality” without first holding a public hearing. 24 V.S.A. § 2509. A “party in interest” may request that the final decision be made by the selectboard, not the tree warden. 24 V.S.A. § 2509.

See Section III(C) of this handbook for further information regarding responsibilities of the tree warden.

2. Abutting Landowner

No person, other than an abutting landowner, may “cut, trim, remove or otherwise damage any grasses, shrubs, vines, or trees” growing in the right-of-way of a town highway, without permission from the selectboard. 19 V.S.A. § 901. The penalty for violating is a fine of not more than \$100 and not less than \$10. 19 V.S.A. § 902.

3. Damage to Public Shade Tree

A maximum fine of \$50 may be imposed on anyone who “shall, willfully, mar or deface a public shade tree” without permission of the tree warden or selectboard. A maximum fine of \$500 per tree may be imposed on anyone who “willfully, critically injures or cuts down a public shade tree” without permission of the tree warden or selectboard. In both cases the collected fines are “for the use of the municipality.” 24 V.S.A. § 2510.

F. Maintaining Road Drainage

The selectboard “may change the course of or widen a stream, or provide storage for accumulated ice” when “it appears necessary to protect a highway damaged or expected to be damaged by flood waters or ice jams.” 19 V.S.A. § 940. To do so, the selectboard “may purchase or take the necessary land.” 19 V.S.A. § 940. The procedures of 19 V.S.A. § 923 must be followed concerning giving notice, inspecting property, determining need, awarding damages and satisfying appeals. 19 V.S.A. § 940.

Embankments or dikes may be erected by the selectboard upon the banks of a stream “[w]hen it is necessary for the protection of a highway.” 19 V.S.A. § 945. Procedures under 19 V.S.A. § 923 may be used to take land when “the owner of the stream or the lands adjacent will not permit town officials to enter upon the lands for this purpose, or requires them to pay a greater sum than in their judgment they ought to pay.” 19 V.S.A. § 945.

The selectboard may also construct and maintain a drain, ditch or watercourse “leading from a highway in the town, across the lands of any person to a watercourse, to carry

away the surface water from the highway, or other drainage necessary for the public health, if they judge the public good or the necessity or convenience of individuals requires this work.” 19 V.S.A. § 950.

G. Legal Consequences of Failing to Properly Maintain Roads

1. VTrans Withholding of State Aid

VTrans may inspect class 1, 2 and 3 town highways to verify the accuracy of mileage records used to compute state aid. The agency then notifies the town of any highway or portion of a highway that does not meet the standards for its class. The town then has one year “to restore the highway or portion of the highway to the accepted standard, or to reclassify or discontinue, or develop an acceptable schedule for restoring to the accepted standards.” 19 V.S.A. § 305(a). If the town fails to do so, the agency will deduct the substandard mileage for purposes of allocating state aid. 19 V.S.A. § 305(a).

2. Liability for Damages Due to Defective Bridges or Culverts

A person may recover from a town damages which occurred “by reason of the insufficiency or want of repair of a bridge or culvert which the town is liable to keep in repair.” 19 V.S.A. § 985(a). To recover, the injured party must have given written notice to one or more of the selectboard members of the town within 20 days of the injury or damage. 19 V.S.A. § 987.

Only the state, not the town, may be liable for damages resulting from the lack of repair of any bridge or culvert on a highway taken over by the state. 19 V.S.A. § 23.

3. Indictment by Grand Jury

A town which fails to keep in repair a highway or bridge may be indicted by the grand jury of the county and fined by the court. The fine shall be spent repairing the highway or bridge under the direction of a commissioner appointed by the court. 19 V.S.A. § 991.

4. Order to Repair Defective Roads and Bridges

According to 19 V.S.A. § 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.” If the highway or bridge is on the line between two towns, notice is given to both towns. 19 V.S.A. § 979. The town has 72 hours to respond by either denying the allegation or commencing work on the highway or bridge.

If the town has not acted in 72 hours, the citizens may then file a written complaint with one of the county road commissioners or the superior court of the county in which the highway or bridge is situated. 19 V.S.A. § 971. The county road commissioners or superior court must decide whether the public good demands that the highway or bridge

be repaired, the repairs necessary to make the highway or bridge safe and convenient for public travel, and the costs of the required repairs. 19 V.S.A. § 972.

The county road commissioners must hold a hearing, inspect the highway or bridge in question, and issue a report regarding whether the highway or bridge must be repaired and describing the nature and cost of the repairs. 19 V.S.A. §§ 972-973. The report is filed with the county clerk and a copy delivered to the selectboard. 19 V.S.A. § 974. The report is “final and conclusive” unless appealed to superior court under 19 V.S.A. § 976.

If the repairs ordered by the county road commissioner are not completed within the specified time period, the commissioners must appoint an agent to undertake the repairs and enter judgment against the town for the amount named in the report, plus costs. 19 V.S.A. § 976. The town has 21 days from judgment to appeal. 19 V.S.A. § 976. If the repairs are not undertaken in the time allowed in the report, and no appeal has been taken, the county road commissioners “shall promptly” appoint an agent to undertake the repairs and judgment entered against the town for the amount named in the commissioners’ report. 19 V.S.A. § 975. If an appeal is taken, the superior court “shall hear the appeal on questions of fact and law and render final judgment.” 19 V.S.A. § 976.

5. Road Commissioner Liability

A road commissioner may be held personally liable for failure to properly maintain a town highway. *Hudson v. Town of East Montpelier*, 161 Vt. 168. The Vermont Supreme Court’s decision in *Hudson* is complex, and it is not clear how the *Hudson* decision will be applied to future cases. The decision appears to say that the road commissioner may be held liable for negligent acts associated with the physical maintenance of a highway. For example, in *Hudson* the road foreman was found personally liable for placing gravel over a ledge protruding from a dirt road that led to an accident. *Id.* The Court ruling was based on the theory that only decisions by public officials performing their duty that require a weighing of public policy considerations can immunize an official from a legal action—not exercising discretion in how gravel should be placed on a town road.

If the town and/or the road commissioner is sued for negligence, an attorney must determine, based on the facts of your case, whether the road commissioner is personally liable under the *Hudson* ruling. *Id.* The point here is that the road commissioner *may* be held liable. For more information on the concept of sovereign immunity for municipalities and municipal employees, see Chapter XVII of VLCT’s *Handbook for Vermont Selectboards*.

VI. EMERGENCY OR UNSCHEDULED MAINTENANCE AUTHORITY/OBLIGATIONS

A. Maintaining Roads in Winter

1. Snow Plowing

A town must keep class 1 highways “in good and sufficient repair during all seasons of the year.” 19 V.S.A. § 310(a). Accordingly, class 1 highways must be plowed and maintained during the winter.

As noted in Section V of this handbook, the selectboard may decide not to plow a class 2 road in winter based upon “safety considerations for the traveling public and municipal employees.” 19 V.S.A. § 310(a). If the road was not routinely plowed before July 1, 2000, the selectboard may make such a decision without notice and hearing. 19 V.S.A. § 310(d). If the road was routinely plowed prior to July 1, 2000, the decision can be made only after notice and hearing. 19 V.S.A. § 310(a). In both instances, an aggrieved property owner may appeal to the Transportation Board. 19 V.S.A. § 310(a) and (d).

The selectboard may decide not to plow a class 3 road in winter based upon “safety considerations for the traveling public and municipal employees.” 19 V.S.A. §302(a)(3)(B). If the road was not routinely plowed before July 1, 2000, the selectboard may make such a decision without notice and hearing. 19 V.S.A. § 310(d). If the road was routinely plowed prior to July 1, 2000, the decision can be made only after notice and hearing. 19 V.S.A. § 302(a)(3)(B). In both instances, an aggrieved property owner may appeal to the Transportation Board. 19 V.S.A. §§ 302(a)(3)(B), 310(d).

A town is not required to plow class 4 highways during the winter. 19 V.S.A. §§ 310(b), 711(b). The Law Center advises towns to spell out which class 4 roads it will plow in the winter, if any, in a written class 4 road policy.

2. Fences to Address Snowdrifts

The selectboard, when it determines a highway is “liable to be obstructed by snowdrifts, and the fences adjoining the highway can be conveniently laid down, ... may cause any portion to be laid down during the winter.” 19 V.S.A. § 925. The procedures of 19 V.S.A. § 923 must be followed concerning giving notice, inspecting property, determining need, awarding damages and satisfying appeals. 19 V.S.A. § 926.

The selectboard, when it determines “that a highway is liable to be obstructed by snowdrifts which may be prevented by erecting a snow fence on land adjoining the highway ... may cause a fence to be built and maintained” *after* “notice to and hearing of the owner or occupant of the land.” 19 V.S.A. § 927. The procedures of 19 V.S.A. § 923 must be followed concerning giving notice, inspecting property, determining need, awarding damages and satisfying appeals. 19 V.S.A. § 926.

3. Opening a Winter Highway

The selectboard “may immediately lay out, prepare and open a winter highway for travel in place of the obstructed highway” when “a public highway is so obstructed by snow that travel is impracticable.” 19 V.S.A. § 955. Before opening the winter highway, the selectboard must follow the procedures of 19 V.S.A. § 923. 19 V.S.A. § 956. The selectboard can undertake advance preparation when they determine “that a winter highway is likely to be needed,” using the procedures in 19 V.S.A. § 923. 19 V.S.A. § 957. The winter highway “shall be continued only during the winter in which it is laid out.” 19 V.S.A. § 955.

B. Flooding of Highways

1. Drainage

The selectboard has the authority to take action such as changing the course of a stream and erecting an embankment or dike if it is necessary to protect a highway from flooding. See Section V(F) for detailed information on the authority of the selectboard to address the flooding of highways.

2. Emergency Removal of Covered Bridges

The general rule is that a town must provide 90 days notice to the Governor and the State Division of Historic Preservation prior to removing or destroying a covered bridge. However, the 90-day notice requirements for removal of a covered bridge does not apply “in the event of a serious emergency,” such as a flood. 19 V.S.A. § 316.

3. Removing Beaver Dams

The selectboard may petition the state Transportation Board to issue an order “requiring the removal or abatement of an impoundment of water created by beaver which threatens to substantially damage or submerge a highway ...” 19 V.S.A. § 37(a). The Transportation Board then holds a hearing, after notice to the owners of the affected land, the selectboard, and the state Secretary of Natural Resources. “If the Board determines that an impoundment of water created by beaver threatens to substantially damage or submerge a highway, railroad or public airport, its order shall direct that the impoundment be abated, with as minimal impact on affected land and natural resources as possible, or if necessary, removed.” 19 V.S.A. § 37(a).

If time does not allow for these procedures and the impounded water “presents an imminent threat to public safety by substantially damaging a highway,” the selectboard may petition a superior judge for an emergency order for removal or abatement of the impoundment of water. 19 V.S.A. § 37(b).

The selectboard also has the authority to take fur-bearing animals in order to protect public highways or bridges from damage or flooding. 10 V.S.A. § 4828.

4. Highway Damage Due to Flood

When a landslide or washout makes a highway “impassable, or the width reduced to prevent the free and safe passage” or a bridge is “swept away by a flood,” the selectboard may “change the location of the highway or the bridge and may discontinue any resulting unnecessary parts of the old highway.” 19 V.S.A. § 935. The selectboard may also “take, damage or affect such land as may be necessary at the location of the slide, or washout, for the purpose of re-establishing, repairing, rebuilding or protecting the highway or bridge, and may proceed immediately to build or rebuild the highway or bridge and open the highway or bridge for work and travel.” 19 V.S.A. § 935. The procedures of 19 V.S.A. § 923 must be followed concerning giving notice, inspecting property, determining need, awarding damages and satisfying appeals. 19 V.S.A. § 936.

For model road and bridge standards to enhance funding from FEMA for damages to roads due to flooding, see Appendix 1. The standards are recommended by VTrans and the Office of Vermont Emergency Management.

5. Penalty for Damaging Highway by Obstructing a Stream

A person who “injures a public highway by diverting a stream, watercourse or sluice” may be fined up to \$100, plus be liable for cost of repair and any damages caused by the violation. 19 V.S.A. § 1108(b) and (c).

6. Paying for Emergency Repairs

According to 19 V.S.A. § 306(c), “there shall be an annual appropriation for emergency aid in repairing, building or rebuilding class 1, 2, or 3 highways and bridges damaged by natural or man-made disasters of such magnitude that the state aid is both reasonable and necessary to preserve the public good.” Emergency payments are approved by VTrans. 19 V.S.A. § 306(c).

VII. REGULATING THE USE OF HIGHWAYS

A. General Authority

A municipality is authorized to regulate numerous aspects of the use of town highways. This section of the handbook focuses on the authority of a municipality to regulate the use of highways by enacting speed limits, erecting signs and implementing parking restrictions; enacting weight limits; restricting the use of highways to specified vehicles; and protecting highways from damage and obstruction.

Additional authority to establish sidewalks and bicycle paths as part of the public highway system and to regulate pedestrian and vehicular use thereof, as well as establish rules for the maintenance and protection of highways and sidewalks and associated street

signs and trees is found in 24 V.S.A. § 2291(1)-(7). Such rules and regulations typically take the form of a municipal ordinance enacted by the legislative body under its authority in 24 V.S.A. § 1971, et seq. More detailed discussions of these topics are found in other sections of this handbook.

B. Speed Limits

The legislative body of a municipality may establish a speed limit not less than 25 or more than 50 miles per hour on any highway under its jurisdiction after an engineering and traffic investigation. 23 V.S.A. § 1007(a). For unpaved town highways, the legislative body, after considering factors such as the character of the neighborhood, abutting land use and the physical condition of the highway, may establish a speed limit not less than 35 miles per hour or more than 50 miles per hour without an engineering and traffic investigation, and must post signs at the points of change from one speed limit to the next. 23 V.S.A. § 1007(a)(1).

Municipalities should be aware that in setting speed limits between 35 and 50 miles per hour on unpaved roads, they must still consider the “neighborhood character, abutting land use, bicycle and pedestrian use, and physical characteristics of the highways” prior to establishing the speed limit. Municipalities should also consult with VTrans’ Manual on Uniform Traffic Control Devices (MUTCD) when establishing speed limits. See Appendix 2.

The legislative body of a city may establish a speed limit on state highways within its jurisdiction which is no less than 25 or greater than 50 miles per hour, on the basis of an engineering and traffic investigation. 23 V.S.A. § 1007(b). A town is not permitted to regulate the speed limit on a state highway. *State v. Yorkey*, 163 Vt. 355 (1995).

Lack of evidence of a traffic and engineering study will not invalidate a local speed limit ordinance as adopted or amended under this section after five years following the day on which the speed limit ordinance took effect. 23 V.S.A. § 1007(e).

Notwithstanding the procedure outlined in this section for enacting a local speed limit, a town or village may adopt a local speed ordinance on a state highway, other than on limited access highways, provided the ordinance duplicates the speed limit established under section 1003 of this title. 23 V.S.A. § 1007(f).

The VLCT Law Center and Vermont Local Roads can provide towns with guidance on the requirements of a traffic and engineering study.

C. Traffic Rules and Signs

The legislative body of a municipality may regulate the operation, use and parking of motor vehicles; the location, design and structure of traffic lights; *stop* and *yield* signs at intersections; *no passing* zones; one-way streets; dividing highways into three or more lanes; the use of lights on motor vehicles on well-lit streets. 23 V.S.A. § 1008(a), (b).

Signs indicating the special regulations must be posted in and near all areas affected. These regulations may not apply to state highways or contradict any provision of Title 23, although the state traffic committee may authorize the legislative body of a municipality to regulate parking within a thickly settled area. 23 V.S.A. § 1008(a), (c).

When traffic may be congested due to a special occasion or work being done on a highway or utilities, a town selectboard may enact special regulations for vehicle speed, excluding vehicles from certain public highways and “such traffic rules and regulations as the public good requires.” Signs indicating the special regulations must be conspicuously posted in and near all affected areas. 23 V.S.A. § 1010(a). The penalty for violating speed limits established for a work site by such regulations shall be twice the penalty for non-work-site speed violations. 23 V.S.A. § 1010(b).

Fines imposed by the Judicial Bureau for violation of a municipal ordinance are to be paid to the municipality, less an administrative charge retained by the court. 13 V.S.A. § 7251.

Under 23 V.S.A. § 1028, it is unlawful for any person, without legal authority, to “alter or attempt to alter, deface, injure, knock down or remove any official traffic-signal device.” 23 V.S.A. § 1028.

D. Parking

1. Removing Parked Vehicles

The police department of the town may remove motor vehicles “parked on the highways of the town contrary to an ordinance of the town regulating parking so as to interfere with the policing, construction or maintenance of the highways, including but not limited to the removal of snow.” 23 V.S.A. § 1752. Such removal will be at the owners expense in an amount determined by the town. 23 V.S.A. § 1752(a). The town must conspicuously post signs indicating that vehicles may be towed at the owner’s expense. 23 V.S.A. § 1752(a).

The police department and any other enforcement personnel, if authorized by specific action of the local legislative body of a municipality, may impound by use of a so-called “Denver Boot” or other immobilizing device, any vehicle, the owner of which has four or more unpaid parking violations in a calendar year; providing notice that the vehicle in question is subject to impoundment is sent to the offender by first class mail at least 15 days prior to impoundment. 23 V.S.A. § 1752(b).

The town may only enforce the above provisions of state law if the provisions have “been adopted by a majority of the voters of the town, present and voting at any regular or special meeting warned for that purpose.” 23 V.S.A. § 1751.

In addition to enforcing state law, a selectboard may enact ordinances authorizing the removal of vehicles parked without authorization on publicly- or privately-owned land.

23 V.S.A. § 1753. The owner may be required to pay reasonable towing and storage charges in addition to any criminal penalty. 23 V.S.A. § 1753; 24 V.S.A. § 2291(4).

2. Parking Meters

A majority vote of a town meeting is required to authorize a municipality to “purchase, lease, install, operate, maintain and regulate coin operated parking meters.” The meters may be used on highways and in public parking lots. 24 V.S.A. § 1862. No advertising may be attached to the meters. 24 V.S.A. § 1867.

The rates need not be uniform throughout the town, but may be adjusted for congestion. 24 V.S.A. § 1864. The statute also states that “when adequate facilities have been provided for the accommodation of traffic, the rates shall be so adjusted as to provide for the maintenance of the services only.” 24 V.S.A. § 1864. There are no reported court cases interpreting this last requirement.

Funds from parking meters in public parking lots may be spent only for the following purposes:

1. To purchase parking lot or lots.
 2. To purchase and install meters and equipment, and to repair and operate the same.
 3. To collect the coin deposits, to sort and wrap and account for the same.
 4. To police, light and maintain the meters and such parking lots including painting of parking lines.
 5. To control and regulate traffic or any combination of the foregoing purposes within the parking meter area.
 6. To pay the principal and interest obligations of any bonds issued hereunder [for purchase of land for a parking lot].”
- 24 V.S.A. § 1865(b).

3. Parking Lots

A municipality may purchase land for a public parking lot, and has the right of eminent domain to condemn land for that purpose. 24 V.S.A. § 1865(a). A municipality may also issue a bond to finance an off-street public parking project, to be paid from revenues. 24 V.S.A. § 1868.

E. Weight Limits

1. Establishing Weight Limits

The statutes regarding weight limits for state highways are set forth in 23 V.S.A. §§ 1391-1992. The selectboard may, with the approval of the secretary of VTrans, designate any highway within the town to carry the same legal load as specified in 23 V.S.A. § 1392 for state highways.

Once approved, the secretary of VTrans shall have the highway posted for the load limit. 23 V.S.A. §§ 1393(a), 1400c. In addition, if the use of a town highway is restricted, the selectboard must post copies of the rules in two public places and post signs, approved by VTrans, at each end of the portion of highway affected. 19 V.S.A. § 1110(a).

The legislative body may also set a weight limit different from that set by 23 V.S.A. § 1392 when, “in the opinion of the legislative body of the municipality, any class 2, 3 or 4 town highway or bridge ... may be varied from the weight limit” in 23 V.S.A. § 1392. 23 V.S.A. § 1396(a). The municipality must file an annual report by February 10 with the Department of Motor Vehicles (DMV) with a complete copy of all weight limitations, other than state legal limits, within the town’s jurisdiction. 23 V.S.A. § 1400b(a).

The legislative body may request the secretary of VTrans to set the weight limit on a class 1 highway at less than the state highway limit, provided that there is a reasonable alternative route for vehicles traveling at the state weight limit. 23 V.S.A. §§ 1042(a), 1393(a). When a highway or bridge is so restricted, signs must be placed in accordance with 23 V.S.A. § 1397. 23 V.S.A. § 1042(a).

When the weight limit has been adjusted as described above, state law places additional signage requirements on the town. Under 23 V.S.A. § 1397, when the weight limit on a town road deviates from the state weight limit, signs must be posted at each end of the restricted highway or on the approaches to the affected bridge. However, such signs are not required if the highway is a class 4 town highway or a class 3 town highway leading to a single residence. 23 V.S.A. § 1397(b). To be enforceable, special weight limits must be on file with the DMV within three days of the posting. 23 V.S.A. § 1400b(b).

2. Permits for Overweight Vehicles

A municipality—through its selectboard, trustees or mayor—may issue a permit for operation of a vehicle in excess of the weight limits established on town highways and bridges, except class 1 highways. 23 V.S.A. § 1400a(a). The permit application is on a uniform form provided by the commissioner of the DMV. 23 V.S.A. § 1400a(b). An administrative fee of not more than \$5.00 may be charged. 23 V.S.A. § 1400a(c) and (d). The town may require additional compensation for extra wear or maintenance required on the highways. The amount of compensation may be determined by considering (1) the amount of weight allowed in excess of the normal limit, (2) the configuration and number of axles on the vehicle, (3) the number and length of trips, and (4) the condition of the highway before and after use by the vehicle and costs of repair. 23 V.S.A. § 1400a(c). It is to the town’s advantage to have any agreement for compensation in writing because, if the agreement is in writing, the permit may be revoked if the amount due is not paid. 23 V.S.A. § 1400a(c).

3. Weight Limits on Covered Bridges

VTrans and the selectboard may limit use of a covered bridge “to vehicles which are within limits as to weight, height and width as they shall establish.” 19 V.S.A. § 313. Limitations must be plainly posted on signs approximately one hundred feet from each end of the bridge and at intersections as may be required for restricted vehicles to take an alternate route. 19 V.S.A. § 313. Signs must be at least 24 inches by 24 inches, with letters at least three inches high. 19 V.S.A. § 313.

If the limitations are not approved by the selectboard and VTrans, the selectboard may place the question of imposing such limitations on the warning of the next town meeting. When the limitations are adopted, the bridge shall be posted according to the limitations. 19 V.S.A. § 314.

Operating a vehicle in violation of limits posted on a covered bridge is punishable by a fine of not more than \$200.00 for the first offense and \$300.00 for each subsequent offense. 19 V.S.A. § 315.

F. Restricting Use of Highways to Specified Vehicles

The legislative body of a municipality may, with the approval of the secretary of VTrans, designate highways and bridges under their control, except for class 1 town highways, for use by specified types of motor vehicles based on volume and type of traffic and character of the neighborhood. 23 V.S.A. § 1042(a). This provision authorizes towns, with the permission of VTrans, to restrict the use of highways based on factors other than weight limits. A decision of the secretary to restrict the use of town highways to specified vehicles may be appealed to the Transportation Board.

If a town votes to restrict the use of a highway to specified vehicles it must comply with the posting requirements set forth in 19 V.S.A. § 1110(a) that are discussed in Section E(1) above.

The Transportation Board is referenced in several sections of this Handbook. The Transportation Board is part of VTrans and its powers include: hearing appeals from agency decisions and rulings regarding measurement, description or reclassification of town highways pursuant to section 305 of this title; providing appellate review, when requested in writing, of decisions of the secretary of transportation when he or she assumes the powers and duties of a selectboard in highway matters in unorganized towns and goes pursuant to section 16 of this title; providing appellate review, when requested in writing, of decisions of the secretary in administering the provisions of Title 24 relating to junkyards; and hear and determine disputes involving the decision of a selectboard under subdivision 302(a)(3)(B) or subsection 310(a) of this title not to plow and make negotiable a class 2 or 3 town highway or section of a highway during the winter. The board has the power to determine and adjudicate all matters over which it is given jurisdiction. It may also render judgments and make orders and decrees. Unless otherwise provided by law, when an appeal is allowed from the agency to the board, the appeal shall be taken by filing a notice of appeal with the secretary within 30 days of the date of the agency decision from which the appeal is taken. 19 V.S.A. § 5.

G. Penalty for Violating Posted Restrictions

A person who violates a posted restriction is guilty of a traffic offense, and shall be fined up to \$100, plus be liable for damage done to the highway. The fine and compensation are recovered in a civil action in the name of the town. 19 V.S.A. § 1110(b).

H. Protecting Highways from Damage and Obstruction

1. Abandoned and Junk Vehicles Obstructing a Highway

Towns are often faced with abandoned and junk vehicles that obstruct a highway. State law provides mechanisms for towns to deal with these situations.

An *abandoned* motor vehicle is defined in state law as one “without claimed ownership for thirty days.” 24 V.S.A. § 2241(1). Such a vehicle may be in perfect running order. A *junk motor vehicle* is a “discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof...” 24 V.S.A. § 2241(6).

The Transportation Board has the responsibility “to dispose of abandoned vehicles.” 19 V.S.A. § 5(d)(13).

It is a violation of 24 V.S.A. § 2271 to “place, discard or abandon a junk motor vehicle in a place where it is visible from the main traveled way of a highway.” 24 V.S.A. § 2271. Such a motor vehicle is a “public nuisance.” 24 V.S.A. § 2271. The penalty is not less than \$5.00 nor more than \$50.00 for each day of the violation. 24 V.S.A. § 2282.

The responsibility for removing such a vehicle lies with:

1. The landowner, if the landowner holds title to the vehicle, upon receiving written notice from VTrans. 24 V.S.A. § 2272(a).
2. The true owner of the motor vehicle, if the landowner is not the owner, upon receiving written notice from VTrans. 24 V.S.A. § 2272(b).
3. VTrans, within ten days of receiving written notification from the landowner. 24 V.S.A. § 2272(c).

Prior to notifying VTrans, the landowner may remove the vehicle to any part of his or her property, without incurring any civil liability or criminal penalty to the owner of the vehicle. 24 V.S.A. § 2272(c).

2. Removal of Obstruction by Unorganized Town or Gore

A complaint may be made to a district judge, who may issue a warrant to the supervisor for the unorganized town or gore, authorizing the supervisor to cause the encroachment or nuisance to be removed. The supervisor has the same power as a selectboard to remove the encroachment or nuisance. 19 V.S.A. § 1103.

3. Penalty for Obstructing Highway

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 injure or impede a person traveling on the highway or trail” may be fined up to \$1,000, plus costs of repairing the damage and a reasonable attorney’s fee. The fine is recovered by a civil lawsuit in the name of the town. If the court finds that the lawsuit is “without substantial basis,” the court may award a reasonable attorney’s fee against the person who brought the action. This statute does not apply to logging equipment temporarily located in the right-of-way if the equipment does not “unreasonably impede passage.” 19 V.S.A. § 1105.

A person who “willfully drives over or parks or otherwise impedes normal use on a sidewalk or footpath, except where it is necessary to cross the sidewalk for purposes of entering private grounds, shall be fined not more than \$25.00 nor less than \$5.00.” 19 V.S.A. 906.

A selectboard may also require that snow be removed from sidewalks by “the owner, occupant, or person having charge of abutting property.” 24 V.S.A. § 2291(2).

I. Non-Vehicular Activity on the Highway or in the Highway Right-of-Way

1. Use of the Highway Right-of-Way

A permit is required for “any use of any highway right-of-way.” 19 V.S.A. § 1111. Specific sections of the statute deal with driveway entrances, highway grades and drainage (19 V.S.A. § 1111(b)), installing pipes and wires in the highway right-of-way (19 V.S.A. § 1111(c)), and installing private sewer or water lines (19 V.S.A. § 1111(d)).

With regard to constructing an access in the highway right-of-way, state law provides that the agency or legislative body, within their respective jurisdictions, may make such rules to carry out the provisions of this section as will adequately protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure. 19 V.S.A. § 1111(b). The statute prohibits the state or town from denying reasonable entrance and exit to or from property abutting the highways, except on limited access highways. 19 V.S.A. § 1111(b). The test for reasonableness must be based on a review of safety, maintenance of reasonable levels of service on the existing highways, and protection of the public investment in the existing highway infrastructure. Access may also be denied “as necessary to be consistent with the planning goals of 24 V.S.A. § 4302 and to be compatible with any regional plan, state agency plan or approved municipal plan.” 19 V.S.A. § 1111(b).

Vermont Local Roads has prepared excellent guidelines to assist towns in developing a highway access policy and ordinance. Contact Vermont Local Roads at 802-654-2652 to inquire about the publication.

2. Utility Lines and Wires in Right-of-Way

Under state law, telegraph and telephone lines, electric wires and two-way wireless telecommunication facilities may be constructed and maintained in the highway right-of-way as long as the activity does not interfere with the use and maintenance of the highway. 30 V.S.A. § 2502. When the lines cannot be erected so as not to interfere with the use and maintenance of the highway, the Transportation Board, after soliciting the advice of the selectboard of the town (if it's a town highway) shall determine where and in what manner such wires shall be erected. 30 V.S.A. § 2503.

The Transportation Board or the selectboard of a town may direct a line of wires to be placed at a greater height or underground where it crosses a street or highway. If a line of wires is erected or maintained upon, under or across a street or highway, contrary to the direction of the Transportation Board or the selectboard, or is not changed when directed by them, they may remove such line, and recover the expense thereof from the person or corporation using the same in an action on this statute. 30 V.S.A. § 2504.

When a person objects to the erection of a line of wires along a street or highway in front of his or her residence, he or she may apply to the Transportation Board or the town's selectboard, which, upon notice and hearing, as provided in section 2503 of this title, shall determine upon what streets or highways the same shall pass, or in what manner, if at all, such objection may be obviated. Such decision shall be final. 30 V.S.A. § 2505.

3. Enforcing a Permit for Right-of-Way Use

A civil penalty of between \$100 and \$10,000 may be imposed for violating the statute or a court order issued under the statute. 19 V.S.A. § 1111(j). The selectboard may suspend any permit until compliance is obtained. If use or activity continues after the suspension, the selectboard may physically close the driveway or access point if the safety of highway users may be affected. This is in addition to any other enforcement authority the town may have for the specific situation. 19 V.S.A. § 1111 (g). Finally, no deed purporting to subdivide land abutting a state highway or class 1 town highway can be recorded unless all the lots which are created are in conformance with the statute governing the use of a highway right-of-way. 19 V.S.A. § 1111(k).

4. Regulating Highway Signs

The state has addressed the types of highway signs that may be erected. The following signs are exempt from the requirement of the state sign law:

1. Signs erected by a town outside the highway right-of-way, not more than 64 square feet in area, which "show the time and place of services or meetings of churches and civic organizations in the town, and which may include a panel which identifies the name of the town, the charter date, the date the town was founded, or any other significant date in the history of the town." The panel may bear the wording

“Welcome to ...” No more than two such signs can be erected and maintained readable in any one direction on any one highway. 10 V.S.A. § 494(4).

2. “Signs of a duly constituted governmental body including traffic and similar regulatory devices, legal notices or warnings at railroad crossings.” 10 V.S.A. § 494(6).
3. “Signs to be maintained for not more than two weeks announcing an auction, or a campaign, drive or event of a civic, philanthropic or religious organization.” 10 V.S.A. § 494(9).
4. Up to two directional signs on any existing highway signpost, each sign not to exceed one square foot, on any town highway except class 1 town highways. The erection of such signs must be under guidelines adopted by the town. The town may charge a reasonable fee for installing approved signs. 10 V.S.A. § 494(14).
5. Municipal informational and guidance signs, not to exceed 12 square feet in area or 12 feet in height. The signs must be approved by the municipal planning commission, submitted to and adopted by the selectboard, and receive a permit under 19 V.S.A. § 1111. Once a permit is issued, the signs may be placed in any public right-of-way except an interstate highway. 19 V.S.A. § 494(15).
6. Municipal informational and guidance signs in a downtown district designated under 24 V.S.A. Chapter 76A, not to exceed 12 square feet in area or 12 feet in height. The signs must be approved by the municipal planning commission, submitted to and adopted by the selectboard, submitted to the Travel Information Council for final approval, and receive a permit under 19 V.S.A. § 1111. Once a permit is issued, the signs may be placed in any public right-of-way except an interstate highway. 10 V.S.A. § 494(17).

Notwithstanding state law, a town may have sign ordinances that are stricter than the state statute. 10 V.S.A. § 505(a). The state statute also does not reduce any rights or remedies a town may have under other statutes, the town charter, town ordinances, or the doctrines of equity or common law. 10 V.S.A. § 505(b).

For additional information regarding political signs within the highway right-of-way, refer to the “Ask the League” column in the June 2000 issue of the Vermont League of Cities & Towns’ monthly newsletter, the *VLCT News*.

5. Soliciting Contributions Within the Roadway

In general, a person is prohibited from standing “within the roadway of a highway ... for the purpose of soliciting a ride, contributions, employment or business from the occupant of any vehicle.” 23 V.S.A. § 1056(a). However, not-for-profit and municipal organizations may solicit contributions on the roadway if (1) approval is granted by the legislative body of the municipality, and (2) the legislative body ensures that there is in

effect a policy of liability insurance providing adequate coverage for the municipality. Approval shall not be granted if the legislative body judges that the proposed activities would create a safety hazard or cause undue traffic congestion. 23 V.S.A. § 1056(b).

6. Use of Town Highways by Snowmobiles

A snowmobile may not travel on a plowed public highway except to cross it at right angles. 23 V.S.A. § 3206(b)(1). The prohibition does not apply to a public highway which is not being maintained and plowed for use by motor vehicles during the winter season. 23 V.S.A. § 3206(b)(2). If used on an unplowed portion of a public highway, the snowmobile must not be closer than five feet from the plowed portion. 23 V.S.A. § 3206(b)(3). However, if the highway is a town highway, a snowmobile may be operated on it only if the highway has been opened to snowmobile travel by the selectboard and so posted. 23 V.S.A. § 3206(b)(5).

7. Sleds on Town Highways

The selectboard “shall forbid coasting upon the highways when it endangers the lives or property of travelers and shall post notices to that effect in two or more conspicuous places in the vicinity.” 31 V.S.A. § 511. This prohibition does not apply in villages or cities having regulations regarding coasting. 31 V.S.A. § 511.

8. Camping Overnight in the Highway Right-of-Way

A person shall not use any part of a public highway right-of-way, a public rest area associated with a public highway or any public land not so designated by the agency, department or municipality having control of same as an overnight camping area. 19 V.S.A. § 1106. Violators are subject to a fine of not more than \$50.00 per day. 19 V.S.A. § 1106.

9. Depositing Snow on Highways

No person, other than an employee in the performance of his or her official duties or other person authorized by VTrans (in the case of state highways) or selectboard (in the case of town highways), shall plow or otherwise deposit snow onto the traveled way, shoulder or sidewalk of a state highway or a class 1, 2 or 3 town highway. 23 V.S.A. § 1126a.

10. Depositing Harmful Substances on Highway

No person shall drop or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon the highway. A person shall immediately remove or cause to be removed any destructive or injurious material which he drops or deposits, or permits to be dropped or deposited upon, any highway.

If the throwing or depositing was done from a motor vehicle, except a motor bus or a bus transporting school children, it is prima facie evidence that the throwing or depositing was done by the operator of the motor vehicle. A person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from the vehicle. 23 V.S.A. § 1126.

J. Damaging a Highway

A person is subject to a fine of not more than \$100.00, plus the actual costs of repairing damage, if he or she has “wantonly or willfully” injured a highway, a bridge, or any of their components “by destroying or removing planks, posts, timber, stones, or asphalt surface, or by digging pits for gravel, clay or for other purpose... .” 19 V.S.A. § 1108(a). A maximum \$100 fine, plus cost of repair, may also be imposed on anyone who injures a highway “by dragging logs or timber or any other objects on the road surface.” 19 V.S.A. § 1108(b). The person may also be liable to the town, state or any individual “for damages sustained ... in consequence of the acts prohibited.” 19 V.S.A. § 1108(c). Both the penalty and the damages are recoverable in a civil action. 19 V.S.A. § 1108(a), (b) and (c).

VTrans is also empowered to “promulgate rules as it deems necessary to prevent the abuse of any highway or portion of a highway during any season of the year.” 19 V.S.A. § 1109.

VIII. BUDGETING AUTHORITY AND PRACTICES

A. Town Expenditures

1. Highway Appropriations

As noted in Section III of this handbook, the selectboard is responsible for supervising all highway-related expenditures. 19 V.S.A. § 303. The money for highways that the selectboard oversees is appropriated by the town at its annual town meeting. 17 V.S.A. § 2664. State law requires that the town “express in its vote the specific amounts, or rate on a dollar of the grand list, to be appropriated for laying out and repairing highways and for other necessary town expenses.” 17 V.S.A. § 2664.

While the selectboard oversees the expenditure of highway money, it is prohibited from using highway money for other town expenses. Under state law, an unexpended balance in funds raised by the town highway tax may not be used for any purpose other than that for which the tax was voted. Unexpended funds are to be carried forward into the next year and applied to the same purpose for which they were originally allocated. 19 V.S.A. § 312.

2. Funding for Highways and Bridges Constructed by Court Order

If a town does not carry out a supreme or superior court order to build a highway or bridge, those who originally petitioned for the work to be done may apply to the court, asking the court to assess the town a sum sufficient to complete the work. 19 V.S.A. § 782. The town is entitled to a trial by jury. 19 V.S.A. § 783. If an assessment is ultimately ordered, the work shall be completed under the supervision of a commissioner appointed by the court. 19 V.S.A. § 781.

If the highway or bridge is discontinued before the assessment ordered to pay for its construction has been spent, the town may apply to have the court suspend all or part of the assessment. The town may also ask the court to order that all or part of the assessment be spent for building any highway or bridge for which the town is liable. 19 V.S.A. § 784.

3. Funding for Highways Crossing Town Lines

Procedures and apportionment of costs for highways involving two or more towns are set forth in 19 V.S.A. §§ 790-796, 910 and 911. In general, the law encourages towns to agree on expenditures for the construction and maintenance of roads that serve multiple municipalities.

B. State Aid for Highways

1. Requirements for Obtaining Aid

To be eligible for state aid, a town must budget at least \$50 per mile for each mile of class 1, 2 or 3 town highway. 19 V.S.A. § 307.

By February 10 of each year, the selectboard must file with the town clerk “a sworn statement of the description and measurements of all class 1, 2 and 3 town highways.” 19 V.S.A. § 305(b). Any changes, such as acceptance, discontinuance, or reclassification, shall also be filed with the town clerk. 19 V.S.A. § 305(b).

VTrans will not accept any change in mileage until its receives a copy of the documents filed with the town clerk regarding the change. 19 V.S.A. § 305(c). The agency may also inspect class 1, 2 and 3 highways to verify the accuracy of its record and that each highway meets the requirements of its class. 19 V.S.A. § 305(a). A selectboard may appeal a finding of the agency by filing a notice of appeal with the executive secretary of the Board of Transportation. 19 V.S.A. § 305(d).

Aid may also be distributed, based upon applications by towns, for grants for the rehabilitation of “class 2 town highways that are rural major collectors.” 19 V.S.A. § 306(h).

Within 60 days of town meeting, the selectboard must forward to VTrans a plan for town highway construction and maintenance for the following year on forms provided by the agency. 19 V.S.A. § 306(e).

Towns must match a certain percentage of the cost of a project to obtain state aid. For highway or bridge construction with federal/state/local or state/local funding, typically the towns' share will be 10% of project costs, up to a maximum equal to the amount that could be raised in one year by raising the town's tax rate by \$0.50. 19 V.S.A. § 309a(a) and (c). Several exceptions to this general rule are listed in 19 V.S.A. § 309a(b). See Appendix 3.

For projects funded by the state's town highway bridge and culvert program, typically the town's share is ten percent of the project costs. 19 V.S.A. § 309b(a). However, the town's share is one-third of the project costs for projects under the class 2 resurfacing program, the class 2 town highway rehabilitation program, or the town highway bridge maintenance program. 19 V.S.A. § 309b(b) and (c).

2. Aid to Take Land for a Highway

A selectboard may apply to the Transportation Board for additional money to construct a highway if (1) the highway is to provide access to a recreational, industrial or community service area, and (2) the estimated costs for taking land for construction of the highway exceed the amount available to the town for highway construction for the preceding two years. 19 V.S.A. § 816. Details of the application and board proceedings, including consultation with other state agencies, are provided in 19 V.S.A. §§ 817-819.

3. Spending State Aid Funds

A town may spend state aid "solely for town highway construction, improvement, maintenance purposes or as the nonfederal share for public transportation assistance." 19 V.S.A. § 306(a)(5).

State bridge aid is to be spent on town bridge engineering services, and maintenance or construction of bridges with a span of six feet or more on class 1, 2, and 3 town highways. 19 V.S.A. § 306(b). With the approval of the agency, such aid may also be used for "alternatives which eliminate the need for a bridge or bridges, including, but not limited to, construction or reconstruction of highways, purchase of parcels of land that would be landlocked by closure of a bridge or bridges, payment of damages for loss of highway access and substitution of other means of access." 19 V.S.A. § 306(b).

The selectboard members are *personally* liable to the state for "making any unauthorized expenditures" from state aid. 19 V.S.A. § 306(a)(5).

C. Contracting for Highway Work

1. Bidding Requirements

There is no state statute requiring that town contracts for highway work be put out to bid. Although not binding on towns, some guidance for putting work out to bid may be found in 19 V.S.A. § 10a(c), which specifies the requirements when competitive negotiation is used by the state for highway work. You can also contact the VLCT Law Center and Vermont Local Roads for information on how to put together a bid if your town chooses to do so.

It is important to note that when grant money is being used, it is wise to determine if there are any conditions imposed by the grant such as requirements for bidding and consideration of companies owned by women or minorities.

2. Contracting with VTrans

The selectboard may request that VTrans do specified construction or maintenance work on a town highway or bridge. 19 V.S.A. § 309(a). VTrans has the discretion to agree to do the work for the town or not.

In addition, the selectboard may request that VTrans contract the work out to someone else. In this case, VTrans will furnish the plans and specifications. The town will then award the contract, or the town and VTrans may agree that VTrans will award the contract, to the lowest bidder. 19 V.S.A. § 309(b). The town shall, upon demand of VTrans, reimburse the state for the town's share of expenditures. 19 V.S.A. § 309(c).

Paving contracts with VTrans *may* include a provision for liquidated damages (a fixed amount of money) if the work is not completed on time. Under state law, "such damages shall be paid by the agency to the town or towns in which the work was not completed on time." 19 V.S.A. § 10c(j).

IX. CREATING AND MANAGING THE HIGHWAY SYSTEM

A. Overview

The manner in which a municipality designs and lays out its highway system has a profound effect on how the town looks and operates. Arguably nothing affects development in a municipality more than where a town chooses to place its main and secondary roads. Moreover, where the town chooses to construct sidewalks, erect signs and designate trails is crucial to determining the character of the community.

This section addresses the town's authority to layout and manage its highway system. Issues addressed in this section include laying out a highway, reclassifying a highway and condemning land for highway purposes.

B. Laying Out and Surveying

1. Surveying a Highway

A survey is required whenever a selectboard accepts, lays out or alters a highway under the provisions of chapter 7 of title 19. 19 V.S.A. § 704.

2. Right-of-Way

When laying out a highway or trail, the right-of-way must be three rods (1 rod = 16.5') "unless otherwise properly recorded." 19 V.S.A. § 702.

A right-of-way width of one and one half rods on either side of the center of the traveled way may be assumed "whenever the original survey was not properly recorded, or the records preserved, or if the terminations and boundaries cannot be determined." 19 V.S.A. § 32.

The selectboard may authorize a survey of an existing highway "to verify the location and width of the existing right-of-way, easement or fee title and to determine the extent of the interest of the public in the title." 19 V.S.A. § 33(b). Notice must be sent by certified mail to all known abutting landowners. 19 V.S.A. § 33(b). The survey must be based on "all available evidence." 19 V.S.A. § 33(b). Employees or agents of the municipality have the right to enter property to conduct the survey, "doing as little damage as possible, subject to liability for actual damage." 19 V.S.A. § 35. Whenever practicable, advance notice shall be given to the owner or occupant of the property. 19 V.S.A. § 35. Neither the owner nor the occupant shall be liable for any damage resulting from the survey work. 19 V.S.A. § 35.

If the limits of the right-of-way "cannot be determined on the ground from available evidence," then the selectboard may order a survey of the centerline of the traveled way, "and a width of one and one-half rods on each side of the centerline shall be assumed and controlled for highway purposes." 19 V.S.A. § 33(c). Notice of completion of the survey, with notice of rights of appeal and statutory damages, must be sent to all known abutting landlords at least 30 days prior to recording of the survey in the town clerk's office. 19 V.S.A. § 33(e) and (f). Permanent monuments are to be placed in the field. 19 V.S.A. § 33(d).

An abutting landowner who is dissatisfied with the survey may appeal to superior court within 120 days of the date when the survey results were filed with the town clerk. 19 V.S.A. § 34(a).

Once the survey is recorded and all appeals exhausted, municipal rights to all lands outside the boundaries of the survey shall be discontinued. Title to the discontinued property reverts to the owners of abutting land. 19 V.S.A. § 33(g).

3. Removal of Obstructions to Create a New Highway

In its order laying out or altering a highway, the selectboard must fix a time within which a landowner may remove buildings, fences, timber, wood or trees. 19 V.S.A. § 713. Unless the landowner consents to a lesser time, this must be at least two months, or at least six months if the lands taken have buildings. 19 V.S.A. § 713. The time also must be at least until damages are paid, if the amount awarded by the selectboard is accepted by the landowner or damages are awarded by referees. 19 V.S.A. § 713. However, an appeal of the award of damages will not delay the highway work. 19 V.S.A. §§ 713, 714, 726, 740.

Once the time allowed has expired, the selectboard has paid or tendered awarded damages and there are no pending appeals to superior court (except for the amount of damages), the selectboard may take possession of the land, remove obstructions, and open the lands for working and travel. 19 V.S.A. § 714. An appeal of the damages awarded will not delay work, but work will automatically be stayed if the appeal is based on objections to the necessity of taking the land, or dissatisfaction with the laying out, alteration or resurvey by the selectboard. 19 V.S.A. §§ 714, 743.

4. Curb Cuts and Ramps on New Highways

Newly constructed intersections or curbs used by pedestrians must have handicapped access curb cuts or ramps, built in compliance with specifications of the American National Standards Institute. 19 V.S.A. § 905a.

5. Accepting a Private Street as a Public Street

Every street or highway shown on a recorded plat is deemed to be a private street or highway until it is formally accepted by the municipality. Such acceptance must be by ordinance or resolution of the selectboard. 24 V.S.A. § 4421.

6. Laying Out a Logging Road

The selectboard may lay out a right-of-way “through the land of any person” when “it becomes necessary for the practical removal of lumber, wood, or other material, or to pass through the lands of a person other than the owner of the land from which the lumber, wood or other material is to be removed.” 19 V.S.A. § 958. When doing so, the selectboard must follow the quasi-judicial procedures set forth in 19 V.S.A. § 923. 19 V.S.A. § 958.

7. Laying Out a Park

A petition for laying out a public park “for the erection of a soldier’s monument or for other public purpose” may be submitted to the selectboard by “a fifth or fifty or more of the freeholders of a town.” 24 V.S.A. § 2501. The selectboard must then examine the premises, hold a hearing, and “shall proceed in setting out land, awarding damages, and

in all other particulars, as in laying out a highway upon petition of three freeholders.” 24 V.S.A. § 2501.

C. The Role of VTrans in Designing Town Highways

VTrans provides technical and engineering assistance and advice on construction, improvement and maintenance of town highways, when requested. 19 V.S.A. § 10(5) and (6). District VTrans offices provide advice and expertise to towns within their district. (See Appendix 4 for a list of VTrans district offices.) This section discusses the various aspects of town highway design with which VTrans is involved.

D. Laying Out, Altering, Reclassifying or Discontinuing a Highway

1. Procedural Requirements

The selectboard may initiate proceedings to lay out, alter, reclassify or discontinue a highway on its own motion. 19 V.S.A. § 708(a). In addition, proceedings may be initiated by a petition signed by “voters or landowners” whose number is at least five percent of the voters. 19 V.S.A. § 708(a).

The first step in initiating such proceedings is for the selectboard to “promptly” set a time and date to examine the premises and hold a hearing. Second, the selectboard must provide, by certified mail, 30 days notice of the examination and hearing to the petitioners, persons owning or interested in lands through which the highway passes or abuts, and the municipal planning commission. Notice must also be posted in the town clerk’s office and, at least ten days before the hearing, published in a local newspaper. 19 V.S.A. § 709.

The selectboard next examines the premises, holds a hearing, and decides whether “the public good, necessity and convenience of the inhabitants of the municipality” require the highway be laid out, altered, reclassified or discontinued. 19 V.S.A. § 710.

If the selectboard decides to lay out, alter or reclassify a highway, and the right-of way cannot be determined, the selectboard must order a survey in accordance with 19 V.S.A. §§ 33 and 710.

If the selectboard decides to discontinue a highway, “the discontinuance shall be in writing setting forth a completed description of the highway.” 19 V.S.A. § 710.

Within 60 days of the hearing, the selectboard must return the original petition with a report on its findings and, if necessary, a completed survey. 19 V.S.A. § 711(a). The selectboard’s order, with the survey, shall be recorded by the town clerk. 19 V.S.A. § 711(a).

A person owning or interested in lands through which the highway is laid out, altered, or resurveyed may appeal the selectboard’s action to superior court. 19 V.S.A. § 740.

If the selectboard does not lay out, alter or discontinue a highway, an application to superior court by petition may be made by persons who are voters or landowners and whose number is at least five percent of the voters. 19 V.S.A. § 750. Such an application may also be made if the selectboard does not build and open a highway within three years of laying it out. 19 V.S.A. § 750.

2. Reclassifying a Class 4 Highway to Class 3

A selectboard does not need to reclassify a class 4 highway to class 3 “merely because there exists within a town one or more class 3 highways with characteristics similar to the class 4 highway.” 19 V.S.A. § 708(b). In deciding whether to reclassify a class 4 highway to class 3, the selectboard may consider “whether the increased traffic and development potential likely to result from the reclassification is desirable or is in accordance with the town plan.” 19 V.S.A. § 708(b).

A selectboard may require that a petitioner bear the cost of upgrading a class 4 highway to a class 3 highway. 19 V.S.A. § 711(b). This provision does not require a town either to maintain a class 4 highway or upgrade a highway from class 4 to class 3. 19 V.S.A. § 711(b).

E. Accepting a Highway from the Federal Government

A town selectboard may accept from the United States of America, or any agency of the United States, relocated or reconstructed sections of highways provided by the federal government as replacement for sections of highways acquired, or to be acquired, for an authorized federal project or purpose. 19 V.S.A. § 1902.

F. Designating a Throughway

A town may designate any town highway or part of a town highway as a throughway. The town may revoke the designation “after notice.” 19 V.S.A. § 27. According to the statute, only the town, not the selectboard, may designate any town highway or part of a town highway as a throughway. 19 V.S.A. § 27. While the statute says the town must provide notice prior to revoking a throughway designation, it does not specify what type and length of “notice” is required. 19 V.S.A. § 27.

The designation as a throughway is not effective until the selectboard erects signs or signals in accord with 23 V.S.A. § 1025. 19 V.S.A. § 28. The selectboard may designate any intersection under its authority as either a *stop* or a *yield right-of-way* intersection. 19 V.S.A. § 28.

G. Designating Scenic Highways

A scenic highway is one that has been so designated by the state or by a municipality. 19 V.S.A. § 1(14). A town scenic highway may be reconstructed or improved consistent

with the standards established by the Transportation Board pursuant to 10 V.S.A. § 425. 19 V.S.A. § 2502(b). Such a designation does not affect the rights of landowners to develop property adjoining a scenic road. 19 V.S.A. § 2505.

State highways are designated scenic highways by the Transportation Board, on recommendation of the Scenery Preservation Council. 19 V.S.A. § 2501(a). Town highways are designated scenic highways by the selectboard, on recommendation of the planning commission or on the selectboard's own initiative, after a public hearing warned for that purpose. The registered voters of a town may also petition for such a designation. 19 V.S.A. § 2502(a). The town has the authority "to accept and spend any funds made available to them for the purpose of enhancing or establishing designated scenic roads." 19 V.S.A. § 2504.

H. Recording the Location and Opening of a Highway

Any court order establishing, altering or discontinuing a highway, together with a survey, must be recorded with the town clerk. 19 V.S.A. § 705.

I. Discontinuing a Highway

1. Procedure for Discontinuing a Highway

According to 19 V.S.A. § 771, a selectboard may discontinue a highway by using the same procedures for responding to a petition to discontinue a highway. These procedures are set out in 19 V.S.A. §§ 708-711. The selectboard must set a time for a hearing and give 30 days' notice of the hearing by certified mail to "persons owning or interested in lands through which the highway may pass or abut," "any municipal planning commission in the town," and post a copy of the notice in the office of the town clerk. A notice must also be published in a local newspaper not less than ten days before the hearing. 19 V.S.A. § 709. If after the hearing the selectboard decides to discontinue the highway, the discontinuance must be "in writing setting forth a completed description of the highway." 19 V.S.A. § 710. Within 60 days the selectboard must file a report of their findings with the town clerk; the order discontinuing the highway must be recorded by the town clerk. 19 V.S.A. § 711.

2. Procedure for Discontinuing a Highway Located in Two Towns

When a highway continues in two towns, each town selectboard must follow the procedure for discontinuing a highway. The two selectboards may hold a joint hearing if they wish. 19 V.S.A. § 771. If one town decides to discontinue the highway and the other town does not, the "superior court shall be petitioned to resolve the issue." 19 V.S.A. § 771. If the highway also crosses the boundary of two counties, the petition shall be filed in the county which has the greater share of the mileage involved. 19 V.S.A. § 771. Commissioners appointed by the court shall be "disinterested landowners who are not those appointed to lay out the highway or bridge." 19 V.S.A. § 771.

3. Discontinuing Old County Highways

According to 19 V.S.A. § 773, a selectboard “may discontinue any portions of the old county highways laid out by superior court commissioners as the public good requires.”

4. Discontinuing a Highway Created by the State Legislature

According to 19 V.S.A. § 774, a selectboard may “alter or discontinue highways laid out by a committee appointed by the general assembly.” If the highway runs through two or more towns, the same procedures are used for discontinuing town highways under 19 V.S.A. § 771.

5. Ownership of Right-of-Way

There are several stages of deciding the ownership of land which had been the right-of-way of a discontinued highway. First, the selectboard must notify the commissioner of the Department of Forests, Parks and Recreation “when they have filed a petition to discontinue a highway under this subchapter.” 19 V.S.A. § 775. (Since this requirement applies only when the selectboard has “filed a petition,” it may apply only when a petition to superior court is filed because a highway is in two or more towns.) If the selectboard chooses to designate the discontinued highway as a trail, the right-of-way continues at the same width. The commissioner of the Department of Forests, Parks and Recreation also may, with the approval of the selectboard, designate the discontinued highway as a trail. If neither the selectboard nor the commissioner designates the discontinued highway as a trail, then the right-of-way belongs to the owners of adjoining lands. The right-of-way land is returned to the lots to which it originally belonged. If this cannot be determined, the land shall be equally divided between the owners on each side. 19 V.S.A. § 775.

J. Compensating a Landowner When a Highway is Laid Out or Altered

1. Procedure

There are several steps involved in this process. First, the selectboard determines damages to be paid to an abutting landowner before the highway is opened. 19 V.S.A. § 712. In determining damages, the value of a discontinued highway belonging to the landowner, and any benefit the landowner receives from the laying out of the new highway, may be taken into account. 19 V.S.A. §§ 809, 811.

If the landowner or an interested person is dissatisfied with the amount of damages awarded by the selectboard, there are three options: First, the selectboard, with the approval of the other party, may appoint “one or more disinterested persons” to award damages. 19 V.S.A. § 725. That award “shall be final.” 19 V.S.A. § 725. Second, the person may apply to the district court for appointment of commissioners to appraise the damages. 19 V.S.A. § 726. Such an application will not delay work on the highway.

19 V.S.A. §§ 713, 714, 726. Finally, the person may appeal to superior court. 19 V.S.A. § 740. An appeal of damages only will not delay work. 19 V.S.A. § 740.

When the court orders such damages to be paid, it may allow the owner a “reasonable time” to pay the damages, but this may not exceed the time allowed for opening the highway. The clerk of the court shall issue a writ of execution for the sum owed. 19 V.S.A. § 808.

2. Damages for Discontinuing a Highway Before It is Completed

If a highway is discontinued before being “worked or opened,” the damage assessment becomes void. A landowner must repay to the town any damages already paid due to the laying out of the highway, minus actual damages which accrued before the discontinuance. 19 V.S.A. § 776. To determine the amount of such actual damages, the selectboard uses the quasi-judicial procedures set out in 19 V.S.A. § 923. The land is returned to the original landowner or his or her assigns. 19 V.S.A. § 776.

K. Condemning Land for Highway Purposes

1. Necessity to Condemn

The state may condemn land for highway purposes when there is a “necessity” to do so. *Necessity* is defined by statute as “a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and the property owner.” 19 V.S.A. § 501(1). The statute goes on to expand on this basic definition: “Necessity shall not be measured merely by expense or convenience to the condemning party. Due consideration shall be given to the adequacy of other property and locations and to the quantity, kind and extent of cultivated and agricultural land which may be taken or rendered unfit by the proposed taking. In this matter the court shall view the problem from both a long-range, agricultural land-use viewpoint, as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the effect upon home and homestead rights and the convenience of the owner of the land; to the effect of the highway upon the scenic and recreational values of the highway; to the need to accommodate present and future utility installations within the highway corridor; to the need to mitigate the environmental impacts of highway construction; and to the effect upon town grand lists and revenues.” 19 V.S.A. § 501(1).

2. Condemnation Proceedings

The first step in the condemnation process that the state will hold pre-condemnation hearings for the purposes of receiving “suggestions and recommendations from the public” prior to initiating proceedings for acquiring land. 19 V.S.A. § 502(c). The state may not take any land or any right in land that is owned by a town or union school district that is being used for school purposes until the voters of the district vote on the issue at its annual or special meeting. 19 V.S.A. § 502(d).

After these initial hearings and a survey is conducted the state must petition to condemn land with the Superior Court. 19 V.S.A. § 505. The Superior Court must set a time and place for a necessity hearing on the condemnation petition. 19 V.S.A. § 505. The state must prepare a notice of the necessity hearing and serve notice on the municipalities in which the lands are located and all “interested persons.” 19 V.S.A. § 506. *Interested person or person interested in lands* means a person who has a legal interest of record in the property affected.” 19 V.S.A. § 501(3). This would include, for example, not only the title holder, but also the holders of recorded mortgages or easements. The state, municipal corporation or any owner affected by the condemnation order may appeal to the Vermont Supreme Court. 19 V.S.A. § 510.

3. Landowner Compensation for Condemnation

When property is taken, a property owner is entitled to damages which “shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property, and the business on the property. The added value, if any, to the remaining property or right in the property, which accrue directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.” 19 V.S.A. § 501(2).

L. Naming Highways and Erecting Signs

1. Authority to Name a Highway

The selectboard has the authority “to number houses and name highways if desired.” 19 V.S.A. § 304(17). This includes the power to rename streets and renumber lots. 24 V.S.A. § 2291(16).

In addition, upon petition of 25 or more persons, or by petition of a state administrative department, the state Board of Libraries has the authority to name roads and geographic locations. 10 V.S.A. § 152. When it receives a petition, the Board conducts a hearing after notifying each town in which the road or location lies and any state department having jurisdiction over the road or location. 10 V.S.A. § 153.

2. Required Highway Signs

Under 19 V.S.A. § 921, the town must erect “school zone” warning signs on highways near a school. The signs must conform to the *Manual on Uniform Traffic Control Devices*. 19 V.S.A. § 921. VTrans is required to furnish such signs to municipalities at cost. 19 V.S.A. § 922.

All sidewalk crossings must conform to the United States Federal Highway Administration’s *Manual on Uniform Traffic Control Devices*. 19 V.S.A. § 905b.

VTrans will furnish, at its expense, cattle crossing signs for a town highway when requested to do so by a farm operator. 19 V.S.A. § 1107.

3. Design Standards for Traffic Control Signs

The standard for all traffic control signs, signals and markings within the state is the United States Department of Transportation Federal Highway Administration's *Manual on Uniform Traffic Control Devices*. 23 V.S.A. § 1025. However, towns may erect alternative signs of a guidance or informational nature and creative design, in accordance with 10 V.S.A. § 494(13). 23 V.S.A. § 1029.

4. Damaging Traffic Control Signs

It is unlawful for any person, without legal authority, to “alter or attempt to alter, deface, injure, knock down or remove any official traffic-signal device.” 23 V.S.A. § 1028.

5. Audible Traffic Signals

Audible traffic signals must be installed at intersections with an exclusive walk cycle when a new traffic light system is installed. 19 V.S.A. § 905c.

6. Signs for Handicapped Persons

A sign designating the presence of a disabled person may be erected only with the consent of the individual or his or her guardian. 19 V.S.A. § 922a.

M. Highways and Bridges Between Two Towns

1. Overview

The selectboards of two towns may, by agreement, lay out, reclassify or discontinue a highway on the line between two towns, or erect a bridge over a stream between the two towns. A majority of the selectboard of each town must assent to the agreement. 19 V.S.A. § 790. The towns may determine by agreement what part of the highway shall be built and repaired by each town, and what share of damages for construction each town shall pay. The towns may also agree on what share each town shall pay for the construction and maintenance of a bridge over a stream between the two towns. 19 V.S.A. § 791.

Inhabitants of the two towns may petition for such a highway or bridge to be constructed. The petition must be signed by either voters or landowners, whose number is at least five percent of the voters of the towns. The petition may be presented to the selectboard of either town, which shall then notify the selectboard of the second town. The two selectboards shall set a time for a hearing and give notice of it. 19 V.S.A. § 793. The selectboards of both towns then jointly follow the proceedings for a single selectboard laying out a highway or building a bridge. A copy of their findings must be filed with the

clerks of both towns within six months after the conclusion of the final hearing. The boards' orders and surveys shall be recorded in each town clerk's office. 19 V.S.A. § 793.

If the selectboards reject the petition, then an application may be made to the superior court by voters or landowners whose number is at least five percent of the voters of the towns. The court shall then follow the same procedure as with a highway extending into two towns, and issue an order. In its order, the court shall apportion between the towns the costs of laying out, repairing or reclassifying the highway. 19 V.S.A. § 794.

If one selectboard of two towns does not agree to build a required bridge between them, then either selectboard may petition the superior court. The court will then proceed as in the case of a petition filed by voters or landowners whose number is at least five percent of the voters. 19 V.S.A. § 796.

If a highway is laid through two or more towns, a municipality lacks jurisdiction to unilaterally discontinue its portion of the highway. *In re Bill*, 168 Vt. 439 (1998). The town must comply with the statutory requirements regarding highways that run between two towns.

2. Highways Near Town Line

Public good or convenience may require that a highway be laid out, altered or reclassified so that it is near, but not on, a town line. This may be because of the position of the land or the nature of the soil. When both towns are benefited similarly, as though the highway were on the town line, the selectboards or superior court (on report of commissioners) may lay out, alter or reclassify the town highway. Expenses shall be apportioned as if the highway were on the town line. The same proceedings are followed as if the highway were actually on the town line. 19 V.S.A. § 794.

N. State Highways

1. Adding or Removing a Highway from the State Highway System

A highway may be added to or deleted from the state highway system by legislative action or a proposal by VTrans that is accepted by the selectboard of the affected municipality and approved by the Legislature. 19 V.S.A. § 15.

2. State Authority to Acquire Land for State Highway

VTrans may purchase, lease or take by condemnation land within 250 feet of the center line of a state highway (except limited-access highways) for "the preservation of its scenic character, or for the purpose of providing picnic or camping grounds, or for parking areas for the use of travelers." 19 V.S.A. § 21(a).

3. Town’s Authority to Prevent State Highway Project

If the voters of the town vote against a planned highway project at the annual or a special town meeting within one year of the corridor and/or corridor design hearing, then VTrans must suspend the project. The agency will forward the facts related to the project and recommendations to the Transportation Board. The board makes a report to the Legislature which shall order either completion or discontinuance of the project. 19 V.S.A. § 1511.

4. Town Control of Roadway Removed from the Highway System

A town affected by the relocation of a highway “may appear and be heard at any proceedings in connection with the relocation.” 19 V.S.A. § 516. If a court determines the relocation is necessary, its order shall “determine under what conditions the agency of transportation (VTrans) shall relinquish control to the town of that portion of the state highway system affected by the relocation.” 19 V.S.A. § 516. When the agency has complied with the conditions, it certifies and records this information in the town clerk’s office. “[T]hereafter the maintenance and control of the portions of the state highway relinquished shall be vested in the town where located.” 19 V.S.A. § 516.

APPENDIX 1

ROAD AND BRIDGE STANDARDS
of the
Town of _____, Vermont

The town of _____ hereby adopts the following Town Road and Bridge Standards which shall apply to all future road and bridge construction or reconstruction done within the Town (unless State or Federal funding regulations govern over this document).

The standards listed here are considered minimum and are presented for purposes of guiding construction and maintenance personnel. The selectboard reserves the right to modify the standards for a particular project, where, because of unique physical circumstances or conditions, there is no possibility that the project can be completed in strict conformance with these provisions. Fiscal reasons are not a basis for modification of the standards.

Any new road, whether or not that road is proposed to be conveyed to the town, shall be constructed according to the minimums of these standards. The selectboard shall make final decisions over all questions arising during construction of new roads and shall approve all field changes. If any federal and/or state funding is involved in the project the VTrans district office will be notified.

Roadways. All gravel roads will have at least a 10-inch thick processed gravel subbase, be graded so that water does not remain on the road surface, and have adequate space for proper ditching.

Ditches. Soil exposed during ditch and slope construction or maintenance will be treated immediately following the operation as follows:

- Seed and mulch slopes less than 2.5%.
- Place biodegradable matting and seed on slopes between 2.5% and 5 %.
- Stone line ditches with angular material on slopes greater than 5%.

Culverts and Bridges.

- All new driveway culverts will have a minimum diameter of 15 inches.
- All new roadway culverts will have a minimum diameter of 18 inches.
- Any culvert greater than or equal to 36 inches in diameter will be designed according to the latest *VTrans Hydraulics Manual*. End treatment (inlet or outlet) will also be evaluated in accordance with this manual.

Guardrail. When new road or culvert construction creates side slopes steeper than 3 on 1, guardrail will be installed according to the *AASHTO Roadside Design Guide*.

Passed and adopted by the Selectboard of the Town of _____, State of Vermont, on _____, 2001.

Selectboard

APPENDIX 2

SPEED LIMITS ON UNPAVED ROADS

A new State law (S. 56) gives municipalities the option of setting speed limits on all or portions of unpaved roads at no less than 35 and no more than 50 mph without conducting an engineering and traffic investigation. But the law goes on to require that towns consider four criteria which are part of what is commonly accepted as criteria for conducting an engineering and traffic investigation.

An engineering and traffic investigation helps to base a reasonable speed limit on facts and not on whimsy, assuring motorists that a posted speed limit is safe and reasonable. The *Manual on Uniform Traffic Control Devices* (MUTCD) sets out six criteria:

1. Road surface characteristics, shoulder condition, grade, alignment and sight distance.
2. The 85th percentile speed/pace speed.
3. Roadside development and culture and roadside friction.
4. Safe speed for curves or hazardous locations within the zone.
5. Parking practices and pedestrian activity.
6. Reported accident experience for a recent 12-month period.

In setting speed limits between 35 to 50 mph on unpaved roads, the new law requires selectboards to consider:

- Neighborhood character (number 3 of the MUTCD criteria).
- Abutting land use (MUTCD criterion 3).
- Bicycle and pedestrian use (MUTCD criterion 5).
- Physical characteristics of the highway (MUTCD criteria 1 and 4).

We can assume, therefore, that the Legislature means to eliminate the need for considering the 85th percentile and pace speed (#2), parking practices (#5) and accident experience (#6) when considering the reasonable speed limit for unpaved roads (35, 40, 45 and 50 mph).

The Vermont Agency of Transportation (VTrans), Vermont Local Roads and VLCT suggest that municipalities take the following steps in establishing speed limits on municipal roads and streets.

Paved Roads: Follow the standard procedures from the MUTCD which are explained more fully in the handbook *Setting Speed Limits: A Guide for Vermont Towns*. The handbook also contains a model traffic ordinance.

Unpaved Roads:

1. Physically view the entire length of each road, taking into consideration the four criteria under the new State law (S. 56) instead of the six from the MUTCD.
2. Document as much information as possible (necessary for credibility and enforcement).
3. If it appears that the reasonable speed should be 35, 40, 45 or 50 mph, go to step 5.
4. If it is clear that the reasonable speed should be 25 or 30 mph, continue the traffic investigation using all six of the standard criteria.
5. As a selectboard, formally decide what the speed limit is for each road, basing decisions on observations.
6. Incorporate the selectboard's decisions in a municipal traffic ordinance, following carefully all the steps for adopting or amending an ordinance.
7. Record all official actions with the town clerk.
8. Erect appropriate signs according to MUTCD guidelines.

For more information, call Vermont Local Roads at 800-462-6555.

APPENDIX 3

Ch. 3 TOWN HIGHWAYS T.19 § 309a

§ 309a. Local highway work; uniform local share; exceptions

(a) Except as provided in subsection (b) or (c) of this section, in any case of highway or bridge construction in which a federal/state/local or state/local funding match is authorized, the municipality's share shall be ten percent of the project costs.

(b) This section shall not apply to:

(1) any project phase, preliminary engineering, right-of-way acquisition or construction, which was included in the transportation construction program submitted by the agency* in February 1987 and approved by the general assembly in Act No. 91 of the Acts of 1987; or

(2) any project phase for which a municipality already has provided for payment of its share by issuing bonds or funding a reserve established under a capital improvement plan; or

(3) any project on a town highway for which the general assembly has authorized a different federal/state/local funding match; and any project which serves an "economic growth center" as defined in 23 U.S.C. § 143, and for which the general assembly has authorized a different federal/state/local funding match;

(4) any project involving a bridge, including the approaches to a bridge, that extends between this state and an adjacent state;

(5) any bridge or roadway project involving a local financial share in which the municipality, after its review of the conceptual project plans, chooses not to proceed with the proposed project; in such circumstances, the agency shall pay 100 percent of the project costs incurred through the date it receives such notification from the municipality;

(6) any project where, by the mutual agreement of the municipality and agency, rehabilitation of an existing bridge is the preferred alternative, the agency shall use the appropriate combination of state and federal funding to pay 95 percent of the cost of rehabilitation; or

(7) any project or portion of a project involving a structure that is part of the historic bridge program, where the agency shall use the appropriate combination of state and federal funding to pay 100 percent of the cost of rehabilitation.

(c) Notwithstanding the provisions of this section, a municipality's share of any single project shall not exceed an amount equivalent to the amount which could be raised in one year by increasing the municipality's tax rate by \$0.50. In these cases, the remaining portion of the nonfederal share shall be made up by the agency, using available state funds. - Added 1989, No. 121, § 11, eff. June 22, 1989; amended 1993, No. 61, § 41, eff. June 3, 1993; 1995, No. 140 (Adj. Sess.), § 2; 1997, No. 38, § 6a, eff. May 28, 1997; 1999, No. 18, § 21, eff. May 13, 1999.

* For the purposes of this chapter: "agency" means the agency of transportation.
19 V.S.A. § 1(1).

APPENDIX 4

VERMONT AGENCY OF TRANSPORTATION (VTrans) DISTRICT OFFICES

District 1 (Bennington)

359 Bowen Road
Bennington, VT 05201
802-447-2790 (tel)
802-447-2793 (fax)

District 2 (Dummerston)

870 US Route 5
North Brattleboro, VT 05304-8236
802-254-5011 (tel)
802-257-2836 (fax)

District 3 (Rutland)

122 State Place
Rutland, VT 05701
802-786-5826 (tel)
802-786-5894 (fax)

District 4 (White River Junction)

221 Beswick Drive
White River Junction, VT 05001
802-295-8888 (tel)
802-295-8882 (fax)

District 5 (Colchester)

5 Barnes Avenue
Essex Junction, VT 05452
802-655-1580 (tel)
802-655-6642 (fax)

District 6 (Berlin)

186 Industrial Lane Road
Barre, VT 05641
802-828-2691 (tel)
802-828-3530 (fax)

District 7 (St. Johnsbury)

1068 US Route 5, Suite 2
St. Johnsbury, VT 05819-8501
802-748-6670 (tel)
802-748-6671 (fax)

District 8 (St. Albans)

680 Lower Newton Road
St. Albans, VT 05478
802-524-5926 (tel)
802-524-7940 (fax)

District 9 (Derby)

4611 US Route 5
Newport, VT 05855
802-334-7934 (tel)
802-334-3337 (fax)

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