



MEMORANDUM

To: Selectboards, Municipal Managers, Road Commissioners, Highway Supervisors (Road Foremen)

From: VLCT Municipal Assistance Center

Date: July 19, 2017

RE: Model Town Highway Access Policy

Title 19 V.S.A. § 1111 requires all individuals and corporations to obtain a permit to occupy or alter any part of a municipal right of way. That statute makes it unlawful to “develop, construct, regrade or resurface any driveway, entrance or approach, or build a fence or building, or deposit material of any kind within, or to in any way affect the grade of a highway right of way, or obstruct a ditch, culvert or drainage course that drains a highway right of way, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way,” without a permit. Such permits are commonly referred to as “access,” “curb cut,” or “driveway” permits and are issued by the municipal legislative body or its designee.

It is essential that every municipality establish a permitting process, including rules and regulations that set forth any required construction standards and conditions that must be complied with before an access permit may be issued. State statute specifically authorizes the legislative body to “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 infrastructure...” 19 V.S.A. § 1111(b). **MAC has developed this Model Access Policy and Model Access Forms to assist municipalities in carrying out the requirements of 19 V.S.A. § 1111.** Having a clear policy that spells out the process and standards in place will ensure that all applicants for access permits understand what is required of them and that all applicants are treated fairly and consistently.

Although this document is written in the form of a free-standing policy, access issues may also be regulated by municipal ordinance and/or municipal zoning regulation.

Sponsor of:

VLCT Employment
Resource and Benefits
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VLCT Municipal
Assistance Center

VLCT Property and
Casualty Intermunicipal
Fund, Inc.

PLEASE NOTE THAT this model policy is not comprehensive. It does not address technical issues such as traffic volume, deceleration lanes, traffic impact studies, parking, loading, safety, drainage and other issues associated with various types of development, especially commercial development. However, this model may be supplemented so that it does address such issues. Sources for technical information include: the Vermont Agency of Transportation’s “B-71 Standards for Residential

and Commercial Drives,” “A-76, Standards for Town and Development Roads” and “Access Management Program Guidelines” as well as other VTrans documents. For stormwater drainage management standards, see guidance developed by VLCT’s Water Resources Program.

This model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy, nor does it make any express or implied guarantee of legal enforceability or legal compliance, nor does VLCT represent that any policy is appropriate for any particular municipality. You are advised to seek legal counsel to review any proposed policy before adoption.

Customizing this Model Policy

Your municipality is responsible for editing this document so that it reflects the practices and policies adopted by your municipality in conformance with federal and state requirements. Opportunities for customization are bracketed and marked with italic text.

Permitting and Refusing a Permit

State statute requires that the legislative body or its designee consider whether the project as authorized by the permit: 1) protects the safety of the traveling public; 2) maintains reasonable levels of service on the existing highway system; and 3) protects of the public investment in the existing highway infrastructure. 19 V.S.A. § 1111(b). However, a municipality *may not deny reasonable entrance and exit* to or from property abutting the highways, *except* “on limited access highways, using safety, maintenance of reasonable levels of service on existing highway infrastructure and protection of the public investment in the existing highway infrastructure as the test for reasonableness, and *except* 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) (emphasis added).

Therefore, the legislative body or its designee may not deny an access permit *unless* the legislative body, or its designee, finds the request “unreasonable.” A permit application may be deemed unreasonable if, in the opinion of the legislative body or its designee, it does not adequately: 1) protect the safety of the traveling public; 2) maintain reasonable levels of service on the existing highway system; 3) protect of the public investment in the existing highway infrastructure; or 4) comply with the planning goals of 24 V.S.A. § 4302 and any regional, state, or approved Town Plan. 19 V.S.A. § 1111(b).

Permission to Proceed

One way to ensure that driveways, accesses, and curb cuts are constructed in accordance with municipal approval involves the issuance of a “Notice of Permission to Proceed,” as described in this Model Policy. Using this process, a final permit is not issued until construction is completed, inspected, and deemed to comply with the terms and conditions imposed by the municipality in its written “Notice of Permission to Proceed.” That Notice, at a minimum, should set forth all of the conditions, specifications and restrictions applicable to the project and state that any violations of those conditions, specifications, and restrictions are subject to fines ranging from \$100.00 to \$10,000.00 for each violation in accordance with 19 V.S.A. § 1111(j). The Notice may also state that the applicant’s access point may physically be closed, in accordance with 19

V.S.A. § 1111(g), if it is deemed to be a safety hazard or if the safety of the highway users is or may be affected. A provision should be included in the Notice that states that it is the applicant's responsibility to repair any damage, in accordance with the town's minimum standards, it has caused to town property as a result of its work conducted pursuant to the Notice.

The Notice states that a permit recognizing the completion of the permitted access will be issued and become effective when it is determined that the access, as constructed, complies with all policies, conditions, specifications, and restrictions described in the Notice. If upon final inspection, the legislative body or its designee determines that the project complies with the terms and conditions of the Notice, the legislative body or its designee can issue a final permit.

Recording Approvals and Permits

The statute requires that initial and subsequent permits must be recorded at the expense of the applicant in the land records of any municipality in which the affected property is located, unless the legislative body determines that such action is not warranted in specific instances or for certain categories of permits. 19 V.S.A. § 1111(l).

Enforcing the Policy

Although this document is written in the form of a policy rather than an ordinance it is nonetheless enforceable because municipalities are given specific authority in State Statute to enforce access issues.

When a person does not obtain a required access permit, or fails to comply with the terms and conditions of an issued permit, a municipality has several ways to proceed, which are described below.

Assurance of Discontinuance

The legislative body, or its designee, may (not must) also accept an "assurance of discontinuance" of any access violation, including a schedule for abatement of a violation. 19 V.S.A. § 1111(i). If such assurances are allowed, they must be in writing and must be filed not only with the town, but also with the attorney general, the Superior Court, and the town clerk's land records.

Prior to instituting any legal action regarding a highway access or an access permit, the legislative body or its designee may (not must) issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and notice of intention to institute an action or proceeding against the person responsible for the violation. 19 V.S.A. § 1111(i).

Permit Suspension and Access Closure

The legislative body, or its designee, may suspend the permit until compliance with statute and permit conditions requiring compliance with any local ordinance and regulation relating to highways and land use is obtained. 19 V.S.A. § 1111(g). The law allows the legislative body, or its designee, may physically close the driveway or access point, if there is continued use or activity after suspension of a permit, and in the opinion of the legislative body, or its designee, the safety of highway users is or may be affected.

19 V.S.A. § 1111(g). MAC recommends seeking legal advice prior to taking action to physically block an access.

Injunction

If the legislative body, or its designee, believes that any person is in violation of the provisions of Title 19 V.S.A. §§ 1111 *et seq.*, it may bring an action in the name of the town against the person to collect civil penalties as provided in 19 V.S.A. § 1111(j) and to restrain by temporary or permanent injunction the continuation or repetition of the violation. 19 V.S.A. § 1111(h).

Civil Penalties

Persons who violate the requirements of obtaining a permit, permit conditions, or the terms of an order issued by a court may be subject to civil penalties of not less than \$100.00 and not more than \$10,000.00 for each violation. When the violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for correction or termination of the violation constitutes an additional separate and distinct offense except during the time an appeal from the order may be taken or is pending.

TOWN OF _____
HIGHWAY ACCESS POLICY

Section 1 -- Authority.

This Highway Access Policy (hereafter "Policy") is enacted pursuant to the authority granted to the Town under 19 V.S.A. §§ 303 and 1111.

Section 2 -- Purpose.

This Policy regulates access to the Town highway system. It is the purpose of this Policy to protect and preserve the safety and convenience of the inhabitants of the Town and the traveling public and to protect the public investment in the Town highway system through the regulation of highway access.

Section 3 -- Definitions.

For the purpose of this Policy the terms defined in this Policy shall have the following meanings:

"Access Permit" means the permit issued by the Selectboard to access the town highway system after following the procedural requirements of this Policy.

"Highway" means the highway system for the Town of ____, which includes the public 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.

"Notice" means the written Notice of Permission to Proceed, described in Section 5c of this Policy, issued by the Selectboard after an application for an access permit is approved.

"Person" means an individual corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or other legal entity.

"Selectboard" means the Selectboard of the Town of _____.

"Town" means the Town of _____.

"Vermont Agency of Transportation Standards B-71 and A-76" shall mean the most recent versions of the Vermont Agency of Transportation standard sheets B-71, Standards for Residential and Commercial Drives and A-76, Standards for Town and Development Roads.

Section 4 -- Permit required.

No person shall install, develop, construct, regrade, or resurface any driveway, entrance, or approach, or build a fence or building, or deposit material of any kind within, or to in any way

affect the grade of a highway right-of-way, or obstruct a ditch, culvert, or drainage course that drains a highway, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way, within the Town unless an Access Permit has been obtained from the Selectboard in accordance with this Policy.

[Insert optional exclusion for municipal purposes such as "A driveway or other access created or developed by the Town for official Town purposes is not required to obtain an Access Permit."]

Section 5 -- Process.

a. Application.

A person may apply for an Access Permit from the Town using the Access Permit Application form provided by the *[insert name of office where applications are available such as "Town Clerk's Office"]*. The application shall be in writing and shall be signed by the applicant or an individual authorized to act for the applicant. A fee of \$___*[insert amount]* shall be paid at the time the application is submitted. A completed application must be submitted to the ___ *[insert responsible party such as "Selectboard" or "Manager" or "Road Foreman" or other designee]* at least ___*[insert number of days]* before work is scheduled to begin. The *[insert responsible party such as "Selectboard" or "Manager" or "Road Foreman" or other designee]* may modify the time requirements of this Policy for good cause shown provided the public health and safety will not be jeopardized by such action.

b. Consideration.

[If applicable, insert language such as "Prior to any action by the Selectboard, the (Town Manager, Town Administrator, etc.) shall cause the application to be reviewed by Town departments including, but not limited to, highway/DPW, police, fire, and rescue."]

The *[insert the responsible party such as "Selectboard" or "Manager" or "Road Foreman"]* will consider a completed application *[if the decision will be made by the Selectboard, insert the following: "at a regular or special Selectboard meeting and may recess the meeting on the application as necessary to receive additional information."]* The *[insert "Selectboard" or "Manager" or "Road Foreman"]* may approve, approve with conditions/modifications, or deny an application upon consideration of the approval standards set forth in Section ___ of this Policy.

c. Notice of Permission to Proceed. If an application is approved, the *[insert "Selectboard" or "Manager" or "Road Foreman"]* will issue written permission in the form of a Notice of Permission to Proceed ("Notice"). The Notice will list the specifications, requirements, and restrictions for the work. The Notice may require supervision and/or inspection by the Town. The Notice will state the date on which construction / development of the Access may proceed.

d. Notification of completion. The applicant shall notify the [*insert "Selectboard" or "Manager" or "Road Foreman"*] within [*number*] of days after construction is completed.

e. Final inspection. The [*insert "Selectboard or its designee" or "Manager or his or her designee" or "Road Foreman"*] shall conduct a final inspection to determine if the work has been completed according to the requirements listed in the Notice.

f. Issuance of Permit. If, after inspection, it is determined that the Access has been constructed / developed in compliance with the Notice, a written Permit shall be issued by the [*insert "Selectboard" or "Manager" or "Road Foreman"*] within ___ days after final inspection.

g. Recording of Permit. A Permit shall not be valid until recorded in the Town Land Records at the expense of the Permittee.

Section 6 -- Contents of Application.

An application for an Access Permit shall be on the form provided by the Town and shall be deemed to be complete if it includes the following:

(1) The name, address, and telephone number of the applicant, the principal officers of the applicant, the individual making the application, and any other individual authorized to represent the person applying for the Permit;

(2) If the applicant is not the owner of the premises where the access is to be constructed, the name and contact information of the owner or other person that has the authority to consent to the use and development of the premises, and a signed statement from that person stating that consent is given to the applicant;

(3) The location of the access, including street address (if any), and parcel ID # of the property;

(4) The date on which construction is proposed to begin;

(5) A visual depiction of the premises indicating location, layout, adjacent state and local highways, entrances and exits, traffic flow patterns, parking and land uses of the surrounding area;

(6) Any additional information the applicant wishes to furnish that assists the Selectboard or its designee in determining that the proposed access will comply with the applicable standards; and

(7) The signature of the applicant or an individual authorized to act for the applicant.

Section 7 -- Approval conditions.

When issuing a Notice under this Policy, the Selectboard shall require that the proposed access will be constructed or developed according to the standards in Vermont Agency of Transportation Standards B-71 and A-76."

In addition, the Selectboard shall require conditions to avoid: (1) undue adverse traffic congestion and unsafe conditions regarding the use of public roads, sidewalks and other public rights-of-ways; (2) unhealthy conditions regarding water supply, sewage disposal or solid waste disposal; and (3) adverse affects on drainage ditches, culverts or other drainage facilities. [*Insert optional specific provisions that relate to the above 3 criteria.*]

In addition, the Selectboard may require the posting of a security bond or the establishment of an escrow account to ensure compliance with the conditions of the Notice or Permit and protection of the town highway system. In addition, the Selectboard may attach any such reasonable conditions as they may deem appropriate to mitigate or eliminate any impacts reviewable under the approval standards set forth above.

Section 8 -- Expiration of Notice of Permit.

The authorization conveyed by a Notice of Permit shall expire _____ [*insert time period*] after the issuance of that Notice unless the work authorized by such Notice has been substantially commenced.

Section 9 --Damage to Town highways.

In the event that damage to a town highway is caused by improper construction, maintenance, or grading of a driveway or other highway access point, it shall be the responsibility of the property owner to compensate the Town for any expenses involved in restoring that highway to its original condition.

Section 10 -- Revocation of Permit; Frontage road.

As per 19 V.S.A § 111(f), the Selectboard may, as development occurs on land abutting a Town Highway, require the elimination of an access previously permitted and require the construction of a common frontage road or other access improvements which may serve more than one property or lot.

Section 11 -- Responsibility for culverts and headwalls

Culverts and headwalls installed on private property, even when located within the municipal right of way, are the responsibility of the property owner. Property owner retains exclusive legal and financial responsibility to repair, replace, and maintain those culverts and headwalls. Nevertheless, property owner must obtain permission from the Town in the form of a written Notice of Permission to Proceed before any repair or replacement may take place.

Section 12 -- Applicability of other laws and ordinances.

The Permit required under this Policy shall not replace or eliminate any requirement to obtain approval under any other applicable State laws or municipal land use ordinances. Applicants and Permittees are solely responsible for ensuring that their access is in compliance with applicable State laws and municipal land use ordinances.

Section 13 -- Enforcement and Penalties.

In the event that a person fails to obtain a Notice/Permit as required by this Policy, fails to abide by the terms and/or conditions of a Notice/Permit, or misrepresents any information contained within or in support of a Notice/Permit application, the Selectboard may resort to any or all of the following enforcement options:

a. Optional Notice of Violation

Prior to instituting any legal action or proceeding to enforce this Policy, the Selectboard or its designee may issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and notice of intention to institute an action or proceeding against the person responsible for the violation. 19 V.S.A. § 1111(i).

b. Assurance of Discontinuance

The Selectboard or its designee may accept an "assurance of discontinuance" of any violation of this Policy, including a schedule for abatement of a violation. 19 V.S.A. § 1111(i). When such assurances are allowed, they must be in writing and must be filed not only with the town, but also with the attorney general, the Superior Court, and the town clerk's land records.

c. Permit Suspension

The Selectboard or its designee may suspend a Permit until compliance with State statute and this Policy is obtained. 19 V.S.A. § 1111(g). The Selectboard or its designee may physically close the driveway or access point, if there is continued use or activity after suspension of a Permit, and in the opinion of the Selectboard, or its designee, the safety of highway users is or may be affected. 19 V.S.A. § 1111(g).

d. Injunction

If the Selectboard believes that any person is in violation of the provisions of Title 19 V.S.A. §§ 1111 *et seq.*, it may bring an action in the name of the town against the person to collect civil penalties as provided in 19 V.S.A. § 1111(j) and to restrain by temporary or permanent injunction the continuation or repetition of the violation. 19 V.S.A. § 1111(h).

e. Civil Penalties

Persons who violate the requirements of this Policy or fail to adhere to Permit conditions, or the terms of an order issued by a court of law may be subject to civil penalties of not less than \$100.00 and not more than \$10,000.00 for each violation. When the violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for correction or termination of the violation constitutes an

additional separate and distinct offense except during the time an appeal from the order may be taken or is pending.

Section 14 -- Severability.

If any section of this Policy is held by a court of competent jurisdiction to be invalid such finding shall not invalidate any other part of this Policy.

Section 15 -- Effective Date.

This Policy shall become effective upon adoption by the Selectboard.

Adopted this _____ day of _____, 201_.

APPENDIX A
Town of _____
Access Permit Application Form

Application # _____ [to be filled in by the Town]

NOTICE TO APPLICANT: This form is for use in conjunction with the Town's Highway Access Policy. Before submitting an application, applicants are urged to review the Town's Highway Access Policy in full.

If an application is approved, the [*insert "Selectboard" or "Manager" or "Road Foreman"*] will issue written permission in the form of a Notice of Permission to Proceed ("Notice"). The Notice will list the specifications, requirements, and restrictions for the work. The Notice may require supervision and/or inspection by the Town. The Notice will state the date on which construction / development of the Access may proceed.

Once construction/development is completed, the [*insert "Selectboard or its designee" or "Manager or his or her designee" or "Road Foreman"*] shall conduct a final inspection to determine if the work has been completed according to the requirements listed in the Notice. If, after inspection, it is determined that the Access has been constructed / developed in compliance with the Notice, a written Permit shall be issued by the [*insert "Selectboard" or "Manager" or "Road Foreman"*] within __ days after final inspection. An access is not considered legally permitted until the written Permit has been recorded in the Town Land Records at the expense of the Permittee.

Name of Applicant: _____

Address and telephone number of Applicant: _____

If Applicant is an organization or corporate entity, list the principal officers of Applicant and any other individual authorized to represent the applicant group or entity applying for the Permit:

If Applicant is an organization or corporate entity, list the name address, email and telephone number of individual making the application:

Location of the proposed access: _____

If the applicant is not the owner of the premises where the proposed access will be constructed, list the name and contact information of the owner or other person that has the authority to consent to the use of the premises and attach a signed statement from that person stating that

consent is given to the applicant to have the access constructed on those premises:

The date on which construction is proposed to begin: _____

Attach a visual depiction of the premises indicating location, layout, state and local highways, entrances and exits, traffic flow patterns, parking and land uses of the surrounding area.

Describe the arrangements that have been made to protect the public health, safety, welfare and convenience of the traveling public during construction including, but not limited to, arrangements for traffic control, crowd control, waste and sanitation facilities:

Applicant may provide any additional information that may assist the Selectboard.

Signature of the applicant
or an individual authorized to act for the applicant

Date

FOR TOWN USE ONLY:

Application received by _____ **[town official] on** _____ **[date]**

Application fee of \$ _____ **, received by** _____ **[form of payment]**

APPENDIX B
Town of _____

Notice of Permission to Proceed with Construction / Development of Access / Right of Way

Notice is hereby given to _____ [name of Applicant / Property Owner] that the Selectboard of the Town of _____ hereby grants permission to proceed with the construction / development of the proposed access/driveway/curb cut at _____ [parcel # and street address or property, if any], which proves access to / connects with [name and/or # of town highway] as per the Access Permit Application # _____, submitted to the Town on _____ [date]. Construction / development may begin on or after _____ [date] and must proceed according to the following conditions and restrictions:

[insert conditions or restrictions]

Permission granted in this Notice will expire *[insert time period]* from the date of issuance and is not transferrable.

This Notice does not constitute an Access Permit. A Permit authorizing the use of the access and recognizing completion of the project will be issued and become effective only after it is determined that compliance with all conditions, specifications, and restrictions described in this Notice to Proceed are met. The Selectboard for the Town of _____, with the assistance of _____ *[insert "Road Commissioner," "Road Foreman," or other town officer as relevant]*, will have the authority and responsibility to determine when the conditions, restrictions, and specifications above are met.

Upon receipt of this Notice, you are hereby authorized to proceed with the project in accord with the conditions, specifications, and restrictions described herein. Approval covers only the work described in your Access Permit Application, as modified by the conditions, restrictions, and specifications listed above. You will be held financially responsible for any damage caused to the Town highway system resulting from the development or construction of a driveway/access, regardless of whether such development or construction has been authorized by the Town.

This Notice does not relieve you from any requirements imposed by other local, regional, or State agencies.

Issued on: _____ [date]

By: _____
Chair of the Selectboard

APPENDIX C
Town of _____
Access / Right of Way Permit

It is the determination of the Selectboard of the Town of _____ that all of the conditions, restrictions, and specifications described in Access Permit Application # _____, as modified by the relevant Notice to Proceed, which was issued by the Town on _____ [date], have been met.

Therefore, Permit # _____ is hereby issued to _____
[Applicant / Property Owner], as Permittee for the access/driveway/curb cut located at _____ [parcel # and street address or property, if any], which proves access to / connects with _____ [name and/or # of town highway]. All of the conditions, restrictions, and specifications described in Access Permit Application # _____, as modified by the relevant Notice to Proceed, which was issued by the Town on _____ [date], remain in force as conditions of this Permit as long as the present land use continues. Any change in the present land use will require a new Permit.

This Permit shall not be valid until recorded in the Town Land Records at the expense of the Permittee.

The issuance of this Permit does not relieve Permittee from any requirements imposed by other local, regional, or State agencies.

In the event that there is a failure to adhere to the conditions, restrictions, and specifications described above, this Permit may be suspended by the Selectboard until compliance is obtained. If there is continued use or activity after suspension, the Selectboard may physically close the driveway or access point if, in the opinion of the Selectboard, the safety of highway users is or may be affected.

As per 19 V.S.A § 111(f), the Selectboard may, as development occurs on land abutting a Town Highway, require the elimination of an access previously permitted and require the construction of a common frontage road or other access improvements which may serve more than one property or lot.

Permit issued on _____ [date]
By: _____ [Selectboard or its designee]

Received for recording on _____ [date], with applicable recording fees paid.
By: _____ [Town Clerk]