

## Bristol Town Administrator

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**From:** Susan Senning <ssenning@vlct.org>  
**Sent:** Wednesday, June 26, 2019 3:11 PM  
**To:** Bristol Town Administrator  
**Subject:** RE: Class 4 road responsibility / disabled resident

Sorry for the “PS” email. I’m glad we discovered the footnote, as I think it needs to be revised. The model policy does not include anything specific to culverts and bridges but the footnote may confuse the board so please keep it in mind when they do review it.

No such provision exists, you are correct.

Good luck,  
Susan

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**From:** Bristol Town Administrator <[townadmin@bristolvt.org](mailto:townadmin@bristolvt.org)>  
**Sent:** Wednesday, June 26, 2019 3:08 PM  
**To:** Susan Senning <[ssenning@vlct.org](mailto:ssenning@vlct.org)>  
**Subject:** RE: Class 4 road responsibility / disabled resident

Thank you, Susan. Yes, Class 4 road policies are on the Selectboard’s radar—we just hadn’t gotten there yet. It’s likely to be on the July 8 Selectboard agenda to at least get the discussion off the ground—no pun intended. I have the VLCT model (Nov. 2018) and copies of some other towns’ policies and have begun to craft something for Bristol.

The disabled resident is under the impression the Town is obligated “by law” (her words) to now upgrade the road because she is a disabled resident on town highway. I am not aware of any such provision, but thought I’d check.

--Valerie

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**From:** Susan Senning <ssenning@vlct.org>  
**Sent:** Wednesday, June 26, 2019 3:01 PM  
**To:** Bristol Town Administrator <[townadmin@bristolvt.org](mailto:townadmin@bristolvt.org)>  
**Subject:** RE: Class 4 road responsibility / disabled resident

Hi again, Valerie,

I sent my previous email too soon, apparently. After I noted the footnote 1 on our model policy guidance, with respect to culverts and bridges, it seemed a little contradictory to the interpretation that the selectboard has discretion in

maintaining class 4 roads. Therefore, I chatted with a colleague and came across this recent advice from Garrett to another recent inquiry:

“VLCT has in the past interpreted state law to require towns to maintain culverts and bridges on class 4 highways. It has based this interpretation on 19 V.S.A. § 302(a)(5), which states, with regard to trails, that towns “shall not be responsible for any maintenance including culverts and bridges,” which carries the negative implication that towns are responsible for maintaining culverts and bridges on class 4 highways.

In reviewing this statutory scheme as a whole, it makes little sense to us that the State would mandate a town to maintain bridges and culverts on a class 4 town highway but make the maintenance of the highway itself discretionary. This interpretation would lead to the irrational result of having rutted, muddy, unmaintained class 4 highways running across the countryside with brand new culverts and freshly painted bridges. “This Court construes statutes to avoid absurd results manifestly unintended by the Legislature.” *Clark v. Clark*, 172 Vt. 351 (2001).

In contrast, 19 V.S.A. § 310(b) speaks only to class 4 town highways. “Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways and meeting the standards set forth in section 302 of this title.” 19 V.S.A. § 310(b). The silence in 19 V.S.A. § 310(b) with respect to bridges implies that towns are not responsible for maintaining bridges on class 4 highways. Also, 19 V.S.A. § 985 provides that towns will be liable for personal or property damage caused “by reason of the insufficiency or want of repair of a bridge or culvert which the town is liable to keep in repair.” This implies that there are bridges and culverts for which the town has no maintenance obligations (i.e., those on class 4 town highways and trails). Finally, because the term “highway” includes “rights-of-way, bridges, drainage structures, signs, guardrails”, 19 V.S.A. § 1(12), it would follow that if a town is not responsible to maintaining class 4 highways, then that would include both the bridges and culverts that are a part of it.

In light of the statutes, we believe the more rational interpretation would be that a town’s obligation to maintain the bridges and culverts on its Class 4 roads is also discretionary. To the best of my knowledge however this is an issue of first impression, i.e. there is no published court decision addressing the issue directly.”

I believe the footnote is to impress upon folks that there is a specific note on culverts and bridges in the trails maintenance provision so those must be implied in the class 4 roads provision. Since there is no case law on this point and since we also provide the most conservative advice to members in order to avoid legal challenge, I would say it’s a good thing you replaced the culvert. The upgrades would not be automatically required, unless the standard of “necessity of the town, the public good...” etc was met in this particular case. Sorry for the confusion; I will be reviewing our model policy and guidance with this conflicting advice in mind.

Sincerely,  
Susan

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**From:** Susan Senning <ssenning@vlct.org>  
**Sent:** Wednesday, June 26, 2019 2:50 PM  
**To:** Bristol Town Administrator <townadmin@bristolvt.org>  
**Subject:** RE: Class 4 road responsibility / disabled resident

Hi Val,

With respect to maintenance obligations, the statute governing municipal maintenance obligations of Class 4 roads states, “Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways and meeting the standards set forth in section 302 of this title.” [19 V.S.A. § 310\(b\)](#). In short, a town is under no obligation to conduct maintenance or to perform requested repairs/upgrades, and has broad discretion in making such decisions. The law is clear the town has no statutory obligation to maintain class 4 town highways. However, it is also important to clarify that it is our opinion that the town would be responsible for maintaining culverts and bridges on Class 4 highways, so it is good that you did that work in this case. The footnote 1 on our model policy reads as follows: Note that 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.

In interpreting 19 V.S.A. § 310(b), the Vermont Supreme Court held:

"Here, the surrounding language only reinforces the conclusion that the statute grants the Town discretion in determining whether to maintain and repair class 4 highways. Section 310(a) states, in pertinent part, that a town shall keep its class 1, 2 and 3 highways ... in good and sufficient repair during all seasons of the year. Section 310(b), in direct contrast, provides that '[c]lass 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways.' The use of 'shall' and 'may' in such close proximity conveys a conscious design to impart to the words their ordinary and distinct meanings, imposing a mandatory duty upon towns to maintain class 1, 2, and 3 roads, while affording general discretion to maintain class 4 roads." *Town of Calais v. County Road Com'rs*, 173 Vt. 620 (2002).

The Vermont Supreme Court held in this case that the Selectboard was vested with broad discretion to determine whether to repair or maintain its class 4 town highways and could not be compelled by the county road commissioners to repair a class 4 town highway under this statute. Consequently, a town is not statutorily obligated to maintain a class 4 highway, and, to the extent that it does so, is only obligated to maintain it to the extent required by "the necessity, good, and convenience of the town" and not to the specific statutory standards for other highway classes.

VLCT recommends that every town communicate to its residents how it will deal with its class 4 highways. This is most effectively achieved by adopting a class 4 highway policy. Although not explicitly required by law, it is clear from the case of *Demarest v. Town of Underhill*, 2016 VT 10, that a town's decisions regarding its class 4 roads are more likely to sustain legal challenge if those decisions are based upon a written town policy that conforms to 19 V.S.A. § 310(b). The VLCT Municipal Assistance Center has created a Model Class 4 Road and Trail Policy. A town policy is a statement about how the town and its elected and hired officials will make decisions and conduct internal town operations; a policy does not create legally enforceable obligations and requirements. Nevertheless, a policy can be a very useful document because it clearly defines town standards and sets reasonable expectations for maintenance, repair, and use. VLCT's model class 4 town highway policy is available on our website at: <https://www.vlct.org/resource/model-class-4-highway-policy>. Perhaps this request is a good prompt for the selectboard to adopt such a policy.

I hope this helps.

Sincerely,  
Susan

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**From:** Bristol Town Administrator <[townadmin@bristolvt.org](mailto:townadmin@bristolvt.org)>  
**Sent:** Tuesday, June 25, 2019 3:47 PM  
**To:** Info <[info@vlct.org](mailto:info@vlct.org)>  
**Subject:** Class 4 road responsibility / disabled resident

Hi,

The Town of Bristol has not yet adopted Class 4 road maintenance policies. We have a Class 4 road in town that has not received Town maintenance over the years but it has at least seven long-time residences on it. Somehow, the residents managed to minimally maintain it. A culvert blew out last week with the heavy rains that the DPW folks went up in the evening in response to what was believed to be an emergency to restore access as best they could. A resident called to say she is now disabled (not related to the storms) and believes the Town is now obligated to upgrade and maintain the road. Is there such a requirement?

Thanks,

--Valerie

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