



***UNDERHILL ROAD,
DRIVEWAY & TRAIL
ORDINANCE***

ADOPTED FEBRUARY 3, 2015
AMENDED DECEMBER 18, 2018

The Clerk of the Town of Underhill, Chittenden County, Vermont, in accordance with the provisions of 24 V.S.A § 1975, hereby certifies that the adoption of this ordinance has been conducted in accordance with the procedures established in 24 V.S.A. §§ 1972 – 1973, including:

1. The adoption of the ordinance appeared as an agenda item at the regular Selectboard meeting held on December 18, 2018.
2. The ordinance was approved at the above regular Selectboard meeting and a copy has been entered into the minutes.
3. The ordinance was posted in at least five conspicuous locations in Town.
4. A concise summary of the ordinance was published in the *Burlington Free Press* newspaper on _____, 2018, accompanied by information as to the name of the municipality; the name of the municipality’s website; the title of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice explained citizens’ rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of Title, 24, Vermont Statutes Annotated. A copy of the newspaper publication was entered into the Selectboard minutes on _____.
5. Notice of petition: None filed: _____ Date filed: _____

Signed:

Sherri Morin, Town Clerk
Town of Underhill

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SECTION 1 AUTHORITY, APPLICATION & INTERPRETATION

- A. **Authority.** This civil ordinance is opted pursuant to 24 VSA § 1971 and shall take effect 60 days from the date of adoption by the Underhill Selectboard except as otherwise provided by statute. (24 VSA §§ 1972, 1973).
- B. **Interpretation.** Where this ordinance differs from the *Underhill Unified Land Use & Development Regulations* (ULUDR), the more restrictive shall apply. Where a provision of this ordinance is stricter than a State or Town standard or law, the provision of this ordinance shall apply.
- C. **Introduction.** The provisions of this ordinance replace the *Underhill Road Policy*, as amended through March 2002, and the amended 2015 *Road, Driveway and Trail Ordinance*, and is the Town Highway Ordinance/Town Road Ordinance referred to in the ULUDR, as amended. This ordinance does not repeal, annul, or impair any previously issued permit or approval.
- D. **Delegation.**
1. The Zoning Administrator & Road Foreman shall only have the powers and authorities delegated to him or her as stated in this Ordinance and by the Selectboard.
 2. When reviewing projects under Section 8.B.2, the DRB shall have the same powers and authorities as the Selectboard in regards to access, layout, design and permitting, unless stated otherwise in this Ordinance.
- E. **Application.** The provisions of this ordinance are to be strictly applied by the Town Reviewing Body, and waiver or modification to the provisions of this ordinance can only be granted by the Selectboard and the DRB, as provided in this ordinance. This ordinance applies to the:
1. New construction of, and the maintenance and repair of, Town highways, Town trails, and Town bridges;
 2. New construction of driveways;
 3. The substantial rebuilding of roads, driveways, and bridges, but not activity that is incidental to regular road and driveway maintenance, including minor fill, grading, ditching or excavation, repairing, adding to or enhancing the top surface, resurfacing an existing road or driveway that does not result in widening or relocation or relocation, and culvert replacement (in accordance with § 4.C.9 of this Ordinance); and
 4. Change of use of a development road or driveway.
 - a. A change of use includes, without limitation, any increase in the length or alignment of a traveled way; and any subdivision on an existing development road or driveway that increases the number of lots, businesses or dwellings, including accessory dwellings, served.
- Any new road or driveway shall be constructed to the standards of this ordinance, the ULUDR, and any applicable state and federal standards.
- F. **Other Application Provisions.**
1. Town highway classifications and their determinations are set out in 19 V.S.A. § 302. Town highway classifications can be found on the current Underhill Road Map in the

- Town Office.
2. Unidentified corridors are governed by 19 V.S.A. § 302(a)(6).

SECTION 2 **PURPOSE**

- A. The purposes of this ordinance are to:
1. Set standards for the construction, maintenance, and use of roads, trails, and driveways.
 2. Set procedures by which roads, trails, and driveways are laid out, altered, classified, or discontinued.
 3. Guide construction and maintenance personnel and inform residents and developers.

SECTION 3 **DEFINITIONS**

- A. Unless otherwise defined, the definitions provided in 19 V.S.A. § 301 apply.
- B. Additional Definitions:
1. **Access Ways.** Referring to Development Roads, Driveways and Town Highways.
 2. **Agency of Transportation (AOT).** The State of Vermont, Agency of Transportation.
 3. **Class 1 Town Highways.** Town highways that form the extension of a state highway route and carry a state highway route number.
 4. **Class 2 Town Highways.** Town highways other than Class 1 Highways that are selected by the Selectboard as the most important highways in the Town.
 5. **Class 3 Town Highways.** Town highways other than Class 1 or 2 Highways that met the minimum standards of 19 V.S.A. § 302(a)(3)(B), as amended.
 6. **Class 4 Town Highways.** Town highways that are not Class 1, 2, or 3 or unidentified corridors.
 7. **Commercial Driveway.** Any direct or indirect access from a Town highway to property that contains at least one commercial establishment other than an approved home business, as permitted under the ULUDR.
 8. **Development Road.** Any direct or indirect access from a Town or state highway serving four or more lots or dwellings, and any road designated as a “private road” as of the date of adoption of this ordinance.
 9. **Development Review Board (DRB).** The Underhill Development Review Board.
 10. **Driveway.** Any private direct or indirect access, residential or commercial access, from a Town or state highway or private road to property, whether by easement or right-of-way, and serving up to three parcels, and includes the entire right-of-way.
 11. **Private Road.** See “Development Road.”
 12. **Road.** Any Town highway or development road.
 13. **Stormwater Runoff.** See 19 V.S.A. § 301(23), as amended.
 14. **Town Reviewing Body.** Any of the following municipal bodies or officials: the DRB, the Selectboard or the Zoning Administrator.

15. **Trails.** See 19 V.S.A. § 301(8), as amended.
16. **Underhill Unified Land Use & Development Regulations (ULUDR).** The *Underhill Unified Land Use & Development Regulations*, as amended.
17. **Unidentified Corridors.** Governed by 19 V.S.A. § 302(a)(6)

SECTION 4 GENERAL PROVISIONS RELATING TO ACCESS WAYS

A. General Provisions.

1. Notwithstanding any other provision of this ordinance, the Town Road and Bridge Standards published from time to time by AOT shall apply to the construction, repair, and maintenance of all Town highways and bridges and shall be considered minimums. To the extent this ordinance has stricter standards the stricter standards shall apply.
2. No construction or site work other than as necessary to develop the Access Permit application shall commence on a road or driveway until all required road and/or driveway permits and approvals have been obtained.
3. All private parties involved in activities governed by this ordinance are charged with knowledge of and compliance with applicable state statutes and Town ordinances, regulations and policies.
4. The applicant is responsible for securing all required municipal, state and federal road or driveway permits prior to commencing work on any road or driveway.

B. Reasonable Access.

1. The Town Reviewing Body shall allow reasonable access to public highways, balancing access with public safety, environmental concerns (including hydrology), and the purposes of this ordinance. Reasonable access may include, without limitation, alternate driveway locations, shared right-of-way, limits on the use of the property, and requirements for additional engineering and construction.
2. Certain conditions may make reasonable access impossible (e.g., no direct access from Town highway; all road frontage is along a Class II wetland). The Town of Underhill is not responsible for obtaining or remedying a lack of frontage or other barriers to reasonable access for a property owner.
3. No additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of parcels established after the effective date of the ULUDR and this ordinance, nor for the development or redevelopment of contiguous parcels under common ownership and control as of the effective date of the ULUDR and this Ordinance.

C. Development Road and Driveway Standards.

1. **Grades.** The average and maximum grades on any road or driveway shall not exceed 10%. A 10% grade shall not extend over a distance greater than five hundred (500) feet.
 - a. The Zoning Administrator may permit a single grade of up to 12% for a distance not exceeding 50 feet. If an applicant proposes a grade greater than 10% in more than one location, or a grade greater than 10% for a distance that

- exceeds 50 feet, review by the Selectboard, or where applicable, approval by the DRB, is required to determine if a waiver is appropriate.
- b. With written request to the Selectboard from the Zoning Administrator, or with applications being reviewed by the Selectboard, the Selectboard may require the paving of portions of a road or driveway exceeding a 7% slope. The DRB may require the paving of portions of a road or driveway exceeding a 7% slope for those access ways being reviewed as part of a DRB application.
 - c. Lesser grades shall apply if specified by AOT standards.
2. **Topography.** Roads and driveways shall be sited to minimize site disturbance on steep slopes (15% or greater), primary agricultural soils, and surface waters, wetlands, and associated buffer areas, and to minimize the number and extent of stream crossings.
- a. To the extent physically feasible, development roads and driveways shall be designed and constructed to:
 - I. Follow natural elevation contours to minimize the amount of cut and fill and slope stabilization required, and the adverse visual impacts of road and utility cuts.
 - II. Avoid rock outcrops and ledges larger than 200 square feet in area.
 - III. Minimize the number and extent of stream crossings and buffer area disturbance within steep slope areas in accordance with the ULUDR.
 - IV. Share and be located along field edges or follow existing linear features such as roads, tree lines, stone walls, and fence lines, to minimize fragmentation of forests and agricultural land and associated visual impacts and to maintain access to forestland for long-term management.
 - V. Adhere to other requirements, specifically the identified resource and hazard areas, under Article VIII of the ULUDR.
 - b. Development roads and driveways and associated elements such as ditches shall not channel or direct stormwater runoff to adjoining properties, public rights-of-way, or surface waters and wetlands.
3. **Radii.** The minimum radius in all cases, measured on the inner edge of the curve, is 35 feet unless otherwise approved by the Selectboard/DRB with consideration of any recommendations by the Underhill-Jericho Fire Department.
4. **Curbs.** All curbing shall be granite, a minimum of seven (7) inches in height, and either vertical or sloped (“mountable curb”).
- a. Curbing is only permitted in the Underhill Flats Village Center District.
 - b. The Selectboard/DRB shall approve those projects involving curbing, which will be reviewed on a case-by-case basis.
5. **Geotextiles.** Geotextiles shall be used for separation, reinforcement, filtration drainage, and moisture control in road and driveway construction. The use of geotextiles does not relax or reduce any road or driveway standard or specifications.
6. **Drainage.**

- a. No Access Permit shall be issued if the access will result in drainage over a Town road.
 - b. Selectboard approval is required for any road drainage into a Town highway right-of-way.
 - c. Drainage easements and off-site improvements are required for road drainage directed onto adjoining properties.
 - d. All proposed drainage facilities for development roads and driveways shall be sufficient to carry runoff from the surface and divert water away from the development road or driveway without causing sedimentation, erosion, or the impounding (except in approved retention basins) of water.
 - e. Any change in drainage patterns as a result of road or driveway construction or other excavating work associated with development must not adversely affect existing roads, road drainage facilities or any other property in the area.
 - f. A builder or developer shall be responsible for supplying an accurate and detailed plan of the topography and drainage patterns as a part of the road or driveway design approval process. The builder or developer shall also be responsible for correcting any problems that occur as a result of road or driveway construction. Bonding for that purpose may be required.
7. **Slopes, Banks and Ditches.**
- a. AOT Standards A-60, A-61 & A-62 shall apply to ledge and slopes in rock excavations
 - b. Vertical or sharp cut faces, excepting ledge is prohibited.
 - c. Banks shall not interfere with snow removal.
 - d. Ditches shall be provided where necessary and constructed to prevent infiltration of water into the gravel subbase, and to conduct storm drainage to waterways and absorption areas.
 - e. Projects involving development roads shall follow the provisions for “Ditches and Slopes” in the Town Road and Bridge Standards published by the AOT, as amended.
8. **Wet Areas.** If the Town Reviewing Body determines that a proposed road or driveway is in a wet area that is not classified as a wetland or vernal pool and is located outside of required buffer area, the applicant may be required to contact the State’s Wetlands Office for a determination and possible delineation. The Town Reviewing Body may also require additional gravel and sand cushion, as well as an underdrain to ensure a stable road or driveway.
9. **Culverts.**
- a. AOT Standards A-76 and B-71 shall be followed as to culvert size and material for roads and driveways, respectively.
 - b. Culverts shall have a minimum slope of 0.5% to allow for positive drainage flow.
 - c. The Town Reviewing Body may require beaver fences and trash racks as necessary to protect the road and neighboring waterways.

- I. A temporary or permanent access used only for agriculture or forestry purposes, as approved by the Zoning Administrator, or where applicable, the Selectboard, or State of Vermont;
 - II. A temporary access for use during construction or special events, as authorized by the Zoning Administrator, or where applicable, the Selectboard or State of Vermont; or
 - III. When demonstrated by the applicant, and determined by the Selectboard/DRB in consultation with Town or state highway officials, that an additional access is necessary:
 - A. To provide better vehicular and/or pedestrian safety;
 - B. To improve traffic circulation or reduce traffic congestion;
 - C. To avoid physical site constraints (e.g., streams, wetlands, steep slopes); or
 - D. To provide for a more functional site layout.
- b. Except as permitted by the Selectboard/DRB on good cause shown by the applicant, no access or intersection shall be within 100 feet from a road intersection or another driveway unless the driveways or roads oppose each other.
- c. To improve traffic flow and vehicular & pedestrian safety, avoid congestion, and preserve the capacity of public highways, the Selectboard/DRB, in consultation with local or state highway official, may also:
- I. Further limit access onto public highways by requiring the elimination or relocation of existing accesses;
 - II. Require shared accesses, driveways, or roads to serve multiple lots within a subdivision;
 - III. Require access from a secondary (less traveled) road if the proposed subdivision has frontage on both primary (arterial or collector) and secondary (local) roads, and access to the secondary road is sufficient and reasonable; or
 - IV. Require that road rights-of-way extend to property line(s) to allow future access or connections to adjoining parcels.
 - V. Require a proposed development road be extended to, or connect to, existing or planned roads adjoining a proposed subdivision, under joint agreement or in common or public ownership.
- d. All driveways shall comply with the setback requirements of the ULUDR.
3. **Widths.**
- a. Widths for a residential driveway at the access point shall normally be the result of application of the apron radii set out in AOT B-71 standards. Actual access widths may be determined by the Selectboard/DRB. The traveled portion of the driveway may narrow to AOT B-71 standard at the edge of the access point right-of-way, except that the following minimums shall apply:
 - 1 residence, 12 feet wide;
 - 2 residences, 14 feet wide;

3 residences, 20 feet wide.

- b. Widths for commercial driveway at the access point shall normally be the result of application of the apron radii set out in AOT B-71 standards. Actual access widths shall be determined by the Selectboard/DRB based on anticipated traffic including the size and amount of truck traffic anticipated. The traveled portion of the driveway may narrow to AOT B-71 standard at the edge of the access point right-of-way.

- 4. **Nonconforming Lots.** For pre-existing, nonconforming lots, access must be provided by a permanent easement or right-of-way, as documented in deed language to be recorded in the land records of the town or, with the written approval of the Selectboard, by a Class 4 town highway that is upgraded and maintained by the applicant and successors, in accordance with the ULUDR and this Ordinance.

B. Development Roads.

1. Construction and Design Requirements.

- a. All development roads shall comply with AOT Standard A-76 (as amended), the ULUDR, and this ordinance.
 - I. Where the AOT Standards include recommendations, those recommendations are requirements under this ordinance, except the A-76 recommendations for paving grades that exceed 7%. These AOT recommended standards are intended for low volume conditions (<250 ADT) and where heavy truck traffic is infrequent.
 - II. Where heavy trucks are common or increased traffic is expected, an engineering assessment should be performed to determine appropriate dimensions for subbase and surface treatment.
- b. New and substantially rebuilt Town highways shall follow the Vermont State Design Standards where natural and built environments allow, with attention to historic, archaeological, natural and recreation resources.
- c. Access to state highways shall meet the AOT Access Management Program Guidelines in effect at the time of application. Where these standards differ, the most restrictive shall apply.

- 2. **System Capacity.** The volume and type of traffic to be generated by the proposed subdivision at build-out shall not result in undue traffic congestion or delay on public highways, or exceed the functional or structural capacity of travel lanes, intersections, bridges, culverts and other highway infrastructure in the vicinity of the proposed subdivision. The DRB may require a traffic impact analysis prepared by a qualified transportation engineer or planner for any subdivision that generates 75 or more peak hour trips, or as otherwise deemed necessary by the Selectboard to determine whether infrastructure improvements are needed to mitigate traffic impacts from a proposed subdivision. Traffic studies shall reference the Institute of Transportation Engineers' Trip Generation Manual (current edition), or trip generation rates derived from local transportation studies.

- 3. **Location.**

- a. A subdivision shall be served by no more than one direct access onto a Town or state highway unless additional access is deemed necessary by the DRB to:
 - I. Improve traffic circulation or reduce traffic congestion;
 - II. Facilitate emergency vehicle access, as determined by the Underhill-Jericho Fire Department;
 - III. Allow connections between adjacent parcels of land, each of which has direct access to a public highway; or to
 - IV. Address physical site constraints, such as the presence of steep slopes, surface waters, wetlands, resource or hazard areas, or other physical site conditions that warrant additional access.

4. **Widths**

- a. Widths for a development road at the access point shall normally be the result of application of the apron radii set out in AOT A-76 standards. Actual access widths shall be determined by the DRB based on anticipated traffic including

Table 5.1 Travel Lane and Shoulder Widths for Rural Development Roads							
Design Volume (ADT)	0-25	25-50	50-100	100-400	400-1500	1500-2000	2000+
Design Speed (mph)	Width of Lane/Shoulder (ft)						
25	7/0	8/0	9/0	9/2	9/2	10/3	11/3
30	7/0	8/0	9/0	9/2	9/2	10/3	11/3
35	7/0	8/0	9/0	9/2	9/2	10/3	11/3
40	7/0	8/0	9/2	9/2	9/2	10/3	11/3
45	---	---	9/2	9/2	9/2	10/3	11/3
50	---	---	9/2	9/2	10/2	10/3	11/3

Source: Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets, October 1997.

the size and amount of truck traffic anticipated. The traveled portion of the driveway may narrow to AOT A-76 standard at the edge of the access road right-of-way except that the following minimums shall apply:

- 3 or 4 residences, 20 feet wide;
- 5 or more residences, 24 feet wide

- 5. **Travel Lanes.** The width of travel lanes and shoulders shall be based on average daily traffic (ADT) and design (existing or planned) posted speeds, in accordance with current "Vermont State Standards for Design and Construction" in effect at the time of application and the town highway ordinance. Design standards for rural development roads are included in Table 5.1 above.

- a. Roads intended for shared use by bicycles or for on-street parking (e.g., within the Underhill Flats Village District) shall incorporate paved shoulder areas that meet minimum recommended width and design standards under Vermont State Standards in effect at the time of application.

- 6. **Necessary Additional Access.** A lot or use for which it has been demonstrated by the applicant, and determined by the Selectboard in consultation with Town or state

highway officials, that an additional access is necessary for vehicular and pedestrian safety, to improve traffic circulation, to reduce traffic congestion or, that because of physical site constraints (e.g., streams, wetlands, or steep slopes), strict compliance with this requirement would result in a less functional site layout.

7. **Road Names.** All new roads shall have names approved by the Selectboard.
 - a. Road names shall be unique to the Town and not duplicate the name of a road or roads in surrounding towns. Similarly spelt or sounding road names may be rejected. The Town Administrator shall be responsible for investigating all proposed names for conformance to this standard and shall report the results of the investigation to the Selectboard.
 - b. Applications for new development roads shall include at least 3 proposed names. The Selectboard may approve or reject any or all proposed names.

SECTION 6 WORK WITHIN RIGHTS-OF-WAYS

A. General Provisions

1. Work within the Town right-of-way, including placement of utilities, is governed by 19 VSA § 1111 and Chapter 71 of Title 30 of the Vermont Statutes Annotated. State or Town permits or the approval of the Selectboard or AOT is required, including without limitation, Access Permits and permits under the ULUDR.
2. No person shall disturb the ground or pavement in any town right-of-way without first obtaining guidance from the Road Foreman and a permit from the Zoning Administrator, or where applicable, the Selectboard/DRB. Disturbance includes developing, constructing, or reconstructing an entrance or approach; erecting a fence or other structure; depositing material, obstructing drainage, or filling or grading the land adjacent to a highway so as to divert water onto the highway right-of-way.
3. Two sets of detailed plans must be submitted with any permit application. All plans filed with the Town shall include proposed locations of all items covered by the permit and area to be followed by as-built plans.

B. Widths. When the right-of-way is not discernable, town highway and trail rights-of-way are presumed to be 3 rods in width unless otherwise recorded. The minimum width of right-of-way in which a new driveway will fall shall not be less than thirty (30) feet. The minimum width of right-of-way in which a development road will fall shall not be less than sixty (60) feet.

C. Damage to Objects or Obstructions in Town Right-of-Way. Objects placed in the Town right-of-way, including but not limited to mailboxes, fences, gardening supplies, recreational equipment, any structure, and any object placed in violation of Section 6.A.2 above, are placed at the owner's risk. The Town assumes no responsibility for any damage to such objects, including mailboxes damaged by snow or ice clearing operations. The Town may seek recovery of damages to Town equipment from objects placed in the Town right-of-way.

D. Trees and Shrubs. The placement or removal of roadside growths, plantings and brush is governed by 19 VSA §§ 901-904 and 906 and 24 V.S.A. § 2508, including penalties.

- E. **Emergencies.** Nothing in this Section shall be construed to prevent excavation by a developer as may be necessary for the preservation of life or property, provided that the developer performing such work applies for a permit on the first working day after the commencement of excavation and complies with current State rules on working in streams during emergency events. Notice shall be given to State authorities as state rules may require, and to the Road Foreman, Town Clerk, Zoning Administrator, Town Administrator, and to emergency response agencies (e.g., the Underhill-Jericho Fire Department, Essex Rescue, Vermont State Police, etc.) as required.

SECTION 7 *HIGHWAY AND TRAIL MAINTENANCE AND CONTROL*

- A. **Summer Maintenance and Control.** Maintenance and repair of Town roads is the first priority. Reconstruction and road upgrades will be scheduled subordinate to maintenance and repair activities. The Selectboard shall have discretion to prioritize summer projects as in its judgment deems appropriate.
- B. **Winter Maintenance and Control.** No “Bare Road” policy is recognized by the Town of Underhill. Travelers are expected to drive with respect for winter conditions. Class 2 and 3 roads will be plowed for the passage of standard passenger vehicles when practical. The Selectboard will consider the traveling public, municipal employees and available resources in determining when to plow a Class 2 or 3 roads in the winter. Road, sand, salt or some other snow removal mixture will be applied only where deemed necessary to provide safe passage for vehicles.
- C. **Paving.**
1. Paving of Town gravel highways is in the discretion of the Selectboard except where otherwise provided by law. The characteristics of the neighborhood in which the highway is located, safety for the traveling public and residents, foreseeable connections and reclassifications, costs of construction and maintenance, and public comment on the proposal shall be considered in deciding whether paving of an unpaved Town highway is appropriate.
 2. Paving of Town highways shall meet Vermont State Highway specifications. Where heavy trucks are common or increased traffic is expected, an analysis shall be performed to determine appropriate thickness of subbase and pavement.
- D. **Improvements.**
1. A proposed subdivision or development, as defined in the ULUDR, shall not unduly burden town or state highways, including roads and intersections in the vicinity of the project. Any highway access, drainage, lane, or other infrastructure or traffic control improvements necessitated by the proposed subdivision shall be paid for and installed by the applicant unless otherwise approved by the Selectboard, the DRB where applicable, or state highway officials. With the recommendation of the DRB, the Selectboard may require, as necessary to ensure compliance with this ordinance, any of the following:

- a. Performance bonding or other form of surety to ensure that required road, intersection and related infrastructure improvements are installed as approved by the Selectboard, the DRB where applicable, or state highway officials.
- b. The phasing of development in relation to planned state or municipal transportation infrastructure improvements included in adopted capital or transportation improvement programs.
- c. A development agreement approved by the Selectboard governing the timing, installation and any agreed upon cost-sharing arrangements between the subdivider and the Town or other affected property owners.

E. Class 4 Highways.

1. The Town shall have no obligation to maintain Class 4 highways. In the discretion of the Selectboard or its delegate, a Class 4 highway may be maintained to the extent deemed required by the necessity of the Town, the public good and the convenience of the inhabitants of the Town. To the extent the Town elects in its discretion to perform any maintenance work on Class 4 highways it shall not do so in an arbitrary or discriminatory manner.
2. The Town shall have no obligation for winter plowing of Class 4 highways. Winter plowing by private parties shall require prior approval by the Selectboard. Any winter plowing of a Class 4 road permitted by the Selectboard to parties other than the Town shall not nullify the effect of 23 VSA § 3206(b)(2).
3. The AOT A-76 standards, the standards of this ordinance and the ULUDR apply.
4. Permission for private repair, maintenance, improvement, or restoration of Class 4 roads may be granted by the Selectboard under such conditions as it deems appropriate, including the posting of bonds and provision of signed releases relieving the Town of liability. The road shall be left in comparable or better condition as when permission is granted.
 - a. If a Class 4 road is to be used for new development (e.g. the construction of a single-family dwelling) that requires year-round access, the road shall be upgraded and maintained by the applicant and his or her successors in interest to at minimum town driveway (B-71) standards. If the new development pertains to more than three lots, the Class 4 road must be brought up to Town highway (A-76) standards in accordance with this ordinance and the ULUDR. Public rights-of-way used to access private property shall remain open to the public.
 - b. For new minor subdivisions, as defined in the ULUDR, accessing a Class IV road, the road shall be upgraded to meet minimum driveway standards (B-71) and the standards of this ordinance and the ULUDR.
 - c. For new major subdivisions, as defined in the ULUDR, accessing a Class IV road, the road shall be upgraded to meet minimum road standards (A-76) and the standards of this ordinance and the ULUDR.
 - d. The applicant is responsible for the cost of Class 4 road upgrades and road maintenance under a maintenance agreement approved by the Selectboard.

- F. **Trails.** The Town shall not be responsible for the maintenance or upkeep on trails, which are not considered town highways. Permission for private repair, maintenance, improvement, or restoration of trails may be granted by the Selectboard, and where applicable, the DRB, under such conditions as it deems appropriate, including the posting of bonds and provision of signed releases relieving the Town of liability. The trail shall be left in comparable or better condition as when permission is granted.
- G. **Other Control Provisions Applying to Both Class 4 Highways and Trails.** When necessary, the Selectboard may:
1. Establish vehicle weight limits;
 2. Prohibit or restrict wheeled vehicles on trails and post signs and barriers;
 3. Require permits for temporary heavy equipment access, and stipulation for damages and repairs as conditions of permit approval, and require bonds or advance deposits against the cost of repairs and damages;
 4. Set speed limits;
 5. Apply other controls approved by the Selectboard/DRB.

SECTION 8 ADMINISTRATION & PERMITTING

- A. **Applicability.** Access permits are required for:
1. Any new access point (i.e. curb cut) with either direct and indirect access from Town or State highways, including driveways accessed from private or shared rights-of-way;
 2. Pre-existing or new lots that do not have frontage on public road, and encompasses the access point and ensuing traveled way; and
 3. All changes to existing accesses, including extensions, realignment or alterations of the traveled way and changes of use.
 4. Any proposed new access or change in an existing access onto state highways will also require approval by the AOT.
- B. **Coordination of Review.**
1. **Zoning Administrator and Road Foreman.** For those projects not involving review by the DRB (e.g. access to an existing lot), review can be administered by the Zoning Administrator in coordination with the Road Foreman. Unless Selectboard review is required per § 8.3 below, approval shall be granted so long as all components of the access way meet the requirements of this ordinance. Written notice of the approval with a copy of the permit shall be provided to the Selectboard. Should the Zoning Administrator and/or Road Foreman have an issue with a particular application, the application can be referred to the Selectboard with a written statement outlining the cause of concern in addition to the relevant requirements under Section 8.3.C below.
 2. **Development Review Board (DRB).** For those projects involving review by the DRB (i.e. subdivision applications, conditional use review application, site plan review applications and variance request applications), all aspects relating to access permitting shall be reviewed and approved by the DRB so long as all components of

the access way meet the requirements of this ordinance. The DRB shall clearly advise in its decision if access review is not required.

3. **Selectboard.** For those applications not involving review by the DRB, the following situations have been identified as applications requiring Selectboard review:
 - a. Situations where applicants are requesting to exceed the standards enumerated within this ordinance;
 - b. Situations enumerated in this ordinance where the Zoning Administrator has not been given the authority to approve an application administratively;
 - c. Applicants requesting a waiver from the standards enumerated in this ordinance per § 8.E; and
 - d. The creation, modification, or extension of a development road.

C. **Access Permit Application Process.** To obtain access permit approval, applicants are required to submit the requisite materials below, as well as conform with the following procedures:

1. **Application Materials.**

- a. **Application.** An application form provided by the Town with the accompanying application fee and recording fee.
- b. **Site Plan.** A site plan illustrating the proposed access way.
 - I. **Driveways.** For commercial or private driveways, applicants shall submit a sketch illustrating lot lines and the proposed driveway right-of-way, if applicable. The sketch shall also include landmarks and dimensions such that the path and slope profile of the proposed driveway can be easily identified.
 - II. **Development Roads.** For development roads, applicants shall submit two sets of design drawings signed or stamped by a registered engineer or surveyor. The design drawings shall depict the following:
 - A. The development road's right-of-way;
 - B. The development road's layout showing all radii of curvature;
 - C. A slope profile, road cross sections indicating road construction and drainage management;
 1. Grade readings shall be at 50-foot intervals unless a smaller interval is requested by the Town Reviewing Board (Selectboard or DRB).
 - D. The location of utilities and details of road termination and/or intersection shall be shown; and
 - E. Terrain contour lines at 10-foot or lesser intervals shall be shown. Drawings shall be at least 11 inches by 17 inches.
- c. For those projects being reviewed by the DRB per § 8.B.2 above, applicants shall conform to the application requirements of the *Unified Land Use & Development Regulations* and any DRB policies in place at the time of application. The DRB may also require applicants to submit any materials that conform to the standards of this ordinance.

2. **Site Visit.** A site visit(s) shall be arranged with the Zoning Administrator and Road Foreman (who may visit separately).
 - a. **Driveways.** The applicant shall flag at 50-foot intervals, the centerline of a proposed driveway.
 - b. **Development Roads.** The applicant shall flag at 50-foot intervals, the centerline of the proposed road. The Zoning Administrator shall be responsible for contacting the Planning Commission to make arrangements for any member who wishes to participate in the site visit.
 - c. **All Access Ways.** Where relevant, the Zoning Administrator will coordinate the site visit(s) with other interested parties. Site visits performed by the Zoning Administrator may be conducted simultaneously with site visits held by the DRB.
3. **Written Report for Access Permits Requiring Selectboard Approval.** For those access permits requiring Selectboard approval, the Zoning Administrator shall advise the Selectboard by submitting written correspondence of any identified issues relating to specific requirements, including but not limited to: grade, design, width, sight lines, and drainage. The Zoning Administrator shall also identify any site limitation or issues pertaining to construction timing and schedule, and any other matters deemed relevant, as well as any observations made by the Road Foreman.
4. **Request for Addition Information.**
 - a. At its discretion, the Town Reviewing Body may require greater detail in the materials provided by the applicant.
 - b. If the Town Reviewing Body determines there are significant site limitations, they may require engineering drawings that define the site's topography and proposed driveway or road grades, or for driveways, any or all of the engineering drawings required under "Road Design Drawings" and Section 5.10.D above.
 - c. The Town Reviewing Body may at any time may request input from the Underhill-Jericho Fire Department regarding any application.
5. **Permit Approval.**
 - a. **Development Review Board (DRB) Approval.** The DRB shall clearly advise of access approval in its decision, as well as stipulate any perceived and applicable conditions, so long as the approval and conditions conform to the standards of this ordinance. Access permits approved by the DRB have the restrictions as enumerated under Sections 8.C.5.b.II-IV below.
 - b. **Zoning Administrator and Selectboard Approval.**
 - I. Once approved by either the Zoning Administrator or the Selectboard, a copy of the access permit shall be delivered to the applicant, which shall include any conditions set by the Zoning Administrator or Selectboard.
 - II. Upon approval, all Access Permits shall be filed with the Underhill Town Clerk and recorded in the Underhill Land Records.

- III. Once approved, Access Permits shall be effective for three years from the date of approval unless otherwise stated. The project shall be substantially completed within the life of the permit.
 - IV. The Selectboard may extend the life of an Access Permit on good cause shown by the applicant.
- 6. **Withholding of Access Permits.** The Zoning Administrator, with written notice to the Selectboard, or the Selectboard, may withhold the issuance of an access permit when:
 - a. Construction or paving materials are unavailable; or
 - b. A satisfactory traffic, pedestrian, utility, diversion, or drainage plan cannot be implemented; or
 - c. Satisfactory information has not been supplied;
 - d. The applicants proposal does not comply with the standards and purposes of this ordinance; or
 - e. Other factors, including but not limited to issues arising from public comment appear pertinent.

D. Miscellaneous Types of Access Permits.

- 1. **Administrative Access Permit Amendments.**
 - a. All permits approved by the Zoning Administrator are eligible to be amended so long as the proposed change(s) conform to the standards of this ordinance. Should the proposed amendment not meet the standards of this ordinance, other Town regulation, or other law, the request shall be referred to the Selectboard under § 8.B.3 of this Ordinance.
 - b. Permits approved by the Selectboard are eligible to be amended so long as the proposed change(s) conform to the standards of this ordinance, and does not alter, nor is inconsistent with, the findings and conditions imposed in the original permit. Should the proposed amendment not meet the standards of this ordinance, other town regulation, or other law, or, should the proposed amendment alter or fail to conform with the Selectboard’s conditions of approval, the request shall be referred to the Selectboard for review.
 - c. Access approval granted by the DRB may be amended so long as the proposed change(s) conform to the standards of this ordinance, and shall comply with the parameters provided in, and is consistent with, the DRB’s decision.
 - d. Examples of possible administrative access permit amendments include, but are not limited to, relocation or modification of roadways, utilities and related improvements within approved rights-of-way or utility corridors.

The Zoning Administrator shall issue, post and record administrative Access Permit amendments in the same manner as Access Permits.

- 2. **Temporary Access Permits.**
 - a. Temporary access/driveways involve no permanent improvements
 - b. Temporary access/driveways may be administratively approved for a period not to exceed 3 months with written notification to the Selectboard.

- c. The Selectboard may extend the approval to exceed 3 months on a case by case basis on good cause shown.

E. Waivers.

1. For access related projects reviewed by the DRB and the Selectboard, standards of this ordinance may be waived for a particular project because of unique physical circumstances or conditions on good cause shown by the party seeking the waiver. In reviewing the application, the Selectboard/DRB shall consider the standards set forth in 24 V.S.A. § 4469. Such waivers shall be minor and not conflict with the stated purposes of this ordinance or state laws or rules. Fiscal reasons are not a basis for waiver of the standards or requirements of this ordinance.
2. Waivers shall include written findings and statements of any applicable conditions.

F. Other Regulations Involving the Construction of Access Ways

1. All work shall be conducted by a professional contractor unless otherwise approved by the Selectboard. The contractor shall have proof of general liability coverage that can be provided upon request for local approval as to the amount and scope prior to commencement of a project. The above-referenced insurance shall not be cancelled without thirty (30) days written notice to the Selectboard or designee for projects involving the Town right-of-way.
2. If required by the Selectboard/DRB or state law, the contractor shall file with the Zoning Administrator proof of a Dig Safe number.
3. As required by the Selectboard/DRB, the Contractor shall provide a plan for the protection of shade and ornamental trees within the limits of public ways and places, the restoration of turf and erosion prevention and sediment control plans.

G. Inspection and Retention of Professional Advisers.

1. **Inspection During Construction.**
 - a. The Zoning Administrator or the Road Foreman may inspect a road or driveway construction at any time.
 - b. In addition to the Town's Staff, the Selectboard may retain and delegate inspection duties to a licensed civil engineer or another applicable professional. If the Town's Staff determines that the retention of a professional adviser is necessary, a formal request to be approved by the Selectboard shall be submitted.
 - c. Cases involving the inspection of development roads, or when required by the Selectboard/DRB, the holder of the Access Permit shall have stakes set on centerline and marked with finish grades at least every 100 feet for the entire length of the access way, or side staked with distance and grades marked before inspection.
 - d. Should the inspection result in questions or concerns regarding the construction methods, quality or the amounts of material, or compliance with this ordinance or any permit, the Selectboard will send written notice to the parties involved and, if necessary, order work stopped. No additional work shall commence until all concerns have been addressed.
2. **Inspection After Construction.**

- a. At their discretion, or by written request from the Zoning Administrator to the Selectboard, the Selectboard may commission a civil engineer or other professional to provide a profession opinion whether a road or driveway design complies with this ordinance and all applicable permits and designs, including cut and fill plans, surveys, layouts, rights-of-way, utility locations, and preparation and construction.
 - b. If inspection is by a representative of the Selectboard, the representative shall submit a written report to the Selectboard. Upon a favorable result of the inspection, the developer or property owner will be issued a “letter of compliance” stating that the road or driveway was installed to all applicable requirements, specifications and standards. The letter of compliance shall be deemed acceptable as to the topics it covers as part or all of any Certificate of Compliance required by the DRB. No letter of compliance is required for administrative amendments under Section 8.D.1 of this ordinance.
3. **Certification Letters.** The Selectboard may require a certification letter from an engineer or designer upon completion of the project to certify conformance with the approved permit.

H. Recovery of Expenses.

1. **Professional Costs.** The Selectboard may assess the applicant or property owner(s) for the costs of such professionals, which costs shall be paid before a letter of compliance, if applicable, is issued.
2. **Culvert, Ditch and Signage Costs.**
 - a. The labor and materials cost of initial culvert installation at intersection with town highways, including coincidental ditching, is the responsibility of the affected property owner(s). The installation shall conform to the provisions of this ordinance. Town employees may install such culverts. Labor costs shall be assessed using the appropriate scale employed by the Federal Emergency Management Agency (FEMA) or its successor.
 - b. The cost of repair to replace existing driveway culverts or development road culverts in the Town right-of-way shall be borne by the Town. Replacement culverts shall conform to the provisions of this ordinance unless otherwise determined by the Selectboard.
 - c. Activities and costs associated with ditches, culverts, and other drainage devices outside of the Town right-of-way are the responsibility of the property owner(s).
 - d. Should damage occur to the Town right-of-way or infrastructure resulting from improper construction, maintenance, or grading, or as a result of stormwater runoff from a private road, driveway or right-of-way, the financial responsibility for necessary repairs shall be on the property owner(s). Town approval shall be obtained prior to repair. Repairs not completed within 30 days of notice may be completed by the Town and billed to the property owner(s).

- e. Road signs indicating the intersection of a private road and a town highway or other private road shall meet town standards for such signs at the intersection of town highways applicable at the time of installation and shall be installed by the Town at the expense of the property owner(s).

SECTION 9 APPEALS & ENFORCEMENT

- A. Administration of this ordinance is under the supervision and control of the Selectboard.
- B. The enforcement provisions of Chapter 59 of Title 24 of the Vermont Statutes Annotated apply. A civil penalty of not more than the statutory amount may be imposed for a violation of this ordinance; each day the violation continues shall constitute a separate violation.

SECTION 10 MISCELLANEOUS PROVISIONS

- A. The Selectboard may authorize the survey of existing highways and associated rights-of-way, easements or fee title. The provisions of 19 V.S.A. §§ 33-35 shall be followed.
- B. The Town of Underhill will not accept development roads, private roads or commercial or private driveways as Town highways, and will not take over any associated improvements such as drainage structures or facilities.
- C. **Laying Out, Altering, Discontinuing or Reclassifying a Town Highway.** The provisions of Chapter 7 of Title 19 of the Vermont Statutes Annotated shall apply. When reclassifying roads from class ‘4’ to class ‘3’, the road shall be brought up to the standards established in this ordinance. Ordinarily, the Selectboard will require the petitioner(s) to bear the costs of such an upgrade.

SECTION 11 SURVIVAL OF TERMS

If any provision of this ordinance or its application is held invalid by a court of competent jurisdiction, the validity or application of other provisions of this ordinance shall not be affected.