

CALAIS HIGHWAY ACCESS (CURB CUT) ORDINANCE

Section 1 - Authority

This Highway Access Ordinance amends in its entirety the 2004 Town of Calais Curb Cut Ordinance. It is enacted pursuant to the authority granted to the Town under 24 V.S.A. §§ 1971 and 2291, and 19 V.S.A. §§ 303, 304 and 1111.

Section 2 -- Purpose.

This Ordinance regulates access to Calais's highway network through the review and issuance of access permits (a/k/a curb cut permits). It is the purpose of this Ordinance to protect and preserve the safety and convenience of the Town's residents and the traveling public, to improve and maintain water quality standards by controlling runoff from the highway, to prevent undue adverse impacts to the Town's natural and historic resources proximate to the highway, and to ensure that public investments in the Town highway network and infrastructure are protected.

Section 3 -- Definitions.

For the purpose of this Ordinance the following definitions apply:

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

"*Access Point*" means the physical location at which a driveway or property access intersects with a public highway.

"*Applicant*" means the person or entity seeking an access permit from the Town of Calais.

"*Approach*" means the land adjacent to the access point.

"*Change of use*" means any change in the use of an existing curb cut and includes but is not limited to changes from a residential to commercial use or from a commercial to a residential use.

"*Highway*" means the highway or road system for the Town of Calais (with town highway classifications as set forth in 19 V.S.A. §302), which includes but may not be limited to, the public rights-of-way, bridges, drainage structures and facilities, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas within the Town highway right-of-way used to mitigate the environmental impacts of highway construction on natural and historic resources.

"Notice of Permission to Proceed" means the written notice, described in Section 5, Subsection 4 (i) of this Ordinance, issued by the Selectboard after an application for an access permit is approved authorizing the applicant to commence construction.

"Person" means any natural person, corporation, municipality, the State of Vermont or any department, agency, or subdivision of the State, and any partnership, unincorporated association, or other legal entity. .

"Selectboard" means the Selectboard of the Town of Calais.

"Natural and historic resources" include but are not limited to: lakes; ponds; streams; rivers; wetlands; vernal pools; significant natural communities; state-registered Fragile Areas; wildlife road crossings; known populations of rare, threatened, endangered, or uncommon species; deer wintering areas; mast stands; areas of grassland bird habitat; historic buildings, stone walls, and cellar holes; and trees, plants and shrubs, all as described in the Natural Resources and other sections of the Calais Town Plan, as amended from time to time.

"Town" means the Town of Calais.

"Vermont Agency of Transportation Standards B-71 and A-76" means 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.

An access permit is required for any of the following:

- 1) Installing, developing, or constructing a driveway or other property access point that intersects with a Town highway.
- 2) Regrading or resurfacing any driveway, entrance, or approach; or building a fence or building; or depositing or discharging material of any kind within a highway right-of-way; or in any way affecting its grade; or performing any other work within the highway right-of-way that causes or has the reasonable potential to cause an undue adverse impact to adjacent natural or historic resources.
- 3) Obstructing a ditch, culvert, or drainage course that drains a highway.
- 4) Filling or grading the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way.

Approval from the Calais Tree Warden or Deputy Tree Warden shall be obtained prior to cutting any trees as defined in the Calais Shade Tree Preservation Plan at or adjacent to the access point or its approaches. The Tree Warden or Deputy Tree Warden shall follow the process in the Calais Shade Tree Preservation Plan.

Work shall not commence until the applicant has received a Notice of Permission to Proceed, which may also include conditions of approval, as described in Sections 5, 7, and 8.

Section 5 -- Application and Review Process.

- 1) *Application.*** A person shall apply for an Access Permit from the Town using the Access Permit Application form provided electronically or at the town clerk's office. The application shall be in writing, shall be signed by the applicant and the landowner, if the applicant is not the owner, or their duly authorized agents. The application shall contain the information required by Section 6 below.
- 2) *Fees.*** The Town shall require an application fee, due at the time of submittal of the application form. An application will not be reviewed until the fee is paid in full. The fee amount shall be set by the Selectboard and the current fee shall be listed on the application form or a duly adopted fee schedule.
- 3) *Timing.*** A completed application must be submitted to the Zoning Administrator at least 45 days prior to the planned commencement of work.
- 4) *Review.***
 - a) The Zoning Administrator shall review the application materials submitted and deem the application either complete or incomplete. An applicant will be given the opportunity to modify or supplement an incomplete application. Any disagreement regarding completeness shall be resolved by the Town's Director of Public Works (DPW), whose determination shall be final.
 - b) Once the Zoning Administrator deems an application complete, the applicant shall cause notice of the application to be posted at the Town Clerk's Office, at or near the application's proposed Access Point, and at least one other public place where notices are typically posted in the Town. The applicant, landowner, any adjoining landowners and/or other persons who can demonstrate a substantial legal interest that may be negatively affected by the granting of the application may request a public hearing on the application by filing a written request with the Town Clerk not more than 14 days after the posting of the notice of application.
 - i. The Notice shall state in substantially similar form the following:

NOTICE
[Name of Applicant] has applied for a permit to use the Town highway right-of-way for the purpose of [_____]. The

full application is on file with the Town Clerk and available for public review upon request. If any interested party objects to the issuance of the permit, they may request the Selectboard hold a hearing on the application by [date certain].

- c) The Zoning Administrator shall then refer the completed application to the DPW.
- d) DPW shall consult with the Road Commissioner and Conservation Commission's (CC) Designee.
- e) The DPW, Road Commissioner, and CC Designee shall visit the site (separately or together) prior to issuing recommendations.
- f) The Road Commissioner and CC Designee shall make recommendations to the DPW regarding the application and whether to approve, approve with written conditions, or deny the application.
- g) After the consultation, site visit, and receipt of recommendations (described in d–f of this Section), the DPW shall draft a proposed decision for the Selectboard, incorporating the recommendations of the Road Commissioner and CC Designee. If there is a conflict between any such recommendations, they shall be clearly identified in the draft decision and resolved by the Selectboard.
- h) If there is not a written request for a public hearing timely filed with the Town Clerk, the Selectboard or its designee shall meet with DPW (and Road Commissioner and CC Designee if making modifications) to review the decision, make any modifications, and issues a decision on the Access Permit application. The Selectboard may approve, approve with written conditions, or deny, the application.
 - (i). If a request for a public hearing is timely filed with the Town Clerk, the Selectboard shall schedule, warn, and hold a hearing on the application. Only those persons authorized to request a hearing and who have standing may present testimony, directly or through witnesses, and other evidence relevant to the application at the hearing. After the hearing, the Selectboard may approve, approve with written conditions, or deny the application.
- i) If the Selectboard approves the application, it shall issue a "Notice of Permission to Proceed." The applicant may then proceed with the construction of the access point in compliance with the Notice of Permission to Proceed and any conditions therein.

j) Within 14 days of completion of construction, the applicant shall notify the DPW that construction is complete. Upon receipt of this notice the DPW shall promptly notify the Road Commission and CC Designee and they shall conduct an inspection to determine if the construction has been completed according to the requirements and conditions listed in the Notice of Permission to Proceed.

k) If the DPW determines the construction is completed as required, the DPW shall notify the Selectboard and the Selectboard or its designee may issue a final written permit if the construction was completed in compliance with the Notice of Permission to Proceed and all written conditions therein.

l) Approved applications and permits shall be recorded in the land records. Any fees for recording shall be paid by the applicant.

m) Notwithstanding the foregoing references to the respective roles and functions of the Selectboard, the Director of Public Works, the Road Commissioner, and the CC Designee, ultimate responsibility for reviewing and approving curb cuts shall remain with the Selectboard. In the event of vacancies in any Town position, the Selectboard may, without offending this Ordinance, fulfill the roles and functions assigned or delegated by this Ordinance to others. Similarly, the Selectboard may, at its discretion and without offending this Ordinance, designate curb cut functions to Town employees so long as the process includes notice and reasonable opportunity for public hearing, and the final decision is endorsed by the Selectboard.

Section 6 -- Contents of Application.

Applications for an access permit shall be on the most recent version of the form provided by the Town. The form includes the necessary items for the applicant to include. Failure to provide the requisite information may result in an application being deemed incomplete. The application must include at least the following:

- 1) The name, address, email 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 they consent to the applicant's proposed construction;

- 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 (which may be in the form of a sketch) indicating location, layout, north arrow, adjacent state and local highways, entrances and exits, traffic flow patterns, parking and land uses of the surrounding area;
- 6) The location and proximity to the access point and its approach to any natural and historic resources as defined in Section 3 above.¹
- 7) 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/or such additional information that the Selectboard or its designee may reasonably request to understand the nature and impact of the project and its compliance with standards.
- 8) The signature of the applicant or an individual authorized to act for the applicant.

Section 7 – Standards and Approval Conditions.

All approvals for access permits shall require any proposed access point to be constructed or developed in accordance with applicable Vermont Agency of Transportation Standards B-71 and A-76, as well as the standards in this Ordinance.

It shall be unlawful under this Ordinance to use or work within the town highway right-of-way without a permit, as described herein, or in a manner that fails to maintain reasonable levels of service, does not reasonably protect or promote the safety of the traveling public, causes material adverse impacts from stormwater runoff or to drainage facilities, results in poorly designed or located access points (including multiple access points serving a tract or tracts of land in close proximity), materially adversely impacts water supply or sewage/solid waste disposal facilities, results in an undue adverse impact on natural and historic resources, materially negatively impacts emergency vehicle access, fails to reasonably protect the public investment in the highway system and/or fails to protect reasonable levels of service on State and Class 1 town highways where

¹ Many natural resources have been mapped by the Vermont Agency of Natural Resources and can be seen on their 'Natural Resources Atlas' (<https://anrmaps.vermont.gov/websites/anra5/>) and 'BioFinder' (<https://anrmaps.vermont.gov/websites/BioFinder/>) web maps. Both maps show a variety of different resources, which can be turned on and off using the 'Layers' tab in the bottom left. Further information about the listed natural and historic resources can be found in the Calais Town Plan.

development contributes 75 or more peak hour trips to said highways, as described in 19 V.S.A. §1111(b).

The Selectboard finds that use of or work within the Town highway right-of-way without first obtaining an access permit under this Ordinance or in a manner inconsistent with the standards set forth above constitute a public nuisance detrimental to the public health, safety and welfare.

To ensure the foregoing standards are met, reasonable conditions imposed by the Town may include but are not necessarily limited to the following:

- 1) Conditions designed to maintain reasonable levels of service on the existing highway system, including when a change of use is proposed or has occurred.
- 2) Conditions designed to protect and promote the safety of the traveling public, including by avoiding or minimizing unsafe conditions for or related to pedestrians, livestock, non-motorized vehicles, and motorized vehicles, including motorcycles, on public highways, trails, sidewalks, and other public rights-of-way. This may include relocating a proposed access point to ensure reasonable sight distances are provided.
- 3) Conditions designed to avoid adverse impacts from stormwater runoff or related to drainage ditches, culverts, or other drainage facilities. This may include limiting the slope of the driveway leading to the access point.
- 4) Conditions related to access point design and location, including requiring that access points be constructed in accordance with Vermont Agency of Transportation Standard Sheet B-71, or a similar standard, and conditions requiring all proposed access points be designed to be as perpendicular as possible to the existing Town highway, where appropriate and reasonably practicable.
- 5) Conditions designed to avoid adverse effects upon water supply, sewage disposal, or solid waste disposal.
- 6) Conditions designed to avoid undue adverse impacts on the natural and historic resources at or adjacent to the access point or the approach to the access point, as defined in Section 3, above.
- 7) Conditions designed to ensure or enhance emergency vehicle access.
- 8) Conditions designed to protect the public investment in the Town highway system.
- 9) Conditions designed to protect service levels on State and Town highways in any case involving an access permit for a development contributing 75 or more peak hour trips to State highways or class 1 Town highways.

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. Among other requirements, the Selectboard may include conditions requiring the applicant to move an

access to another location or to pay the Town for the purchase and installation of warning signs or other traffic control devices.

Section 8 – Expiration of Notice of Permission to Proceed.

The authorization conveyed by a Notice of Permission to Proceed shall expire within two years after the issuance of that Notice unless the work authorized by such Notice has been commenced and substantially (at least 50 percent) completed.

In the event of an expiration, the expired Notice of Permission to Proceed is void and an applicant is required to file a new application prior to commencing construction.

Section 9 –Damage

In the event that construction, maintenance, or grading causes damage to a public highway or other public infrastructure or to previously identified natural or historic resources within the public right-of-way, it shall be the responsibility of the property owner to compensate the Town for any expenses involved in restoring that highway or infrastructure or natural or historic resource to its original condition prior to the damage.

Section 10 – Responsibility for culverts and headwalls

The property owner shall pay for the cost of materials and costs of installation of privately-owned culverts and headwalls made part of a permitted construction. The property owner retains exclusive legal and financial responsibility to repair, replace, and maintain those culverts and headwalls. Nevertheless, the property owner must obtain approval from the Selectboard in the form of a written Notice of Permission to Proceed before any repair, replacement, or other work may take place within the Town highway right-of-way.

Section 11 – Revocation of Permit; Frontage road.

As provided by 19 V.S.A § 1111(f), the Selectboard may, as development occurs on land adjacent to 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 12 – Applicability of other laws and regulations.

The Permit required under this Ordinance is in addition to, and shall not replace or eliminate, any requirement to obtain approval under any other applicable State laws or municipal ordinances. Applicants and Permittees are solely responsible for ensuring that their access point is in compliance with applicable State laws and municipal ordinances, including applicable provisions of 19 V.S.A. Chapter 11.

Section 13 -- Enforcement and Penalties.

Nothing herein shall constitute a waiver by the Town of its right to pursue any enforcement remedy available by law, including injunctive relief under 24 V.S.A. §2121.

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

1) Optional Notice of Violation

Prior to instituting any legal action or proceeding to enforce this Ordinance, 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).

2) Assurance of Discontinuance

The Selectboard or its designee may accept an "assurance of discontinuance" of any violation of this Ordinance, 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 in the Town of Calais Land Records.

3) Permit Suspension

The Selectboard or its designee may suspend a Notice or Permit until compliance with State statute and this Ordinance 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 Notice or 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).

4) Civil Penalties; Injunction

If the Selectboard believes that any person is in violation of the provisions of this Ordinance or 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. 24 V.S.A. § 2121; 19 V.S.A. § 1111(h).

Persons who violate the requirements of this Ordinance or fail to adhere to Notice or 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.

Section 14 -- Severability.

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

Section 15 -- Effective Date.

This Ordinance amends the 2004 Curb Cut Ordinance and shall become effective 60 days from the date of adoption by the Selectboard, or if a petition is filed in accordance with 24 V.S.A. § 1973, this Ordinance shall take effect in accordance with 24 V.S.A. § 1973(e).

Adopted by the Selectboard of the Town of Calais this _____ day of _____, 20__.

Signatures:

