

FEE: \$20.00

Date Received: _____

STATE OF VERMONT TOWN OF WHEELOCK
Application for Access Permit

Landowner: _____

Mailing address: _____

The undersigned requests an Access Permit to allow _____ to construct an access in accordance with Vermont Department of Highways Standards to serve the applicant's property located on the _____ side of Town Highway No. _____ (the local name for this road, if known _____). The applicant agrees to maintain said access and adhere to the directions, restrictions and conditions forming a part of this permit.

Check one or more uses: ___ Residential; ___ Agricultural; ___ Commercial; ___ Industrial; ___ Development; ___ Other.

Dated at _____, this _____ day of _____ 20 _____.

_____, Applicant

ACCESS PERMIT

Notice: This permit is issued in accordance with Title 19, Section 1111, V.S.A. (Please see back for entire Statute) relative to all highways within the control and jurisdiction of the Town of Wheelock. The issuance of this permit **does not** release the applicant from any requirements of statutes, ordinances, rules and regulations administered by other governmental agencies. The permit will be effective upon compliance with such of these requirements as are applicable and continue in effect of as long as the present land use continues. **Any change from the present land use will require a new permit.**

This permit is issued subject to the directions, restrictions, and conditions contained herein and on the reverse of this form and any attachments hereto, and covers only the work described in this applications, and then only when the work is performed as directed. Violations are subject to the penalties set forth in Title 19, Section 1111, V.S.A. of fines of not less than \$100 nor more than \$10,000 for each violation.

Conditions: All applications will be accompanied by a sketch of the property frontage, showing location and width of access in relation to the property lines, designated trees, power poles or other stationary objects. All accesses will be constructed at level of road shoulder or below to the limit of the Town right-of-way. All culverts from Town Road to back edge of culvert must have 1 1/2"- 3/4" crushed gravel. Any variation from the above to be approved by Selectmen and/or their agent. Culverts will be required where deemed necessary; size and length to be determined by the Selectmen and/or their agent. A minimum 15" or larger culvert will be required where deemed necessary. All completed construction shall be subject to inspection and approval by the Selectmen and/or their agent. The maintenance and repair of a driveway culvert, if required, are the responsibility of the property owner. Roles and responsibilities of the town and property owner are further defined in the "Policies Regarding Driveway Accesses Off Town Highways" adopted June 14, 2017 and attached.

Road Commissioner and Road Foreman Recommendation

Date of Inspection: _____

Directions, conditions and restrictions:

Commissioner & Foreman Signatures: _____

19 V.S.A. § 1111. Permitted use of the right-of-way

§ 1111. Permitted use of the right-of-way

(a) **Permits.** Permits must be obtained by anyone or any corporation wishing to use as described in this section any part of the highway right-of-way on either the state or town system. Notwithstanding any other statutory requirement, a permit shall be required for any use of any highway right-of-way, consistent with the provisions of this section. The authority given to the board, the secretary, and the attorney general under this section shall also apply to the legislative bodies of towns, or their designees.

(b) **Driveway entrances, highway grades; drainage.** It shall be 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, 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 written permit from the agency, in the case of state highways, or the legislative body, or designee of a municipality, in the case of town highways. As a condition of any such permit, compliance with all local ordinances and regulations relating to highways and land use shall be required. The agency or legislative body, within their respective jurisdictions, may make such rules to carry out the provisions of this section as will adequately protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure, but shall in no case 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 the existing highways, 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. However, 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, the permit may include reasonable conditions and requirements to protect service levels on such highways.

(c)(1) **Installing pipes and wires in highway.** It shall be unlawful to dig up or excavate a trench in a public highway for the purpose of installing pipes or wires without a written permit from the agency in the case of state highways and the selectmen for town highways. The permit shall include any conditions imposed by the issuing party. All inspection of excavation and backfilling shall be done under the supervision of an agent of either the town or state as the case may be. Failure of any person, corporation, or municipality to perform the work or to restore the highways in a satisfactory and timely manner to the agency or the town may result in either the agency or the town completing the work at the expense of the permit holder; provided however, the agency or town shall give timely notice to the permit holder of any defects, and the permit holder upon receipt of notice, shall have a reasonable time in which to repair the defects. The agency or the selectmen may recover reasonable expenses incurred in this manner in a civil action in the name of the state or town with costs.

(2) These provisions shall not apply to cities and shall not prevent a person, corporation, or municipality from excavating to make emergency repairs to a break in a pipe or a short in a wire, but in all cases all work shall be completed to the satisfaction of the agency or the town. Notice shall be given to the appropriate persons as expeditiously as possible after discovery of the problem.

(d) **Use by private sewer or water lines.** The agency may issue permits allowing the use of highway rights-of-way for private sewer or water lines if, following notice and hearing, the board certifies to the agency that the requested use will serve the needs of the public. In its certificate, the board may attach conditions as are required, including but not limited to the following:

(1) the installation of sewer or water lines shall conform with plans and specifications approved by the agency and shall be relocated at no cost to the state whenever the right-of-way is needed for highway purposes;

(2) reimbursement of the agency by the permit applicant for the actual costs of the review, inspection, and engineering services provided by the agency for these installations;

(3) reimbursement of the agency by the permit applicant for the cost of assigning an inspector to the project during construction.

(e) **Project inspectors; highway access plan.** The agency may assign an inspector to the project during construction at the applicant's expense. Any application to the agency for a drive or access permit by reason of any development subject to the provisions of this section shall include a proposed highway access plan for the entire tract of land. The agency shall impose reasonable conditions to reduce the number of accesses that will be required for the tract of land. These conditions may include a required setback of any construction or improvements from the highway to permit the construction of frontage road or roads, acceleration and deceleration lanes, and/or other areas for off-highway control and management of vehicles, and may require reimbursement for any costs to the state for the installation of traffic control devices or road improvements reasonably required because of the development and may permit or require integration of the access and on-site traffic control facilities and connection of frontage roads between contiguous tracts of land as development is occurring or may occur along the highway.

(f) **Revoking access; frontage road.** The agency, in the case of state highways, or the selectboard, in the case of town highways, may, as development occurs on land abutting the highway, provide as a condition of any permit for the elimination of 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.

(g) **Permit suspension.** In addition to any other enforcement powers that may be provided for by law, the secretary or his or her designated representative, on behalf of the agency or the legislative body, or designee on behalf of a municipality, may suspend any permit under this section until compliance is obtained. If there is continued use or activity after suspension, the secretary, on behalf of the agency, or the legislative body, on behalf of a municipality, may physically close the driveway or access point if, in the opinion of the secretary or the legislative body, the safety of highway users is or may be affected.

(h) **Restraining prohibited acts.** Whenever the secretary believes that any person is in violation of the provisions of this chapter he or she may also bring an action in the name of the agency in a court of competent jurisdiction against the person to collect civil penalties as provided for in subsection (j) of this section and to restrain by temporary or permanent injunction the continuation or repetition of the violation. The selectmen have the same authority for town highways. The court may issue temporary or permanent injunctions without bond, and any other relief as may be necessary and appropriate for abatement of any violation. An action, injunction, or other enforcement proceeding by a municipality relating to the failure to obtain or comply with the terms and conditions of any permit issued by a municipality pursuant to this section shall be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date on which the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

(i) **Assurance of discontinuance.** The secretary or the selectmen may accept an assurance of discontinuance of any violation of the terms of this chapter including when applicable schedules of abatement for a violation. Any assurance of discontinuance shall be in writing, and shall be filed with the attorney general, the court having jurisdiction over the subject matter, and the town clerk of the town in which the violation occurred for recording in the land records. The attorney general, within ten days of receipt of the assurance, if he or she objects to the terms, may petition the board for a hearing of the violation in the manner prescribed by law. The board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 15 days thereafter. Evidence of violation of an assurance shall be prima facie proof of the violation as cited in the assurance. Prior to institution of any action or proceeding under this subsection, the secretary whenever he or she believes any person to be or to have been in violation 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. In this event, the secretary shall within 30 days provide the person with notice, an opportunity to be heard, and an opportunity to settle the matter before instituting an action or proceeding as provided for in this subsection.

(j) **Civil penalty.** Any person who violates the provisions of this chapter or the terms of an order issued by a court under this chapter shall forfeit and pay to the state a civil penalty of not less than \$100.00 and not more than \$10,000.00 for each violation; provided however, where violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for the correction or termination of the violation shall constitute an additional separate and distinct offense except during the time an appeal from the order may be taken or is pending. For the purposes of this subsection the court issuing the injunction on petition of the secretary shall retain jurisdiction for purposes of awarding the civil penalty.

(k) No deed purporting to subdivide land abutting a state highway or a class 1 town highway can be recorded unless all the abutting lots so created are in accord with the standards of this section, including but not limited to the requirement to provide a frontage road or roads.

(l) **Recording of permits; recording fees.** Initial and subsequent permits shall be recorded at the expense of the applicant in the land records of any municipality in which the affected property is located, unless the agency (in the case of state highways) or the legislative body (in the case of town highways) determines that such action is not warranted in specific instances or for certain categories of permits. The agency or the legislative body may include, as a condition of the permit, that the issued permit shall not be valid until the permit holder records in the office of the appropriate municipal clerk the "notice of permit action" provided with the issued permit by the agency or the legislative body. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1989, No. 79; 1989, No. 246 (Adj. Sess.), §§ 13-15; 1997, No. 62, § 56, eff. June 26, 1997; 1997, No. 120 (Adj. Sess.), § 8a; No. 150 (Adj. Sess.), § 13; 1999, No. 156 (Adj. Sess.), § 13, eff. May 29, 2000; 2003, No. 56, § 55, eff.

June 4, 2003; 2009, No. 132 (Adj. Sess.), § 10, eff. May 29, 2010.)

APPROVAL FOR PERMIT:

Dated at Wheelock this ___ day of _____, 20__.

Wheelock Road Commissioner: _____ Wheelock Road Foreman: _____

APPROVED INSPECTION AFTER INSTALLATION:

Dated at Wheelock this ___ day of _____, 20__.

Wheelock Road Commissioner: _____

Wheelock Road Foreman: _____

07/2017