

Site visit 6PM

April 8 2019

Nancy Leary

Jim Eikenberry usdg Ag.

Dave Atherton

Kyle Thompson

Brian Coolidge

Dory Bailey

Gordon Naylor

Dave Martin

Paul ~~Scott~~ Stone

Mr Seth Hopkins

Tracy Wymen

Sheron Stearns

Tim Guille

Paul Inman



Vermont Department of Environmental Conservation  
Watershed Management Division  
One National Life Drive, Main Bldg., 2<sup>nd</sup> Floor  
Montpelier, VT 05620

Agency of Natural Resources

[phone] 802-490-6195  
[e-mail] [ANR.WSMDWetlands@vermont.gov](mailto:ANR.WSMDWetlands@vermont.gov)

March 26, 2019

*Sent Via Email*

David Atherton; Brandon Town Manager

**Re: Project # 2019-137; Creek Road jurisdiction**

Dear Mr. Atherton:

A site visit to “Creek Road” was conducted by District Wetland Ecologist, Zapata Courage, on March 20, 2019. Creek Road is listed as a Class 4 Road by the Town of Brandon. Questions surrounding its maintenance and continued use have been asked. The travel-way runs primarily along the west bank of the Otter Creek and transects a Class II wetland and buffer, a Special Flood Hazard area, and a River Corridor.

The site visit revealed access onto the parcel(s) in question is established on native ground. Although some stone has been placed at a ditch crossing at the first field opening, there is no other evidence of fill. There is also no discernible structure, such as a gate, associated with the access. Use of the access onto the site has kept it free from woody vegetation encroachment, providing a discernible area to travel on as woody vegetation or tall field vegetation is found on both sides. There are areas of bare ground, but the majority of the access is vegetated with rutting occurring in varying degrees along its length in the fields. In some places, there is no longer a single track because rutting is so deep that vehicles are driving along other paths to either side. Photos were taken during the site visit as Zapata walked along it into the second field and shared with State Regional Floodplain Manager, Dave Rosa, and the District River Management Engineer, Josh Carvajal. Each program is providing an evaluation of this linear feature under the relevant rules and regulations pertaining to recognizing this feature as a road and/ or the requirements needed to establish the feature as a road by the placement of fill or related infrastructure.

*VT Wetlands Program*

As outlined under the Vermont Wetland Rules Applicability to Roads Procedure, August 2017 (see attached), a Class 4 Road is defined as the following: “All town highways that are not class 1, 2, or 3 town highways or unidentified corridors, as defined in 19 V.S.A. § 302.” The town selectboard determines which highways are class 4 town highways. 19 V.S.A. §302(4). Class 4 roads are not required by statute to be maintained as negotiable under normal conditions all seasons of the year. Class 4 roads may become naturalized”.

A Road is defined as “A road is a linear facility with a surface constructed from implied fill, used primarily for vehicular travel and access. A road structure is measured from the filled toe of slope to the toe of slope of either road shoulder, which is commonly called the road prism”. “Roads need regular maintenance of their culverts, shoulders and surface in order for them to continue to be traveled upon. For the purposes of this guidance document, a road does not include a travel-way, skid trail, or town trail.”

Furthermore, the same document defines a Travel-way in the following way: “Travel-ways are not constructed features but simply areas that have been traditionally traveled upon. Common travel-ways include trails, woods roads and tractor paths where the surface of the travel-way is the same as the native material (not previously filled), although possibly compacted with tire ruts. Travel-ways do not qualify as roads under the Vermont Wetland Rules. A Vermont Wetland Permit is required before doing any upgrade, maintenance, or repair, including the clearing of vegetation or adding of fill, to a travel-way in a buffer or wetland. The creation of a new travel way in a wetland or buffer requires a wetlands permit.

The Wetlands Program would not consider this linear feature a “road” as defined under the road guidance document and VT wetland rules. There is no evidence of a constructed surface or continued maintenance of such. Based on assessment, the access is considered a travel-way, and most of the travel-way is also considered part of the surrounding wetland as it also exhibits the criteria of hydric soils, wetland vegetation and hydrology which defines a wetland. If the rutting was not evident, it would be challenging to distinguish the travel-way from the rest of the wetland area. A travel-way can continue to be used in its current condition without a wetland permit; although excessive rutting may be considered a wetland violation over time. Many farms access their fields via a travel-way and this feature appears to provide the same function. To place fill, grade, install new culverts or other infrastructure to enhance the travel-way will require a VT state wetland permit (see page 5 of the Roads Guidance Document). The Federal Army Corps of Engineers (ACOE) also regulates the placement of fill within a wetland; therefore, an ACOE Wetland Permit would also be required. Given the overall length of this feature, and the expected impacts required to establish this feature as a road and given the site is now an active wetland restoration area, a wetland permit is highly unlikely to be issued and it would be cost prohibitive to do so at both the state and federal level.

### *VT Rivers Program*

#### Floodplains and River Corridor

The town of Brandon regulates Special Flood Hazard Areas (SFHA) and Fluvial Erosion Hazard Areas. Fill is prohibited in these areas unless it is used to elevate existing structures. Road maintenance in these areas is exempt from Brandon zoning regulations while road improvements require conditional use review. Maintaining the Class 4 road to its historical condition, including repairing ruts, would be an exempt activity. If there was a proposal to improve the road, a conditional use review should consider the prohibition on fill in hazard areas, whether the development could be located to minimize conflict with changes in channel location over time, and whether the improvement would cause an undue burden on public services and facilities during and after flooding and erosion events. The location within the SFHA and River Corridor suggests that conflict with inundation and erosion hazards is likely.

#### Stream Alteration

Creek Road is identified as TH-57, a Class 4 road of 2.03 miles in length with 0.83 miles currently listed as Not Up To Standards by the Department of Transportation (VTrans). This roadway crosses at least six perennial stream channels which likely maintain fish populations and provide habitat for spawning. These channels have been modified by agricultural drainage yet remain connected as tributaries to Otter Creek. Any maintenance of culverts on TH-57 will need to comply with the DEC Stream Alteration General Permit (SAGP) and install bankfull width structures embedded to provide Aquatic Organism Passage (AOP). Being a Class 4 road, the replacement of these structures will need to be funded by the Town of Brandon since VTrans Structures Grants may only be used on Class 1, 2, and 3 roads. Additionally, due to the condition of the road, DEC would not issue a SAGP for bank stabilization if Otter Creek began to erode the road embankment due to such an activity causing a departure from equilibrium conditions (i.e. not allowing the river to meander within its floodplain).

Under the Municipal Roads General Permit (MRGP) this town road is listed as hydrologically connected and must comply with requirements for Class 4 roads which includes assessing the road using the Road Erosion Inventorying and determining sites which need to be brought up to the standards of the MRGP by implementing Best Management Practices (BMPs). Costs for inventorying erosion and implementing BMPs on the road are the sole responsibility of the Town of Brandon. Compliance with the MRGP is mandated by Act 64 and has been incorporated into the Town Road and Bridge Standards. Adoption of the Town Road and Bridge Standards is one of the four mitigation measures necessary to qualify for the increased state match specified in the Emergency Relief and Assistance Fund (ERAF) rules for a qualifying FEMA Public Assistance event.

Sincerely,

*Zapata, Dave, and Josh*

Zapata Courage

District Wetlands Ecologist

[Zapata.Courage@vermont.gov](mailto:Zapata.Courage@vermont.gov)

Dave Rosa

Regional Floodplain Manager  
[David.Rosa@vermont.gov](mailto:David.Rosa@vermont.gov)

Josh Carvajal  
District River Management Engineer  
[Joshua.Carvajal@vermont.gov](mailto:Joshua.Carvajal@vermont.gov)

cc: Daryl Bartlett, *Public Works Director*

## David Atherton

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**From:** Sharon Stearns <sharonlstearns@gmail.com>  
**Sent:** Thursday, March 28, 2019 6:14 PM  
**To:** Bill Moore; Bernie Carr (bernie@brandon.org); datherton@townofbrandon.com  
**Subject:** Class 4 road near Sanderson Bridge

Good afternoon,

I'm very concerned that the town wants to revert ownership of the Class 4 road near Sanderson bridge. This trail is used by many for recreational use. I've been in touch with another town and a paralegal who have both indicated other towns have converted the public Class 4 road to trail use, so they don't have to maintain them, but it leaves them available for the public to use. Apparently, there is a legal process to do this and many towns have done it.

This road contributes to 3 horse businesses on this road, where we bring in out of towners to spend money here in Brandon in trucks and trailers, food, entrance fees, etc. These 3 businesses employ people. This conversion to non public use affects our economy in Brandon.

Please make these available for public use as trails as other towns have done, rather than giving away our recreation opportunities.

Thanks  
Sharon Stearns  
Five Meadows Farm, LLC  
Sharon L Stearns CPA PLLC

Brandon Select Board  
Brandon VT

April 8, 2019

Discontinue Brandon TH 57 a class 4 road.

1. Quesnel Holsteins and Paul A. and Frances L. Stone are asking that TH 57, a Class 4 road be discontinued.
2. Joe Larock is agreeable to discontinuing the road per conversation with him.
3. TH 57 is currently and unmaintained Class 4 road. The road is impassable.
4. Brandon has not properly maintained the road bed nor the culverts.
5. Any landowner currently having a ROW for access will continue to have that same privilege.
6. USDA, NRCS, Natural Resources Conservation Service will continue to have access via a ROW across Quesnel Holsteins Land, letter attached.
7. Paul A. and Frances L. Stone purchased the land in Brandon in 1997 with the understanding TH 57 had been discontinued in 1990. It is an unpleasant surprise to find out that is not the case. Brandon Select Board meeting minutes attached.
8. Map Exhibit #8 showing lots purchased by Stone from Thayer Estate, 1997, note that no road is shown. Attached
9. Executor's Deed, attached, see map #8 for reference;
  - a. Describes lot (parcel) #2 of 20 acres bordered "on the north by Otter Creek, no mention of a road, or of a ROW"
  - b. Describes lot (parcel) # 3 of 45 acres, no mention of a road, or a ROW.
  - c. Describes lot (parcel) #II of 55 acres, as "bounded on the north and northerly by Otter Creek," no mention of a road.

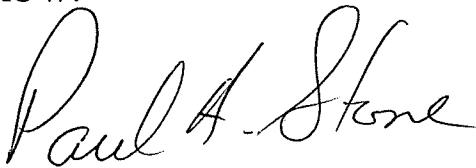
However there is a mention of a ROW, "Also a right of way in common with others, if any, over the parcel of meadow land located on the north side of Otter Creek from the north end of what used to be the Conant Bridge to the highway" ( note that this is on the north side of Otter Creek connecting the Conant Bridge to what is now RT 73)

However, "Excluding, however, the so-called Conant Bridge, which is no longer in existence."

Also, "Subject, however, to a right of way in favor of others, if any across the Bridge Meadow to the swamp lands lying southerly thereof."

This indicates that the ROW is to the south, not to the east over Quesnel Holsteins land (formerly Sanderson), so this is not an ROW of way to TH #4.

d. Describes lot (parcel) #4 of 13 acres, no mention of a road, or ROW.

A handwritten signature in cursive script that reads "Paul A. Stone". The signature is written in dark ink and is positioned above the printed name and address.

Paul A. and Frances L. Stone  
107 Griswold Ln, Orwell, VT 05760; 802-770-9270

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**Courtney Towne**

802-282-2180

courtneytowne13@gmail.com

29th March 2019

**Brandon Town Selectboard**

49 Center Street

Brandon, VT 05733

To Whom it May Concern:

I am writing regarding the discontinuance of Creek Road (Town Highway #57) and am urging you to keep this road open to the public. Many people use this road for a variety of uses but I specifically use it for horseback riding. Creek road is not traveled by vehicle often and is a much safer alternative to the driven roads in the area. Riding horses in and around Brandon, Vermont is becoming more and more unsafe with uneducated motorists who often drive too fast and too close which risks both the lives of myself and my horse. Creek Road enables peaceful riding and safer conditions with far fewer and almost nonexistent interactions with motorists. I am positive that bikers and hikers feel the same as I do about the safety benefits of using Creek Road. There are currently three horse farms located on Pearl Street that use Creek Road quite frequently to keep children, inexperienced adults, and young horses off of the main roadways to enjoy horseback riding outside of an arena.

As an animal scientist I can testify that this road staying in public use is critical to the safety of the roadways. Horses are often spooked (scared) by trailers, large vehicles, motorcycles, bicycles, and any object or vehicle that creates a noise or sight that they are not conditioned to or may be moving quickly. Horses are living creatures ruled by epinephrine, the fight or flight hormone known as adrenaline, and many horses choose flight when scared. When a horse become startled by a noise or sight, it will run very quickly and with very little notice. When horses are under the effect of adrenaline, horses do not think and will run in any direction, which often puts them directly in front of the cause



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of the scare which can potentially put a horse and rider in front of a vehicle. Many motorists do not abide by the law (Vermont Law Title 23: Chapter 13: Section 1127) of slowing down and moving over and unknowingly endanger themselves, the rider, and the horse involved. Horses are living creatures with minds of their own and while riders do their best to control them and expose them to situations and noises they will encounter on the road, they can be unpredictable especially with young or inexperienced riders or horses. Creek Road is a wonderful alternative to the main roads and provides much more safety for those, both human and equine, learning to trail ride.

On a personal note, I have been riding horses both on the main roads, in the Brandon July 4th parade, and on Creek Road for many years (10+). I have gone riding with many friends on Creek Road to enjoy a beautiful Saturday afternoon in the spring, summer, or fall. It would be an absolute shame to lose one of the most beautiful rides in the area and one that often draws people from outside the community to ride in Brandon.

Sincerely,

A handwritten signature in cursive script that reads "Courtney Towne".

Courtney Towne

B.S. Animal Science Auburn University

3/30/19

Dear Selectboard,

It has been brought to my attention that the town is considering giving up the Creek Road close to my property, which I have owned since 1985. In my time here I have never seen the town do any maintenance on that road at all, and the only work I have seen done on it was by the various farm owners so they could use it. I never knew it is a town road. This road should be converted to a legal trail or just leave it as it is so people can continue using it for recreational purposes.

If you just leave it alone there is no expense involved and it is still available for the current use.

Robert Weeden

1007 Pearl St.

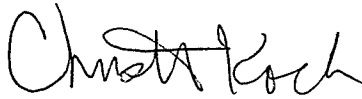
April 1, 2019

Dear Select Board,

It has come to my attention that the class 4 road, Town Road 57, that runs through Sanderson's field from Pearl Street to Route 73 may become private property. I am concerned about this move. I think one of the things Brandon needs is to keep recreational areas open to the public.

I have used this road on many occasions over the years. It is a great place to walk, cross country ski, walk your dog, bird watch or ride a horse. I know people access the river for boating and fishing too. It concerns me that we are losing access to one of the few open places for outdoor fun. I used to access Silver Lake through a path off Route 73. The land owner there has made it impossible to use this public access point. I hope that we do not yet lose another one.

Thank you for taking the time to take public opinions on this issue.

A handwritten signature in black ink that reads "Christi Koch". The signature is fluid and cursive, with the first name "Christi" and last name "Koch" clearly distinguishable.

Christi Koch  
290 Wood Lane  
Brandon, Vt 05733

## David Atherton

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**From:** Shaun Branon <aokinvt@comcast.net>  
**Sent:** Tuesday, April 2, 2019 3:43 PM  
**To:** Sue Gage; David Atherton  
**Cc:** shaunbranon@gmail.com; Terry Branon  
**Subject:** Discontinuance of TH#57

Dear Sue and Dave,

My cousin Terry & I received notice of Discontinuance & "Throw Up" of Town Highway #57 between its intersection with Pearl Street and westerly to the Town of Sudbury town line. We have discussed this matter and see no advantage in supporting this action. We therefore ask the Town of Brandon to not Discontinue Town Highway #57.

Respectfully,

Shaun Branon  
29 Brittany Lane  
St Albans, VT 05478

Terry Branon  
9 Meadowvale Rd  
Plattsburgh, NY 12901

Sent from my iPhone

Change.org

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Please help to save public trails in Brandon VT!

422 supporters

**Petition details**

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**Please help to save public trails in  
Brandon VT!**





**Sharon Stearns started this petition to [shopkins@townofbrandon.com](mailto:shopkins@townofbrandon.com) and 6 others**

The Town of Brandon VT Selectboard will be considering a request to give up a Class 4 publicly owned roadway that is essentially a trail through a beautiful field to abutting landowners on Monday, April 8 at 6:30 pm at the Brandon Town Hall.

Many Vermont towns are saving their old Class 4 roads from yesteryear, that weren't ever upgraded to current road standards because they weren't needed, to preserve history and converting them to public trails to allow the public a safe place for walking, hiking, horseback riding, mountain biking, etc.

Please sign to let Brandon VT Selectboard know we want to keep our public Class 4 roads that are basically trails now as public trails rather than giving them away!

The trail under consideration on April 8 is near the Sanderson bridge in Brandon. It is a beautiful field trail along the Otter Creek that connects Brandon's Pearl Street to Sudbury's fishing access and is approx 4-4.5 miles long. It is a peaceful walk or ride. Once these trails are given up by our Selectboard, they will most likely not be available for the public to use.

Please sign this petition to ask the Town of Brandon VT Selectboard to save our public trails and not to give them away!

Please sign this petition, write to the Selectboard of Brandon, VT, 49 Center Street, Brandon VT 05733 and come to the hearing at the Brandon Town Hall at 6:30 pm on April 8 to save our public trails from being given away!

### **I started this petition because...**

Sharon Stearns is an avid outdoors lover, horseback rider, and 31 year resident and taxpayer in Brandon, VT, who wants to save the history of these Class 4 roads for future generations and to share these beautiful trails with those who enjoy them as I do.

### **Updates**

Keep your supporters engaged with a news update. Every update you post will be sent as a separate email to signers of your petition.

**[Post an update](#)**

1. 1 week ago

250 supporters

2. 1 week ago

Sharon Stearns started this petition

### Reasons for signing



**Kendra Stearns** · 1 week ago

I'm signing because I use this trail for horse-back riding

**paula whiting** · 1 week ago

I'm signing because, as a transplanted Vermonter, I know how precious each piece of wilderness is!

**Kristina Blankenship** · 1 week ago

I'm signing because Vt. used to be my hometown and it is beautiful in every way. I don't think they should take away a trail for the public to use and explore. Keep the trails!!!

**Francis DeVine** · 1 week ago

Old underused Class 4 roads are essential to maintaining the character and openness of Vermont. Please retain this Class 4 Road. Thank you.

**Phoebe Guevin** · 1 week ago

These are spaces for us to enjoy for years to come. I want my children to Be able to use these trails for hiking and biking