



## Town of Windham

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To: Residents and Landowners on Private Roads  
From: Barry A. Tibbetts Town Manager  
CC: Town Council  
Re: Town Plowed Private Roads  
Date: May 19, 2022

Hello,

You are receiving this notification because your home or property is on, abuts or is accessed by a private road which the Town is currently plowing as part of winter road services in Windham.

I would like to thank you for your support thus far and continued efforts towards achieving the desired outcome of continued plowing service on your private road.

This past winter the Town worked with the State of Maine legislative committee (State and Local Government Committee) on finalizing the private and special law for the Town's project of continuing winter services on designated private ways.

The Legislative Committee made three changes to the now approved Private and Special law L.D. 1975. The Town will need to comply with these changes.

- 1) The total number of signatures needed on the easement has been raised to 67%. This would represent those properties that are directly abutting the Private Road. If you receive this letter, you are a direct abutter.
- 2) The legislature did extend the ability for the Town to continue services until October 1st of 2023. This allows one additional year for completion of the project.
- 3) The final request was for the Town to send out this notice and notify the committee of its issuance.

For those of you that missed the first letter announcing this project the details are provided below. Our Public Works Director and Town Engineer will be driving all the private roads within this program this summer. A summary of their conclusions will be forwarded to known new or existing road associations. Copies of the reports will also be on our website for all to view.

The Town for many years has plowed these roads (as identified on the Town's Road Classification Map, on our website <https://www.windhammaine.us/DocumentCenter/View/7454/Road-Classification-Map>), based on past agreements (now expired) and in some cases with no agreements. Under Maine Law the Town cannot place public vehicles on private roads for service. This was decided in 1989 by the Maine Supreme Court who issued an "Opinion of the Justices" stating that it would be *unconstitutional* for a town to use town funds for the private purpose of maintaining a private road. Since then, Maine Municipal Association (MMA) and the Maine Department of Transportation (MDOT) have advised towns that it is not legal for a town to plow private roads.

[www.windhammaine.us](http://www.windhammaine.us)

The Council was advised of the issue in 2021, and a request was made to the Maine Legislature to assist the Town in a solution for these identified private roads, hence L.D. 1975 was enacted to allow the Town to continue the practice (snow plowing) with certain conditions being met. The Town has 101 private ways in this category, which equates to 34+ miles.

The effect of the L.D. 1975 legislation allows the Town to continue winter plowing service on an interim basis with these requirements:

- A) Each major private road plowed by the Town needs to form a road association. If there are multiple private roads that are interconnected, each road would have the option to decide to join as one association or separate as individual road associations. This is a good opportunity for property owners to formalize handshake agreements with their neighbors.
- B) Having regular inspections by the Town (Public Works Director) to ensure that the road meets a minimum standard for plowing vehicles. Per a special new ordinance for these private roads, the road association would ensure the minimum improvements are met each year or within the designated three-year cycle as identified by the Public Works Director. Costs for maintenance are borne by the Road Association.
- C) The Town has enacted a special private road plowing ordinance ([Winter Maintenance of Designated Private Ways](#)) which identifies each currently plowed private road and the minimum road standards necessary. This special private road plowing ordinance will not require these roads to meet public Town Standards for a roadway. This ordinance basically allows access on these roads for plowing over a public access easement approved by the road owners.
- D) Any private road within this special classification can discontinue the town service with an association vote of 67% at any time. No re-admittance to this plowing service is permitted. No new or existing private roads will be allowed within this special legislation.
- E) The owners of the properties benefited by the road must grant a public access easement to the Town. This is necessary in order for continued plowing at Town expense to be constitutional.
- F) When the road association members agree to the ordinance and public access easement, this allows public vehicles to traverse on the road with no liability to the Town and without the road ever becoming a town way (unless the owners grant and the Town Council votes to accept it as such).
- G) A detailed Q and A is on our website along with additional information.  
<https://www.windhammaine.us/758/Private-Roads-with-Winter-Maintenance>

In receiving this letter, you will fall into one of the two solutions listed below:

- A) If you have a home (property) on a private road with a road association and want to continue with Town plowing services, the Town will work with the road association leadership moving forward. If you want to discontinue the snow plowing arrangement you should talk with your association.
- B) If you do not have a road association the Town recommends you follow the information provided on our website with particular attention to the Q and A section. Our objective is to help you to get organized with a road association and its function so we can ensure the continuation of the plowing service. All the necessary forms to organize and operate a road association are posted on the website.

In Windham, a significant number (over 40%) of private roads fall into the category of receiving municipal plowing during the winter for more than 20 years. We have been working with many road associations (about 50%) on yearly maintenance plans. We need to bring all the private roads in this category to the same functioning position. The Town wants to respect the privacy rights on private ways but to comply

with State law we need a public easement and a road association for operation efficiency. Our goal is to continue to offer plowing services while ensuring that emergency and fire dept vehicles can reach our citizens most expeditiously.

The Town wants this to be a simple transition but also has limited staff to assist in this educational transition/setup. We are pleased to be of assistance but need your help on the non-road association roads to take the necessary steps.

Thank you for your patience and understanding in learning about this challenge and the proposed solution.