

Is a town liable for damage to private property resulting from water that runs off a town highway?

Generally, the principle of sovereign immunity will protect a town from tort liability (e.g., negligence, trespass, and nuisance) in cases where it is performing governmental, as opposed to proprietary, functions. Such governmental functions include building and maintaining town highways and their accompanying drainage systems. While towns are immune from liability when property damage is caused by a surface water drainage system installed to protect the town's roads, an exception exists when a town fails to repair a culvert necessary to allow a natural stream to pass under a town highway after receiving notice that the culvert is not functioning as intended. If a town does not repair a culvert constructed for a natural stream after receiving notice that the culvert is blocked, sovereign immunity will not bar recovery for property damage caused by the town's failure to remedy the situation. *Graham v. Town of Duxbury*, 173 Vt. 498 (2001).

If a driveway culvert fails, is the municipality responsible for the replacing the culvert?

Typically, no. Title 19 provides municipalities with the authority to control – through issuance of permits – construction or development projects that occur in, or affect, the highway right of way. Placement of a driveway culvert within the town highway right of way requires a permit from the selectboard. 19 V.S.A. § 1111(b). While this statute does not address the issue of the responsibility for repairing and replacing driveway culverts, it follows that if a property owner has placed a culvert in the town's highway right of way, then the owner would be responsible for repairing and replacing the culvert, unless the town has made provision to take ownership or responsibility for it.

A property owner's responsibility for driveway culvert maintenance and repair should be clearly articulated in the town's highway access, curb cut, or culvert policy, as well as in the highway access permits granted by the selectboard. When a municipality permits an applicant to install a culvert within the highway right of way and the municipality has no maintenance obligations, the municipality should be careful to refrain from doing any acts of maintenance and repair, as those acts could be interpreted as acts of acceptance, which in turn could deem the culvert the town's responsibility. The Municipal Assistance Center has sample municipal driveway access and culvert policies. Contact us if you would like a copy of one.

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