# Tree Law Roles and Responsibilities

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Municipal officials, employees, and volunteers all need a shared awareness and understanding of tree law in Vermont. Coordination and communication, as well as knowledge of each party's role as defined by the law, will set the stage for clear conversation and decision making regarding the municipal stewardship of trees that fall under local control.

This resource is intended to provide a general overview of tree law and municipal officials' authority and obligations as applied to Vermont municipalities and not as strict legal advice to resolve any nuanced tree matter. Please also see our Tree Law FAQs (left) for additional information.

If you are a VLCT member with additional questions, contact us via the MAP Portal via the "Ask a Question" button at the bottom of this page.

## *Tree law terms & definitions*

1. **Shade tree.** A "shade tree" is a shade or ornamental tree that is in whole or in part within the limits of a public way or public places, provided the tree: was planted by a town; or is designated as a shade tree pursuant to a town's Shade Tree Preservation Plan ("Plan"). To be designated as a "shade tree" under a town's Plan, the selectboard and tree warden must agree that the tree is critical to the cultural, historical, or aesthetic character of the town.
2. **Public ways & places.** A "public way" means a right-of-way held by a municipality, including a town highway. A "public place" means a municipal property, including a municipal park, recreation area, or municipal building.
3. **Right-of-way (ROW).** This is a broad term that includes highways, trails, and easements that the town has either exclusive control over, or at least some form of easement right. A roadway width of one- and one-half rods (24.75 feet) on each side of the center of the existing traveled (49.5 feet wide in total) way can

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be assumed and controlled for highway purposes whenever the original survey was not properly recorded, or the records preserved, or if the terminations and boundaries cannot be determined.

4. **Shade Tree Preservation Plan ("Plan").** An optional plan adopted by the majority of a municipal legislative body (selectboard, councilors, alderboards) and the tree warden. A Plan must have certain elements as described in 24 V.S.A. § 2502 and may have additional elements. The Plan is a town-wide document that enables protection of designated shade trees and sets policies for planting, managing, and removal of shade trees.
5. **Town highway.** All class 1, 2, 3, and 4 highways that towns exclusively or cooperatively maintain. Town highways are those laid out in the manner prescribed by state law; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the town. The term "highway" includes rights-of-way, bridges, drainage structures, signs, and guardrails.

## *Overview of roles*

**Selectboard.** The selectboard has general supervision of the affairs of the town and responsibility for all town duties not committed to the care of another officer. 24 V.S.A. § 872. As such, the role of the selectboard in tree law is broad.

The selectboard appoints, supervises, and removes the tree warden and appoints and removes the deputy tree warden(s); creates and adopts the shade tree preservation plan ("Plan") and tree ordinance; funds tree programs; authorizes cooperative and financial agreements between the tree warden and other entities; coordinates with the highway crew regarding tree maintenance in the

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town's rights-of-way ("ROWs"); sits in a quasi-judicial nature to hear shade tree cutting or removal appeals; and assists the tree warden in enforcement actions.

**Tree warden**. The tree warden controls all shade trees in town and enforces all laws related to shade trees and may manage infested or infected trees. Under state law, no person may cut a shade tree without tree warden authorization. With some exceptions, tree wardens may cut or remove, or designate the cut or removal, of shade trees, but before any shade tree is cut, the tree warden must provide public notice. Abutting landowners and residents have the right to appeal the proposed cut/removal, in which case the selectboard must hold a public hearing and make a final decision. The tree warden may also make cooperative and financial agreements with other entities and accept funds and resources to effectuate management of the town's urban forest.

**Deputy tree warden(s)**. Deputy tree warden(s) are appointed by the selectboard and directed by the tree warden. They have the same authority under state law and power as the tree warden.

**Municipal Manager**. The town manager ("manager") is responsible for the general supervision of the affairs of the town and is the administrative head of all departments. Managers are given their authority directly by state law and are responsible for all duties not otherwise conferred upon another town officer. 24 V.S.A. §§ 1235, 1236(1). In addition, the manager performs all duties committed to the selectboard by law, except for those duties reserved to the selectboard via 24 V.S.A. § 1236(2). The manager, however, does remain subject to the direction and supervision of the selectboard.

In towns that have adopted the town manager form of governance, the manager has supervision and charge of town buildings and maintenance of parks and playgrounds. This means that the manager will generally have charge and control of *non-shade trees*

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in most instances and on most municipal property.

**Town Administrators:** In towns where the selectboard has hired a town administrator, the administrator may perform similar duties to a Town manager. The key difference between these two positions is that while their duties may be similar, the administrator is not a statutory position – it's one created by the selectboard to assist it in carrying out its duties. The administrator's authority doesn't emanate from state law as a manager's authority does and, as such, an administrator only has those powers and responsibilities that the selectboard delegates to them.

**Highway crew**. The highway crew maintains the town's highways, which sometimes includes maintenance on trees within the ROWs, as directed by the selectboard or town manager in a manager form of governance. In certain instances, no tree warden authorization is required before maintenance of (e.g., cutting or removing) shade trees on the town's highway ROW. Please see the "Town Highway/Right-of-Way Maintenance" action item below for more information.

**Selectboard appointed tree committees, boards, or commissions.** Some towns may have selectboard created or governance charter created tree committees. They may be created for a specific purpose (e.g., to help draft the Plan or a tree ordinance) or play a more general advisory role to the selectboard and tree warden on tree matters. Generally, these committees don't have any statutory authority or obligations with respect to tree law and instead would play an advisory and research and information gathering oriented role.

**Vermont Department of Forests, Parks and Recreation**. The Department's Urban & Community Forest Program offers technical assistance and guidance for tree wardens and other municipal officials or volunteers seeking to maintain or enhance their public trees and forests.

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*Tree law roles and responsibilities:*

## Appointment and Removal of Tree Warden and Deputy Tree Warden(s)

1. **Selectboard.** Every town must have a tree warden. The selectboard appoints a tree warden following the annual town meeting by majority vote of the membership of the board. To appoint a tree warden, the selectboard must vote at a selectboard meeting, properly noticed under the open meeting law. The statute is written so that the selectboard may appoint another tree warden each year following town meeting, but this is optional. In other words, if the selectboard does not appoint a new tree warden following the annual town meeting, the current tree warden will continue to serve. The selectboard must report the tree warden's appointment to the State of Vermont Department of Forests, Parks and Recreation, which can be done via the Vermont Community Forestry or Department of Forests, Parks and Recreation websites.

The selectboard may also choose to appoint deputy tree warden(s) who serve at the direction of the tree warden and have the same duty and authority as the tree warden. The selectboard may remove tree wardens and deputy tree wardens at any time for any non-discriminatory reason or no reason at all by majority vote of the total membership of the board.

2. **Tree warden**. Even though the selectboard appoints deputy tree wardens, the deputies are directed by the tree warden, so the selectboard should consult with the tree warden regarding potential appointments to facilitate a better working environment and accomplishment of the town's shade tree preservation plan. Ultimately, however, deputy tree wardens like the tree

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warden themselves are accountable and answerable to the selectboard.

There are no offices that are statutorily incompatible with the position of tree warden, though a town's conflict of interest policy may prohibit certain dual office holding. Additionally, depending on what other offices are held by a tree warden, there may be discrete instances of conflicts of interest which should be managed according to the town's conflict of interest policy. Every town must have a conflict-of-interest policy. For more information, VLCT's Model Ethics and Conflicts of Interest Policy (left).

## Development and Adoption of a Shade Tree Preservation Plan ("Plan")

1. **Selectboard and Tree Warden.** Together with the tree warden, the selectboard adopts a shade tree preservation plan ("Plan"). The Plan, which is optional, helps towns plan for shade tree planting, maintenance, management, and protection. The Plan is important because it can designate zones or individual trees as "shade trees." (Trees planted by the municipality are automatically "shade trees.") Shade trees are protected by the tree warden and may not be cut or removed without prior tree warden authorization. Plans may also add detail and clarity to municipal roles and responsibilities in general regarding tree care, protection, and maintenance.

Tree wardens and selectboards who are having difficulty approaching the creation of a Plan and its potential scope but agree that the designation of shade trees is of primary importance should focus on adopting a basic core Plan that contains the minimum elements of 24 V.S.A. § 2502, and that additionally designates shade trees or zones of shade trees.

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The selectboard and tree warden must hold at least one public hearing for input on a proposed Plan before its adoption. The selectboard must publish the plan 10 days prior to the public hearing. While the selectboard has an obligation to hear feedback on the proposed plan, it's ultimately the board and the tree warden that vote to adopt the Plan. After this process, the tree warden and the legislative body of the municipality may vote to adopt a shade tree preservation plan.

2. **Manager.** In a town with the municipal manager form of government, the town manager has the authority to perform all duties conferred by law upon the selectboard. However, this authority is generally understood to only extend to those administrative duties performed by the selectboard and not to any of its quasi-judicial or legislative functions, such as the formulation and adoption of the town's shade tree preservation plan ("Plan"). The town manager does not serve as a substitute for adoption authority of the town's duly elected legislative body (selectboard, village trustees, city council), though they do have the authority to assist with the Plan's development and implementation.
3. **Municipal Library Trustees and Cemetery Commission.** In towns with municipal libraries or cemeteries, the library trustees and the cemetery commission have no formal statutory role in the development of the shade tree preservation plan ("Plan"). However, given that each public body has substantial statutory control to manage their properties, it would be wise for the selectboard and tree warden to include them in the process especially if the Plan's provisions extend to any non-shade trees located on library or cemetery grounds. 22 V.S.A. § 143, 18 V.S.A. §§ 5373, 5375.

## Implementation and Enforcement of Plan and Other Tree Management

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1. **Selectboard.** As the general supervisory head of the town, the selectboard administers all tree related tasks that aren't assigned to another officer, such as the tree warden. Enforcement against the illegal cutting or removal of trees and shade trees comes by issuing statutory penalties or from enforcing a town tree ordinance. The selectboard can issue monetary penalties under state law to illegal cutting of shade trees and trees in the highway ROWs via 19 V.S.A. § 902, 24 V.S.A. § 2510, and 13 V.S.A. § 3602.

The selectboard has the discretionary authority to adopt a tree ordinance, which could apply to shade trees or non-shade trees; to provide for the location, protection, maintenance, and removal of trees on or above public highways, sidewalks, or other property of the municipality; and to administer the Plan and regulate shade trees. Why would a selectboard want to adopt a tree ordinance in addition to a shade tree Plan? A tree ordinance carries more enforcement authority than a shade tree Plan because its rules apply to the public, whereas a Plan is more like a policy, being executive in nature and oriented inwards to guide internal decision-making processes. In contrast, municipal ordinances, once adopted according to statutory process, become legally enforceable local laws. Ordinances are adopted pursuant to Chapter 59, Title 24 of the Vermont Statutes Annotated, which includes adhering to specific notice requirements. Ordinances may be enforced in the judicial bureau by the issuance of municipal civil tickets to violators by designated enforcement officers. Tree wardens and other town officials may be designated as enforcement officers by the selectboard in ordinances. If an ordinance's penalty is greater than $800 or if the town seeks to compel an action or abate an action (injunction) by a violator, the selectboard must enforce the ordinance in superior court with the help of its town attorney.

For more information on ordinances, refer to our Ordinance Adoption, Amendment, or Repeal toolkit on our Policies and Ordinance page.

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**Tree warden.** The tree warden is obligated to perform their statutory duties related to shade trees pursuant to Chapter 67 of Title 24 of the Vermont Statutes Annotated. In addition, the tree warden carries out the Plan and performs any additional duties as described within. Even though state law says that tree wardens "shall enforce all laws relating to shade trees," they will need the support, through monetary means and collaboration, from the selectboard (and manager, in a municipal manager form of governance town) to effectively enforce tree violations. Though only the selectboard has authority to adopt tree ordinances, the tree warden may propose ordinances, rules, or other policies to the selectboard to further the goals of the town's tree planning and management.

2. **Manager**. A manager's job is to ensure the Plan is being successfully carried out. The manager may also have specific tasks assigned to them by the Plan. Even though town managers have independent authority to act, they still must do so to the satisfaction of their employer, the selectboard. The exercise of the town manager's tree authority will necessarily be further informed by the job description and any tree ordinance adopted by the selectboard. As for ordinances, managers have no statutory role in adopting ordinances, but as general administrative head of the town they assist in effectuating their administration and enforcement.
    - Are infested with or infected by, or at risk of becoming infested with or infected by, a tree pest and are located in an infestation area designated by the Agency of Agriculture, Food and Markets and Department of Forests, Parks and Recreation.

State law places all shade trees under the control of the tree warden. 24 V.S.A. § 2502(a). It also gives town managers charge, control, and supervision over the maintenance of parks and playgrounds. 24 V.S.A. § 1236(9)(G). Ostensibly, these two laws pose an apparent conflict over who controls shade trees located in a town park

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or playground. The law providing that the tree warden "shall control" all shade trees in the town is more specific than the law giving the manager general authority over parks and playgrounds; therefore, VLCT thinks the apparent conflict is resolved based on the type of tree and where it is located. As "shade trees" are specifically under the tree warden control, the tree warden has control over all shade trees located on town property including those located in a park, recreation area, near a town building, or within the town right-of-way that was either planted by the town or has been designated as a "shade tree" pursuant to the town's Plan. If a tree was not planted by the town or designated as a shade tree and is located on town property, then it is either under the control of the library trustees if it is located on library property, the cemetery commissioners if on municipally owned cemetery property, or the town manager (or the selectboard for those towns without the town manager form of government) if it is located elsewhere on municipal property.

## Shade Tree and Non-Shade Tree Removal

1. **Selectboard**. Selectboards have control over all trees that 1) do not fall under the definition of "shade trees," and 2) are not located in town cemeteries or libraries. This means that selectboards have authority to manage trees on public rights-of-way and municipally owned property that were either not planted by the municipality nor designated as shade trees in the town Plan. A person, other than the abutting landowner or municipality, cannot cut, trim, remove, or otherwise damage trees growing within the limits of a town highway without first obtaining the consent of the selectboard.

If an abutting landowner or resident appeals for a proposed *shade tree* cut or removal, the selectboard must hold a public hearing, within 10 business days after receipt of the appeal, to make the final determination on the proposal. During the appeal period, the tree warden's action is stayed (i.e. postponed) until the selectboard makes

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a final decision. The hearing is a quasi-judicial proceeding where the selectboard acts like a judge to receive evidence from interested parties; manage conflicts of interest and ex parte communication; deliberates, and decides the case based on the credible and relevant facts gleaned through testimony. (Ex parte communication means direct or indirect communication between a member of a public body and any party, party's representative, party's counsel, or any person interested in the outcome of a quasi-judicial proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.) Before deciding, the selectboard may perform a site inspection of the area/tree of interest.

1. **Tree warden.** Tree wardens control all shade trees in town and may cut or remove them or cause them to be cut or removed. Before a tree warden cuts or removes a shade tree, they must post public notice at least 15 days prior to the cutting or removal in at least two conspicuous locations in town and in the town clerk's office under 24 V.S.A. § 2509. When the shade tree proposed to be cut or removed is located on property held in fee by another, the town must notify each abutting landowner. Any municipal resident or landowner may appeal the proposed tree warden action within 15 days of the notice being posted by writing to the selectboard. If the proposed action is appealed, the selectboard must give notice of the appeal to the tree warden and hold a public hearing (see above for information on the hearing).

The tree warden does not need to give public notice under 24 V.S.A. § 2509 to remove shade trees that:

- Are a hazard to public safety; or
- Must be removed for the town to comply with State or federal law or permitting requirements.

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Even though state law only gives the tree warden authority over shade trees, the Town Plan may determine whether tree maintenance or removal on specific municipal property must require the approval of another municipal officer or selectboard. Therefore, there's potential for the tree warden to play a larger role in tree management in town.

**Manager.** The manager controls all non-shade trees that are located on town property that are not under the authority of the cemetery commission or library trustees. This means the manager may cut them, remove them, or cause them to be cut or removed at their discretion, with or without public notice, unless they agree to subject these trees' care, management, and removal to the provisions of the town's Plan or other policy or ordinance.

**Library Trustees and Cemetery Commission.** The tree warden has control of all shade trees within the municipality. This includes all trees located on town property including those located on library and cemetery lands that were either planted by the town or designated shade trees by the Plan. If a tree on library or cemetery lands was not planted by the town or designated as a shade tree, then it's under the control of the library or cemetery.

## Town Highway/Right-of-way ("ROW") maintenance and tree removal

1. **Selectboard and Highway Crew.** The highway crew, as directed and supervised by the selectboard, has the authority to remove shade and non-shade trees and bushes within the town highway right-of-way that obstruct the view of the highway ahead, cause damage to the highway, or that are objectionable from a material or scenic standpoint. Shade trees subject to this maintenance still have

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some protection, albeit under a different standard. The law, 19 V.S.A. § 904, states that shade trees, as well as non-shade trees that have been set out or marked by abutting landowners, must be preserved so long as the usefulness or safety of the highway is not impaired. Young trees standing at a proper distance from the roadbed and from each other, and hedges of bushes or trees that serve as protection to the highway or add beauty to the roadside must also be preserved. This authority allows the highway crew to perform most routine town highway right-of-way maintenance, as directed and supervised by the selectboard.

2. **Tree warden.** Even though certain highway ROW tree cutting, and removal doesn't require tree warden authorization, the town's Plan may specify that tree maintenance or removal on specific municipal property must require the approval of another municipal officer. This means that the Plan could grant additional authority to the tree warden or some other municipal officer to authorize certain tree cutting or removal in the town highway ROWs.
3. **Manager.** The town manager takes over the selectboard's supervisory role of the highway crew. As such, the manager controls all non-shade trees that are located on town property that are not under the authority of the cemetery commission or library trustees. This means the manager may direct the highway crew to cut, remove, or cause cutting or removal at their discretion, as the selectboard would, with or without public notice, unless they agree to subject these trees' care, management, and removal to the provisions of the town's Plan or other policy or ordinance.
4. **State highways**. State law gives broad authority for the state agency of transportation to maintain and cut or remove ***any*** trees in state ROWs. No tree warden authorization or notice is required before the state cuts a shade tree in a state ROW. Likewise, no selectboard authorization is required for the state to cut any other trees in the state ROWs.

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## Collaborative and financial agreements

1. **Tree warden and selectboard.** The tree warden, with consent of the selectboard may:
    - enter into financial or other agreements with the owners of land adjoining or facing public ways and places for the purpose of encouraging and effecting the Plan;
    - enter into agreements with other municipalities to provide tree warden services or training, or;
    - cooperate with federal, state, county, or other municipal governments, agencies, or other public or private organizations or individuals and may accept, on behalf of the town, funds, equipment, supplies, or services for use in carrying out the town's tree management, growth, or Plan.
2. **Selectboard.** The selectboard may give consent to the tree warden to enter into the financial, cooperative, and other agreements listed above, as well as authorize the tree warden to accept funds, equipment, supplies and other services for tree management.
3. **Manager.** Although state law gives the selectboard the authority to grant tree warden's consent on entering into the agreements stated above, the town manager will be crucial in facilitating and administering such agreements.

## Management of infested or infected shade trees

1. **Tree Warden.** When an insect or disease pest infestation present in public or private trees threatens other trees and is considered detrimental to the town's Plan or threatens public safety, the tree warden may request surveys and recommendations for control action from the Secretary of Agriculture, Food and Markets or Commissioner of Forests, Parks and Recreation.

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The tree warden may determine that an owner or lessee of abutting property has sufficiently controlled all insect pests or tree diseases upon the trees within the limits of a public way or place abutting the property and may determine that it is not necessary to remove the infected or infested tree(s).

## Other Tree Related Activities

1. **Utility work.** The law that utility companies must adhere to (30 V.S.A. § 2506) says that a tree "within a street or highway shall not be cut or injured in constructing, maintaining, or repairing a line of wires, without the written consent of the adjoining owner or occupant, unless the . . . selectboard of the town in which the tree is situated, after due notice to the parties and upon hearing, shall decide that such cutting or injury is necessary." VLCT MAC interprets this law to mean that abutting landowners can give permission to utility companies to perform work on their property that is within the town ROW and that no additional permission from the tree warden would be required if this process is followed, even if the tree being cut or injured is a shade tree. If the abutting landowner refuses, selectboard may give permission following a hearing.

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