

U.S. Department
of Transportation

Federal Highway Administration
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February 29, 2008

Mr. Jeff Brillhart
Assistant Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483

RE: Snowmobile and All Terrain Vehicle (ATV) use of
Transportation Enhancement (TE)-funded corridors in
New Hampshire: New FHWA Framework for
Considering Motorized Use on Nonmotorized Trails and
Pedestrian Walkways

Dear Assistant Commissioner Brillhart:

This letter is responding to former Commissioner O'Leary's July 30, 2007 letter regarding the New Hampshire Department of Resources and Economic Development (NHDRED) request that the U.S. Secretary of Transportation deem it appropriate for NHDRED to continue to allow ATV use of TE-funded corridors in New Hampshire in conditions of snow cover.

As discussed with your staff, we delayed the response while FHWA completed its framework for considering motorized vehicle use on nonmotorized trails and pedestrian walkways. The purpose of this now-released policy clarification is to help determine whether to permit an exception for motorized use on nonmotorized trails and pedestrian walkways under 23 U.S.C. § 217(h).

Based on our review, the information from NHDRED forwarded with your July 30, 2007 letter does not support their request to keep in place New Hampshire's current practice of allowing general ATV winter use with snow cover on TE-funded corridors.

Title 23 United States Code (USC) Section 217 applies to any bicycle transportation and/or pedestrian walkway facility, including trails, funded under the Federal-aid highway program, for a pedestrian walkway or for a trail designated for nonmotorized use. This includes all Federal-aid highway funding program categories, except as noted below.

Section 217 does not apply to:

- Trail projects funded under the Recreational Trails Program that allow motorized use, or
- Projects using regular Federal-aid highway program funds if the original intent of the facility is for motorized vehicle transportation.

Title 23 U.S.C. § 217(h) does not permit the use of motorized vehicles on existing and proposed nonmotorized trails and/or pedestrian walkways using Federal transportation funds, except in exceptional cases. These exceptions, under certain circumstances, may include maintenance vehicles, snowmobiles, motorized wheelchairs, or electric bicycles, and “such other circumstances as the [U.S.] Secretary [of Transportation] deems appropriate.”

Such exceptions will need significant data gathering and careful justification so as to not unduly impair non-motorized operation of the trail or pedestrian walkway, or violate the expectations of adjacent or nearby property owners. An exception should be considered only when other reasonable options have been exhausted. The exception may allow limited use of segments of nonmotorized trails and pedestrian walkways, such as for 90 degree crossings, short doglegs, crossing structures such as bridges, or other exceptional circumstances. For example, an ATV, utility vehicle, or construction vehicle used for sidewalk or trail maintenance may be permitted while engaging in sidewalk or trail maintenance work.

Another example would be when an existing or proposed nonmotorized trail offers the only reasonable route across a barrier (such as a bridge over a waterway, highway, railroad, etc.). Shared use with motorized users such as all terrain vehicles (ATVs) may then be considered for a specific segment of the trail facility. There may be situations where allowing motorized use on an otherwise nonmotorized facility may reduce environmental impact when compared to having separate facilities. These situations may fall under “such other circumstances as the Secretary deems appropriate.”

Under FHWA’s policy, extensive consideration should be given to the original intended use of the trail or pedestrian walkway. Change requests should not be used on recently constructed trails or pedestrian walkways (seemingly to avoid the Federal restriction against motorized use). The entities with jurisdiction over the trail or pedestrian walkway should be encouraged to honor the original agreement and intended use.

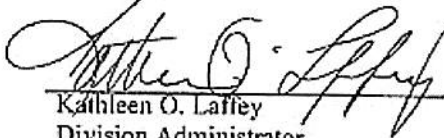
FHWA in consultation with the State Department of Transportation (DOT) may specify which motorized uses are being permitted under an exception. Similarly, FHWA in consultation with the State DOT may impose conditions on motorized vehicle use of nonmotorized trails, such as time of day, seasonal, or weather-related restrictions. The decision to permit motorized use may be for an initial trial period, before a final decision is made. All requests for an exception to permit motorized use are encouraged to have an inclusive and documented public involvement process, consistent with the State’s public involvement procedures.

Finally, FHWA defines "snowmobile" based on the definition from two sources. First, the International Snowmobile Manufacturers Association defines a snowmobile as "a self-propelled vehicle intended for off-road travel primarily on snow, having a curb weight of not more than 453.59 kg (1,000 lb); driven by track or tracks in contact with snow; and steered by a ski or skis in contact with the snow." Second, Title 23 Code of Federal Regulations § 652.5(m) defines a snowmobile as "a motorized vehicle solely designed to operate on snow or ice."

The FHWA policy provides an extensive list of factors to be considered before FHWA permits a motorized use on part of a nonmotorized trail or pedestrian walkway. More details about these factors can be provided to you at your request

If you have any questions, or need further information, please contact Leigh Levine of the New Hampshire Division Office at (603) 228-3057, extension 111.

Sincerely,



Kathleen O. Laffey
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