



THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION



CHARLES P. O'LEARY, JR. COMMISSIONER

JEFF BRILLHART, P.E. ASSISTANT COMMISSIONER

July 30, 2007

Ms. Kathy Laffey
Division Administrator
Federal Highway Administration
19 Chenell Drive, Suite One
Concord, NH 03301

OPTIONAL FORM 99 (7-90) FAX TRANSMITTAL
To: Andrew Walters
From: Leigh Levine
Phone #: 228-3657, 111
Fax #: 283-0301

Dear Ms. Laffey:

Enclosed is a letter dated July 17 from the Commissioner of the NH Department of Resources and Economic Development (NHDRED) requesting FHWA and the US Department of Transportation's concurrence regarding the definition of "snowmobile" and the use of all terrain vehicles (ATVs) on trails purchased or enhanced with federal Transportation Enhancement funding.

As you are aware there is interest from the public on both sides of the issue of ATV use on recreational trails. Your prompt attention to this matter is very much appreciated. Please call if you have questions.

Sincerely,

Charles P. O'Leary, Jr.
Commissioner

CPO:bpr
Attachment

- cc: The Honorable John H. Lynch, Governor
George M. Bald, Commissioner, NHDRED
Mark Hodgdon, Attorney General's Office
Anne Edwards, Attorney General's Office
Jeff Brillhart, NHDOT



GEORGE M. BALD
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

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E-MAIL: gbold@dred.state.nh.us

July 17, 2007

Charles P. O'Leary, Jr.
Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03302-0483

RECEIVED
COMMISSIONERS OFFICE

JUL 18 2007

THE STATE OF NEW HAMPSHIRE
DEPT. OF TRANSPORTATION

Subject: Snowmobile and All terrain Vehicle (ATV) use of Transportation
Enhancement (TE)-funded corridors in New Hampshire

Dear Commissioner O'Leary:

This is in response to the February 13, 2007 letter from Federal Highway Administration (FHWA) requesting a definition of "snowmobile" under New Hampshire law and documentation supporting the winter use of all terrain vehicles (ATVs) on New Hampshire corridors purchased with Transportation Enhancement (TE) funds.

Additionally, the Department of Resources and Economic Development (DRED) requests that New Hampshire Department of Transportation (NHDOT) ask the Secretary of Transportation (Secretary) to deem DRED's long-standing policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

The following are the corridors at issue in this request. TE funds provided about eighty percent of the acquisition costs for these corridors:

Ashuelot, 21 miles long, acquired in 1995, project # 12133C
Cheshire, 42 miles long, acquired in 1995, project # 12133B
Conway, 13 miles long, acquired in 2001, project # 12632
Farmington, 7 miles long, acquired in 1997, project # 12631
Fort Hill, 9 miles long, acquired in 1994, project # 11896
Jefferson-Whitefield, 2 miles long, acquired in 2000, project # 12638
Monadnock, 9 miles long, acquired in 1999, project # 12706
Northern, 59 miles long, acquired in 1995, project # 12133A

DRED maintains the TE-funded corridors pursuant to maintenance agreements with NHDOT. As a preliminary matter, since acquiring these corridors, most more than 10

years ago, DRED has allowed ATV use with snow cover. Thus, DRED is not requesting FHWA approve a new policy. Rather, DRED is requesting that the Secretary confirm that DRED's long-standing policy is "appropriate."

The Definition of Snowmobile Under New Hampshire Law

Part of the reason for DRED's policy of allowing ATV use with snow cover lies in the history of the definition of "snowmobile" under New Hampshire law. Under section 23 U.S.C. § 217, snowmobiles are permitted on TE-funded corridors. The Federal law does not define "snowmobile." Therefore, we understand that FHWA looks to the states' definitions of that term.

Prior to July 1, 2006, RSA Chapter 215-A, the applicable New Hampshire law, did not have a definition of "snowmobile." Rather, the law used the term "snow traveling vehicles," which were defined to include ATVs as a type of off highway recreational vehicle (OHRV). For this reason, DRED's policy of allowing ATV use historically complied with Federal law.

As of July 1, 2006, the term "snow traveling vehicle" was removed from RSA 215-A. At that time, the term "snowmobile" was added to the law and it does not include ATVs. RSA 215-A:1, XIII. Accordingly, ATVs no longer fall within the general definition of snow traveling vehicles but are still included in the definition of OHRVs which recognizes they can travel on surfaces "covered by ice or snow." RSA 215-A:1, VI. For the following reasons, however, DRED requests that the Secretary deem DRED's policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

Request for Determination That ATV Use With Snow Cover Is Appropriate

TE funds constituted about eighty percent of the aggregate acquisition costs for these corridors. The remaining twenty percent was funded through State and local funds. Moreover, the yearly maintenance of these corridors is funded almost entirely with State funds. More specifically, since the State acquired the corridors, TE funds have not been used for improvements, however TE funded projects are planned for 2.5 miles of the Ashuelot in FY 2008 and 8.3 miles of the Northern in FY 2010.

Thus, the State made, and continues to make, a major investment in these corridors. As such, it is appropriate to allow the State to manage the corridors in a manner that reflects the unique character and needs of the State while protecting the transportation interests in these corridors.

Since the State acquired the corridors, they have been successfully managed for multiple uses, while also preserving their function as transportation corridors. These corridors provide connectivity between communities. Under New Hampshire law, these rail corridors must also be operated and maintained in such a way that would not

unreasonably limit the ability to restore rail service. RSA 228:60-a. DRED has managed the corridors appropriately in accordance with this mandate.

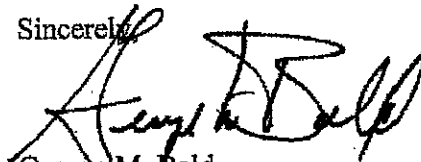
Additionally, winter ATV use does not cause environmental impacts beyond those caused by snowmobiles. There is no damage to the surface of the corridor as there is an intermediate surface of snow cover existing between the ATVs and the surface. Allowing continued use of ATVs with snow cover would not cause increased impact to other users of the corridors as ATVs have been using these corridors for 10 years.

Instituting a new policy prohibiting ATV use would certainly be disruptive to the current users of the corridors. It will also cause increased expenses for notifications, signage, and management responsibilities. Preventing ATVs in the winter will also pose an increased burden on law enforcement agencies as they would be required to enforce such a restriction.

For the foregoing reasons, DRED requests that the Secretary deem it appropriate for DRED to continue managing these corridors as it has since their acquisition to allow ATV use with snow cover.

We thank you for your consideration of our request. Please feel free to contact Bill Gegas (603-271-3254) at DRED or me if you have any questions or need additional information.

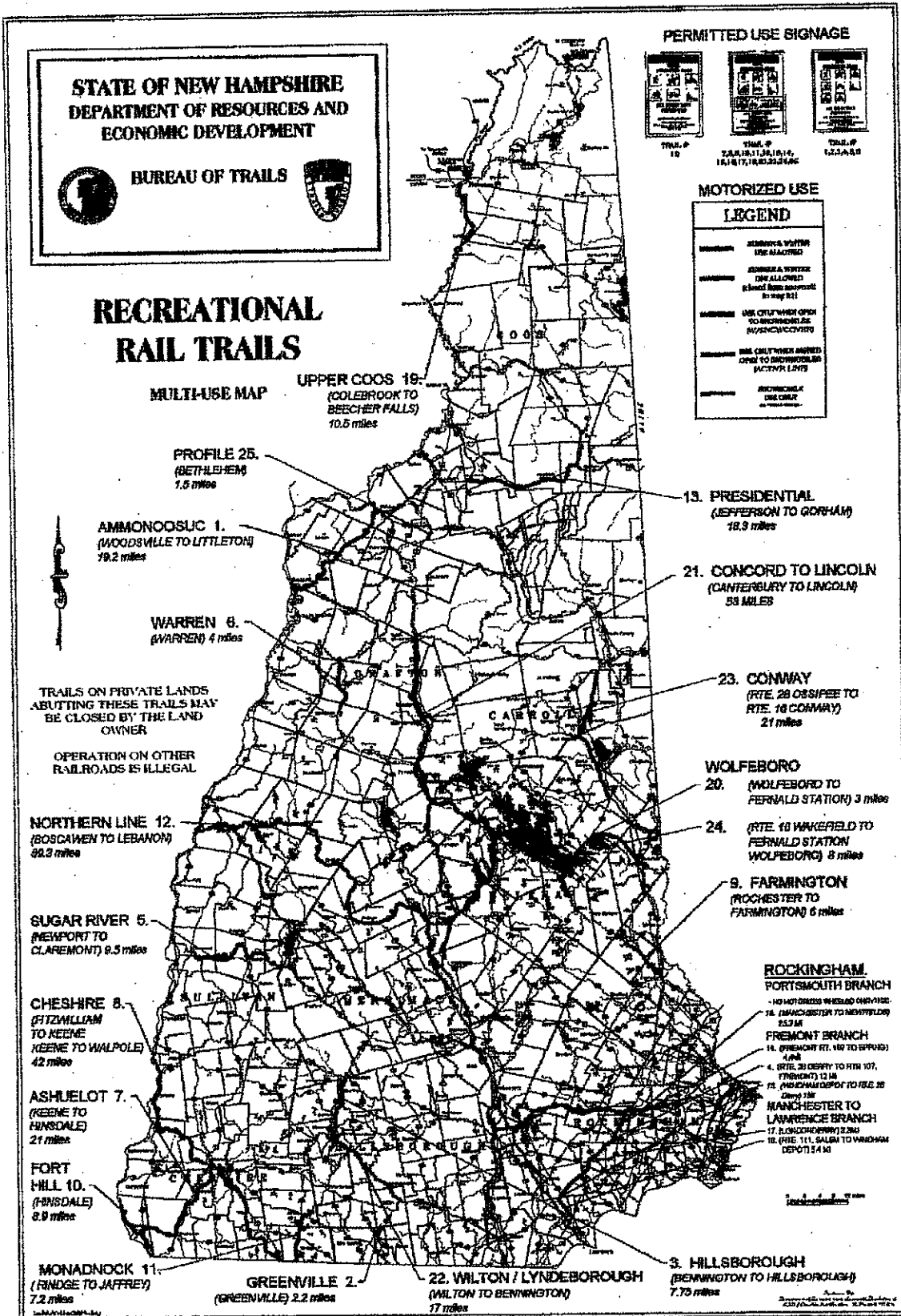
Sincerely,



George M. Bald
Commissioner

GMB:CG:lc
Enclosures

cc: His Excellency, John H. Lynch, Governor
Mark Hodgdon, Attorney General's Office
Anne M. Edwards, Attorney General's Office
Allison McLean, Director, Division of Parks and Recreation
Chris Gamache, NHDRED, Trails Bureau
Jim Moore, NHDOT
Christopher Morgan, NHDOT,
Ram Maddali, NHDOT



OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages

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Fax # <i>283-0301</i>	Fax # <i>(last page)</i>

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GENERAL SERVICES ADMINISTRATION

TRAIL PERMITTED USES



**WINTER USE
ONLY WITH
SNOW COVER**

ALL OTHER USES

PROHIBITED

RSA 215-A:3V & RSA 216-F:2 III

STATE OF NEW HAMPSHIRE

DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

DIVISION OF PARKS AND RECREATION

BUREAU OF TRAILS