



U.S. Department
of Transportation
**Federal Highway
Administration**

New Hampshire Division

July 7, 2016

53 Pleasant Street, Suite 2200
Concord, NH 03301
(603) 228-0417

In Reply Refer To:
HDA-NH

Ms. Victoria F. Sheehan
Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03301

Attn: Bill Cass

Subject: City of Claremont, New Hampshire – Request for Exception under 23 U.S.C. 217(h)

Dear Commissioner Sheehan:

The Federal Highway Administration (FHWA) received a request from the New Hampshire Department of Transportation (NHDOT) on March 7, 2016, on behalf of the City of Claremont, requesting permission to allow OHV use along the Bobby Woodman Trail as an exception from the Federal requirements under 23 U.S.C. 217(h). Section 217(h) prohibits use of motorized vehicles on trails and pedestrian walkways with specific exceptions. FHWA's Framework for Considering Motorized Use on Nonmotorized Trails and Pedestrian Walkways notes that FHWA will provide exceptions "only when other reasonable options have been exhausted." FHWA confirms that 23 U.S.C. 217(h) does apply to this situation, and considers this exception request incomplete pending further evaluation, analysis, and consideration of reasonable options.

The NHDOT exception request states that the State does not believe that 23 U.S.C. 217(h) should apply in this situation, because the Transportation Enhancement Activity (TE) funding was for corridor *acquisition*, not for nonmotorized trail *construction*. FHWA rejects this argument: FHWA has always interpreted the law to prohibit motorized use on TE-acquired trails. Furthermore:

- FHWA's definition of *construction* under 23 U.S.C. 101 (as in effect in the 1990s) included "acquisition of right-of-way" (currently codified as 23 U.S.C. 101(a) (3)).
- Under the definition of *transportation enhancement activities* a State could preserve a railroad corridor and/or convert it to pedestrian and bicycle use. The definition did not include any motorized use as an eligible activity.
- The City's original TE application and environmental documentation stated that the intended use was for pedestrian and bicycle use, with winter snowmobile use. The application does not mention potential OHV use.

If the City of Claremont and NHDOT wish to continue efforts related to this exception request, FHWA recommends that the State and the City evaluate:

- The environmental impacts of OHV use, because OHV use was not considered in the initial trail corridor acquisition.
- Pedestrian and bicycle use at various locations along the trail (for example: section west of Chestnut Street, Chestnut Street to the bridge, the bridge itself, and sections along Washington Street).
- How motorized use would affect safe, accessible, and comfortable pedestrian and bicycle use along the trail corridor, and how the City would accommodate nonmotorized users.
- Modifications to the trail corridor to accommodate pedestrians and bicyclists without a detour: to be complete prior to allowing OHV use within the corridor.
- How the State and the City would address concerns from residents who oppose allowing motorized use, especially in the residential area.
- Limiting the exception request to a shorter length.

FHWA notes that the section between Chestnut and Washington Streets:

- Has a residential area on the south and a recreational and agricultural area on the north.
- Is not adjacent to streets; so that additional noise from OHVs would be noticeable.
- Provides direct pedestrian and bicyclist access from the residential area to Washington Street businesses, with no alternate routes across the river within walking distance.
- Has a connection to the Claremont Middle School and to the Arrowhead Recreation Area (which has skiing and a small snowmobile and OHV riding area).

FHWA notes that the section along Washington Street:

- Is a commercial area adjacent to the highway, with highway-oriented retail businesses. Washington Street carries 11,000 vehicles per day, including truck traffic. Additional noise from slow-speed OHV use would be less noticeable.
- Has 4 to 5-foot shoulders that can be upgraded as bicycle lanes.
- Has sections with 4 to 5-foot sidewalks that can be upgraded for accessible pedestrian use, and sufficient right-of-way to construct accessible sidewalks to ensure continuity.
- Has characteristics suitable to implement a Road Diet from 4-lane undivided to 2 lanes with a center left turn lane and/or turn lanes. This would provide options to accommodate bicyclists and pedestrians within the highway right-of-way, and reduce conflict with OHV use. See FHWA's *Road Diet Informational Guide*.
- Provides a connection to the larger OHV riding areas and access to businesses.
- Was the location of the RTP grants to the Sullivan County ATV Club.

The City and State should consider other options that may not require an exception:

- Provide an alternate OHV route along the river or an alternate route that crosses the river on a new right-of-way.
- Determine whether or not it would be legal and appropriate for OHVs to use designated highways, highway shoulders, or streets within the City to connect trail riding areas and access to businesses.

- Determine whether or not a Road Diet on Washington Street could provide space for OHV use within the highway right-of-way, leaving the trail for pedestrian and bicycle use.

FHWA realizes that each scenario described above will have costs. The State may use:

- RTP funds for any recreational trail project, including rail-trail projects.
- Transportation Alternatives funds for any pedestrian and bicycle, rail-trail, or recreational trail project.
- Surface Transportation Block Grant (STBG) Program funds for any project eligible under STBG, the TA Set-Aside, or the RTP.
- Statewide Planning and Research funds to support pedestrian and bicycle counting for planning purposes and to support pedestrian and bicycle planning.

FHWA will not request reimbursement of Federal-aid highway program funds used in this corridor because all of the projects continue to serve an eligible purpose.

We are available to meet with you to further discuss this response or answer questions. Please contact Leigh Levine of my staff at 603-410-4844 or leigh.levine@dot.gov.

Sincerely,



Patrick A. Bauer
Division Administrator