

Jo –

Let me offer you a little background context of our recent experiences with other communities as a starting point. This is not a simple matter, and there is an option for a waiver request, but there are many considerations and it will take a significant effort to even put together a waiver request.

**First, here is what I know immediately about the project:**

I can tell from available information that an application for Transportation Enhancement Funds was submitted in 1994 by the Town of Haverhill Trails Committee (points of contact Michael Penkert and Douglas Teschner), as designated by the Board of Selectmen. The state project number was 12138, The application discussed building a 13 ½ mile bike/ped transportation corridor along the abandoned Blackmount Branch Rail Corridor. Immediately available records show that \$212,805 (total \$\$), \$170,244 federal was spent on this project. We do have some additional files in our Rail and Transit Bureau that I will be reviewing for more details. However, as this project is 20+/- years old, and specific project files must be kept for only 3 years after project closeout, I suspect I will not be able to find all of the details to all of the question you may have.

**Claremont NH Scenario – very similar**

This is very similar to a situation that the Department was made aware of in the City of Claremont about 2 ½ years ago. The circumstances are not much different – a section of the local abandoned rail trail was purchased in the mid-1990's with the City have ownership, and the rail trail was used by many modes of recreational and transportation travelers, including ATVs. FHWA was notified by a person familiar with the rules behind Transportation Enhancement that ATVs were travelling on the corridor (this person objected to the ATV usage). The Department spent a number of months working with the City to try and answer many of the same questions you have, and in the end we were not able to answer all of the detailed questions the City had. They did not have any records and we did not have many records.

Given the federal requirements that come with TE funding, the City did move to temporarily prohibit ATVs in the Spring of 2014. They weren't thrilled, and didn't necessarily agree, but the risk of paying back funding was not something they wanted. Then they put together a waiver request – there is a very specific framework that FHWA requires. Waiver requests are submitted to, reviewed by, and decided upon by the FHWA NH Division Office for trails here in NH. NHDOT has to review the waiver request, and offer comments/recommendations, and then FHWA makes final decisions. The waiver from the City of Claremont was submitted to NHDOT in Summer 2015 (here is a link to the request if you are interest – it is very large and complex -<https://www.dropbox.com/sh/qxhvvnqh98c1uh3/AACtool66rgJ3QuL0IMqtZQna?dl=0> ). The Department took some time to review the waiver, and in March 2016, the Department offered FHWA their recommendation (see attached PDF file).

Just last week FHWA responded. They did not accept the waiver request or the recommendations of the Department – you can see the details of their response in the attached information. I am including an email to the City Solicitor in Claremont that has both the FHWA decision letter and our follow-up to Claremont. There was also some media attention about the decision based on the FHWA letter.

Preliminary thoughts on your comments:

- FHWA's position is not likely to change for the circumstances now in Haverhill. It is our understanding that NO waiver request has ever been approved by any FHWA Division office. Claremont argued many of the same points that you are now, and they are all valid, but it did not make a difference.
- Claremont also had support from all of NH's federal delegation and most state legislators in their waiver request.
- I don't know if we will find that Glenn was aware of the restrictions. Perhaps the Town was never notified, perhaps the Town was notified through the project contacts and the information wasn't conveyed to Glenn, but perhaps it was. In any of those cases (or other scenarios), FHWA's opinion is not likely to change.
- From the few project files I have seen so far, I am unclear how much of the 13 ½ mile corridor was purchased and constructed with the TE funding received. By example in the Claremont case, the rail trail is MUCH longer than just the portion they were requesting a waiver for – other sources of funds that allow for ATV use for were used to purchase those other portions of their corridor. It may be determined that a similar circumstance exists in Haverhill.
- I and my staff are willing to work with you to try and determine answers to the questions you have. The waiver process is not a short one – I think Claremont is a reasonable example. From initial notification to final waiver decision by FHWA was 2 ½ years. However, Claremont came into compliance with federal regulations 2 years ago by prohibiting ATV usage. It was not a popular step locally for all of the same reasons you note, but the City was not willing to risk paying back funds to FHWA. In your case, it is the federal portion of the project I mentioned above that is at risk – about \$170,000.

I hope that I am helping with some of this background – this is a lot of information, the issue is much more complex than I thought when I first heard about Claremont, and the process is also as complex to resolve.

I have adjusted the group of recipients on this email to more focus on those people on my end that we may ask to be involved in the review and research of information should you want our assistance in any way to answer many of the questions you have.

**Regards,  
Bill**