

Cummings, Valerie

From: Bill Watson
Sent: Friday, July 22, 2016 10:30 AM
To: 'Jo Lacaillade'
Cc: Patrick Herlihy; Shelley Winters; Tom Jameson; Nancy Mayville; Louis Barker
Subject: RE: Haverhill Drive Permit/Rail Corridor Communication

Jo –

Sorry for the delay.

We have not found that there is a statute of limitations , but this is only the second time we have had this circumstance. I would expect that FHWA would tell us that it is in perpetuity unless funds are somehow repaid.

The NHDOT permit is simply to have a drive access to NH 10. We don't have the authority to give access across Town property – any comment by NHDOT staff previously that would be contrary to this was made in error. So then what you are really asking about is who has the authority to allow the property owner to connect to the NH 10 driveway from their property, across the rail corridor.

This trail crossing now becomes a local issue. And there are general 2 scenarios:

- If the Town feels that there is language in the deed for the rail corridor property that may allow for conveyance of crossings for access to lands on the other side, then the town could decide to allow the crossing to occur, but it would still be open to federal oversight if FHWA so choose.
- If the landowner did not have a crossing of some sort in the vicinity of where they are requesting now, prior to the land being purchased with FHWA funds, OR if the deed to the rail corridor does not discuss grandfathering type of language for such crossings, then FHWA would likely not support a crossing now.

The Department is unable to tell you with any certainty that you can or cannot take the action you are requesting. You may want to discuss this locally, with legal counsel, etc., for their opinion. Certainly if there is any more we can offer to assist we will.

Regards,
Bill

William Watson Jr., PE Administrator
P - 603-271-3344 C - 603-419-0103 F - 603-271-8093
bwatson@dot.state.nh.us

NH Department of Transportation
Bureau of Planning and Community Assistance
7 Hazen Drive
Concord NH 03301



From: Jo Lacaillade [mailto:townmanager@haverhill-nh.com]
Sent: Friday, July 15, 2016 7:59 AM
To: Bill Watson
Cc: Patrick Herlihy; Shelley Winters; Tom Jameson; Nancy Mayville; Louis Barker
Subject: Re: Haverhill Drive Permit/Rail Corridor Communication

Good Morning,

Is there no statute of limitations on how long the Federal government can hold us hostage over this money?

How does this affect the trail crossing that I requested. I know that the State issued the driveway permit but what happens if we grant them permission to go over the trail from that driveway? I was told from the beginning that the State would not issue that permit unless the Federal Highways signed off, and since I have the permit I assume they have done so. Are we able to grant the easement over the trail or is that tied to the \$170,000 repayment also?

Please advise.

Jo

On Thu, Jul 14, 2016 at 3:46 PM, Bill Watson <BWatson@dot.state.nh.us> wrote:

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/qxhvvngqh98c1uh3/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

William Watson Jr., PE Administrator

P - [603-271-3344](tel:603-271-3344) C - [603-419-0103](tel:603-419-0103) F - [603-271-8093](tel:603-271-8093)

bwatson@dot.state.nh.us

NH Department of Transportation

Bureau of Planning and Community Assistance

7 Hazen Drive

Concord NH 03301



From: Jo Lacaillade [mailto:townmanager@haverhill-nh.com]

Sent: Thursday, July 14, 2016 11:07 AM

To: Bill Watson

Cc: Bill Cass; Dave Rodrigue; Patrick Herlihy; Shelley Winters; Douglas King

Subject: Re: Haverhill Drive Permit/Rail Corridor Communication

Good Morning,

When you and I spoke about a month ago, you were looking into the funding and I see from your email it was determined that it was from a source that does not allow ATV's. Can you provide the document signed by the Town that states that the money they were accepting would not allow ATV's to access the trail? Glenn was here for 20 years and ATV's have been on that trail from the beginning as far as I know, and as I told you on the phone last month, I cannot believe he would have allowed that to happen if he was aware of the funding restrictions. This is the same trail that goes through Bath, Lisbon etc...and all are used by ATV's. If this restriction was on all of these trails, perhaps all Towns that will be impacted will need to join together to appeal. I have spoken with one of the Bath Selectmen and he is going to research their funding also. Closing of this trail to this type of traffic will have a very significant economic impact on all of these towns because of the use of the trail.

Please advise how to start the appeal process. How do I determine how much of the trail in the North country was developed using these funds. I will need to reach out to those Towns also if an appeal is to be effective.

I do appreciate all of the time you have give to assisting me. This issue has put me in a very bad position as a new Town Manager looking at having to terminate a LONG standing and much used ATV system of trail.

Respectfully,

Jo A Lacaillade

Town Manager

On Thu, Jul 14, 2016 at 9:06 AM, Bill Watson <BWatson@dot.state.nh.us> wrote:

Good Morning Jo –

Please see the attached response from NHDOT regarding a number of issues brought forward by the Town in communication with FHWA recently, that has been forwarded to the Department to be addressed.

I am also attaching the original June 10, 2016 letter from the town to FHWA and their June 17, 2016 response letter as reference.

A hardcopy will be sent today as well.

Please let me know if there is more we can help with on this matter.

Regards,

Bill

William Watson Jr., PE Administrator

P - [603-271-3344](tel:603-271-3344) C - [603-419-0103](tel:603-419-0103) F - [603-271-8093](tel:603-271-8093)

bwatson@dot.state.nh.us

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7 Hazen Drive

Concord NH 03301



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Jo A Lacaillade

Town Manager

----- Forwarded message -----

From: Bill Watson <BWatson@dot.state.nh.us>

To: "Jane Taylor (jtaylor@claremontnh.com)" <jtaylor@claremontnh.com>

Cc: Guy Santagate <gsantagate@claremontnh.com>, Victoria Sheehan <VSheehan@dot.state.nh.us>, "Leigh.Levine@dot.gov" <Leigh.Levine@dot.gov>, Christopher Waszczuk <CWaszczuk@dot.state.nh.us>, Bill Cass <BCass@dot.state.nh.us>

Date: Fri, 8 Jul 2016 15:53:14 -0400

Subject: FHWA Response to Waiver Request

Jane –

There are 2 attached letters to this email, both of which will also be sent by mail.

The first is FHWA's response to the Department dated July 7, 2016 in response to the Claremont waiver request.

The second is our follow-up to you.

Please let me know if you have any questions.

Regards,

Bill

William Watson Jr., PE Administrator

P - [603-271-3344](tel:603-271-3344) C - [603-419-0103](tel:603-419-0103) F - [603-271-8093](tel:603-271-8093)

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Jo A Lacaillade
Town Manager