



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

New Hampshire Division

February 13, 2007

19 Chenell Drive
Suite One
Concord, NH 03301

In Reply Refer To:
HDA-NH

Ms. Carol Murray, Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03301

Dear Ms. Murray:

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

The enclosed letter was received by the Federal Highway Administration (FHWA) New Hampshire Division Office concerning ATV use on TE-funded rail corridors owned by the State of New Hampshire Department of Transportation (NHDOT), and managed by the New Hampshire Bureau of Trails (BOT).

Federal law (23 U.S.C. 217, enclosed) generally prohibits motorized vehicle use on trails and pedestrian walkways with limited exceptions. One exception is "*when snow conditions and State or local regulations permit, snowmobiles.*"

Federal transportation law does not define "snowmobile," nor does the *Uniform Vehicle Code*. Therefore, the State may define "snowmobile." FHWA does not challenge the described NHDOT and BOT definition of wheeled ATVs as "snow traveling vehicles." However, absent a State law or regulation defining a "snowmobile" as including any snow traveling vehicle, FHWA must consider a commonly understood definition of snowmobile, such as those of other Federal agencies or industry.

The USDA Forest Service defines an "over-snow vehicle" in 36 CFR 212.1 as a "motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow." This regulation does not define "snowmobile." But an ATV that does not run on tracks or tracks and/or skis does not meet the Forest Service's definition of "over-snow vehicle."

The National Park Service defines a snowmobile in 36 C.F.R. § 1.4 as "Snowmobile means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by ski or skis in contact with the snow." An ATV does not meet this definition.

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The International Association of Snowmobile Manufacturers (ISMA) defines a snowmobile as: "Snowmobile — 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." An ATV does not meet this definition.

Based on documentation FHWA has seen so far, it would appear under New Hampshire policy ("*No person shall operate an OHRV other than an ATV, trail bike or snowmobile on bureau snowmobile trails. No person shall operate a conventional motor vehicle on a bureau snowmobile trail.*"), that an ATV is considered a distinct vehicle from a snowmobile, and, therefore, does not meet the State's definition of "snowmobile."

Consistent with Mr. Walters' request of FHWA, and TE program requirements, we request that you provide us with any appropriate State or local statutory or regulatory documentation that:

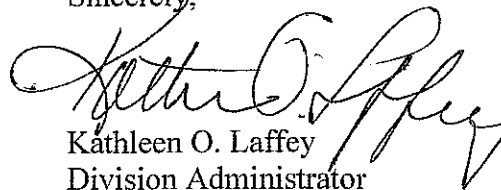
1. Provides the legal definition of "snowmobile" in New Hampshire.
2. Supports the use of snowmobiles on New Hampshire's TE funded corridors.

If there is no State legislation or regulation defining a snowmobile in a manner that includes ATVs, then ATVs must be prohibited from trails and pedestrian walkways that use Federal-aid highway program funds under 23 U.S.C. 217.

Exceptions: You will see that 23 U.S.C. 217(h)(5) allows an exception for "such other circumstances as the Secretary deems appropriate." The State may request an exception under this provision. We are working with our Washington Headquarters office on the process that may be required to allow exceptions.

In summary, please provide the appropriate documentation as requested above.

Sincerely,



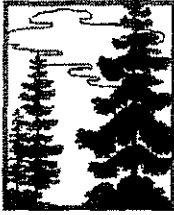
Kathleen O. Laffey
Division Administrator

Enclosure

LL/caj

Cc: Andrew Walters, Concerned Citizen and Director, ATV Watch
James A. Moore, P.E. NHDOT
Ram Madali, NHDOT
Chris Gamache, New Hampshire Department of Resources and Economic Development

File: 250.550 + file
250,200 " "



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January 16, 2007

Mr. Leigh Levine
FHWA - NH Division
19 Chenell Drive
Suite One
Concord, NH 03301

Dear Mr. Levine,

Thank you for the information concerning the Federal Highway Administration's position on wheeled ATV use on New Hampshire rail trails purchased with Federal Transportation Enhancement (TE) funds.

Over the last few years ATV Watch has received numerous inquiries and complaints related to ATV use on the TE funded rail corridors owned by the State of New Hampshire Department of Transportation (NHDOT) and managed by the New Hampshire Bureau of Trails (BOT). In turn ATV Watch has made inquiries to these agencies regarding the issue and the applicability of federal statutes governing the TE funded rail trails. In response to these inquiries NHDOT and BOT have consistently held the position that in the winter, with adequate snow cover, wheeled ATVs are defined as "snow traveling vehicles" and therefore permitted under the federal statutes. In response to inquiries ATV Watch has received, we have relayed the state's position with the caveat that it is not ATV Watch's position, but that it is the state's position and that at some point ATV Watch would look into the issue further.

It is my understanding that on TE funded rail trails federal statutes preclude the use of any motorized recreational vehicles except "snowmobiles" when state or local regulations permit. Over the last year or so we have investigated the basis for the State of New Hampshire's position and have come up with no statutory or regulatory documentation supporting it. Admittedly, perhaps we have overlooked something and if this is the case we would like to know that.

We have been hesitant to raise this issue and really did not even want to. However, at this point we felt we had to raise it and clarify it before the state feels like there is some sort of precedent that has been established. If in fact, wheeled ATV use is not legal and has been allowed, even promoted by the state, they probably will not want to claim an illegal use as a basis for any sort of precedent argument.

We are asking for clarification on this issue from the Federal Highway Administration as soon as possible.

Sincerely,

Andrew Walters, Concerned Citizen and Director, ATV Watch

Cc: Ram Maddali (NHDOT), Chris Gamache (NHBOT), Christopher Douwes (FHA), Commissioner Carol Murray (NHDOT)

Bicycle and Pedestrian Legislation in Title 23 United States Code (U.S.C.)

<http://www.fhwa.dot.gov/environment/bikeped/sec217.htm>

§217. Bicycle transportation and pedestrian walkways

(a) **USE OF STP AND CONGESTION MITIGATION PROGRAM FUNDS.**—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and 104(b)(3) of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle use.

(b) **USE OF NATIONAL HIGHWAY SYSTEM FUNDS.**—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1) of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) **USE OF FEDERAL LANDS HIGHWAY FUNDS.**—Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities.

(d) **STATE BICYCLE AND PEDESTRIAN COORDINATORS.**—Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) **BRIDGES.**—In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which bicycles are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of bicycles can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) **FEDERAL SHARE.**—For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

(g) **PLANNING AND DESIGN.**—

(1) **IN GENERAL.**—Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) **SAFETY CONSIDERATIONS.**—Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) **USE OF MOTORIZED VEHICLES.**—Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for—

- (1) maintenance purposes;
- (2) when snow conditions and State or local regulations permit, snowmobiles;

- (3) motorized wheelchairs;
- (4) when State or local regulations permit, electric bicycles; and
- (5) such other circumstances as the Secretary deems appropriate.

(i) **TRANSPORTATION PURPOSE.**—No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **BICYCLE TRANSPORTATION FACILITY.**—The term ‘bicycle transportation facility’ means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(2) **ELECTRIC BICYCLE.**—The term ‘electric bicycle’ means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

(3) **PEDESTRIAN.**—The term ‘pedestrian’ means any person traveling by foot and any mobility impaired person using a wheelchair.

(4) **WHEELCHAIR.**—The term ‘wheelchair’ means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.