

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**  
**OFFICE OF THE COMMISSIONER**

**DECLARATORY RULING NO. 2017-**

**APPROVAL AND REGULATION OF OHRV TRAIL CONNECTORS WITHIN  
THE STATE HIGHWAY RIGHTS-OF-WAY**

I, Victoria F. Sheehan, Commissioner of the Department of Transportation, do hereby issue this document as a Declaratory Ruling in order to provide procedures and requirements for the applicability and implementation of RSA 236:56 governing OHRV trail connectors within class I, II, and III highway rights-of-way.

This Ruling shall be used by the Department in determining the permitting, location, construction, maintenance and any other aspect of approving and regulating OHRV trail connectors pursuant to RSA 215-A:9.

Dated: October 6, 2017



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Victoria F. Sheehan  
Commissioner, NHDOT

# STATE OF NEW HAMPSHIRE

## DEPARTMENT OF TRANSPORTATION BUREAU OF HIGHWAY MAINTENANCE

### Policy for the Permitting of Off-Highway Recreational Vehicles (OHRVs) Trail Connectors Within State Highway Rights-of-Way

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#### 1. **PURPOSE**

The purpose of this policy is to outline departmental procedures and requirements relative to utilizing the public highway system Rights-of-Way (ROW) for Off-Highway Recreational Vehicles (OHRVs) trail connectors in accordance with the following principles:

- a. To provide maximum safety and protection to highway traffic through the orderly control of OHRV movements onto, from, adjacent to, and along the State’s highway system ROW ;
- b. To provide a uniform procedure throughout the State whereby OHRVs may be permitted to utilize the State’s highway system ROW;
- c. Monitor the location, design and construction of trails built within the State’s ROW;
- d. To provide a standard guidance on sign installation intended to warn highway traffic that an approved OHRV trail connector exists, and
- e. To provide a uniform design standard that protects the physical structure of the State’s highway system ROW.

## **2. INTENT**

- a. The review of OHRV trail connector permit applications is the responsibility of the Commissioner of the Department of Transportation. This operational responsibility is delegated to the Division of Operations - Bureau of Highway Maintenance and its district offices. The District Engineer or the Assistant District Engineer shall issue all off highway permits. The Commissioners for the Departments of Transportation and Safety shall jointly issue all on-Highway connector permits per RSA 215-A:10 IV(a).
- b. Trail connector permits will be requested only after all other means to connect the trail system outside of the state highway system ROW have been explored and deemed unacceptable or infeasible.
- c. This policy shall apply to all proposed trail connectors. A revised permit will be required where physical changes to an existing permitted trail connector are proposed.
- d. Compliance with this policy shall not relieve the applicant from the responsibility to comply with other Federal, State, or local ordinances, rules, or regulations.
- e. This policy does not include provisions for OHRV crossings of state highways. The Department has a separate policy / guidelines for the permitting of OHRVs to cross the traveled portion of the highway.
- f. This policy shall be used for permitting of on-highway and off-highway OHRV trail connectors within the State controlled highway system ROW.
- g. Off-highway OHRV trail connectors located in the State highway system ROW will be reviewed utilizing the coarse and fine filter criteria required under RSA 215-A:42 and RSA 215-A:43, as applicable, as well as the provisions of this policy.
- h. The Department reserves the right to make changes, additions, repairs, and relocations to the State highway system ROW in the location of any trail connector. These changes may include relocation, reconstruction, widening, and maintaining the highway, which may necessitate modifications to the existing trail connector to be completed by the Permittee. The Department shall advise the Permittee prior to undertaking such changes.
- i. Proposed trails within the state highway system ROW shall connect major trail systems or connect the trail system to acceptable OHRV services.

## **3. REFERENCES**

The following statutes and policies currently enacted are the basis for the policies developed herein:

- a. Bureau Responsibilities, RSA 215-A:3;
- b. Operation of All OHRVs, RSA 215-A:6; RSA 215-A:8
- c. Limitations of OHRV Operation on Class I, II, and III Highways, RSA 215-A:9;
- d. Limitations of OHRV Operation on Class I, II, III and III-a Highways, RSA 215-A:10;
- e. ATV and Trail Bike Trails, RSA 215-A:42;

- f. Evaluation Process, RSA 215-A:42; RSA 215-A:43
- g. Prohibition of Certain Vehicles Within Highway Rights-of-Way, RSA 236:56, and
- h. State of New Hampshire, Department of Public Works and Highways, Crossing of Highways by Off-Highway Recreational Vehicles (OHRVs), Policy Procedure No. 8.

#### **4. DEFINITIONS**

- a. “Clear Zone” means the unobstructed, traversable area provided beyond the edge of the traveled way for the recovery of errant vehicles. Clear zone is calculated by using the American Association of State Highway and Transportation Officials (AASHTO), “Roadside Design Guide”.
- b. “Department” means the Department of Transportation of the State of New Hampshire.
- c. “Off Highway Recreational Vehicle” (OHRV) means any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, tracks, or cushion of air. More specifically OHRVs may include; All Terrain Vehicles (ATVs), Motorcycles, Trail Bikes, and Utility Terrain Vehicles (UTVs). For the purposes of this policy snowmobiles are not considered OHRVs.
- d. “On-highway use of OHRVs” means the commingling of vehicular and OHRV traffic within the traveled portion of the State highway system.
- e. “Permittee” means the NH Department of Natural and Cultural Resources – Bureau of Trails.
- f. “Rights-of-Way” (ROW) means State owned property, easements, or other interests therein, dedicated for the construction, operation, and maintenance of the State highway system.
- g. “Sight Distance” means a line that encounters no visual obstruction between 2 points, each at a height of 3 feet 9 inches above the pavement, allowing for a 2 foot 6 inch clearance to accommodate grass or brush. The line represents the line of sight between the operator of an OHRV using the trail (point 1) and the operator of a vehicle approaching from either direction on the highway (point 2).
- h. “State Owned Lands” means any parcel that is owned wholly or in part by the State or where the State has management responsibilities or exclusive rights to the property.
- i. “Trail Connector” means that specific portion of an OHRV trail that may be authorized within the State highway ROW (aka: Connector Trail).
- j. “Trail Crossing” means that specific portion of an OHRV trail that may be authorized for direct crossing of the State highway right-of-way.
- k. “Traveled Portion of the Highway” means all areas of a public highway between the outer limits of the paved or gravel shoulders.
- l. “Traveled Way” means that portion of a public highway designated for the use of vehicular traffic excluding the paved or gravel shoulders, sidewalks, or parking spaces.

- m. "Use and Occupancy Agreement" (U&O) means a document by which the Department approves the use and occupancy of limited access and/or controlled access rights-of-way by alternative facilities.
- n. "Water Bar" means an earthen berm or excavated swale, traversable by OHRVs that is angled across a trail to divert runoff water off the trail. Manufactured rubber flow deflectors may be used in place of water bars with approval by the district engineer. Where required, the allowable spacing for water bars shall be as prescribed in the State Best management Practices for Trail Construction and Maintenance.

## **5. POLICY PRINCIPLES**

- a. Limited Access Highways (Interstate, Divided Highways, and Toll Roads)
  - (1) Trail connectors within interstate highway, divided highway, or toll road rights-of-way shall not be permitted.
  - (2) If trail connectors are permitted within Limited Access rights-of-way, a Use and Occupancy (U&O) agreement must be executed between the Department and the Permittee.
- b. Controlled Access Highways
  - (1) If a trail connector is permitted within Controlled Access rights-of-way, a U&O agreement must be executed between the Department and the Permittee.
- c. Other State Highways
  - (1) The operation of OHRVs may be allowed on sidewalks adjacent to urban highways upon written request of a town or city after consultation with the Permittee and approval of the Department. Applications for use of sidewalks shall be treated as trail connectors.

## **6. PERMITTING PROCEDURE**

- a. General
  - (1) All permit applications (Appendix I) shall be submitted by the Permittee to the District Engineer who oversees highway maintenance operations at the proposed trail connector location. Appendix II contains a map depicting the separate highway maintenance district limits and contact information. All applications shall include a locus map and an aerial view of the area to be reviewed.
  - (2) Separate permits are required for each proposed trail connector location.
  - (3) The permit application will be reviewed by the respective district offices for conformance with this policy and other applicable laws, regulations, and policies.
  - (4) The district office is responsible to request additional information needed to complete or support the application.

- (5) After reviewing the complete application, the district office shall either issue or deny the permit. Approved permits will be issued directly to the Permittee or the Permittee will be notified in writing if the permit is denied.
- (6) Access onto or off of the state highway system shall comply with the requirements of the NHDOT “Policy for the Permitting of Crossings on State Highways by Off-Highway Recreational Vehicles (OHRV’s)”.
- (7) Pursuant to RSA 215-A:29, XI(a) “Verbal permission given to an OHRV club or to the chief of the bureau of trails shall be adequate for operating a wheeled OHRV on trails established by organized OHRV clubs or on trails designated by the chief of the bureau of trails as wheeled OHRV trails. A list and description of such wheeled OHRV trails shall be maintained by the chief of the bureau of trails and shall be available to the public upon request. Individuals operating wheeled OHRVs on such trails shall not be required to obtain specific landowner permission.” The Permittee shall maintain, and supply when requested, the list of designated trails with their description. Liability in connection with the creation, use, or operation of the trail connector shall reside with the Permittee. If the property owner(s) wish to rescind their authorization of a trail, or trail access, the permit will be revoked.
- (8) The parking of motor vehicles, trailers, or other equipment used to transport OHRVs to the trails shall not be permitted within the highway right-of-way, except within designated parking areas approved by the Department.
- (9) Permits shall include any provisions necessary to promote safety, maintain the existing highway infrastructure, and/or to provide additional visibility or other safety features deemed advisable by the District Engineer. Such provisions may include limiting trail use to specific times of day or times of year as well as the construction of certain features deemed necessary.
- (10) Signing on trails intended to warn trail users of the highway or inform them of other special requirements shall be provided, erected, and maintained by the Permittee.
- (11) The Permittee is responsible for recommending the need, location, size, and message of all other signs where appropriate based on sight distance or other considerations.
- (12) The Permittee is responsible for providing, and the Department is responsible for erecting and maintaining the approved highway signs intended to warn passing motorists of the trail connector.
- (13) The Permittee shall hold at least one meeting to inform the public and local cities and towns of the plan and layout for a proposed OHRV trail connector and to provide an opportunity for the public to comment. Information on the plan and layout shall be made available to the public at a place in the local area in which the proposed trail connector is to be located, at the Permittee's office in Concord, and on a public accessible Internet site maintained by the Permittee. The meeting and the places to obtain the information on the plan and layout shall be advertised at least 14 days prior to the meeting in a newspaper of statewide circulation and also in any local newspapers to the cities and towns in which the state property is located.

b. On-Highway Trail connectors

- (1) On-highway use of OHRVs should be limited to village district areas. A village district area can be defined as the location in a village where structures are nearer than 200 feet apart for a distance of ¼ mile.
- (2) Preference will be given to areas connecting services such as gas, food, and lodging to the trail system.
- (3) Posted speed limits will be no more than 40 miles per hour.
- (4) Preference will be given to areas with low Average Daily Traffic (ADT) volumes and low crash history.
- (5) OHRV use is prohibited on interstate highways, divided highways, or toll roads.
- (6) If the shoulders are paved and wider than 4 feet, OHRVs should use the shoulders, unless permitted otherwise where on street parking is prevalent.
- (7) If the shoulders are paved and 4 feet or less in width, OHRVs must use the travel lanes on the highway, provided there is only a minor speed differential between OHRVs and motor vehicles.
- (8) If the shoulders are gravel, the OHRVs must use the paved travel lanes. Travel on the gravel shoulders is prohibited.
- (9) Road geometry and speed differentials are factors in determining if on-highway use can be approved. Engineering judgment must be used in making this determination.
- (10) On-road OHRV trail signing will be determined by the DOT, Bureau of Traffic, in conjunction with the Permittee, utilizing currently accepted standards and practices.
- (11) The Bureau of Traffic will be responsible for installation and maintenance of signing designed to warn road users of the shared use. The Permittee, municipality or local OHRV club will be responsible for cost of manufacturing signs, including replacement when necessary.
- (12) The Permittee will be responsible for installation and maintenance of trail signing that delineates the route for the OHRV users. The Bureau of Traffic shall approve trail signing design and location prior to installation.
- (13) Enforcement shall be upheld by any State and local police and law enforcement officer and by the NH Fish and Game (NHF&G) Department.
- (14) Access to on-highway connectors via town roads approved for OHRV use and driveways within the designated on-highway connector is allowed.

- (15) When OHRVs are in the traveled way or paved shoulder they shall follow the rules of the road, including traveling in the direction of traffic, traveling in single file, obeying regulatory signage and traveling at speeds not less than 15 miles per hour and not greater than the posted speed limit.
- (16) OHRVs used on the highways shall not have studded tires or tracks.
- (17) OHRVs shall only use the on-highway portion of the trail system during the time period where DRED, Bureau of Trails has officially opened the trail systems. OHRV travel is prohibited between ½ hour past sunset to ½ hour before sunrise.
- (18) Approval shall be granted in permit form signed by both the Commissioner of DOT and the Commissioner of DOS.
- (19) The permit will outline general and specific conditions pertaining to each on-highway connector. The Permittee shall be responsible to notify OHRV users of the permit conditions.

c. Off-Highway Trail Connectors

- (1) New trail connectors shall be constructed and maintained by the Permittee in accordance with the requirements of this policy and the most current edition of the BEST MANAGEMENT PRACTICES For Erosion Control During Trail Maintenance and Construction- NH Trail Construction and Maintenance Manual developed by the State of New Hampshire.
- (2) Off-highway trail connectors shall be located as far from the edge of the traveled way and as close to the ROW line as practicable.
- (3) Prior to submitting a trail connector application, the Permittee shall schedule an on-site meeting with the Department. This meeting will be to determine the need, constructability, and feasibility of the proposed trail connector and identify the potential impacts to highway infrastructure, natural resources, environmental resources, wildlife habitat, cultural or historic resource areas, and unique geologic features. This meeting will assist in determining what other local, State, and/or Federal agencies will require involvement in the process.
- (4) Once the feasibility of the trail connector has been established, the Bureau of Trails will be responsible for initiating the evaluation process and following the requirements set forth in RSA 215-A:42 and RSA 215-A:43, if required. Applications for trail connectors specifically exempted in RSA 236:56 from the fine/course filter criteria documentation shall still comply with pertinent sections of this policy.



- (5) During the evaluation process, the applicant shall be responsible for submitting a completed trail connector application and three (3) copies of design plans for review by the Department. Design plans shall at a minimum:
  - a. Be drawn to at a sufficient scale to provide needed detail;
  - b. Depict existing and proposed conditions of the site including topography, utilities, drainage infrastructure, and other pertinent information;
  - c. Depict proposed trail signing;
  - d. Include traffic control plans for maintenance of highway traffic during construction of the trail connector, and
  - e. Include highway cross-sections depicting existing and proposed features at critical locations.
  
- (6) Permittee shall complete and submit an original copy of the NHDOT OHRV Environmental Documentation Checklist (Appendix III) with all off-road trail connector applications, including any associated documentation required.
  
- (7) Upon receiving approval to proceed from the Department, the Permittee will be responsible for acquiring all necessary local, State, and Federal permits required for the construction of the proposed trail connector.
  
- (8) Copies of all required permit approvals must be forwarded to the Department prior to the commencement of any work within the right of way.
  
- (9) The Department will then issue a permit for the trail connector.
  
- (10) The Permittee shall be responsible for construction of the trail connector in accordance with the design plans and requirements of this policy.

## **7. CONSTRUCTION REQUIREMENTS**

### **a. General**

- (1) No construction within the highway ROW shall commence until a permit is executed by the Department.
- (2) The Permittee is responsible for ensuring construction is in accordance with the permit, Department policy, and design plans.
- (3) The Permittee is responsible for all costs in connection with construction and maintenance of the trails.
- (4) The Permittee is responsible for providing appropriate traffic control and maintaining all highway traffic patterns during construction of the trail connector.

- (5) In no case shall a trail connector cause water to stand (pond) on the pavement, shoulders, trail connector, or within the limits of the ROW.
- (6) Unless construction begins within one year from the date of issue, the permit shall expire.
- (7) When the size and complexity of the trail connector installation requires a Department representative to monitor and inspect the project, the cost of such inspection and monitoring may be invoiced to and paid for by the Permittee depending on scope.
- (8) The Permittee shall prohibit the use of the trail system by unauthorized vehicles.

b. Off-Highway Trail Connector

- (1) The trail connector width shall be between 12 and 15 feet.
- (2) Sharp turns in the trail connector shall be “hardened” with asphalt pavement or other suitable material approved by the Department.
- (3) The trail connector shall be constructed of a durable gravel base and crushed gravel surface.
- (4) The trail connector shall be located parallel to the roadway and preferably outside of the clear zone calculated for that section of road. Unless site conditions require, the trail connector shall not be located less than 8 feet from the edge of pavement.
- (5) Trail connectors shall be graded to drain away from the highway at a cross-slope of -2% to -4%.
- (6) Trail connectors shall be limited in length and shall only be proposed where no alternative route outside of the highway ROW is possible.
- (7) The longitudinal grade of the trail within the highway ROW shall not exceed 15%.
- (8) To the greatest extent practicable, culvert extensions shall be avoided and separate drainage structures beneath the trail connector shall be required to convey flows. Culverts shall be properly sized to accommodate the flow during a 25-year recurrence interval storm event. Flared end sections are required and no headwalls or wingwalls shall be allowed.
- (9) Trail connectors constructed with grades exceeding 8% or -8% shall have water bars diverting runoff to a stabilized outlet with spacing in accordance with state trail BMP's.

**8. MAINTENANCE RESPONSIBILITY**

- a. Maintenance of the trail connectors, crossings, approaches, or any damage caused by the trail will be the responsibility of the Permittee and maintained in accordance with the most current edition of the BEST MANAGEMENT PRACTICES For Erosion Control During Trail Maintenance and Construction- NH Trail Construction and Maintenance Manual developed by the State of New Hampshire. The Department of Transportation will not participate in any maintenance of these facilities.

- b. Ongoing maintenance responsibilities will include but are not limited to:
  - (1) Maintenance of the trail accesses from the edge of the highway pavement or paved shoulder;
  - (2) Maintenance of the off highway trail connector surface and associated slopes;
  - (3) Maintenance of all approved and/or required upstream and downstream drainage alterations including but not limited to; pipe extensions, culverts, open ditches, bridges and swales;
  - (4) Maintenance of all trail signage;
  - (5) Maintenance of trees, bushes, or shrubs that obstruct sight distance; and
  - (6) Repairing any damage to public or private property within the ROW caused by the trail.
- c. Maintenance of on-highway signage installed by the Department, intended to warn traveling motorists of the trail crossing is the Department's responsibility.
- d. The Permittee is responsible for maintaining records of all OHRV trail crossings and trail connectors within the State highway ROW throughout the State. Once a year, the Permittee shall provide to the Department a map and list of all trail connectors and certify that all private landowner access permission has been granted.

## **9. PERMIT REVOCATION OR SUSPENSION**

- a. Upon receiving notice from the Permittee or adjacent landowners rescinding their permission for the trail connector to access their property, or the municipality withdraws their support for the on-highway connector, the Department shall revoke the permit and the trail connector shall be closed.
- b. If the district engineer or bureau administrator is notified that use of the trail connector constitutes a danger to the public health, safety or welfare, or the trail no longer serves its original purpose of connecting major trail systems or services to the trail system, the permit shall be suspended and the trail connector shall be closed until an investigation is completed. The Department shall investigate the allegations and determine if the permit should be revoked and the trail connector closed permanently.
- c. If repeated damage to highway infrastructure is caused by use of the trail connector, the permit will be suspended until an investigation to determine what improvements are needed to ensure the damage is mitigated. The cost of any repairs or improvements will be the responsibility of the Permittee.
- d. Immediately following revocation of any permit, the trail connector shall be completely removed and the area restored by the Permittee to the satisfaction of the Department.
- e. Existing trail connectors that remain inactive or unmaintained for more than 3 consecutive years shall be considered abandoned and shall be removed and the area restored by the Permittee to the satisfaction of the Department.

