



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

Minnesota Division

October 21, 2011

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Thomas K. Sorel
Commissioner of Transportation
Department of Transportation
MS 100, Transportation Building
St. Paul, Minnesota 55155

Re: Dresbach Bridge – FHWA Policies and Regulations on Bicycle/Pedestrian Accommodation

Dear Mr Sorel:

Per Mr. Tom Faella's August 11, 2011 request on behalf of the La Crosse Area Planning Committee (LAPC), we have reviewed the statutes of Title 23 and Title 49 of the United States Code (USC), the regulations of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and the policy and guidance of the U.S. Department of Transportation (USDOT) and Federal Highway Administration (FHWA) with regard to the requirements of bicycle/pedestrian accommodation on Federal-aid projects. Electronic versions of the Title 23 and Title 49 statutes and regulations can be found at the FHWA Resources website:

<http://www.fhwa.dot.gov/resources/legsregs/>. A comprehensive list of policy and guidance can be found on the FHWA's Bicycle and Pedestrian Program website:
<http://www.fhwa.dot.gov/environment/bikeped/guidance.htm> .

We have identified key references which provide the most primary and current information. These are listed in the enclosed spreadsheet for convenient reference.

The March 2010 USDOT policy is to "incorporate safe and convenient walking and bicycling facilities into transportation projects." In addition, the USDOT "encourages bicycle and pedestrian accommodation on bridge projects including facilities on limited-access bridges with connections to streets or paths." However, we find very few statutes, regulations, or policy, and guidance memoranda that have unconditional requirements for bike/ped accommodation on all Federal-aid construction projects. Those references having "shall", "must", or "will" requirements, and their applicability to the Dresbach bridge replacement project, are as follows:

- **23 USC 217 Bicycle Transportation and Pedestrian Walkways:**
[http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=\\$\\$xa\\$\\$busc23.wais&start=1595439&SIZE=17005&TYPE=TEXT](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc23.wais&start=1595439&SIZE=17005&TYPE=TEXT) Reference 23 USC 217(e) Bridges, which states two conditions. Currently, bicycles are not permitted to operate on this portion of I-90. Mn/DOT's Bike Feasibility Study will determine whether the safe accommodation of bicycles can be provided at a reasonable cost.

- **23 CFR 652 Pedestrian and Bicycle Accommodations and Projects:**
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=7f603ec660922dfa65ba82ff44906101&tpl=/ecfrbrowse/Title23/23cfr652_main_02.tpl
 - 23 CFR 652.5 is more stringent than the March 2010 USDOT policy and 23 USC 217, by limiting the requirement for bridge deck replacement or rehabilitation to highways without full control of access. I-90 is a full access control roadway.
 - 23 CFR 652.7 requires that only bike paths used for transportation purposes are eligible for Federal-aid funding.
 - 23 CFR 652.7 provides that if five conditions are met, the bike path may be authorized, but it does not require authorization of the project. For the Dresbach project, conditions (1), (2), (3) and (5) are typically met through the course of project development. Condition (4), “The estimated cost of the project is consistent with the anticipated benefits to the community” is difficult to analyze. However, it must be satisfactorily evaluated and documented in the Bike Feasibility Study. A need for the project must be established in the Bike Feasibility Study.

- **October 22, 2008 FHWA Guidance – Bicycle and Pedestrian Provisions of Federal Transportation Legislation:** <http://www.fhwa.dot.gov/environment/bikeped/bp-guid.htm>
 - States that safe accommodation of nonmotorized users shall be considered during the planning, development, and construction of all Federal-aid transportation projects and programs but does not require accommodation in every transportation project.
 - “Bicycle and pedestrian projects are broadly eligible for most Federal surface transportation funding categories. Eligibility does not, however, guarantee that bicycle and pedestrian projects, plans, and programs will be funded -- States and MPOs retain broad control over project selection procedures and choices and can set their own priorities for funding.”

- **FHWA Design Guidance Accommodating Bicycle and Pedestrian Travel: A Recommended Approach**
<http://www.fhwa.dot.gov/environment/bikeped/design.htm> and FHWA **Supplementary Design Guidance for Bicycle and Pedestrian Projects:**
<http://www.fhwa.dot.gov/environment/bikeped/supdesgn.htm> state that “1. Bicycle and pedestrian ways shall be established in new construction and reconstruction projects in all urbanized areas unless one or more of three conditions are met:
 - bicyclists and pedestrians are prohibited by law from using the roadway. In this instance, a greater effort may be necessary to accommodate bicyclists and pedestrians elsewhere within the right of way or within the same transportation corridor.
 - the cost of establishing bikeways or walkways would be excessively disproportionate to the need or probable use. Excessively disproportionate is defined as exceeding twenty percent of the cost of the larger transportation

project. [Note that the supplementary design guidance clarifies ‘This 20 percent figure should be used in an advisory rather than an absolute sense.’]

- where sparsity of population or other factors indicate an absence of need. For example, the Portland Pedestrian Guide requires ‘all construction of new public streets’ to include sidewalk improvements on both sides, unless the street is a cul-de-sac with four or fewer dwellings or the street has severe topographic or natural resource constraints.”

We believe that the October 22, 2008 FHWA Guidance provides the best summary of what is required: In reference to several sections of 23 USC, “While these sections stop short of requiring specific bicycle and pedestrian accommodation in every transportation project, Congress clearly intends for bicyclists and pedestrians to have safe, convenient access to the transportation system and sees every transportation improvement as an opportunity to enhance the safety and convenience of the two modes.”

Federal policy and guidance indicate that the decision to accommodate bike/ped uses must be made on a project-by-project basis, and even when there is consideration of bike/ped use in the preliminary design and environmental processes, alternatives do not necessarily need to be carried forward into the environmental document.

We believe the efforts of Mn/DOT to analyze the cost and feasibility of accommodating future bike/ped travelers on the proposed Dresbach Bridge meet the purpose and intent of USDOT and FHWA requirements. We also would like to make note that in 2008, the LAPC determined, in conjunction with local advocacy groups, that only one bicycle and pedestrian river crossing was necessary to meet the needs of the public, as part of the 2035 Coulee Regional Bicycle Plan. The LAPC voted on March 19, 2008 to select the Wagon Wheel Trail on TH 14/61 to construct a connection between La Crescent and La Crosse, instead of advocating to build a separate trail adjacent to the I-90 Dresbach Bridge.

Sincerely,

A handwritten signature in blue ink that reads "Derrell E. Turner". The signature is fluid and cursive, with the first name being the most prominent.

Derrell E Turner
Division Administrator

Enclosure

AG/trb

cc: 2 Mn/DOT
1 La Crosse Area Planning Committee – Tom Faella, e-copy Faella.Tom@co.La-Crosse.wi.us
1 Mn/DOT - Tim Mitchell, e-copy tim.mitchell@state.mn.us
1 Mn/DOT, District 6 - Jai Kalsy jai.kalsy@state.mn.us
DMS – #30928 SP 8580-149 I-90 Dresbach Br FINAL DRAFT BIKE-PED POLICY