

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

COMMITTEE TO SAVE THE DERRY RAIL  
TRAIL TUNNEL, *et al.*

Plaintiffs,

v.

SHAILEN BHATT, FEDERAL HIGHWAY  
ADMINISTRATION, ADMINISTRATOR, *et al.*

Defendants.

Civil Action No. 1:24-cv-262-AJ

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION  
AND/OR RELIEF UNDER 5 U.S.C. § 705**

Pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705, Plaintiffs Committee to Save the Derry Rail Trail Tunnel and Rails to Trails Conservancy respectfully move for a preliminary injunction and relief under 5 U.S.C. § 705 to preserve status, to postpone unlawful agency action, and to prevent unnecessary and irreparable harm to the M&L Railroad Historic District. Defendants plan to construct a six-lane road across the historic Manchester & Lawrence Railroad according to a design approved by the Federal Highway Administration on May 13, 2024, which eliminates necessary measures to minimize the harm to this historic resource. Construction will be funded by the Federal Highway Administration as part of Defendant Commissioner William Cass's project to construct a new exit, Exit 4A, on Interstate 93, and has received approval from Defendants Administrator Shailen Bhatt and Administrator Patrick Bauer. As explained in the accompanying memorandum in support of this motion, Defendants have failed to comply with their statutory obligation to include "all possible planning to minimize harm" to this historic site. *See* 23 U.S.C. § 138(a)(3); *Druid Hills Civic Ass'n, Inc. v.*

*Fed. Highway Admin.*, 772 F.2d 700, 715-19 (11th Cir. 1985). Permitting Defendants to move forward with their plans while this case is pending would irreparably harm Plaintiffs' continued use and enjoyment of the M&L Railroad Historic District, and the balance of harms and public interest support preliminary relief.

A proposed preliminary injunction and order postponing agency action is attached hereto pursuant to Local Rule 65.1.

Dated: October 8, 2024

Respectfully submitted,

**COMMITTEE TO SAVE THE DERRY RAIL  
TRAIL TUNNEL**

**RAILS TO TRAILS CONSERVANCY**

By their attorneys,

/s/ Charles C. Kelsh

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**CERTIFICATE OF SERVICE**

I, Charles Kelsh, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on October 8, 2024.

I further certify that, on October 8, 2024, I served this document via email on counsel for Defendants Shailen Bhatt and Patrick Bauer, on written consent from counsel, at the below address:

Anna Dronzek, Assistant U.S. Attorney  
United States Attorney's Office, District of New Hampshire  
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*/s/ Charles C. Kelsh*  
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Charles C. Kelsh