



*Celebrating 50 years*

October 14, 2015

Comments c/o  
Catherine Gjessing - General Council  
Vermont Fish & Wildlife Department  
Commissioner's Office  
1 National Life Building, Davis 2  
Montpelier, Vermont 05620-3702

Dear Ms. Gjessing:

Please accept the following comments from Vermont Natural Resources Council (VNRC) regarding the Rule Governing the Designation and Establishment of All-Terrain Vehicle Use Trails on State Land and the approval of the Les Newell Connector trail. VNRC represents approximately 4,500 members and activists, and the last time we surveyed our membership, an overwhelming percentage of the respondents said they do not support opening state lands to ATVs.

Our overriding recommendation is while the proposed rule includes important criteria that should be considered before designating ATV trail use on state lands, including requiring rulemaking for each trail designation, we believe designating ATV corridors, especially without a more comprehensive ATV policy in the state, is a mistake. There has been a long history of work to define what is needed for comprehensive ATV policy, and we offer the following as background.

I. ATV Collaborative and ANR Staff Recommendations

VNRC participated on the Governor's 2004 ATV Collaborative with the ANR, Vermont All-Terrain Vehicle Sportsman's Association (VASA) and many other interest groups. Throughout the course of a year, VNRC worked on a host of ATV policies in a proactive fashion with the Collaborative. Despite coming to agreement on a long list of needed policies, VNRC issued the opinion in the Collaborative Report that opening public lands to ATV was not an appropriate policy at the time. Much of our concern during the Collaborative process was based on ANR's own reports and findings on the issue.

For example, in the ATV Collaborative Report, VNRC agreed with the ANR's ATV Committee, which studied the environmental impacts of ATVs in 2000 and concluded to the Board of State Land Stewardship that "it would be prudent to not legislatively or administratively relax existing public lands regulations on ATV use until there is a sufficient knowledge base to assess whether Vermont's public land base can accommodate environmental protection demands and existing non-motorized and snowmobile usage before accommodating more." The ANR ATV Committee, representing diverse professionals from the ANR, also concluded after

commissioning a ATV Environmental Impacts Report, that “there is no environmental good news here.” According to a December 2, 2000 memorandum to the ANR Board of State Land Stewardship (attached), the ATV Committee explained:

The studies described in this report paint a disturbing pattern of negative environmental impacts with few studies having neutral results and none having beneficial environmental outcomes. Recreationally, there are some benefits to those interested in motorized sport, but even those generally come at a ‘cost’ to other recreationists who find their activity displaced or deteriorated.

In 2001, Ed Leary, Operations Director for ANR wrote the Secretary of ANR to explain that the ANR Board of State Land Stewardship unanimously agreed with the ATV Committee’s recommendation that the existing ANR regulation regarding ATV use should not be legislatively or administratively relaxed. According to Ed Leary’s memorandum, “until such time that there is substantial scientific evidence and public support for opening Vermont’s public lands to ATVs, the Agency should work with ATV dealers to inform buyers that public land is off limits to ATV use.”

In 2002, district managers across Vermont documented widespread illegal ATV activity on state lands (attached). The district managers explained how various funds were being used to repair vegetation, damaged stream crossings, rutted skid roads, and a multitude of other environmental problems. The managers shared their concern that effective closures were not working in many instances. These reports mirrored impact reports submitted in 2000. These reports were voluminous and responsive to a legislative request to study ATVs on state lands. These reports highlight the deep concerns expressed by ANR’s own employees regarding ATV activity on state land.

In 2004, during the ATV Collaborative process, ANR staff, including the ANR Lands Director and the Water Quality Division, went on record to share their concerns about the environmental impacts of ATVs and continuing environmental damage to state lands; including the “obliteration” of a beaver pond on Groton State Forest. As the ANR Lands Director stated, “State lands should not be available for recreational ATV use until such research is conducted that clearly demonstrates that the environmental and social impacts of ATV trail use are minimal and can easily be controlled.” Furthermore, the ANR Lands Director stated:

While there may be some truth to the argument that providing legal opportunities to ride ATVs in appropriate locations on state lands would result in a reduction of illegal ATV use on state lands, the Collaborative report offers no evidence that this would, in fact, be the case. One could easily argue the opposite – that opening up legal ATV trails on state lands could encourage increased illegal ATV use. ...

*The State Lands Director continued:*

Also, if state lands are available for locating ATV connector trails, then this could serve as an incentive for ATV clubs to locate trails systems immediately adjacent

to state lands. Given that state lands only compromise about 8% of Vermont's land base, a viable ATV trail system is not dependent on making state lands available for such purposes.

In 2004, when VNRC participated on the ATV Collaborative, there was not consensus on the issue of opening public lands; however there was widespread support for increasing registration fees to \$55 to help pay for enforcement, creating an illegal trespass fund, addressing safety education, and other issues. The Collaborative also addressed the need to develop effective penalties for illegal use, and for trails to comply with Act 250 jurisdiction where appropriate. Additionally, the Collaborative submitted a proposed budget to the Governor, which highlighted that with annual ATV registration of \$55, VASA could raise \$935,000 based on an 85% return of registrations from 20,000 annual registrations (see attached proposed budget). According to the Collaborative's budget, ATV registration fees were to pay for the following:

Administration	\$136,500
Law Enforcement	\$470,000
Trail Liability Insurance	\$130,000
Illegal Trespass Fund	\$130,000
Use Training/Safety Education	\$ 50,000
Office Supplies and Equipment	\$ 4,500
Trail Maintenance	\$ 42,000

To the best of our understanding, this budget has not been implemented, and therefore important improvements such as adequate enforcement, an illegal trespass fund, and other needed policies have fallen by the wayside.

## II. Deficiencies in the Proposed Rule

The Rule Governing the Designation and Establishment of All-Terrain Vehicle (ATV) Use Trails on State Land is implementing the most controversial aspect of the ATV Collaborative report, opening up state lands to trails, without addressing all the missing links – for example, the need to have adequate enforcement, penalties, and the budget to pay for resource damage on private and public land.

Furthermore, in the past, the ANR has called for additional research on the environmental impacts of ATVs before relaxing ATV policy regarding state lands. The proposed ATV rule articulates that each proposal to designate an individual ATV connector trail should go through the rulemaking procedures contained in 3 V.S.A. Chapter 25, which provides a more thoughtful and public approach than simply enacting a rule authorizing trail designation.<sup>1</sup> The proposed ATV rule also establishes criteria that should be part of rulemaking review, such as reviewing

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<sup>1</sup> A proposed rule in 2009 was repealed, partially on the basis that LCAR objected to the ANR's lack of authority to issue the rule. The major difference between the 2009 rule and the current rule seems to be that each trail will have to go through the rulemaking process, but it would be helpful to understand more fully how the authority to issue the current proposed rule squares with issuing a proposed trail designation at the same time.

the environmental and social environmental impacts of the trail designation, and ensuring that there are no other reasonable or feasible alternatives for connecting to the established ATV trail network. We believe the criteria the ANR has outlined is helpful; however, there still remains the gap of not having a larger programmatic review of the environmental impacts of opening state lands to ATV corridors, a step that was contemplated before going down the road of opening state lands to ATVs.

In addition, there also remains the gap of unresolved policy at the state level. In its repeal of the previous Rule Governing the Establishment of ATV Use Trails on State Land, ANR's General Counsel articulated in a filing with LCAR and the Secretary of State's Office that members of the public concerned about the impacts of ATV riding are "correct that illegal ATV riding has been an issue in the past, and the state's ability to enforce against illegal ATV use depends upon having adequate resources." ANR's General Counsel also instructed, "Given the significant questions regarding ANR's authority to adopt the ATV rule, ANR believes that right course of action at this time is to repeal the existing ATV rule while working to address the unresolved policy issues related to the use of ATV's on state land." (See attached). Our biggest concern is the same policy issues remain unresolved, yet the state is moving ahead with the process of designating trails.

The ANR should take a step back and work with government agencies to begin a much more comprehensive process to address ATV policy in the state. This includes conducting the assessments called for by ANR, and implementing many of contemplated aspects of the ATV Collaborative recommendations, including providing necessary enforcement and penalties for controlling and reducing illegal ATV use. Once these are implemented, the ANR could assess if there is an effective way to control illegal ATV activity through adequate enforcement and meaningful policies to deter illegal use. Illegal activity is currently occurring in areas with legal access throughout the state, and opening connector trails, as a stand-alone policy, will not curtail illegal resource damage. More wide-ranging policies are needed, as the ANR recognized in the Collaborative process, and in its comments explaining, in part, the repeal of the previous ATV rule.

Thank you for your consideration of our comments.

Sincerely,



Jamey Fidel  
Forest and Wildlife Program Director, General Counsel  
Vermont Natural Resources Council