

Legislative Committee on Administrative Rules  
Testimony of Mark Nelson and Rachel Stevens  
December 17, 2015, 10:00am

Chairperson, Representative French, Vice Chair, Senator MacDonald, and Members of the Committee, thank you for the opportunity to appear before you to talk about the Agency of Natural Resource's rule to allow ATV use on state land.

My name is Mark Nelson and I chair the Vermont Chapter of the Sierra Club.

My name is Rachel Stevens and I am an environmental attorney and chair the Forest and Wildlife Committee.

We are here on behalf of our 9,000 members and supporters. The Vermont Chapter of the Sierra Club respectfully asks this Committee to object to this rule. At a minimum, we ask that this Committee please hold off on making a decision today in order to closely review the legal, economic, and environmental implications of the rule. We believe ANR is proposing a major change in land-management policy that will expose Vermont's public lands and the Vermonters who use them to the increased safety risks and environmental damage of ATVs. We believe this is an unwise and potentially illegal policy change that should not be addressed through rulemaking, but rather by the legislature.

In 2009, this Committee voted unanimously to object to ANR's rule to allow ATV use on state land. In making that determination, this Committee found, among other things, two fatal flaws that are still true today. First, this Committee determined that ANR did not have the authority to adopt that rule finding that the agency lacked sufficient legal authority to institute such a sweeping policy change under this section of the motor vehicle statute. This view was also held by Conservation Law Foundation and the Center for Biological Diversity who filed a complaint in Washington County in 2009 challenging the rule. While the proposed

rule before you today varies from the 2009 rule, we believe the same legal issues persist and should be scrutinized carefully by this Committee.

Second, this Committee found in 2009 that ANR failed to provide any scientific information or support for allowing ATVs on state lands. Under the Vermont Rules of Administrative Procedure, the provision of scientific background is a requirement of any new administrative rule. This is still true today. While we acknowledge and appreciate the time that ANR's staff has put into developing these designation criteria, we have not seen a scientific impact statement outlining any of the studies or underlying research data that the agency has relied on in determining that ATV's on state land is appropriate.

In addition to these historical issues with the rule, we would like to raise four additional points. First, there is no explanation of why this rule is necessary or how it is in the public good. We raised this concern in our public comments and are not satisfied with our response from ANR. While many ATV riders came out in support of this rule during the public hearings, there was no reason given for the need to allow these connector trails except for convenience to riders. Almost 85% of land in Vermont is privately held, leaving ATV riders ample room to recreate. Let's leave our state land intact for established recreation users who struggle to access and enjoy the outdoors where ATVs are present.

Second, there is not an adequate assessment of the potential economic impact of allowing ATVs on state land. The Vermont Rules of Administrative Procedure require an economic impact statement outlining the expected economic impact of the rule and the impact the rule will have on greenhouse gases. The only discussion of economic impact relates to the Les Newell Connector trail and the cover sheet simply states that "there is unlikely to be any significant economic impact associated with the use of this small section of trail." We believe this economic analysis is inadequate. This rule opens up state land to ATVs, something that has never been allowed before. We have no idea what type of impact this could have on our tourism industry which in large part is fueled by out-of-state visitors who come

to Vermont to hike and camp in the forests. Additionally, there is a significant potential economic impact on the agency itself which will have to use valuable staff time and financial resources to manage, monitor, and enforce this new program. We are at a loss for why a cash-strapped agency with an already big to-do list would want to take on managing ATV riders' use of state lands.

Third, as we stated in our public comments, we believe this rule is procedurally flawed because it establishes a *process* for designating ATV trails while at the same time designating a trail.

Lastly, we believe that establishing a process to allow ATVs on state land at all is contrary to the legislature's intent. If the legislature had wanted to create a presumption that ATV trails are allowed on state land when certain designation criteria were met, it would have done so in the statute. Instead, the legislature expressly prohibited the use of ATVs on Vermont state land. We believe that if the state wants to make this major policy change and start allowing ATVs on state land, it should let the Vermont legislature tackle the issue.

In sum, we ask that this Committee object to this rule or, at a minimum, take more of the review period to look closely at the procedural, legal, economic, and environmental concerns that we have raised with you today. Thank you for your time.