



October 2015

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

**Re: The Vermont Chapter of the Sierra Club's Comments on Proposed Rule
Governing the Designation of ATV Use Trails on State Land**

The Vermont Chapter of the Sierra Club submits these comments in response to the Proposed Rule Governing the Designation and Establishment of All-Terrain Vehicle Use Trails on State Land proposed by the Vermont Agency of Natural Resources, Department of Fish and Wildlife. Our Chapter is dedicated to the preservation, protection, and enjoyment of Vermont's natural resources and offers these comments on behalf of our approximately 9,000 members and supporters. After thoughtful consideration and discussion with our membership, our Chapter opposes the promulgation of this rule. We appreciate the opportunity to provide these comments, and thank you for your consideration.

1. The public good is not served by ATV use of state land.

The proposal states "the purpose of this rule is to ensure that any designation of public land for use by ATVs is in the public good." ATV use of state land does not benefit the public good, but rather harms it by risking Vermont's environmental, economic, and public health.

As we saw during the 2009-2011 debates over repeal of the ATV rule, there is significant opposition in Vermont to allowing ATVs on public land. While we acknowledge that ATV riders, under the leadership of the Vermont ATV Sportsman's Association (VASA), are more organized and potentially more aware of the rules governing ATV riding, this fact alone does not make ATV use on state land consistent with the public good.

Further, as the proposal states, "the lands of the state are held in common by the people." This duty does not mean that the state should accommodate the recreational uses of all people. Rather, the Agency needs to take a longer view and manage the land so that future generations of Vermonters can use the resources as well. When in doubt, the Agency should err on the side of protecting the integrity of the environment.

ATV use on state land deprives Vermonters of quiet use and enjoyment of public land.

We appreciate that ATV use gives pleasure to some Vermonters. As park advocates who regularly explore and enjoy Vermont's forestlands, we want people to experience nature.

However, the promotion of ATV riding at the expense of the established recreation activities does not make the most judicious use of the state's land. ATV use is incompatible with other activities already being enjoyed on state land, such as hunting, fishing, camping, hiking, canoeing, swimming, picnicking, horseback riding, and cross-country skiing. Because of ATVs' speed, range, and versatility, these vehicles can quickly dominate a large acreage making competition of recreation uses inherently unequal.

ATV users claim that without this rule the Agency is denying them their ability to access and enjoy the outdoors. However, quite the opposite is true. Even though the Agency proposes to consider these impacts in its designation criteria, this rule alienates established recreation users by eliminating places where they could otherwise recreate free from the sights, smells, and sounds of an over mechanized system.

While there is certainly disagreement between competing state land user groups, please do not let this debate drown out the interests of the general public. As we've said, the Agency is supposed to manage these lands for all Vermonters—not just for those that live in the vicinity of a particular area—but for everyone, even those who will never set foot on the land. With this in mind, we urge the Agency to consider the following:

In the conflict between motorized and nonmotorized recreationists, both sides invoke what they feel are their fundamental rights. Nonmotorized recreationists, especially the ones who seek peace and quiet, demand freedom *from* these machines while motorized recreationists demand a place *to* enjoy their machines. But there is a third party involved in the conflict—the land, specifically, the land which is held in trust for all...[o]f course the land is silent. It cannot speak for itself.¹

ATV use on public land harms the environment.

The harmful environmental effects of ATV use are well documented. ATV use causes soil erosion, clogging streams with sediment, damaging critical wetlands and riparian areas, and destroying vegetation; impacts air quality; destroys vegetation; harasses wildlife and splinters their habitat; and creates noise pollution.

Recently, Vermont made significant investments in protecting its water quality and made a call to protect forestland from the threat of forest fragmentation. This proposed rule is inconsistent with these policy commitments. The Agency should not risk the environmental integrity of state land merely for the convenience of ATV users.

ATV use on state land risks Vermont's tourism industry.

Some public meeting attendees expressed concern about the economic impact of discouraging ATV riders from coming to Vermont, citing New Hampshire as a model for the economic potential of an ATV industry. Any potential economic benefit gained allowing ATV use on state land would come at a risk to Vermont's robust tourism industry.

¹ *Preface*, Off-road Vehicles on Public Land, <http://wilderness.org/sites/default/files/legacy/Off-Road%20vehicles%20on%20Public%20Land.pdf>.

Vermont is a tourism destination. Hikers regularly visit our state as they explore and enjoy the Long Trail, the Appalachian Trail, and other state parks and forests. Any influx of ATV tourism could diminish Vermont's attractiveness as a tourist destination for hikers and campers from out-of-state.

2. The proposal's focus on only designating connector trails does not limit the potential for negative impacts from ATVs.

Under the language of the proposed rule, "connector trails" mean "a narrow section of developed linear travel way which connects two or more established VASA trails." While this appears to limit the scope of the proposed rule to existing connector trails, there is nothing to prevent VASA or private landowners from creating new, "established" trails abutting state land and qualifying for designation. Further, allowing use of connector trails on state land increases the potential for illegal ATV use on state land.

3. There are no enforcement mechanisms in place to ensure compliance with the rule.

The Agency must recognize the magnitude of the enforcement problem with this proposed rule. The Agency suggested at public hearings that there are not enough staff or resources to have a meaningful presence in the field. Announcing proposed ATV restrictions that are unenforceable under current personnel and resource conditions merely gives the illusion of control. Unless the Agency can increase its personnel and resource, then it must adapt its rules and regulations to fit its enforcement capabilities.

4. The proposed rule is procedurally flawed.

We agree that, if the Agency is going to allow ATV use on state lands, the Agency should commence a rulemaking process for each proposed trail designation. However, it is premature for the Agency to commence rulemaking for the Les Newell Connector trail.

The Agency should not ask the public to consider a specific trail designation without first receiving public comment about the process and criteria for designation and establishment of trails on state land. Combining these proposals signals that ATV use on state land is a forgone conclusion thereby undermining the importance of public participation.

To this point, some public meeting attendees suggested that the Les Newell Connector trail should be designated as a "test case" to examine the impacts of ATVs. We disagree because a wait-and-see approach is not appropriate when it comes to public lands that belong to all Vermonters.

Specific Questions and Comments

- How will speed limits for ATVs be enforced?
- What is the process to reevaluate ATV trails once they have been designated? What types of changed circumstances will the Department consider?
- How often will the Agency monitor the designated trails to ensure that ATV users are complying with the rule? How often will the Agency monitor the designated trails to examine the effects of the use of ATVs on state lands? We believe that, on the basis of the information gathered, the Agency must from time to time amend or rescind designations of areas or take other actions necessary to ensure compliance with the rule and prevent degradation of the environment.
- The proposed rule defines ATVs as non-highway recreational vehicles “not wider than 60 inches.” How will the Department enforce the size of ATVs used on the trails? We are concerned that there is no way to prevent other vehicles, such as four-wheel drive trucks or jeeps, from using the trails.
- The Agency should assess financial penalties for violations of the rule.

In summary, the Vermont Chapter of the Sierra Club does not support the proposal because we do not support ATV use on state land. Further, we oppose the proposed rule, as drafted, because there are not adequate monitoring or enforcement mechanisms in place to ensure compliance and protection of our state lands. Thank you for the opportunity to comment.

Sincerely,

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