



STATE OF VERMONT

January 13, 2016

Legislative Committee on
Administrative Rules
c/o Legislative Council
115 State Street
Montpelier, VT 05633-5301

Dear LCAR Members:

We are writing as members of the Senate Committee on Natural Resources and Energy to express our concerns regarding the Agency of Natural Resources' (ANR's) proposed Rule Governing the Designation and Establishment of All-Terrain Vehicle Use Trails on State Lands (ATV Rule). It is the jurisdiction of the Senate Committee on Natural Resources and Energy to review matters relating to the conservation, development, and planning of the State's natural resources, including the use of the State's parks and recreational lands. In exercising our committee's jurisdiction, we have reviewed the proposed ATV Rule, and we recommend that the Legislative Committee on Administrative Rules (LCAR) object to the rule.

It is our position that ANR lacks the statutory authority to adopt the proposed ATV Rule. ANR offers as statutory authority 23 V.S.A. § 3506(b)(4), a provision in the motor vehicle laws prohibiting use of State lands by ATVs unless the Secretary of ANR designates an area for use by ATVs by rule. However, under constitutional principles, delegation of a legislative function to a subordinate governmental unit is only authorized when a legislature grants the authority subject to articulated principles or standards for exercise of the authority by the subordinate government unit. In contrast, a delegation of authority that leaves all discretion to a subordinate government unit for exercise of the legislative function is improper.

The statutory authority offered by ANR under 23 V.S.A. § 3506(b)(4) lacks any principle or standard by which a rule regulating the use of ATVs on State lands would be based. The statute simply provides no standards, limitations, or principles directing the Secretary's exercise of authority. Moreover, if the General Assembly accepted ANR's offered authority to adopt the ATV Rule, the Secretary of Natural Resources would have

unfettered discretion to designate trails. It is highly unlikely that the General Assembly ever intended to afford ANR such a broad grant of authority.

In addition, the Administrative Procedure Act (APA), 3 V.S.A. § 838, requires an agency proposing a rule to submit an economic impact statement analyzing the anticipated costs and benefits of adoption of the proposed rule. Specifically, the APA requires an economic impact statement to list the categories of persons potentially affected by the rule. The economic impact statement must also compare the economic impact of the rule with the economic impact of other alternatives. However, ANR failed to list any categories of persons affected by the rule and failed to compare the economic impact of the proposed rule with alternatives.

Consequently, as members of the Senate Committee with jurisdiction over the use of State lands and the conservation of natural resources, we recommend that LCAR object to the proposed ATV Rule as: 1) beyond the authority of the agency; and 2) in conflict with the APA's economic impact statement requirements. Please let us know if you need additional information or input regarding our review of the proposed ATV Rule.

Sincerely,

Senator Chris Bray
Chair, Senate Committee on Natural
Resources and Energy

Senator Diane Snelling
Vice Chair, Senate Committee on Natural
Resources and Energy

Senator Mark MacDonals
Senate Committee on Natural
Resources and Energy

Senator Brian Campion
Senate Committee on Natural
Resources and Energy