

June 16, 2009

Warren Coleman
Agency of Natural Resources
103 South Main Street
Waterbury, VT 05671

Dear Warren:

Please accept the following comments from Vermont Natural Resources Council (VNRC) regarding the proposed rule governing the establishment of all-terrain vehicle (ATV) use trails on state land. These comments will elaborate on several points that we did not have time to address at the public hearing.

Our overriding recommendation is the Agency of Natural Resources (ANR) should withdraw the proposed rule from consideration and begin an earnest discussion with stakeholders and ANR staff about ATV policy in the state. Besides the fact that over 90% of our members who responded to a survey on ATV policy opposed opening state lands, we do not support the proposed rule because it is happening in a vacuum, separate from any of the other policy considerations that were addressed by the ATV Collaborative of ANR staff throughout the past decade.

I. ATV Collaborative and ANR Staff Recommendations

VNRC participated on the 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. As is recorded in the 2004 ATV Collaborative Report, VNRC reached a different conclusion on the issue of opening state lands to ATVs. 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, "there is no environmental good news here." According to a memorandum to the ANR Board of State Land Stewardship, 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. 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, and merit a review by ANR.

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, an illegal trespass fund, 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 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

II. Deficiencies of the Proposed Rule

The proposed rule enables the most controversial aspect of the Collaborative report, opening up state lands to trails, without addressing all the missing links – the need to have adequate enforcement, penalties, and the budget to pay for resource damage on private and public land. Furthermore, the proposed rule states that potential negative economic impacts could be felt by the state in terms of additional staff time being focused on ATV management and potential demands on law enforcement, but the proposed rule does not acknowledge that ANR and state government are losing staff, including wardens. These are the people that are charged with enforcing ATV activity in Vermont.

Furthermore, the proposed rule ignores ANR's own calls for additional research on the impacts of ATVs before relaxing ATV policy regarding state lands, and it appears various concerns by upper level managers in the ANR have not been factored into the rulemaking process. When VNRC comments on the long-range management plans that are proposed for state lands, we consistently consider the professional expertise of the land managers that are part of ANR. With the proposed rule, it appears that there is little buy-in from the staff with expertise on land management issues, which further erodes our confidence in the rule and the process for how it has moved forward.

What is even more disturbing is the proposed rule fails to disclose the ANR's own 'Annotated Bibliography and Research Assessment' in the scientific information statement of the proposed rule. The section is left blank; as if to say that the ANR has no scientific information to inform the validity of the rule. The ANR also fails to explain how the 2000 environmental impacts report is irrelevant to the proposed rule. How can the public weigh the merits of the proposed rule if the ANR fails to address this important topic?

Furthermore, the proposed rule does not focus on the narrow approval of a 500-foot connector trail in Island Pond. It categorically opens up state lands for consideration of connector trails with no limitation on the length of the connector trails across state lands. In addition, the proposed rule allows VASA to petition for new trails on state land and according to the rule, the only safeguard for the public, is a comment period of not less than 10 days.

III. Suggested Actions

The ANR process on this proposed rule is significantly flawed. The ANR should take a step back and begin an earnest public process to address ATV policy in the state. This includes conducting the assessments called for by ANR and getting buy-in from the Lands Stewardship Team before moving forward with any new policy considerations.

Furthermore, the ANR should focus on implementing the non-controversial aspects of the ATV Collaborative recommendations with renewed buy-in from the Collaborative members. 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 small connector trails is not a credible answer to curtailing illegal resource damage. More comprehensive policies are needed, as the ANR recognized in the Collaborative process.

VNRC respectfully calls on the ANR to abandon the proposed rule. ANR should focus on the implementation of the less controversial Collaborative recommendations, and follow the advice of ANR staff to conduct meaningful assessments on whether state lands even have the ability to accommodate ATV activity at a threshold level in Vermont.

Sincerely,

Elizabeth Courtney
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Vermont Natural Resources Council

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