

PROPOSED RULE: COVER SHEETSOS# _____
(Do not complete)

Note: File this form and its attachments with the secretary of state. You must file an adopting page, an economic impact statement, a public input statement, text of the rule, and an annotated text showing changes from existing rules with this cover sheet. You must also file a scientific information statement and/or incorporation by reference statement if applicable.

Please complete the following.

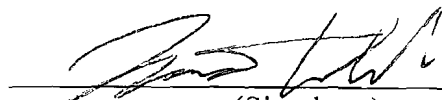
1. Title of proposed rule:
Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land
2. Agency:
Agency of Natural Resources
3. Contact Person (Name, Address, & Phone)
Warren Coleman
Agency of Natural Resources
103 South Main Street
Waterbury, VT 05671
(802) 241-3600
4. Statutory authority for this rule:
23 V.S.A. § 3506
5. Concise summary explaining the effect of the rule. This summary will be used to provide published notice of the proposed rule. **(150 words or less):**
Establishes a process by which a trail traveling over state land may be designated for use by All-Terrain Vehicles (ATVs).
6. Explanation of why this rule is necessary: This rule is the exercise of the Secretary's authority to designate trails for use by ATVs. State lands can provide the necessary interconnection for a state-wide ATV trail system.
7. List of people, enterprises and government entities affected by this rule: Agency staff, ATV users, general store owners, lodging owners, travel and tourism personnel, users of state lands.
8. Brief summary of economic impact of this rule **(150 words or less):** As the current 600 mile Vermont All-Terrain Vehicles Sportsman's Association (VASA) ATV trail system grows, ATV sales could increase, as well as an increase in business being felt by motels, gas stations, restaurants and general stores by additional ATV riders coming to a particular area, requiring goods and services that these businesses provide. Registration fees, as well as revenue generated from additionally insured ATVs, would also increase. Potential negative economic impacts could be felt by the state in terms of: additional staff time being focused on managing the ATV use of public lands; possible

demands on law enforcement; additional impact on the trail system could increase maintenance costs.

9. Date, time and place of scheduled hearing, if any (no sooner than 10 days following second publication):
A public hearing will be held in the auditorium of the Pavilion Office Building, 109 State Street in Montpelier, Vermont, from 7:00 p.m. to 9:00 p.m. on Monday, June 15, 2009.

10. Deadline for public comments (no earlier than 7 days after scheduled hearing): 6/22/09

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I APPROVE THE CONTENTS OF THIS FILING.



(Sign here)

Date 05/15/09

Jonathan Wood
Secretary, ANR

(Type name here please)

Please Check off the following components that are enclosed with this rule (**Please check only those that apply to this proposed rule**).

- Proposed Cover sheet
- Adopting Page
- Economic Impact Statement
- Scientific Information
- Public Input Statement
- Incorporation by Reference
- Text of the Rule
- Annotated Text

This box for Secretary of State use only

- Proposed Cover Sheet
- Adopting Page
- Economic Impact Statement
- Scientific Information
- Public Input Statement
- Incorporation by Reference
- Text of the Rule
- Annotated Text
- ICAR Approval received.

These components were filed with this rule. APA Clerk's Initials _____.

ADOPTING PAGE

Note: This form must be filed three times during the rulemaking process, viz., with the Proposed Rule Cover Sheet, Final Proposal Cover Sheet, and Adopted Rule Cover Sheet.

Please complete the following:

1. Title of rule:
2. Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land
3. Agency:
Vermont Agency of Natural Resources
4. Agency's reference number, if any:

4. This is a(n)

- Amendment- changes to an already existing rule.
- New rule- adopts a rule that did not previously exist.
- Repeal-repeals a rule that previously existed.

Except for new rules, please give the name of the existing rule and the date on which it was last amended or adopted:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with the filings of proposed rules and final proposals. Filing a paragraph or page of a larger rule is not sufficient. Similarly, if the rules of the agency have been published as part of the Code of Vermont Rules, the agency shall file the annotated text, if possible, using the appropriate page or pages of the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

ECONOMIC IMPACT STATEMENT

Note: In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832 (b) for details). Where this form is insufficient for your purposes, please use additional sheets.

Please complete the following.

1. Title or subject of rule:
Rule Governing the Establishment of All-Terrain Vehicle Use Trails on State Land
2. Agency:
Vermont Agency of Natural Resources
3. Please list categories of people, enterprises and government entities potentially affected by this rule and estimate for each the costs and benefits anticipated. If applicable, include small businesses, and complete items 4 and 5 of this sheet as well. Please be as specific as possible, giving full information on your assumptions, data base, and attempts to gather other information on the nature of the costs and benefits involved. Costs and benefits can include any tangible or intangible entities or forces which will make an impact on life without this rule.
See response to #4 below.
4. Please compare the economic impact of the rule with the economic impact of other alternatives to the rule, including no rule on the subject or a rule having separate requirements for small business.

As the current 600 mile Vermont All-Terrain Vehicles Sportsman's Association (VASA) ATV trail system grows, ATV sales could increase, as well as an increase in business activity for motels, gas stations, restaurants and general stores with additional ATV riders coming to a particular area, requiring goods and services that these businesses provide. Additional income from repair service could be generated by ATV dealers. Potentially, private enterprises could benefit if they choose to begin to offer commercial ATV tours as a result of Vermont having a complete, state-wide trail network.

Today, the cost to register an ATV in Vermont is \$25.00 per year. Registration fees, as well as revenue generated from additionally insured ATVs, would also increase. Current Vermont statute calls for 85% of ATV registration fees and fines to be transferred to the Vermont Department of Forests, Parks and Recreation, which makes this money available to VASA in a grant to maintain the ATV trail system in Vermont. The grant to VASA in 2009 was \$411,000.00.

Potential negative economic impacts could be felt by the state in terms of: additional staff time being focused on managing the ATV use of public lands; Possible increases in law enforcement; additional impact on the trail system could increase maintenance costs necessitating a raise in registration fees to compensate.

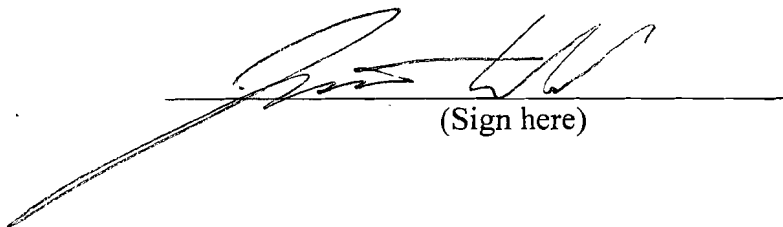
Green House Gas: This rule has the potential to impact the emissions of green house gasses if a state-wide trail system results in greater ATV use.

Conversely, it may allow Vermont residents the opportunity to ride ATVs in-state and not have to travel for ATV riding opportunities.

- 5. Flexibility statement: Please compare the burden imposed on small business by compliance with the rule to the burden which would be imposed by alternatives considered in 3 V.S.A. § 832a.

This rule does not regulate small business. No additional burdens are imposed on small businesses.

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I CONCLUDE THAT THIS RULE IS THE MOST APPROPRIATE METHOD OF ACHIEVING THE REGULATORY PURPOSE. IN SUPPORT OF THIS CONCLUSION, I HAVE ATTACHED ALL FINDINGS REQUIRED BY 3 V.S.A. § 832 (a) and § 832 (b)



(Sign here)

Date:05/15/09

Jonathan Wood
Secretary

(Type name here please)

SCIENTIFIC INFORMATION STATEMENT

Note: In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity. Where this form is insufficient for your purposes, please use additional sheets.

Please complete the following:

1. Title or subject of rule:

Rule Governing the Establishment of All-Terrain Vehicle Use Trails
on State Land

2: Agency:

Vermont Agency of Natural Resources

3. A brief explanation of scientific information:

N/A

4. Cite source of Scientific Information and provide instruction on how to obtain this material from the agency:

N/A

PUBLIC INPUT STATEMENT

In completing this public input statement, an agency shall describe what it did or will do to maximize the involvement of the public in the development of the rule. Where this form is insufficient for your purposes, please use additional sheets.

Please complete the following:

1. Title or subject of rule:

Rule Governing the Establishment of All-Terrain Vehicle Use Trails
on State Land

2: Agency:

Vermont Agency of Natural Resources

3. Please list the steps that have been or will be taken to maximize public involvement in the development of the proposed rule:

The Agency has met with the primary interest group interested in this rule, Vermont All-Terrain Vehicles Sportsman's Association (VASA).

A public hearing will be held in the auditorium of the Pavilion Office Building, 109 State Street, in Montpelier, Vermont from 7:00 p.m. until 9:00 p.m. on Monday, June 15, 2009.

The Agency will post the proposed rule on the Agency's website.

Beyond general advertisements, please list the people and organizations that have been or will be involved in the development of the proposed rule.

ATV users, law enforcement, users of public lands.

Rule Governing the Designation and Establishment of All-Terrain Vehicle Use Trails on State Land

1.0 Authority

- 1.1 This rule is promulgated pursuant to 23 V.S.A. § 3506. Section 3506 (b)(4) states that an all-terrain vehicle (ATV) may not be operated on “any public land, body of public water or natural area established under the provisions of section 2607 of Title 10 unless the Secretary has designated the area for use by all-terrain vehicles pursuant to rules promulgated under provisions of 3 V.S.A. chapter 25.”
- 1.2 In promulgating this rule, the Secretary of the Agency of Natural Resources is establishing the criteria to be considered by which trails may be designated for use by ATVs, as defined in chapter 23 of Title 23.

2.0 Policy and Purpose

- 2.1 The purpose of this rule is to ensure that any designation of public land for use by ATVs is in the public good.
- 2.2 The Secretary shall only consider the designation of trails for ATVs for the purpose of connecting existing trails that occur on private lands and can only be connected through discrete areas of state land.
- 2.3 The Secretary may designate a Class IV road as an ATV trail only where the town Selectboard, or municipal government, has authorized the use of the road by ATVs.
- 2.4 The lands of the state are held in common by the people. A designation under this rule does not confer title, property rights, usage rights, or any other right to any person, organization or entity. Designation under this rule does not negate the need for any applicable permits, licenses, permissions nor supersede the application of state and federal laws.

3.0 Definitions

- 3.1 "Agency" means the Vermont Agency of Natural Resources.
- 3.2 "Operate" includes an attempt to operate and shall be construed to cover all uses of ATVs whether they be at motion or rest.
- 3.3 "Secretary" means the secretary of the Agency of Natural Resources.
- 3.4 "All-terrain vehicle" or "ATV" means any nonhighway recreational vehicle, except snowmobiles, having no less than three low pressure tires (10 pounds per square inch, or less), not wider than 60 inches, and having

a dry weight of less than 1,700 pounds, when used for cross-country travel on trails or on any one of the following or a combination thereof: land, water, snow, ice, marsh, swampland, and natural terrain. (An ATV shall not include an electric personal assistive mobility device.)

- 3.5 "Association" means the Vermont All-Terrain Vehicles Sportsman's Association (VASA).
- 3.6 "Designated Trail" means a narrow section of developed linear travel way, with an approved designation for traversing by means of an ATV.

4.0 Designation

- 4.1 In determining whether any state lands shall be available for ATV use, the Secretary shall consider the following factors:
- a) Whether the source of funds used to acquire, develop or manage the land proposed for trail designation would allow for such use;
 - b) Whether deed restrictions, easement requirements, or other restrictions imposed by law would restrict or prohibit such use;
 - c) Whether a proposed trail is the most practical way in light of the factors listed herein to connect contiguous existing trails on private lands;
 - d) Whether the activity is consistent with existing management plans for the parcel;
 - e) To what extent the natural environment may be impacted by the designation (including wetlands, streams, ponds, Rare and Irreplaceable Natural Areas, Necessary Wildlife Habitat, threatened or endangered species, and designated natural areas);
 - f) What impact the proposed designation would have on the primary uses intended by the acquisition, management plans, other existing trail systems, or other public uses of the land;
 - g) Whether there would be conflicts with other users of the land proposed for designation;
 - h) Whether the proposed trail is designed to have the least impact on public land (including length, natural resources areas, and existing incompatible uses);
 - i) Whether the proposed trail is a legally established Class IV Road authorized by the town Selectboard or municipal government for use by ATVs;

- j) To what extent privately held land abutting the proposed trail will be impacted; and
 - k) Prior to designation, any trail must have received all applicable permits, licenses, permissions and must demonstrate conformance with any applicable state and federal law.
- 4.2 The factors listed in this section are not exhaustive; the Secretary may consider other factors as they relate to determining the public good of the proposed designation.
- 4.3 The Secretary may designate a trail for use by ATV for appropriate times of the year or for restricted seasonal use only (e.g. trails may only be traveled by ATVs from June 1 through August 31).
- 4.4 Where applicable, any trail designated under this rule shall occur during the long range management planning process for a parcel of public land.
- 4.5 The Secretary may designate a trail for ATV use by the Secretary's own authority without a petition.
- 4.6 Prior to any designation, notice of the petition will be publicly advertised and a public comment period provided for not less than 10 days. Notice of any proposed designation will be sent to the municipal office or town clerk of the town or city in which the proposed trail sits for posting.

5.0 Revocation of Designation

- 5.1 Consistent with natural resource protection, water quality principles, public safety, user conflicts, undue resource impacts, use of ATVs outside the designated trail corridor, or for any other reason the Secretary may revoke the designation of any state land trail for use by ATVs.
- 5.2 Where a town Selectboard or municipal government rescinds authorization for use by ATVs on a Class IV road, designation by the Secretary is automatically revoked.
- 5.3 Revocation may occur at any time, and may take effect immediately upon the decision of the Secretary.

6.0 Petition

- 6.1 VASA may petition the Secretary to initiate the designation process for a trail on state land for use by ATVs.
- 6.2 A petition shall include:
- a) A description of the trail and the parcel of state land of interest;

- b) A map showing the proposed route through state land and how it connects trails on adjoining privately held parcels;
- c) A need and justification for the designation under this rule;
- d) A plan outlining maintenance and repair of the trail by VASA, including how the trail shall be built, maintained and repaired for the life of the trail. It should briefly describe measures by which the Association will enforce appropriate trail usage;
- e) An explanation as to why the proposed trail is eligible for designation under the factors found in 4.1 of this rule; and
- f) Any additional information as requested by the Secretary necessary for the review of the trail proposed for designation.

6.3 Within 30 days of filing, the Secretary will inform the petitioner whether the petition is administratively complete.