

Vermont Agency of Natural Resources Repeals ATV Rule Permitting ATV's on State Lands
November 23, 2011

Waitsfield, VT: The Vermont Agency of Natural Resources (ANR) has filed a Final Proposed Rule with the Vermont Secretary of State and the Legislative Committee on Administrative Rules (LCAR) that repeals a 2009 rule that addressed the use of ATV's on state land. Following a public hearing held last spring, and the review of thousands of comments, ANR has decided to proceed with the repeal of what is known as the ATV rule.

ANR Secretary Deb Markowitz said "I was pleased to see so many Vermonters weigh in on the issue of whether it makes sense for ATVs to ride on public land. After weighing the substance of the comments and concerns about the legality of the original rule we decided to move ahead on the repeal."

Markowitz said, "We have also taken concrete steps to address the Vermont ATV Sportsmen's Association legitimate need for limited connector trails across public land."

Under the separation of powers in state government a state agency may only adopt a rule if it has been given the power to do so by the legislature. As a check on the executive branches' rulemaking authority all rules go to the Legislative Rules Committee (LCAR) before they become effective.

Markowitz said "in 2009, LCAR voted unanimously to object to the ATV rule. They strongly believed that ANR did not have the power to adopt the regulation. Because we cannot point to clear authority to adopt this rule, the regulation is vulnerable to legal attack, with little likelihood of prevailing in court." The rule has been challenged in the Washington County Superior Court by the Conservation Law Foundation (CLF). Markowitz states, "it does not make sense to try to defend the ATV rule in court given that LCAR has already determined that no authority to adopt the rule exists."

Approximately 2,000 members of the public commented that ANR should not repeal the ATV rule. Those opposed to the appeal cited concerns about the economic impact of discouraging ATV riders from coming to Vermont, a belief that ATV riders will be more responsible if the sport is formally recognized by the state, and that ATV use has become a more organized sport because the work of the Vermont All Terrain Vehicle Sportsman Association (VASA) and local clubs.

Approximately 1,000 members of the public expressed support for ANR's proposal to repeal the ATV rule. Those in support of the repeal commented that ATV's have significant adverse impacts on the environment, that there is a history of ATV riders violating the law, that ANR does not have adequate resources to police ATV riders on state land, and that the ATV rule adopted by ANR in 2010 is illegal because ANR did not have the authority to adopt the rule.

Secretary Markowitz noted, "there is no question that ATV riders, under the leadership of VASA, are more organized and aware of the rules governing ATV riding that they have been in the past, and that there may be limited situations where crossing state land is appropriate." Markowitz continued, "but ATV riding can cause environmental damage, especially when ATV riders do not follow the law; and right now, the state does not have the resources to permit it to enforce against illegal ATV."

Markowitz said, "although ANR is repealing the prior rule on ATV's , we are working with VASA to use our existing authority to provide license agreements for limited use of state property." License agreements are currently used to permit cell towers, mountain bike trails, and other uses on state lands where the use is consistent with the underlying management purposes of the land. Markowitz said, "I am pleased to have already completed one license arrangement with VASA for a 500 foot crossing alongside route 105 in Brighton. We believe this license process is a more controlled and more appropriate mechanism to authorize ATV use in the limited circumstances where it may be warranted to connect private trail systems."