

## **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 connector trails may be designated for use by ATVs, as defined in chapter 31 of Title 23.
- 1.3 The Secretary shall designate each individual ATV connector trail by rule in accordance with the rulemaking procedures contained in 3 V.S.A. Chapter 25.
- 1.4 The Secretary shall consider the designation and establishment of ATV connector trails on ANR lands upon receipt of a petition as described in 3 V.S.A. §806.

### 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 connector trails for ATVs for the purpose of connecting established VASA trails that occur on private or public lands and can only be connected through areas of state land that have been thoroughly evaluated pursuant to Section 5.0 of this Rule and are deemed appropriate. ATV connector trail proposals for ANR lands that do not primarily serve this purpose will not be considered.
- 2.3 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 "All-terrain vehicle" or "ATV" means any nonhighway recreational vehicle, except snowmobiles, having no less than two low pressure tires (10 pounds per square inch, or less), not wider than 64 inches with two-wheel ATVs having permanent full-time power

to both wheels, 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 and natural terrain. An ATV shall not include an electric personal assistive mobility device.

- 3.3 “Connector Trail” means a narrow section of developed linear travel way which connects two or more established VASA trails.
- 3.4 “Designated Trail” means a narrow section of developed linear travel way which has been approved and designated pursuant to this rule by the Secretary for traversing by means of an ATV.
- 3.5 “Disability” is as defined by the Americans with Disabilities Act, 42 U.S.C. Chapter 126.
- 3.6 “Established VASA trail” is an existing VASA trail on publically or privately owned lands, is designated as a VASA trail and depicted on the VASA Trail map and is open for ATV use pursuant to a legally binding agreement between VASA and the landowner.
- 3.7 “Operate” includes an attempt to operate and shall be construed to cover all matters and things connected with the presence and use of all-terrain vehicles whether they be at motion or rest.
- 3.8 “Secretary” means the secretary of the Agency of Natural Resources.
- 3.9 “State Land(s)” means those lands owned in fee or interests in land owned by the Agency of Natural Resources or the Department of Fish and Wildlife, the Department of Forests, Parks and Recreation, or the Department of Environmental Conservation.
- 3.10 “VASA” means the Vermont ATV Sportsman’s Association.

#### 4.0 Petitions for designation

- 4.1 The Secretary may commence rulemaking to designate an ATV connector trail after receiving a petition for designation, if the ATV connector trail designation meets the criteria set forth in this rule.
- 4.2 It is the responsibility of the petitioner to satisfactorily demonstrate to the Agency of Natural Resources that the ATV connector trail proposal satisfies the criteria outlined in Section 5.2 below.
- 4.3 Only those ATV connector trail proposals that are: legally permissible, do not conflict with any legal requirements or restrictions, and meet the criteria set forth in Section 5.0 shall be considered for official designation through the rulemaking process.

- 4.4 Designations shall be limited to only those ATV connector trail proposals where an ATV trail would cross ANR lands for the primary purpose of connecting two or more established VASA trails on adjacent non-state lands. ATV connector trail proposals for ANR lands that do not primarily serve this function will not be considered.
- 4.5 ATV Connector Trail Designations shall specify the width of the designated ATV connector trail on a case by case basis and the width shall minimize environmental impacts and limit disturbance associated with the maintenance and construction of a connector trail.

5.0 Criteria

- 5.1 The Secretary shall consider and find that each of the following factors have been addressed when assessing whether any state lands shall be available for ATV use:
  - a) Whether the source of funds used to acquire, develop or manage the land proposed for connector trail designation would allow for such use;
  - b) Whether the ATV connector trail proposal is legally permissible and does not conflict with any legal requirements or restrictions associated with the ANR parcel(s);
  - c) What impact the proposed designation would have on the primary uses intended by the acquisition of the parcel;
  - d) Whether the proposed connector trail will have an adverse impact on surrounding natural resources including, but not limited to natural communities, fish and wildlife habitat, and Rare Threatened and Endangered (RTE) species and their associated habitats;
  - e) Whether the proposed connector trail will result in forest fragmentation, open the forest to invasive species or otherwise impair the ecological value of the forest block;
  - f) If a proposed connector trail is for a Class IV Road, whether the proposed connector trail is a legally established Class IV Road authorized by the town Selectboard or municipal government for use by ATVs;
  - g) What impact the proposed connector trail would have on existing infrastructure;
  - h) Other factors deemed relevant by the Secretary as they relate to determining the public good of the proposed designation;

- 5.2 Prior to commencing rulemaking to designate and establish an ATV connector trail on ANR lands, the Petitioner shall demonstrate and the Secretary shall—in consultation with state land managers—find that each of the following criterion are met:
- a) The ATV connector trail proposal provides a connection between two or more established VASA trails on adjacent non-state lands and that there are no other reasonable or feasible alternatives for connecting to the established VASA ATV trail network without using ANR lands;
  - b) The proposed connector trail segment on ANR lands is the shortest appropriate route available for providing a connection between two or more established VASA trails on adjacent non-state lands;
  - c) The established connecting VASA trail segments on non-ANR land utilize an approved Class IV road or are permitted by the adjoining landowners. The applicant shall secure legally enforceable written approval from adjoining landowners, such as, an easement, right of way, or long term lease. The Secretary may determine, in his or her sole discretion, whether the permission is adequate;
  - d) The proposed connector trail does not conflict with the established land use classification or emphasis zones for the parcel(s) as provided within the Agency’s current long range management plan for the parcel. For ANR parcels that do not have a corresponding long range management plan, the applicant shall demonstrate that the ATV connector trail proposal does not conflict or interfere with the stated management goals and objectives of the parcel(s);
  - e) The proposed connecting ATV trail will not unreasonably impact other public uses of the connector trail and will be open to other intended or permitted uses of the ANR parcel, pre-existing, and pre-approved uses; including established recreation, educational, or research uses associated with the ANR parcel(s);
  - f) The connector trail proposal provides recreation benefits to the public and does not negatively impact any established recreation facilities or infrastructure;
  - g) The proposed connector trail minimizes new trail construction to the greatest extent possible, and where feasible and appropriate utilizes established roads and trails;
  - h) The proposed connector trail will be constructed, maintained and managed to prevent soil erosion and discharges to state waters;
  - i) The proposed use and location of the connector trail will not pose any unreasonable or unnecessary safety concerns to users and the general public;

- j) The local VASA ATV chapter proposed as the managing entity for the connector trail proposal and VASA have the financial capacity, sufficient personnel, and the relevant expertise and experience to assume the maintenance, management, and enforcement responsibilities associated with the connector trail proposal;
- k) The proposed connector trail and the frequency of the use of the connector trail will not have an adverse impact on natural resources, including natural communities, fish and wildlife habitat, RTE species and their associated habitats, wetlands, and waters of the state.
- l) The proposed connector trail will not have a negative impact on water resources, shorelands, riparian areas, water quality and flood resiliency values associated with ANR land and meets or exceeds Vermont Water Quality Standards and other relevant water quality standards;
- m) The connector trail proposal does not adversely impact historic or cultural resources; and
- n) The applicant(s) have coordinated this connector trail proposal with any other trail organization that is presently maintaining or managing any portion of the proposed connector trail for other recreation uses under any agreement with ANR and its departments. Coordination with other trail organizations shall include strategies to minimize conflicts, mitigate impacts, and promote cooperative management; as necessary to address any potential negative impacts including but not limited to physical, visual and aesthetic impacts.
- o) The proposed ATV connector trail designation has been approved by any other entity which possesses a legally cognizable interest in Agency lands that may be affected by the connector trail use.

## 6.0 Rulemaking

- 6.1 If the Secretary commences rulemaking to designate an ATV connector trail on state lands, the Secretary shall generate findings that address the factors and criterion in Sections 4, 5.1 and 5.2. In addition, the Petitioner shall —generate:
  - a) A description of the connector trail and the parcel of state land of interest;
  - b) A map showing the proposed connector trail route through state land and how it connects established VASA trails on adjoining parcels; and
  - c) A plan outlining how VASA will build, maintain and repair the connector trail for the life of the trail and describe measures by which VASA will enforce appropriate trail usage, including a detailed description of requisite associated funding.

6.2 The petition and the Secretary's findings and any supporting materials shall be available to the public and posted on the ANR website during the rulemaking process.

## 7.0 Designation

7.1 All petitions regarding designation of an ATV connector trail on ANR lands shall be reviewed by the appropriate District and Agency Lands Stewardship Team(s), which shall make a recommendation for the Secretary to consider.

7.2 The Secretary may designate a connector trail for use by ATVs for appropriate times of the year or for restricted seasonal use only.

7.3 VASA may provide the Department with supplemental information to confirm or rebut the Department's and/or Secretary's findings on each specific criterion.

7.4 The Secretary may designate a connector trail for use by ATVs subject to any terms and conditions, and mitigation, necessary to ensure that the connector trail meets the criteria in this rule and the proper management of ANR lands.

7.5 Prior to initiation of construction, maintenance, repair or use of a designated connector trail, all applicable permits, licenses, and permissions must be in place and; and the proposed connector trail must be in compliance with applicable state and federal law.

## 8.0 Closure of Designated ATV Trails

8.1 The Secretary may temporarily close a Designated Trail for use by ATVs for any reason including, but not limited to, undue impacts to natural resources, water quality impacts, user conflicts, public safety concerns, and unauthorized use of ATVs outside the Designated Trail.

8.2 Where a town Selectboard or municipal government rescinds authorization for use by ATVs on a Class IV road, any connecting ATV trails designated by the Secretary will be closed.

8.3 Where a private landowner rescinds authorization for use by ATVs on his or her land and a Designated Trail was authorized to connect that land to another section of an established VASA trail system, the Secretary will close the Designated Trail.

8.4 Closure may occur at any time, and shall take effect immediately upon the decision of the Secretary. The Secretary shall notify VASA and the local chapter of VASA of closure and the reasons for closure.

8.5 If the Secretary determines that the closure of the trail should be permanent, the Secretary shall initiate rulemaking to repeal the Trail Designation.

8.6 As soon as practical, but no later than one calendar year after the repeal of a Designated Trail in accordance with rulemaking under the Vermont Administrative Procedures Act, VASA shall, under the direction and with the approval of the Agency, return any repealed Designated Trail to its pre-trail condition and cover all associated costs unless otherwise directed by the Secretary. This includes the cost to construct barriers to prevent ATV entry onto the previously Designated Trail, such as gates or other forms of obstruction.

## 9.0 Designated Trails

9.1 The Les Newell Connector trail depicted on Map A is designated for ATV use under the following terms and conditions.

- a) ATV use shall be limited to the designated trail. No off trail use shall be permitted.
- b) All ATVs shall abide by the speed limit of 15 mph. VASA shall post the speed limit on the designated trail at the state boundaries at both ends of the designated connector trail.
- c) VASA shall be responsible for securing all necessary permits for any maintenance or construction required for the use of the trail.
- d) VASA is authorized to conduct maintenance, to improve the trail, and to construct stream crossings on the designated trail. VASA shall be responsible for maintaining the trail in good condition. VASA shall be maintain, reconstruct and construct any infrastructure necessary for the trail in accordance to the best available BMPs and erosion control strategies. No discharge of sediment to state waters is permitted.
- e) VASA may clear debris and brush from the trail and may remove vegetation only as necessary: to maintain a trail width of no more than 10 feet wide and, to ensure adequate drainage and erosion control.
- f) The use of any pesticides or herbicides is prohibited without prior written permission from the Agency.
- g) The placement, collection or storage of trash, human waste, or any other material on the designated trail is prohibited.
- h) There shall be no manipulation or alteration of natural watercourses, lakeshores, wetlands, water levels and/or flow or other waterbodies.
- i) VASA shall erect gates or barriers at the junction of the existing ATV trail and the Designated Les Newell ATV Connector trail. The gates or barriers shall be sufficient to prevent other off-road (jeep and truck) vehicular use.
- j) No ATV use of the designated connector trail shall be allowed between October 31 and May 15. VASA and the Secretary may modify closure in consultation with each other and municipal stakeholders based on ground and weather conditions. VASA shall notify its members and post the closure of the trail to ATV use during closure.

- k) VASA shall close the designated trail when necessary to protect public safety or prevent environmental damage or at the direction of the Agency.
- l) VASA shall immediately close the designated trail and notify the Agency, in the event that an adjoining landowner, a town Selectboard or municipal government rescinds permission for ATV use on trails or a Class IV road that connect to the trail.
- m) The Secretary may revoke the designation for use by ATVs for any reason including, but not limited to, undue impacts to natural resources, water quality impacts, user conflicts, public safety concerns, and unauthorized use of ATVs outside the Designated Trail. Revocation shall take effect after rulemaking to repeal a connector trail designation.
- n) As soon as practical, but no later than one calendar year after the revocation of a Designated Trail, VASA shall, under the direction and with the approval of the Agency, return any revoked Designated Trail to its pre-trail condition and cover all associated costs unless otherwise directed by the Secretary. This includes the cost to construct barriers to prevent ATV entry onto the previously Designated Trail, such as gates or other forms of obstruction.