

ADOPTED RULE: COVER SHEETSOS# _____
(Do Not Complete)

Note: File this form with the Secretary of State and the Legislative Committee on Administrative Rules. You must file an adopting page and the text of the adopted rule with this cover sheet.

Please complete the following.

1. Title or subject of adopted rule:
Rule Governing the Designation and Establishment of All-Terrain Vehicle Use Trails on State Land
2. Proposed Rule # previously assigned by the Secretary of State 09 P-029.
3. Agency:
Agency of Natural Resources
4. Statutory authority for this rule:
23 V.S.A. Section 3506
5. This filing has has not changed since the filing of the final proposal. If it has changed, please attach a letter to this filing explaining in detail what changes were made, citing chapter and section of those changes where applicable, including changes in economic impact.
6. The Legislative Committee on Administrative Rules did not object objected to the final proposal.
7. Procedural history of adoption:

The rule was filed with ICAR on the following date: :04/30/09.

This rule was filed in proposed form with the secretary of state on the following date: 05/15/09.

This rule was published in newspapers of record on 05/28/09 and 06/04/09.

This rule was the subject of public hearings held as follows (give date, time, and place):

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

The deadline for public comment for this rule was 07/06/09.

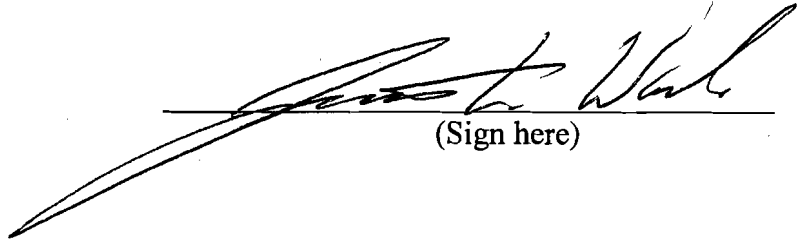
This rule was filed in its final proposed form with the secretary of state and with the Legislative Committee on Administrative Rules on 10/20/09.

This rule was considered by the Legislative Committee on Administrative Rules on 12/15/09.

This rule is filed in its adopted form on 01/04/10.

The effective date of this rule will be 01/19/10 (must be no sooner than 15 days following the filing of the adopted rule).

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I HEREBY CERTIFY THAT THE PROCEDURAL REQUIREMENTS OF TITLE 3, CHAPTER 25 HAVE BEEN MET. I ALSO APPROVE THE CONTENTS OF THIS FILING.



A handwritten signature in black ink, appearing to read 'Jonathan L. Wood', is written over a horizontal line. Below the line, the text '(Sign here)' is printed.

(Sign here)

Date:01/04/10

Jonathan L. Wood
Secretary, ANR
(Type name here please)

An adopting page and a text of the rule were filed with this coversheet

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:
Rule Governing the Designation and Establishment of All-Terrain Vehicle Use Trails on State Land
2. Agency:
Agency of Natural Resources
3. 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: N/A

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.

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 31 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 conduct a preliminary Pilot Program pursuant to Section 7.0 of this Rule prior to proceeding with any further designations.
- 2.3 The Secretary shall only consider the designation of trails for ATVs for the purpose of connecting existing VASA trails that occur on private lands and can only be connected through areas of state land that have been thoroughly evaluated pursuant to Section 4.0 of this Rule and are deemed appropriate.
- 2.4 The Secretary shall consider the designation of areas of state land and/or existing trails for ATV use by individuals with disabilities, as defined by the Americans with Disabilities Act (42 U.S.C. Chapter 126), pursuant to Section 8.0 of this Rule.
- 2.5 The Secretary may designate a Class IV road as an ATV Designated Trail only where the town Selectboard, or municipal government, has authorized the use of the road by ATVs.
- 2.6 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 60 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, water, snow, ice, marsh, swampland, and natural terrain. An ATV shall not include an electric personal assistive mobility device.
- 3.3 "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.
- 3.4 "Disability" is as defined by the Americans with Disabilities Act, 42 U.S.C. Chapter 126.
- 3.5 "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.
- 3.6 "Secretary" means the secretary of the Agency of Natural Resources.
- 3.7 "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.
- 3.8 "VASA" means the Vermont ATV Sportsman's Association.

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 shortest and most practical way in light of the factors listed herein to connect existing VASA trails on private lands contiguous with the involved state 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 but not limited to 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) If a proposed trail is for a Class IV Road, 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 proposed 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 Petitions shall be reviewed by the appropriate District Lands Stewardship Team(s), which shall make a recommendation on the petition to the Secretary.

4.4 The Secretary may designate a trail for use by ATV for appropriate times of the year or for restricted seasonal use only.

4.5 Any trail proposed for designation under this rule shall be reviewed and considered during the Long Range Management Planning process for a

parcel of public land or require an amendment to an existing Long Range Management Plan.

- 4.6 The Secretary may designate a trail for ATV use by the Secretary's own authority without a petition.
- 4.7 Prior to any designation, notice of the petition or a proposed designation by the Secretary pursuant to 4.6 will be publicly advertised and a public comment period provided for not less than 30 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.
- 4.8 A public hearing shall be scheduled if so requested by 25 or more persons in the town or city in which the proposed trail is located.
- 4.9 The public comment period shall occur when no snow cover on the proposed trail is present.

5.0 Revocation of Designation

- 5.1 The Secretary may revoke the designation of any 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 corridor.
- 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 Where a private landowner rescinds authorization for use by ATVs on its land and a Designated Trail was authorized to connect that land to another section of the VASA trail system, designation by the Secretary is automatically revoked.
- 5.4 Revocation may occur at any time, and may take effect immediately upon the decision of the Secretary.
- 5.5 As soon as practical, but no later than one calendar year after the revocation of a Designated Trail, VASA shall return any revoked Designated Trail to its pre-trail condition and cover all associated costs unless otherwise directed by 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 existing VASA trails on adjoining privately held parcels;
 - (c) A need and justification for the designation under this rule;
 - (d) A plan outlining how VASA will build, maintain and repair the 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;
 - (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. A failure to so inform does not render the petition administratively complete or approved in any way.

7.0 Pilot Program

- 7.1 The Secretary shall designate the first two, and up to three, petitions submitted pursuant to Section 6.0 and approved pursuant to Section 4.0 of this rule as a Pilot Program.
- 7.2 The Secretary shall evaluate the Pilot Program trails for one riding season to determine whether such trails:
- (a) Have been properly maintained repaired and enforced;
 - (b) Resulted in any unexpected impacts under the factors listed in 4.1(e), 4.1(f), 4.1(g), 4.1(h), 4.1(j) or 4.2;
 - (c) Shall be authorized as a Designated Trail.
- 7.3 The Secretary shall not authorize any additional Designated Trails on state land pursuant to this rule until the Pilot Program is completed.

8.0 Designation of Trails for ATV Use by Disabled Individuals

- 8.1 The Secretary shall maintain a list of those areas of and/or existing trails on state lands that may be used by disabled individuals and make such list available to the public.
- 8.2 The Secretary shall not authorize a trail reserved for ATV use by disabled individuals as a Designated Trail for ATV use by non-disabled individuals without evaluating it pursuant to Section 4.0 of this Rule.