

== Bike-Walk Alliance of NH ==



All-Terrain Vehicles in New Hampshire

QUESTION: WHAT IS THE SOUND OF AN ATV RUNNING OVER A HIKER OR BIKER?

ANSWER: at the end of the article!

by Bill Kennedy

When is a democracy not a democracy? When does a state agency not have to follow the will of the majority of the people? In a state that advertises, "Live free or die", does that give ATV (All Terrain Vehicle) owners the right to have a state agency violate federal law so they can "live free"? These are just a few of the questions I came up with as I was going through some of the information about ATVs and how the State of New Hampshire through the Department of Resources and Economic Development (DRED) is using its power to circumvent the Federal Highway Administration's (FHWA) Transportation Enhancements (TE) funding laws.

The BWA-NH has received numerous meaningful emails from an organization called ATV Watch headed by Andrew Walters, Director. Their goal is not to ban ATVs but to keep them from encroaching onto the lands and trails designated for low-impact and quiet activities such as hiking, walking, bicycling, snowshoeing, and cross-country skiing. Conservation lands, some rail trails, sensitive woodlands, and trails near homes will typically support low-impact use but not ATVs. The goals of ATV Watch are supported by the BWA-NH. Together we wish to keep ATVs out of sensitive areas so the public will have quiet areas to enjoy. The ATV Watch web site offers more details: www.ATVWatch.com or call Andrew Walters at (603)785-7722.

There's a ton of information out there, and I'll do my best to break it up so you can chew and swallow it without getting indigestion! I'm not a hard core anti-ATV person. I think the only thing I have against ATVs is that I don't own one. If I had a 25 acre back yard it would be great to ride around it on an ATV. I do know that mixing vehicle speeds is a bad idea. That's why farm vehicles aren't allowed on the inter-state highway system. For the

same reason I think its prudent to keep ATVs, as well as any other motorized vehicle, off of bike / pedestrian trails. An ATV could be on top of a biker / hiker before they had a chance to see them. Hopefully the biker / hiker could hear the ATV coming, but that would make the overtaken person responsible for crash avoidance, which goes against state regulation. I would encourage you to read this message and contact your elected officials and ask them why DRED is meeting behind closed doors and why the NH legislature is not following federal statutes concerning ATV use on TE funded trails. A more pointed question might be, why do they appear to be looking for loop holes in the current funding laws. Note that much of this letter was derived from Andrew Walters' email of June 19, 2007.

PART 1: EXECUTIVE SUMMARY (sort of!)

The citizens of New Hampshire successfully fought off a proposed change in the Statewide Comprehensive Outdoor Recreation Plan which would have eliminated the reference to ATV use as being a high impact recreational activity. DRED changed the Draft Management Plan for the 146,000 acre Connecticut Lakes Headwaters Working Forest to include ATV use. Now DRED is pushing to allow ATV use on 300 miles of rail trail. To some it appears that DRED is hoping those opposing the expansion of ATV use on lands prohibited by federal law will be on summer vacation and they can change the laws implemented by the majority of New Hampshire citizens.

The New Hampshire Department of Transportation (NHDOT) owns approximately 300 miles of abandoned rail corridors (rail trails) in New Hampshire. DRED manages these trails on behalf of NHDOT. Most of these abandoned rail corridors were purchased with Federal Transportation Enhancement (TE) grants which were given under conditions that prohibit all motorized use of the corridors except for "snowmobiles."

In violation of Federal statutes, DRED has not just been allowing, but promoting ATV use on the TE funded rail trails. ATV Watch has been in communication with the State of New Hampshire and the Federal Highway Administration (FHWA) in an effort to compel compliance with the Federal Statutes. FHWA sent a letter to NHDOT emphasizing the Federal restrictions and asking NHDOT to explain their position.

It now appears that, rather than comply with the Federal statutes, NHDOT, DRED and the Attorney General's Office are seeking to use loopholes in the statutes for a permanent "work around" to the Federal ATV prohibition on TE funded trails. The exact extent of this work around is not known because the State is refusing to release any information on the issue. The State has learned that information empowers citizens so the policy is being developed behind closed doors.

Release of the new policy is imminent. ATV Watch believes that the solution to this problem is with the Governor's Office. Hopefully you will momentarily put aside the gardening, the summer chores and the vacation planning and pick up the phone, or write an email voicing your opinion.

ATV Watch tries to give you the information you need in order to decide whether or not it is worth taking action. After that it is up to you. A short email or phone call voicing your opposition to the State circumventing the Federal prohibition to ATV use on New Hampshire's TE funded rail trails can be very effective. When we do not speak up, someone else (the ATV lobby) is effectively speaking on our behalf.

Contact information:

Governor John Lynch
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Concord NH 03301
<http://www.egov.nh.gov/governor/goveforms/comments/asp>

NH DOT
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Less than 2% of the population of New Hampshire owns a registered ATV and ATV registrations have increased by less than 2% per year for the last four years. However, DRED continues with an incessant push to develop ATV trails on conservation and public lands. This is demonstrating that a system, where payments from special interests are dedicated directly to the decision makers that set policy regarding those special interests, is a system that is inherently unbalanced. If we don't want to continue to spend our time and energy trying to bring balance to DRED's ATV trail development plans then the underlying system that generates the continuing problems needs to be changed. ATV Watch hopes you will support them in this effort in the future.

PART 2: FURTHER CONSIDERATIONS ON ATV USE ON PUBLIC TRAILS

1. There is no greater impact on the environment of the citizens on New Hampshire than the development of a linear network of ATV trails such as on the rail trails.

-- The linear nature of the trails results in impacts on the greatest number of abutters and lands.

-- The historic nature of the trails brings them into close proximity to residences, businesses and community centers.

-- Public comment received as part of a recent study by NHDOT indicated that more than 80% of the public is opposed to any ATV use on the rail trails

-- In many instances rail trails pass through conservation lands and protected areas. ATV

use on these trails would be a conduit to the conservation lands and protected areas.

-- ATV use on these trails would be a conduit to the conservation lands and an invitation to problems.

-- Many rail trails pass through sensitive environmental areas with critical habitats for rare and endangered species.

2. In 2003 DRED supported House Bill 748 which eliminated the applicability of the statutory ATV trail review criteria to the development of ATV trails on the rail trails. These criteria were intended to protect communities and the environment from the negative effects of ATV trail development. The criteria that were eliminated included the requirement that ATV trail development on State lands be compatible with local zoning, planning, noise and obnoxious use ordinances. In 2006 DRED successfully opposed House Bill which attempted to reinstate the trail review criteria into statute.

3. Allowing ATVs on the TE funded rail trails runs contrary to the intent of TE funded projects. TE funds are intended to provide "opportunities to enhance transportation related quality of life activities, as well as to improve air quality and mitigate congestion."
- State of New Hampshire Manual for Development of Projects.

4. Public policy should not be developed behind closed doors. The Governor's Office should insist on "openness in government" and compel DRED and NHDOT to consider public input regarding ATV use on the rail trails.

5. Decisions made by the State of New Hampshire could have an impact nationwide. If NHDOT and DRED successfully circumvent the Federal prohibition to ATV trail development on TE funded projects this could set a precedent that would result in ATV trail development on TE funded trails across the country. This could ultimately impact thousands of miles of trails.

6. Developing public policy which allows ATV use on the rail trails will negatively impact the ability of communities and conservation organizations to build public support for rail trail preservation. The quickest way to kill community support for a rail trail project is to mention the words all terrain vehicle and rail trail in the same sentence.

7. DRED is in an unenviable position. They have allowed and promoted ATV use on the rail corridors in violation of Federal statutes. The State of New Hampshire should immediately comply with Federal Statutes and prohibit the use of ATVs on the rail trails. If DRED wants to work around the restriction they should do this within the confines of the law, not outside the law.

PART 3: BACKGROUND AND MORE INFORMATION

-- In violation of Federal Statutes DRED has been allowing wheeled ATVs on the TE funded rail trails in the winter (with snow cover) by classifying wheeled ATVs as snowmobiles or "snow traveling vehicles". Also, in one instance, in violation of Federal Statutes, DRED issued a special use permit to allow 350 ATVs to use a TE funded rail trail for one springtime weekend. DRED recently supported a bill in the New Hampshire

Legislature to allow ATVs on the rail trails in connection with the training of sled dogs.

-- Although the Federal statutes restrict motorized use on the TE funded rail trails to "snowmobiles" only, there are two loopholes. First, there is no Federal definition of a "snowmobile". Second, there is a provision in the Statute which allows other motorized use "in such circumstances as the [U.S.] Secretary [of Transportation] deems appropriate." These are truly loopholes and have never been interpreted as a mechanism to allow ATVs on the trails. However, in an attempt to gain access to a rail trail in Vermont, ATV clubs recently asked FHWA to grant a waiver to the prohibition of ATVs. FHWA is now developing a procedure to evaluate requests for waivers titled "Framework for Evaluating Motorized Use on Non-motorized Facilities." The title alone summarizes the situation.

-- ATV watch spoke with NHDOT in April at which time, without saying exactly what their response was going to be, they indicated that the Federal restrictions to ATVs seemed clear and that it was just a matter of implementing the restrictions. Recently NHDOT indicated that the issue was not as straight forward as they had thought. NHDOT said that DRED believes that it is very important to allow ATV use on rail trails and that they are working with the AG's Office on a response to FHWA. NHDOT said that it would be up to FHWA to make the final decision on whether to allow ATV use on the rail trails.

-- In response to ATV Watch's insisting that the public be brought into any attempt to circumvent the Federal prohibition to ATVs use on the rail trails NHDOT responded that they would have to check with their attorneys as to the requirements for public involvement in an issue like this.

PART 4: WHY DO WE KEEP RE-INVENTING THE WHEEL?

At this point, if you're still with me, and if your eyes haven't completely glazed over, you should be starting to smell something funny. I thought all public agencies had to conduct their business in public. That's why they're called "public"! DUH! And finally, we don't need to re-invent the wheel here. Read on about how one state tried unsuccessfully to allow ATVs and bikers and hikers on the same facility.

The state of Pennsylvania tried allowing ATVs on rail trails for 6 years. It didn't work. You can read all about it at:

<http://www.genset.org/library/11gsn/2002/g021211.php#ATVS%20BANNED%20FROM%20PENNSY%20RAILS-TRAILS>

The Susquehanna County Rail-Trail Council included Snowmobiles in their master plan. The ATV folks were upset, so the decision was made to include the ATVs. An ATV group agreed to regulate and patrol ATV use, just like the snowmobilers do in NH. 500 passes were issued for the ATVs at \$20 each. Despite an honest 6 year effort, the dust, noise,

trespass and safety issues could not be resolved; hiker and bicyclist users did not feel safe sharing a pathway with ATVs. The Rail-Trail Council (RTC) listed the following reasons for the permanent ban in a letter to ATV owners:

1. The RTC's founding vision was for a recreational greenway intended for hikers & bikers. With recent ATV use, our many long-time members and financial supporters were beginning to discontinue their memberships and their support.
2. Bikers and hikers were becoming a rarity out on the trails, because they were either afraid to ride bikes with their families due to speeding ATVs or they did not want to eat the dust created.
3. Adjacent property owners were complaining on a regular basis: dust, noise and trespassing. Over 95% of adjacent property owners do not want ATVs on the trail.
4. Complaints from two local realtors have indicated that property values along the trail were decreasing. Property sales were lost in a few instances due to ATVs trespassing on to adjacent property.
5. Township and borough officials were complaining on a regular basis. Again speed, dust, noise and trespass being major complaints. Another major concern was riding of ATVs along the streets to get to and from the trail.
6. Safety for all users is our major concern. The inherent nature of the trail being long with few turns, encourages speeding. The speed differential between a walker and an ATV rider is too great. ATV trails designed by professionals are built to keep the speed down, and discourage speeds over 15 mph. Our rail-trail is not designed for safe ATV use.
7. A major construction project of drainage improvements and resurfacing is to begin in the spring of 2003. This project uses TEA-21 funds (federal highway enhancement funds-FHWA). These funds are not to be used for ATV trails. According to 23 U.S.C. 217(h), motorized vehicles (including ATVs) may not be permitted on trails and pedestrian walkways which use Federal aid highway funds (except snowmobiles, and where specifically authorized by State or local ordinance, motorized wheelchairs, electric bicycles, and maintenance vehicles).
8. It is not just a few bad apples; ATV use just does not mix well with bikers and hikers, who are our primary intended user group. We cannot have both, and our seven years of attempted shared use have proved this. It is also proven in the fact that no other rail-trails in PA allow ATVs (only one is attempting shared use).

Well, if you're still with me and conscious, congratulations. We're almost done. This information has been very hard to follow. I've usually found that when somebody makes it difficult to follow their trail, it's because they're trying to hide something. And when they're trying to hide something, it's because they're "up to no good" as my father would say. As I said earlier, I have nothing against ATVs. If I had a 25 acre back yard I

probably would have been out riding on one today. It's gorgeous out and anything is better than working on a computer as far as I'm concerned! However, Federal policy is pretty clear, considering it was written by politicians. I looked it up on their web site and it says no motorized vehicles. So why is a NH state agency trying to circumvent the Federal law? And, why won't they tell us what they're up to?

AND FINALLY!

Question: What's the sound of an ATV running over a hiker or biker?

Answer: I don't know and I hope I never find out!

Much as I dislike working on this computer, I know where my next email is going. How about you?

Thanks for your time and patience.

Bill Kennedy
Member GSW & BWA NH



[Home](#)