



## New Hampshire Rail Trails Coalition

An affiliate of the Bike-Walk Alliance of NH

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To: House Resource, Recreation and Development Committee

From: New Hampshire Rail Trails Coalition

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Subject: This memo describes the Legislature's role in creating the current Off Highway Recreational Vehicle ("OHRV") problem in NH and how you can fix it by enacting HB 683 (relative to protecting the rights of property owners abutting certain highways and rail trails).

### **A Brief History:**

For more than 33 years, residents and conservation groups have been describing to officials the disturbances caused by OHRVs riding past residential properties; the damage to class VI roads, trails, public and private lands; and the incompatibility of OHRVs with other traditional recreational activities. Finally, in 2001, the legislature created an ATV Study Committee. In 2002, working from this committee's recommendations, the legislature established a coarse and fine filter evaluation process to ensure that new OHRV trails would not create further conflict.

Over the years, the evaluation process that was enacted to protect the larger public interests in the placement of OHRV trails was steadily undermined. Instead of the OHRV problem being fixed, the problems have spread so that more property owners are adversely impacted by high impact OHRV trails; more demands are being placed on law enforcement and emergency services; and more traditional recreationists are being displaced.

### **The Details:**

**2001:** [HB 717](#) was filed to establish "a committee to make recommendations on policy concerning state-operated trails for all terrain vehicles and trail bikes." The committee was specifically required to review "Interests of abutting landowners." Public testimony revealed the serious impacts of OHRV trails on abutting residents - noise, dust, lack of law enforcement, damage to class VI roads, damage to land, lack of public process and public input, need for a master plan, incompatibility with other trail users, and lack of land use regulations in the North Country.

The HB 717 Study Committee recommendations included: "The policy of 'Coarse' and 'Fine' filtering must remain in place. Environmental concerns and potential degradation of an area must also be the paramount consideration." "New or expanded trails should be for ATV use only. Trails could then be designed and engineered exclusively for this use and conflict issues will not arise." "Emphasis should

*be on development of self-contained trails, not linear trails.”* The Study Committee recommended further review of *“New or expanded role(s) for Trails Advisory Committee in trail development, management and closure.”*

**2002:** [HB 1273](#) Building on HB 717’s finding that there were *“urgently needed changes in law regarding ATV trail operations and planning,”* the legislature held 10 public hearings and established a coarse and fine filter evaluation process to be used in the opening of *all* OHRV trails on state lands. This was enacted into law: [RSA 215-A:41,42,43](#).

The citizens and conservation groups who testified in support of this detailed process spoke of the need for full public notice in all trail development proposals as well as the importance of protecting and conserving natural areas. Citizens testified to the problems resulting from misplaced OHRV trails: the serious degradation of the quality of life of abutters, the loss in property value, the noise and air pollution, the damage to trails leading to erosion and the increased costs to police and emergency services.

**2003:** [HB 748](#) began the undermining of the newly enacted evaluation process of RSA 215-A:43.

The exemption of rail trails from RSA 215-A:43 is a direct contradiction of the original ATV Study Committee recommendation that the *“‘Coarse’ and ‘Fine’ filtering must remain in place,”* as well as the directive to focus on self-contained riding areas, *“not linear trails.”* Rail corridors are linear trails that pass through residential areas - exactly where local ordinances and existing uses and impacts on abutting property owners should be seriously considered.

The legislature also weakened the original language that specified that new OHRV trails must be *“compatible with”* local ordinances to the meaningless *“give due consideration to,”* thereby denying NH citizens the basic protections of local zoning and noise ordinances. At the same time, the legislature passed the responsibility to address the admittedly *“large portion of complaints”* about unacceptable noise levels to the local level after just ensuring that the state would no longer have to follow these local laws.

Despite the public testimony again detailing the recurring issues of safety, noise, impact on abutters, over-use of trails, need for careful placement of high impact OHRV trails and the importance of following existing local ordinances, the legislature granted BOT’s request for the *“less restrictive language.”*

The current lawsuit filed by seven households in Gorham against the state and town to remove the nuisance of OHRV trails past their homes is a direct result of these weakened protections.

**2004:** The [Plan for Developing NH’s Statewide Trail System for ATVs and Trail bikes 2004 - 2008](#), mandated by the 2001 Study Committee, stated that: *“The primary goal for the Bureau will be to align the user expectations with state land management goals rather than the other way around. Trail and resource specialists should first explain the regulatory framework in which decisions are made, and then solicit input from wheeled OHRV users. This is extremely important when stressing the governing agencies mandates to protect public resources. ”*

*“22,000 registered OHRV or 2 of every 100, New Hampshire residents and 4,500 non-residents currently have wheeled OHRVs registered in the state.”*

The plan’s predicted increase to 37,000 registrations by 2009 have still not yet been realized.

**2005:** NH DOT, in collaboration with NH Department of Resources and Economic Development (DRED), published the [New Hampshire State Trails Plan](#). They conducted an extensive study of the state’s rail trails, holding public hearings across New Hampshire. Public comments revealed problems with lack of OHRV enforcement, noise and speeding. Also questioned was DRED’s ability to treat non-motorized trail users fairly, given BOT’s financial dependence on motorized registrations. More than 80% of the public opposed any ATV use on rail trails, winter or summer. In light of the public mandate and unaddressed complaints, how does the legislature justify continuing the 2003 exemption from the evaluation process for the opening of rail trails to OHRVs?

**2012:** [SB 250](#) expanded the exemption from the evaluation process for all “trail connectors” in Coos County. RSA 215-A :1: *“Trail connector” means that specific portion of an OHRV trail or cross-country ski trail on which an OHRV trail maintenance vehicle may operate authorized within a state highway right-of-way by the department of transportation.*” The passage of SB 250 led to 100s of miles of roads in Coos County being opened to OHRV travel with minimal oversight. Riders can now leave the trails at Jericho State park and drive their Off-Road vehicles over 33 miles of roads, past dozens of homes in Berlin, Milan, Dummer and Stark to get to the trails in Stratford.

SB 250 also amended RSA 215-A:10 to open specific sections of state roads to OHRV traffic, thus by-stepping not only RSA 215-A:43,44, but also the joint permitting process with the NH Department of Transportation and NH Department of Safety. *“The following sections of state highway shall be designated for OHRV use: Back Lake Road in Pittsburg....”* It is starting to look as though anytime a desired OHRV “trail” cannot pass 215-A:43, the legislature grants an exemption. Where is the oversight and balance?

How does this growing list of exemptions fulfill the original intent of creating new, exclusive OHRV trails, in self-contained areas that are *“compatible with existing uses”* mandated by 215-A:41-II (b)?

**2015:** [SB 172](#) "Amend RSA 215-A:1, I-b to read as follows: *“All terrain vehicle (ATV)’ means any motor-driven vehicle which is designed or adapted for travel over surfaces other than maintained roads with one or more **non-highway** tires”* This is an explicit acknowledgement that ATVs are designed for travel down trails. Why is the state of New Hampshire allowing 1000s of Off Road vehicles to ride down 100s of miles of public road in traffic with logging trucks, tractor trailers etc, some of them driven by unlicensed children on vehicles equipped with “non-highway tires” for 4-5 months of the year? Where is the concern for public safety?

**Summary:** As you can see from this history, the increasing number of serious problems we have with OHRV trails today around the state are a direct result of the legislature undermining, with the full support of the Bureau of Trails, the statutes that were written to correct these very problems. The evidence demonstrates that BOT serves the interests of the OHRV riders who fund BOT salaries. There is no balancing counter-weight for the larger, more diverse public interests, so the same problems of 2001 are before the legislature once again, but on a larger scale.

**What we are asking for:**

1. Please enact meaningful protections for the vast majority of NH residents who do not own or ride OHRVs. Please ensure that all rail trails and roads and trails on public and private property go through a substantial evaluation process. Two New Hampshire courts have recognized OHRV trails in residential settings as a nuisance. The record shows that there needs to be far greater oversight for NH's OHRV trails.
2. Pass HB 683 to re-establish protections for abutting property owners, users of rail trails and public roads.
3. Reinstate the evaluation process of RSA 215-A:43 for rail trails being considered for OHRV use.
4. Establish meaningful abutter notification when roads and trails are being considered for OHRV use. Such a significant change in use should trigger a Site Plan Review.
5. Limit the use of public roads as "trail connectors" for OHRVs to no more than 1/2 mile.

Thank you for your consideration of these requests.

NH Rail Trails Coalition Board,

Chuck Redfern, President, Keene  
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