

## New Jersey Division of Parks and Forestry

### OFF-ROAD VEHICLE USE

This is an electronic transcript of a draft policy developed by the Division of Parks and Forestry that would permit the leasing of park lands for ORV use.

ORV recreation is a complex issue that the Department of Environmental Protection views as one requiring careful planning to protect our natural resources and consensus of various interest groups.

In Response to the growing demand for the legal use of public lands, the Division of Parks and Forestry has developed this policy in recognition of the fact that ORV activities have continuously grown in popularity and would be better accommodated in restricted areas that provide safer riding conditions, as well as channel ORV users away from sensitive natural areas and lands

The New Jersey Division of Parks and Forestry has recognized that the use of off-road vehicles on public land represents a complex national public policy challenge that is not unique to New Jersey.

The use of public lands for off-road vehicles, specifically the State Park System, presents significant, conflicting challenges for balancing the very intensive philosophies and needs of divergent user groups with the 15 million visitors annually to the state Park System.

Each visitor and user group has a stake in how the division's mission of preserving and protecting natural and historic resources is balanced with the interests of hikers, campers, bird watchers, hunters, bikers and many special interests groups such as off-road vehicle constituents.

Balancing all these interests while adhering to the Division of Parks and Forestry's mission and the Division's Stewardship Ethic and its Principles is a challenging task.

In a larger context, it must be understood that the ever evolving trends in outdoor recreation pursuits further complicates and exacerbates public land managers' stewardship responsibilities. From roller bladders, hang gliders and rock climbers to personal watercraft users and mountain bikers, each of these outdoor recreation participants feel they have an "entitlement" to division lands.

The purpose of this document is to articulate the Division of Parks and Forestry's policy direction with respect to off-road vehicle use on division lands.

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## **Executive Summary**

This document articulates the Division of Parks and Forestry's policy direction with respect to off-road vehicle use on division lands.

For many years, the Division of Parks and Forestry has advised individuals and organizations that we would consider proposals from organizations that are advocating the use of division lands for off-road vehicle use. The potential use of division lands would make an organization entirely responsible for the development, operation and maintenance of a designated off-road vehicle area.

In considering off-road vehicle use, the division has been accepting new proposals for the use of division lands from organizations that would accept the complete responsibility for the development, operation, risk, liability and maintenance of designated off-road vehicle areas.

This document further identifies the division's requirements for considering proposals including a lease, management and operations plan, proof of financial capability, guarantee of obtaining the required risk and liability insurance and other requirements.

The division will require that any proposed off-road vehicle use must be on specifically designated leased lands. The division will not allow, with the exception of designated snowmobile trails and special use permit events, the use of any other trails or areas for use by individuals utilizing off-road vehicles.

Any proposed leasing of division lands must focus significantly on the environmental assessment of the proposed area, public and local government input concerning the proposal, liability and insurance concerns and the ability of the proposing organization to conform to all the required lease conditions.

## **DEFINITIONS AND PARAMETERS**

Off-road vehicles are identified as those vehicles not licensed, registered or insured and/or operated by a driver licensed with the New Jersey Division of Motor Vehicles of other similar agency in another State. For the most part, these vehicles are designed and built for operation on non-public roadways, hence the terminology “off-road vehicles.”

Off-road vehicles are prohibited from operating on public roadways in New Jersey. Statute 39:3C-17(b) prohibits the operation of snowmobiles and all-terrain vehicles (ATV’s) on public roadways. All roadways within State park and forest lands, including sand roads or wood roads, are considered public roads.

New Jersey Traffic Laws, Reference 39:3C provides for the registration of snowmobiles and ATV’s. This registration is designed only to permit the direct crossing of public roads to gain access to areas designated for snowmobile or ATV use.

The New Jersey State Park Service Administration Code 7:2-3.2 prohibits the operation of any motorized vehicle on lands and waters which does not have licensing and registration by the New Jersey Division of Motor Vehicles unless a permit is issued by the Director of Parks and Forestry or his/her designee. Special Use Permits are issued for limited numbers of motorcycle enduro events, which include requirements for natural and historic resource protection and site restoration. Snowmobiling activities are permitted by a Special Use Permit or are permitted on areas or trails specifically designated for that purpose.

There are two locations where off-road four-wheel drive vehicles are permitted on State Park Service lands by obtaining an annual pass for beach access. Those areas are Island Beach and Corson’s Inlet State Parks. Access to these areas via four-wheel drive vehicles is strictly for the purpose of sportfishing. Annual passes are issued to administer and control the number of vehicles on the beach at any one time to prevent damage to the natural resource. This document does not otherwise apply to the two above mentioned areas.

These policies and regulations reflect the priority given by the Division of Parks and Forestry to the safety and welfare of the general public and the protection and preservation of New Jersey’s natural and historic resources.

### **Off-Road Vehicle Areas**

The New Jersey Division of Parks and Forestry’s requirement for off-road vehicle use has, to date, been limited to the accommodation of snowmobiles, special use permitted events and registered four-wheel drive vehicles on designated beaches.

Designated trails for snowmobiles have existed for many years and it is recognized that many four-wheel drive vehicles utilize division sand roads in the southern areas of the State Park System and for specific controlled and managed programs for mobile surf fishing vehicle permits at Island Beach State Park and Corson’s Inlet State Park.

The division's policy direction with respect to use of off-road vehicles, off-road motorcycles and all-terrain vehicles is that such uses must be restricted to specific division lands for resource protection/public safety and not integrated into trail systems or areas of the State Park System. (See appendix for permitted use locations)

Current illegal uses of division lands by off-road vehicles present an untenable approach and direction particularly regarding the resource stewardship and management of division lands, as well as parks law enforcement.

Given the numerous conflicting philosophical, policy and management concerns, the leasing of division lands for the purpose of off-road vehicle use is a potential opportunity.

Off-road vehicle organizations and users must take responsibility for developing, operating and maintaining areas for their use to minimize conflicts with other visitors and user groups.

Subsequent sections of this document provide specific information on how the division would establish areas for use by off-road vehicles. The sample lease provides specific direction on what would be required to effectuate such a lease and the provisions that would have to be addressed.

Significant legal and policy issues remain for the leasing of areas for off-road vehicle use, as they present the State of New Jersey with additional liability exposure. Thus, any lease will require review and approval by the Attorney General's Office and the New Jersey Department of Treasury, Bureau of Risk Management.

In addition, the division's position is that only off-road vehicles that are registered with the New Jersey Department of Transportation, Division of Motor Vehicles, will be allowed to utilize areas leased for off-road vehicle use. At the present time, snowmobiles, all terrain vehicles and four-wheel drive vehicles are provided for under Title 39. The required registration of other off-road vehicles (Title 39:3 c-et al) would provide some minimum rules and regulations for owning and operating these off-road vehicles.

The proposed leasing of areas for off-road vehicles will also require, at a minimum, an environmental assessment of the area to be leased. the division would also hold a public meeting regarding the proposed lease to solicit public input as well as the position of county and local public officials.

### **Standard Lease Descriptions**

The designation and use of lands under jurisdiction of the New Jersey Division of

Parks and Forestry for use by off-road vehicles will require the execution of a lease. Except for those trails/areas designated by the State Park Service for snowmobiles and/or use by State registered and insured vehicles or special use permitted events, the use of division lands by all-terrain vehicles (ATV's), off-road motorcycles or other off-road vehicles shall be only on lands leased to approved organizations.

An organization leasing division lands for off-road vehicles shall be completely responsible for the operation and maintenance of the leased area. The organization must be established according to the New Jersey Department of Treasury, Division of Commercial Recording, Statutes and Regulations. In the event the organization is a "non-profit," the organization must register as a corporation with the New Jersey Department of Treasury, comply with the New Jersey Charitable Registration and Investigations Act, Department of Law and Public Safety and secure non-profit status under the Internal Revenue Service.

the following represents an outline of some of the most important standard elements of a Division of Parks and Forestry leased area for off-road vehicles.

\* **Term**

To be negotiated based on the organization and the specific area to be leased.

\* **Rent**

To be negotiated based on the organizations proposal to lease a specific area. Depending on the proposal and the amount of investment in the leased area, generally the rent or consideration for the lease hold interest is valued in terms of the availability of the site to the public for outdoor recreation use.

\* **Purpose**

This section specifically identifies the use and occupancy of the leased premises for a specific purpose- in this case for off-road vehicle use.

\* **Condition of Leased Premises**

Reflects the leasing of an area in its present condition without representation or warranty of any kind.

\* **Management and Operation Plan**

A detailed comprehensive plan for the development, maintenance and operation of the lease premises including facilities to be provided (parking areas, trail development and associated facilities) and measures to contain and regulate all permitted activities on the leased lands.

\* **Annual Plan and Budget**

A specific document that presents those elements of the management and operation plan for the next year. Examples of information to be provided in

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annual plan and budget includes description of hours/days of operation, events and activities to be held; projects and improvements, costs and demonstration that the organization has the required resources to fulfill the annual plan.

\* **Maintenance and Utilities**

Addresses the responsibility for maintenance of the leased premises including the cost of utilities and project approval requirements and restrictions.

\* **Operation and Supervision**

Articulates that the organization leasing the area is completely responsible for its operation, maintenance, supervision and appropriate safety and emergency training.

\* **Security and Enforcement**

Reflects that the organization has the complete responsibility for the security and enforcement of rules/regulations of the leased area.

\* **Renovation and Improvements**

Provides for the division approving all renovations and/or improvements on the leased premises including trails, tracks, clubhouse, sanitary facilities, storage sheds, food/souvenir sales facilities.

\* **Construction Responsibility of Lessee**

Describes the approval process for any construction projects on the leased area including permits, code requirements and maintenance.

\* **Compliance with Laws, licenses, permits and insurance policies**

Responsibility of the organization leasing the site.

\* **Fees**

States that all fees must be approved in advance by the division.

\* **Reports, Records and Audit**

Outlines specific requirements of the organization to submit reports and other information to the division.

\* **Damage to property**

States that damage to the leased premises or adjacent non-leased lands is the responsibility of the organization and may result in further actions or lease termination if damages are not remediated.

\* **Indemnification**

Provides for indemnification of the State of New Jersey by the lessee for all

activities on the leased premises.

\* **Insurance**

The “boiler plate” provisions of the standard lease regarding liability and property damage coverage will be subject to review of the Attorney General’s and the Department of Treasury, Bureau of Risk Management.

\* **Termination**

Reflects conditions under which the lease can be terminated.

\* **Environmental Assessment**

Requires the lessee to complete an initial survey of the environmental conditions of the leased area with a written reports and photographic documentation.

Site improvement/restoration needs are to be documented and incorporated into the Annual Plan.

\* **Authority to lease division lands**

Consistent with provisions of NJSA13:1L, 6 and 8 et al.

**CRITERIA FOR AN OFF-ROAD VEHICLE AREA**

The following represents a number of characteristics and considerations that the Division of Parks and Forestry will take into account when considering proposals to lease off-road vehicle areas.

I. **Physical Characteristics**

A. The property has to have at least five usable miles of trails of be large enough to accommodate that mileage. Trail loops are desirable and should be of varying difficulty to satisfy users.

B. Areas to consider for off-road vehicle facilities may include:

Quarries	Abandoned sand and gravel pits
Former military properties	Other appropriate lands as determined
Degraded lands	by the Division.

C. The property must have suitable areas for parking to accommodate vehicles including those with trailers. This means the parking areas should be of adequate size, particularly if organized events will be held, and have nearly flat surfaces with

soil conditions conducive to heavy vehicle use.

- D. The property should be located in a predominantly undeveloped area to avoid conflicts with adjacent property owners, and preferably not near residential neighborhoods. Conflicts might include noise, trespassing, or incompatibility with neighbors, “business” or lifestyle. If the property is in an area with some development, there should be assurances that neighbors are aware of the applicant’s intentions and do not have reasonable objections to the property being used in this manner.
- E. The property must be located in an area that is not environmentally or historically sensitive. The following factors should be considered:
1. Wetlands.
  2. Known endangered and threatened species habitat.
  3. Soils of landscape features prone to high erosion.
  4. Poor drainage.
  5. Minimum of vegetation removed for trails and facilities.
  6. Existence of historic resources, features and/or artifacts.

If there are portions of areas proposed for lease that are environmentally sensitive, those portions of the property where there is concern must be avoided. If the applicant is unable to avoid a sensitive area, the necessary mitigation for impacting these areas must be obtained. This might include planting vegetation or re-routing trails. After mitigation or avoidance of sensitive areas, there must be a minimum five-miles of trails.

- F. The property shall not be located in a “hazardous area”, steep cliffs, toxic waste sites, or other sites with environmental or safety hazards.

## II. **Management/Policy Considerations**

- A. The organization proposing the lease of division lands for off-road vehicle use must be capable of demonstrating that it has the resources and capacity to completely develop, operate and maintain an off-road vehicle facility.
- B. The organization must be registered as a New Jersey Corporation with the New Jersey Department of Treasury, Division of Commercial Recording. In the case of a non-profit organization, it must be registered with the New Jersey Division of Law and Public Safety and comply with the New Jersey Charitable Registration and Investigation Act and be a tax-exempt organization recognized by the Federal Internal Revenue Service.

- C. The organization must execute a lease agreement with the division and comply with all of the lease terms and conditions. The lease will require the approval of the State House Commission (N.J.S.A. 13:8A-13) and may have to comply with “The Ogden Rooney Law” (N.J.S.A. 13:1D, 51 et al.
- D. Any organization proposing to develop, operate and maintain an off-road vehicle facility must provide for use of the facility by the general public and accommodate various types of off-road vehicles including but not limited to snowmobiles, all-terrain vehicles, off-road motorcycles, motorized bicycles and four-wheel drive vehicles.
- E. The proposing organization must provide, at a minimum, an environmental assessment of the lands proposed to be developed as an off-road vehicle facility.
- F. The Division of Parks and Forestry shall hold at least one public meeting to present the organization’s proposal for an off-road facility. The public meeting will be held in the county and municipality (if feasible) where the proposed facility will be located.
- G. It is the Division of Parks and Forestry’s position any off-road vehicle utilizing division lands must be registered with the New Jersey Department of Transportation, Division of Motor Vehicles as defined in Section J of P.L. 1991, c.496 (C.2A:42A-6.1).
- H. Any proposal for the development, operation and maintenance of an off-road vehicle facility will be subject to review by the New Jersey Trails Council.

## **MANAGEMENT AND OPERATIONS PLAN**

The following represents a general outline of the components of the Management and Operations Plan.

### **I) Introduction**

- General background information, described principal entities, purpose of the plan...

### **II) General Description of Leased Area**

- Overview and description of the site, acreage, significant features, boundaries.
- Site plan must show all existing trails to be used, other trails/paths to be closed and ant new trails to be constructed.

### III) **Administration/Staffing/ Volunteers**

- Specific information on individuals responsible for the leased area including lease compliance, maintenance, programming, security, emergency services and evidence of proper training for courteous and safe use of the area.
- Provide “job descriptions” for individuals assigned to specific responsibilities.
- “Rules and Regulations” for volunteers and staff - for example: behavior, appearance, proper use of equipment and leased area, recording hours, reporting accidents.

### IV) **Training**

- Specific requirements for training staff and volunteers; for example, customer service and emergency procedures.
- The organization or vendor must be required to provide or verify that all users, and not just staff or volunteers, have the proper training or experience for safe and courteous use of the specific type of vehicle.

Just because someone shows up with a vehicle does not mean that he or she knows how to use it. The Egg Harbor Township PAL makes this a requirement of all users of their facility and can provide guidance on a safety program. This testing may only be as long as it takes to perform a short driving test and include printed information on practices and rules. Also, having a training requirement of all users should decrease liability and risk concerns.

### V) **Policy and Procedures**

- General operation of leased area
  - Schedule of days and hours
  - Maintenance inspection, and security
  - Special events
  - Communications
  - Staffing levels
  - Enforcement of rules and regulations
  - Access to the leased area by individuals and groups
  - Fees and charges
  - Emergency procedures
  - Concessions and/or other services
  - Establish user capacity limits for site
- Lease Administration and Compliance

- Assignment of specific responsibilities for reporting and other requirements of the lease.

- Permits

- If a yearly permit or sticker program is not instituted, variations of which are used at both the New Jersey Off-Road Vehicle Park and Egg Harbor Township PAL, then all daily users should be required to have some form of permit, obtained at a single point of entry. This will aid enforcement of trail use and lessen the opportunities of access from adjacent areas or roads

## **ANNUAL REPORT**

The following represents a general outline of the components of an annual report.

### **I) Use of leased area**

- A detailed reporting on use of the area - numbers of individuals by month, special events and/or programs including yearly totals by type of use.

### **II) Maintenance of the leased land**

- A detailed report of inspections made and routine maintenance performed.

### **III) Improvements and Special Projects**

- A detailed reporting of special improvements or projects completed on the leased area including a description, date of the improvements/projects and costs including materials and equipment.

### **IV) Financial Information**

- A reporting of all revenues and costs for the year, including a specific breakdown of revenue sources and detailed expenditures.

### **V) Projections for next year**

- Highlights of anticipated operations, projects/improvements and use of the leased area for the upcoming year.

## **APPENDICES**

- \* Standard Lease
- \* New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq.
- \* Inventory of Trails/Routes/Roads Open for Motorized Use  
(State Park Service, December, 2000)
- \* Standard Elements of An Environmental Assessment
- \* Evaluation of Regional - State Motorized Trails Program
- \* New Jersey Division of Transportation Division of Motor Vehicles P.L. 1991 C.496
- \* New Jersey Department of Environmental Protection  
Division of Parks and Forestry State Park Service Administration Code
- \* New Jersey Division of Parks and Forestry Mission Statement
- \* New Jersey Division of Parks and Forestry Stewardship Ethic
- \* New Jersey Trails Council
  - New Jersey Trails System Act Chapter 159 Laws of 1974 et.seq.
  - State Trails System Rules with proposed amendments - Chapter 5D
  - Administrative Order No. 19
  - New Jersey Trails Council Chapter 367 Law of 1975
- \* Title 39:3C-30 Other Laws when operating snow mobiles or all terrain vehicles on public highways and land.
- \* Interested Parties - Resource List