

FW Comparison of OHV damage repair fund concepts.txt

From: Schmidt, Dan  
Sent: Tuesday, January 02, 2007 9:11 AM  
To: Mautz, Kelly  
Subject: FW: Comparison of OHV damage repair fund concepts

FYI.

-----Original Message-----

From: Joel [mailto:silentsports@charterinternet.com]  
Sent: Thursday, December 28, 2006 10:25 AM  
To: Schmidt, Dan; Patronsky, Mark; Piliouras, Elizabeth  
Subject: Comparison of OHV damage repair fund concepts

I have looked at both the ATV damage repair program proposal for Wisconsin and the existing law and Minnesota and put together the following comparison. Included are suggestions for improving the draft legislation before the State Trails Policy Committee.

At the end is a summary of the OHV damage claims the Minnesota DNR has received over the past three years. Lists of the claims, including descriptions of the damage done to some biking and skiing trails, were submitted as attachments to a previous email.

I respectfully request that the information below be distributed to the other members of the committee in advance of our discussion of the proposed legislation on Jan. 4.

Thank you,

Joel Patenaude  
Public member, Special Legislative Committee on State Trails Policy

Proposed ATV Damage Claim Program for Wisconsin How it compares to Minnesota's law, established in 2004

The proposed legislation now before Wisconsin's Special Legislative Committee on State Trails Policy would establish an all-terrain vehicle damage program to pay the costs of restoring property not designated as ATV routes or trails but is nevertheless damaged by the operation of ATVs.

In contrast to this draft bill, Minnesota's two-year-old "Off-Highway Vehicle (OHV) Damage Account" addresses damage in unauthorized and unpermitted areas caused by ATVs as well as off-highway motorcycles, 4x4 jeeps and trucks. It would be advantageous to likewise broaden the draft legislation for Wisconsin because the harm done by various motorized vehicles can be similar but difficult to differentiate.

A definition of "damage" is needed in the Wisconsin legislation. The Minnesota law states that OHV-caused erosion, loss of topsoil, soil compaction or rutting, damage to vegetation and property damage, such as trampled fences, constitutes damage.

"The bottomline is that if a conservation officer or local sheriff would write a ticket for it, it's damage," states the Minnesota DNR's FAQ on the law.

In Minnesota, the reimbursable costs include all direct costs associated with restoring the property to its pre-damaged condition.

According to the Wisconsin bill, "Any person may submit a claim" if the applicant can demonstrate they have "made reasonable efforts to ID the responsible individual and obtain payment" as well as make "reasonable efforts to prevent reoccurrence."

It is important that the state allow any property owner, public or private individuals and entities (such as local government, park officials, bicycle and cross-country ski clubs) to seek reimbursement.

Of course "reasonable efforts" will need to be defined. (In Minnesota, holding the responsible party accountable requires being able to identify that party and pursuit of police and/or court action against them.) But other than post "no trespassing" signs, erect fences or gates, how can property owners - the harmed parties - be expected to prevent ATV riders from returning and causing more damage? The law should specify to what extent property owners are responsible for keeping ATV'ers at bay.

According to the draft bill, the Wisconsin DNR will set the rules for eligibility, funding and reimbursement as well as "a methodology for proration of ATV damage claim payments if funds are not sufficient to pay all claims." Again, this seems to put the onus on property owners who neither invite nor welcome unlawful and destructive ATV riding. Why should they pay any portion of the costs of repairing ATV damage?

No funding appropriation is included or identified in the draft legislation. But Wisconsin should seriously consider doing what Minnesota does: Fund the state's damage account with a \$500,000 (or greater amount) appropriation from the dedicated OHV accounts.

Tapping OHV funds would be a means to hold ATV'ers themselves accountable for the damage their

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machines can and do do. If the ATV clubs and industry knows a portion of their constituencies' gas taxes and/or registration fees must pay for damage done by illegal riding, the ATV organizations are more likely to aggressively police themselves to help ensure less damage is done in the future.

#### Summary of Minnesota claims

Twenty-two OHV-damage repair claims have been filed since the Minnesota established its program in 2004, according to a list provided by Bill Johnson, who oversees the program for the Minnesota DNR Division of Trails and Waterways. Of those claims, five came from private property owners, two from The Nature Conservancy, and the remainder were submitted by townships, counties, the DNR, USFS and one city for damage done to public property.

"Each claim is unique, but in general damage is pretty localized," Johnson said. "Two claims have been submitted for damage to cross-country ski trails, one claim has come in for an area adjacent to an abandoned railroad grade (a public corridor open to both motorized and nonmotorized uses), and one claim for a paved bike trail."

Nine claims resulted in the DNR paying a total of \$96,962.68. (The individual claims ranged from just over \$239 to nearly \$15,000.) This includes \$18,250 to fix ATV-caused rutting and hillside erosion along cross-country ski trails in north-central Crow Wing and Itasca counties.

Payment of another \$46,000 has been approved for repairing OHV-damaged Beltrami County land that includes puddles expanded by ATV use, trail braiding to bypass the puddles, muddy rutting and evident ATV tracks exiting ski trails and entering a river. A DNR inspection there also made note of "ATV developed trails to circumvent gates, signing and other types of barricades."

Also requiring repair in Beltrami County is a paved bike trail. ATVs have caused "rutting of the slope, destruction and theft of the fence (and) removal of other barricades and sign removal," according to the Minnesota DNR report. "If left unrepaired, the rutting will continue to erode this 50-foot high fill section of the former railgrade."

There are active or pending claims for \$14,624 to repair damage to five other properties (four owned by the DNR, one by a private entity).

One of the 22 total claims was withdrawn, the DNR denied three and, in a single case, restitution was collected from the responsible party so no further action was taken.

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