

## **UPDATE**

# **Review and Recommendations Regarding DCNR's Role and Responsibilities to Provide Motorized Recreation Opportunities within the Commonwealth of Pennsylvania**



**March 24, 2021**

**The Conservation and Natural Resources Advisory Council**

**Geralyn Umstead-Singer, CNRAC Chair**

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## EXECUTIVE SUMMARY

The six-member Motorized Workgroup was established by CNRAC in 2017 to meet an identified need for departmental advice on the state of Motorized Recreation in the Commonwealth. Two years of study led to the release of *The Conservation and Natural Resources Advisory Council's Review and Recommendations Regarding DCNR's Role and Responsibilities to Provide Motorized Recreation Opportunities within the Commonwealth of Pennsylvania* in January of 2019.

The 19-page report, supplemented by six Informational Appendices, identified eight Key Findings and provided 14 Key Recommendations to address those findings. A 15<sup>th</sup> Recommendation dealing with an Internal Department Structure Consideration was added under the *Final Considerations* section of the report.

Between the report's release and the end of 2020 update sessions were conducted by the Department with Workgroup members. The final one of these occurred on December 14, 2020. The Motorized Workgroup's evaluation of Department actions related to the Recommendations is as follow:

- 6 - Completed<sup>1</sup> – Recommendations 2,3,4,8,10,14
- 5 - Agreed to<sup>2</sup> - Recommendations 1,5,7,11,12
- 3 - Sharing Responsibility<sup>3</sup> – Recommendations 6,9,13
- 1 - Rejected<sup>4</sup> – Recommendation 15

The Recommendation Matrix, updated with the Department's responses as of the date of this summary is attached as Appendix B.

The Motorized Workgroup feels the aforementioned results indicate a strong resolve on the part of the Department to aggressively address the subject of this report. The task at hand is significant, at times controversial, and has festered for more than two decades. We commend the Department for prioritizing this issue and making positive strides in policy implementation and administrative direction.

During our ongoing work of the past two years some new issues arose with the potential to impact ongoing outcomes with regard to the identified issues. Those issues are addressed in the **Newly Identified Key Issues and Recommendations** section of this report.

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<sup>1</sup> Completed – All substantial activities/policies related to the Recommendation are in place and functioning at this time. There is no need for further monitoring.

<sup>2</sup> Agreement – The Department has signified they are working to implement the major tenants of the Recommendation. In many cases, substantial progress has been made in that implementation.

<sup>3</sup> Shared Responsibility – The Department recognizes that user group partners are necessary to carry forward actions necessary to address the implementation.

<sup>4</sup> Rejected – The Department does not feel the Recommendation can be implemented at the current time and declined to pursue implementation.

## NEWLY IDENTIFIED KEY ISSUES AND RECOMMENDATIONS

The two years between the adoption of the original report and this update were spent not only tracking established **Key Issue and Key Recommendation** progress but also considering new issues as they were identified. In the estimation of the Motorized Workgroup two rose to the level of new **Key Issues** and required new **Key Recommendations**. They are identified here and numbered consecutively from the original report to make this a trackable living document.

### I. Increased Need for Commonwealth Interagency Cooperation

A broad coalition of partners was identified under Key Findings Section A in our original report. In the past two years, language has been included in the annual Fiscal Code Bill in an attempt to require Commonwealth Departments to work together to provide connectivity for some elements of the motorized recreation community.

PennDOT appears to hold the key to many of the connection issues that are necessary to allow DCNR to make the connections the legislative action sought or is seeking. The primary focus is Right of Ways but in some instances may include use of PennDOT owned infrastructure such as bridges or highways. While a complete inventory of how other states handle this issue was not completed for this report, it is recognized that other states have cooperative provisions for the use of Right of Ways and Infrastructure.

DCNR recently revised its **ATV Trail Development and Management Policy** to reflect some changes with regard to usage of forest roads and other travel/access facilities. PennDOT is encouraged to explore doing the same in a cooperative manner by CNRAC.

**2021 - Recommendation 16:** There is a recognized need, supplemented by the demonstrated will of the State Legislature through Fiscal Code language, for consideration of additional complementary use of owned state assets to accomplish newly identified goals. PennDOT and DCNR are encouraged to work together to meet such identified needs through new initiatives that maximize the benefits of Commonwealth owned Right of Ways and Infrastructure to additional user groups and all citizens.

### J. Liability Reform

Liability concerns are common to many forms of recreation that occur on public and private lands. In Pennsylvania these have long been addressed through the *Recreational Use of Land and Waters Act (RULWA)*. The Act was adopted in 1966 and amended in 2007, 2011, and 2018. A summary, produced by the Pennsylvania Land Trust Association, is Appendix C to this report.

While this Act provides significant liability protection to public and private landowners (among others), there remains a level of trepidation among some who might otherwise be amenable to permitting an increased level of access for recreational activities. The fact that the Act has been amended by the Legislature three times in the past 15 years demonstrates that level of concern as recreational access needs have increased at an accelerated rate during the period.

CNRAC recognizes this is a complex legal issue not easily or quickly solved. Nevertheless, as we look for ways to enhance transportation connectivity for motorized users as required by recent Fiscal Code legislative language, we have this segmented Recommendation to offer<sup>5</sup>:

**2021 - Recommendation 17:** Legislative action will be required to affect any reform of Recreational Liability Law in the Commonwealth. We encourage the Department to carefully consider researching potential impacts of the following potential reform considerations:

- 17A. – Other states have differing Liability protection laws addressing this topic. Consideration should be given to the practicality of adopting some of those statutes for use in Pennsylvania.
- 17B. – Use of Restricted Receipts Account income to purchase a high limit commercially available Liability policy to assure adequate protection to all parties involved in incidents resulting from recreational use of land and waters outside of the protections provided by RULWA.
- 17C. – Voluntary Assumption of Risk is a recognized legal theory in use in many venues within the Commonwealth. Legislation attaching this legal liability protection as a result of participants voluntarily engaging in named activities may provide additional recognized protection for landowners, trail providers, and related entities.

The Motorized Workgroup will continue to monitor progress and provide updates to the Council as deemed appropriate and necessary.

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<sup>5</sup>The full scope of this recommendation requires parties outside of the Department to take actions that address the Liability issue. The Recommendation seeks DCNR's participation as a partner in the process.