

MOUNTAINTOP COMMUNICATIONS FACILITIES

Philosophy:

Mountaintops in Vermont are important for many reasons, such as defining the character of the Green Mountain state, maintaining a natural and aesthetically-pleasing skyline, supporting or sustaining rare alpine ecological communities, and being destinations for thousands of hikers. Many are also vital, even critical, sites for electronic communication, for facilities that broadcast radio, television, and emergency signals. Coincidentally, most critical mountaintops are in state ownership and under management by the Department for these multiple purposes.

Therefore, the Department must be guided in its mountaintop use decisions through a policy that takes into consideration all the following factors:

- 1) The importance of electronic sites for critical broadcasting, especially involving public health and safety, law enforcement, national defense, and public information.
- 2) The number and arrangement of facilities or structures, as to the impact on aesthetics, electronic interference, and signal integrity.
- 3) Potential threats to public health from intense signals.
- 4) Ecological sensitivity of the area.
- 5) Other public uses of the area.

Policy:

The ultimate goal for state-owned mountaintops in Vermont is to have them cleared of all structures, machinery, and appurtenances, with the possible exception of observation platforms. This cannot be realized until the science of electronic communications has advanced to the state when mountaintop antennas and other electrical paraphernalia are outmoded. Until that time, the policy for mountaintop communications sites management will be to provide transmission sites for communications critical to the public health and safety, while minimizing the aesthetic and environmental impacts of these communications facilities.

Attachment 1 provides the guidelines, standards, and other considerations for fulfilling the purposes of this policy.

Procedure for Implementation:

Proposals for installation of new communications facilities or structures shall be handled by the Director of Lands Administration. Ultimate decision shall be by the Commissioner, following review by and recommendation of the Interagency Electronic Site Advisory Council (see Attachment 1).

Applicants may be subject to provisions or a lease or license, depending on circumstances.

Conrad M. Motyka, Acting Commissioner

Effective Date: May 15, 1991

Attachment (1)

MOUNTAIN TOP COMMUNICATIONS FACILITIES

Attachment 1

AGENCY OF NATURAL RESOURCES POLICY

USES OF STATE LANDS

Philosophy:

Agency held lands comprise an important and highly visible part of Vermont's natural resources. These lands are held in public trust for the enjoyment of Vermonters and visitors and for the conservation of important natural resources. Since population, development pressures, and recreational demands continue to increase in Vermont, state lands will be under ever-increasing pressure to serve more needs and activities. Therefore proposed new or expanded uses must be carefully scrutinized, justified, and assessed for their impact on state land and associated natural resources, and benefit to the public.

State lands are capable of serving a great many uses by the public. Many of these activities are compatible with the character, resource values, and/or other public uses of the particular state lands on which they are conducted. However, others may be inappropriate in some instances and/or locations. In those instances, uses may be denied, or permitted only under specific conditions, to insure that:

- (1) Natural resources and associated values are not destroyed, degraded or adversely impacted.
- (2) Activities are in keeping with existing public uses and original intent of the acquisition, including related deed restrictions, restrictions associated with funding sources, and easements.
- (3) Uses are not solely for private gain (that is, the public must benefit from the uses as well).
- (4) Uses do not pose an unreasonable risk to the safety of the users and the general public.

Uses of state land may be authorized by special use permit, license or lease. A permit or license provides a personal privilege or permission with respect to some use of land and does not represent an estate or interest in the land itself. A permit or license is revocable. A lease gives exclusive possession of the land to the lessee for a definite period of time to exercise the rights specified in the lease. A lease is not revocable and requires specific authorization by the Vermont State Legislature (for Forests, Parks and Recreation) or the Governor (for Fish and Wildlife). This policy focuses primarily on uses of state land that may be authorized by special use permit or license. A discussion of existing leases of state land is also included.

Policy:

General Criteria for Use

Uses of state lands and waters under the jurisdiction of the Agency of Natural Resources include those owned by the State of Vermont and managed or controlled by the Department of Forests, Parks and Recreation (FPR), Department of Fish and Wildlife (FW), and Department of Environmental Conservation (DEC). In general, FPR allows a broad range of conservation and recreation uses that serve the general public good on its lands, while FW allows uses that are fish and wildlife-dependent or compatible with fish and wildlife management objectives and serve related management goals. DEC's lands are primarily managed for flood control purposes but provide opportunities for compatible activities. Uses of state lands and waters under the jurisdiction of ANR and its departments are generally appropriate if they meet **all** of the following criteria:

- (1) They are within the missions, goals, and objectives of the Agency and Departments, as expressed in their strategic plans or state law.
- (2) They are compatible with the overall management objectives for the particular parcels in question as outlined in the long-range management plan.
- (3) They do not unreasonably exclude, eliminate, degrade, or conflict with other established and accepted public uses of an area..
- (4) They will not destroy, degrade or adversely impact any natural, geological, historical, cultural, fisheries and wildlife, recreational, or visual resources, and will protect or avoid critical natural resources or other resource values.
- (5) They are not specifically prohibited by law, rule, regulation, or policy.

Note: Under a special Memorandum of Understanding (MOU) between FPR and DEC (dated April 26, 1995 as may be amended), all DEC lands are administered and managed by FPR, according to FPR policies and procedures.

Activities Requiring Special Use Permit or License

Many non-commercial recreational activities by individuals do not require formal written authorization, i.e., a "permit" (see Appendix A.) However, some activities and events, while environmentally permissible, may affect sites/natural resources or exclude other public uses for varying periods of time (see Appendix B.) Such activities and events, in addition to meeting criteria (1) - (5) above, may be conducted **only** with formal written authorization by the Department having jurisdiction. The authorization is in the form of a special use permit or license, depending on the type of activity, its duration, and its potential effect on the land,

resources, and public using the property. Some activities and uses are not allowed on ANR lands (see Appendix C.).

Generally, a special use permit or license is required for any use of state land if any of the following criteria apply:

- (1) The activity is organized or publicized.
- (2) The activity involves a fee or if a donation is requested (charged to or requested from participants). (Note: guided fishing, hunting, and trapping involving groups of less than ten people on ANR lands does *not* require a license or special use permit.)
- (3) The activity would significantly affect a site or may alter/remove/impact natural resources.
- (4) The activity may conflict with other established uses.

Officially recognized organizations or associations with a Cooperative Agreement or other formal arrangement with the Agency may not be required to obtain a special use permit or license for certain activities on state lands. A Cooperative Agreement is generally issued when the Agency/Departments transfer some land management activities, rights and/or privileges to an established organization or entity to implement those activities or use of state lands for education purposes, trail management, research, monitoring, operation of state parks, etc.

Types of Permits: Definitions, Applicability, and Administration

Permits include special use permits and licenses, which are non-transferable, revocable written documents. They must (1) clearly describe the approved use and all imposed conditions for the permitted activity, (2) satisfy criteria and guidelines described in this policy, and (3) not cause undue administrative or operational burden upon the agency, including considerations pertaining to staffing, budget constraints, and maintenance.

Appendix B. identifies activities/events requiring each type of permit and gives related specific information.

Special Use Permit (SUP):

Definition: A formal written authorization for short-term, non-recurring use of state lands for activities and events by individuals and groups, requiring no or only minimal alteration and no permanent structures. A special use permit is revocable and not assignable.

Applicability: A SUP is required if the proposed use meets the following conditions:

- (a) The duration (term) of the activity shall typically be for one year or less.
- (b) Within that term, no activity shall dominate or exclude all other public uses of the land for periods of more than one week at a time.
- (c) Granting of a special use permit does not in any way presume annual renewals. The proposed activity must be feasible without the necessity of repeated renewal. If the activity is not legitimately possible without the guarantee of annual renewal, a special use permit is inappropriate.
- (d) It will not involve a permanent structure and will not destroy, degrade or adversely impact the land and its resources. Incidental timber cutting, skidding, landing, and hauling especially for temporary rights-of-way may be exempted from this constraint. Any permitted timber removal will be undertaken according to a cutting plan and stumpage payment approved by the District Forestry Manager (FPR lands) or Wildlife Biologist (FW lands).

Administration: Prepared and issued by the designated District license coordinator, under the direction of the District Forestry Manager, Parks Regional Manager, and/or Wildlife or Fisheries Biologist, as appropriate. The Fisheries Director or his/her designee may prepare special use permits for Fish and Wildlife Access Areas and Riparian Lands.

Note: Any person conducting a snowmobile business or operation on public lands under permit or license must fully comply with the provisions of T.23, § 3206 and the most current State of Vermont, Department of Motor Vehicles Snowmobile Rules as adopted under the provisions of this statute, and associated regulations of the State of Vermont, Agency of Natural Resources regarding Snowmobiling on State Owned Lands. Organized snowmobile races on all state lands and waters require a special use permit from the Secretary of Natural Resources. (Snowmobiling is prohibited at Fish and Wildlife Access Areas unless used for ice fishing as per established Access Area Rules (see 10 V.S.A. 4145(a)(5)).

License:

Definition: A formal written authorization for certain longer term activities or uses of state land that may allow the user a certain privilege or permission but does not transfer contractual, vested, or property rights. A license is revocable and not assignable.

Applicability: A license is required for any entity using ANR lands for an extended period of time. The proposed use must satisfy the criteria and requirements for “Permits” as described within this policy.

Major License Types:

Agricultural

- 1) A license may be issued for the purpose of expanding an agricultural operation onto Agency land to implement the goals of the long-range management plan for the property and/or to satisfy a deed requirement. (On Fish and Wildlife lands, some agricultural uses may be permitted via existing lease agreements. Upon the expiration of such leases, they may be converted to licenses.)
- 2) The term is generally for five-years.

Maple Sugar Operation

- 1) A license for the purpose of tapping maple trees on Department of Forests, Parks, and Recreation lands for private/commercial uses.
- 2) The license will require use of conservative tapping practices including, but not limited to imposing a limit on the number of taps per tree and the size of tree tapped as specified by the Department of Forests, Parks and Recreation.
- 3) Maple sugaring licenses are generally for a fixed term with the option to renew for additional terms (provided all license conditions have been met and use continues to be consistent with Department management objectives).

Utility Right of Way

- 1) A license to a utility to authorize the use of a corridor across Agency land for a utility line or lines (utility lines would include electric distribution and transmission lines, telephone lines, fiber optics lines, etc.)
- 2) The terms are usually in ten-year increments.
- 3) No utility license will be granted on state land which is solely for the convenience of the utility company and/or a private individual, for which no direct benefit accrues to the Agency of Natural Resources, and/or which does not serve the greater public good.

Research

- 1) A license for the purpose of conducting research on ANR lands.
- 2) Fees may be waived if research results are provided to the Agency.
- 3) License terms are variable.
- 4) Short-term research on ANR lands may be permitted by special use permit.
- 5) Other criteria may apply such as the need to secure a scientific collection permit (see Appendix B.).

Private Access Across State Lands

- 1) A license for the purpose of providing a private party continued access across ANR lands, provided no other reasonable alternative for such access exists. Access licenses are for logging or recreational purposes only (i.e., access to pre-existing camps), and are not intended to be used to support additional development activities. (One-time or short-term access across ANR lands may be

- permitted via special use permit).
- 2) License terms may be up to five years in duration.

Commercial Recreation Use

- 1) A license for conducting multiple commercial or other guided recreational uses of ANR lands such as guided hikes, nature tours, snowmobile tours, dog sledding tours, etc. (Special use permits may be used for individual tours or multiple tours spanning less than a month's duration).
- 2) For purposes of this policy, the term "commercial" applies to both non-profit groups as well as "for-profit" business interests.
- 3) Commercially guided hunting, fishing, or trapping on all ANR lands does not require a license or special use permit except for groups of ten or more. Commercial recreational uses of Fish and Wildlife lands may additionally be limited by any pertinent rules and regulations.
- 4) License terms are generally for one year but may be for up to five years.

Electronic Communication Facilities:

- 1) A license for the development, maintenance and operation of an electronic communications facility on Agency land.
- 2) License terms are for 10 years with the option to renew for an additional term.
- 3) Some existing electronic communication facilities on ANR lands are allowed under long-term lease agreements. As these leases expire, they will be replaced by license agreements. All new electronic communication uses of ANR lands will be authorized by license agreement through the Agency of Administration as per 30 V.S.A. § 227(b).

Administration: Prepared by District license coordinator, under the direction of the District Forestry Manager, Parks Regional Manager, and/or Wildlife or Fisheries Biologist, as appropriate, and approved and signed by the respective Commissioner(s) or his/her designee. Utility licenses and electronic communication licenses are generally prepared by the ANR Lands Director. Electronic communication licenses must be approved and signed by the Secretary of Administration or his/her designee.

Leases:

Definition: A formal written agreement between the state and a party for the long-term use of state land. A lease gives exclusive possession of the land to the lessee for a definite period of time to exercise the rights specified in the lease and creates a contractual estate in property.

Applicability: Granted only in special, rare circumstances. On FPR lands, leases must be approved by the Vermont Legislature pursuant to 10 V.S.A. §2606(b). On FW lands, leases must be approved by the Governor pursuant to 10 V.S.A. Section 4147.

Major Lease Types:

Ski Lease (Downhill):

- 1) A lease for the development, maintenance and operation of a commercial ski area on State Forest or State Park land. Lease purpose includes winter and summer recreation.
- 2) Leases are long-term.
- 3) New ski leases will generally not be developed.
- 4.) Existing ski leases may be amended with legislative approval.

Electronic Communication Lease:

- 1) A lease for the development, maintenance and operations of an electronic communications facility on State Forest or State Park land.
- 2) Lease terms are variable - up to 50 years in length.
- 3) All new electronic communication uses of ANR lands will be done by license agreement through the Agency of Administration as per 30 V.S.A. § 227(b). As current leases expire, they will be replaced by license agreements.

Recreational Camp Lease:

- 1) A lease for the long-term use of state land for the construction, maintenance, and use of a seasonal recreation camp.
- 2) Lease terms are variable but usually long term (e.g., life terms plus additional period if assigned to member of family)
- 3) Most camp leases were established a long time ago or were assumed by the Agency as part of acquiring a new parcel of land. Some are legislatively authorized (e.g. the West Mountain Wildlife Management Area).The Agency will not actively enter into additional camp leases for state lands.

Administration: Leases for uses of State Forests and State Parks are prepared by the ANR Lands Director and, after approval of the Vermont General Assembly signed by the Commissioner of Forests, Parks and Recreation. Leases for uses of Fish and Wildlife lands may be prepared by district staff, the ANR Lands Director, Fish and Wildlife Legal Counsel, or other central office staff and in accord with 10 V.S.A. §4147 must be approved by the Governor and are signed by the Commissioner of Fish and Wildlife or the Secretary of the Agency of Natural Resources.

Procedure for Implementation:

Implement in accordance with FPR Procedure #29.1 - Licenses, Leases, and Special Use Permits, and associated rules and regulations regarding the use of lands held by the Department of Fish and Wildlife.

Appendix B

WRITTEN PERMIT REQUIRED

The following are examples of activities may be allowed on certain ANR lands with a written permit. It is not intended to be an all-inclusive listing. References cited here are available from the Central Office or Appropriate District/Regional Offices of the Agency. Uses or activities not identified here will be considered on a case-by-case basis. An * indicates a separate or additional Agency policy or regulation applies.

SPECIAL USE PERMIT REQUIRED:

Recreational, Cultural, or Other Special Events: Organized races, rallies, competitions, festivals, contests, large performances and any other large group recreational outings such as weddings, reunions, school activities and group picnics that will or have the potential to require special consideration for administrative convenience, conflict with other users, or affect any natural or other resources. Certain school-sponsored events may be allowed via group use agreements. (If applicable, see FPR Policy #2 - Commercial Advertising).

Commercial Photo Shoots and Filming: For activities that may have minimal impact on operations, use, or resources for periods generally shorter than one week.

Primitive Camping: A permit is required if the camping party consists of 10 or more people.

Granting of Temporary Right of Way: Forest products removal on adjacent land is one example. Typically a bond and proof of liability insurance is required to cover potential damage to state land.

Sale or Commercial Harvesting of Forest Products not covered by other agency policies and procedures, such as Christmas trees, seedlings, and brush.

Disabled Hunters gaining access behind closed gates with a motorized vehicle (fees are waived).

LICENSE REQUIRED:

Agricultural Uses: Examples -- grazing, pasturing, growing hay or row crops, etc.

Civil or Military Training Exercises: For example, search and rescue, winter mountaineering.

Commercial Advertising, Movies, and Photo Shoots: For uses that are longer than one week in duration and have the potential for impacting recreational use and/or resources.

Electronic Communication Facilities*: Special conditions apply. As per 30 V.S.A. § 227(b) the Agency of Administration is responsible for issuing all new licenses for electronic communication uses of state owned lands and buildings. Protocols for administration are outlined within the Agency of Administration’s 1998 “Siting, Use and Management of Electronic Communications Facilities on Properties Owned by the State of Vermont – Policies and Procedures Document”.

Guided Recreational Activities: Any guided multiple activity (hikes, snowmobile tours, workshops, ski tours, lama treks, etc.) of an extended duration (more than a month) that meets the criteria set forth in this policy. Guided fishing, hunting and trapping on ANR lands do not generally require a license. Other special conditions may apply, depending on the type of activity.

Housing Rentals: For use of apartments or houses on state land which are not required for Department use.

Maple Sugaring: May be permitted on designated areas of State Forests or State Parks, subject to certain restrictions and conditions. Maple sugaring is not an allowed use of state Wildlife Management Areas.

Research (Scientific): Fee may be waived under certain circumstances. Research licenses are usually conditioned on the research findings being provided to ANR. Issuance of licenses for scientific research must satisfy these additional considerations:

- (1) Scientific research is not to become an exclusive use of the land, unless designated by the Commissioner.
- (2) The activity must be compatible with the Long Range Management Plan for the parcel.
- (3) The study area must be agreed to by the appropriate District Forestry Manager, Parks Regional Manager, and/or Wildlife or Fisheries Biologist, and be delineated both in the field and on a map.
- (4) The license must clearly articulate expectations of the state and licensee, amount of area needed, length of the study period, activities incompatible with the research, potential long-term impacts of the research on other uses of the land, and other pertinent issues. The licensee must assume all responsibility for obtaining any and all necessary permits and approvals.

Temporary ROW may be granted under special circumstances for access to timber harvesting, recreational camps, etc.

Utility Easements*: Special conditions apply -- see FPR Policy #16 - Utility Easements.

Very Large Events and Group Gatherings: Usually for very large events and gatherings lasting more than a week and may be recurring.

Vendors*: Special conditions apply -- see FPR Policy #17 - Vendors. If applicable, see also FPR Policy #2 - Commercial Advertising.

Water Rights: Generally, no additional long-term water rights will be granted. Where reasonable and agreed upon, those currently in effect and/or temporary needs under extenuating circumstances will be provided for by license.

LEASE REQUIRED:

Downhill Ski and Facilities: Special legal conditions apply.

Mineral Extraction: Governed by Vermont Statutes -- 10 VSA §2606(c) and 29 VSA § 308.

Resident Curator: For long-term lease of older, often historic residential structure.

OTHER PERMIT REQUIRED:

Trail Construction or Reconstruction (hiking, cross-country ski, snowmobile): No new trails can be constructed unless a written agreement is in effect.

Logging and Firewood Cutting permit: Handled by firewood permit or a timber sale contract with legal bid specifications and conditions.

RELATED ANR LANDS POLICIES:

- Use of Pesticides on ANR Lands
- Wind Energy and Other Renewable Energy Development on State Lands
- Geocaching on Agency Lands
- Tree Stands and Ground Blinds on Agency Lands
- Trail Easements on Agency Lands

RELATED RULES AND REGULATIONS (Dept. of Forests, Parks and Recreation):

- Primitive Camping Rules (see Vermont Guide to Primitive Camping on State Lands)

- Rules and Regulations for Visitor Conduct and Fees and Charges for State Park Services and Commercial Activities on Department Lands
- ANR Rule on Hang Gliding and Paragliding on State-Owned Lands
- ANR Rule on Snowmobiling on State-Owned Lands

RELATED RULES AND REGULATIONS (Dept. of Fish and Wildlife):

- FW Rule on Use of State-Controlled Fishing Access Areas
- FW Rule on Public Uses of State Wildlife Management Areas and Riparian Lands (pending)