

Public Recreation On Private Land



A Landowner's Guide



Vermont Agency of Natural Resources
Department of Forests, Parks & Recreation

PURPOSE OF THIS BOOKLET

This booklet provides landowners and land users with information about public recreation on private property in Vermont. It covers rights of landowners, responsibilities of land users, and issues of common concern. We hope this information will help maintain the long Vermont tradition of public recreation on private land.

This booklet contains general information only. The Vermont statutes referenced in this booklet are found in Appendix I. People wishing specific advice should contact — depending on the situation and need — organizations listed in the Directory (Appendix II), the Vermont Attorney General's office, their own attorney, and/or their own insurance agent.

KEEPING PRIVATE LAND OPEN TO PUBLIC USES

Private landowners in Vermont play a very important role in providing outdoor recreation to the public. Since about 85% of all land in the state is privately owned, most of the hunting, fishing, trail use, and other valued recreation activities in Vermont would not be possible without the cooperation of private landowners. The Vermont Legislature recognized this and in 1998



amended the Landowner Liability law to increase landowner protection for allowing recreational users on private land.

Recreationists — many of whom are also private landowners themselves — appreciate access to private land and want to see it continue. However, the possibilities of overuse, abuse to the land, and liability still worry landowners and may cause them to consider curtailing public access.

Benefits to Landowners:

- ♦ Trails, bridges, and culverts can often be financed through organizations or agencies. These improvements can make your land more accessible to you for your own management or enjoyment.
- ♦ The Vermont ethic stays alive and well: others may use your land and you may use theirs.
- ♦ Your property may connect with others for greater recreation possibilities, such as trails or open space for hunting.

Costs and problems:

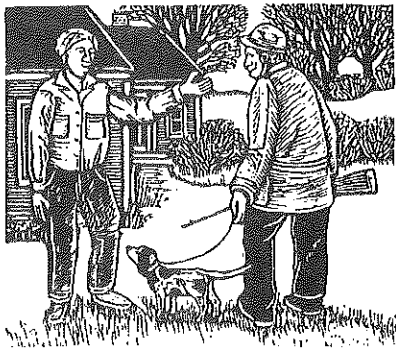
Costs and problems are very few, since most users are respectful and thankful for the opportunity to use your land for their activities. However, there may be an occasional incident or problem person. To deal with these isolated cases, cooperative partnerships with recreational organizations can help. Also, education is on-going by both public agencies and private organizations.

Effects on land value:

Public recreation on private land in all likelihood has little or no impact on its resale or taxable value. In some cases, however, values could increase or decrease somewhat depending on the recreational activity and how it affects the property. Landowners should contact their town listers to determine this.

When permission is not needed from the landowner:

Vermont law allows people to hunt, fish, and walk on private property without permission unless the land is legally posted. Nonetheless, recreation organizations and agencies strongly urge individuals to obtain permission before undertaking their activities, as a courtesy and way of showing respect. Requirements for legal posting are in 10 V.S.A. Section 5201 and available from town clerks.



When permission is needed from the landowner: *

◆ Permission is required for people to: (1) ride snowmobiles, all-terrain vehicles (ATVs), and off-highway motorcycles; and (2) trap

animals. For (1) above, permission given to an organization applies to all its members.

- ◆ Outdoor guides are also required to obtain permission, for insurance purposes.
- ◆ Any construction or other physical alteration of the land or vegetation requires permission.

* NOTES: Permission should be in writing. Even if permission is granted to any individual or group for the above purposes, it may be withdrawn at any time. Such use of someone's property is always a privilege, not a right.

WORKING WITH RECREATION ORGANIZATIONS

Agreements:

If a recreation organization wishes to create or maintain trails or structures on private land, a written agreement helps ensure the work is done to landowner satisfaction and on schedule. The organization also educates its members on appropriate use of the property and corrects any misuse, if it happens. Many organizations also have insurance policies covering their activities.

Both the landowner and recreation organization should have a clear understanding of rights and responsibilities, preferably in writing. Many organizations have "landowner agreements" already prepared for this purpose.

Compensation:

Ordinarily, an organization seeking to develop or maintain a facility (trail, bridge, shelter, etc.) on private property does so without offering compensation to the landowner. Gestures of appreciation, such as a dinner or award, do not constitute compensation and will not reduce landowner protection under law.

However, if any cash or any other significant compensation is given, the landowner will have a greater "duty of care" (more responsibility) to users, and therefore less protection from lawsuits.

Responsibilities of the organization:

- ◆ The organization must build and maintain facilities according to standards, guidelines, and schedules agreed upon with the landowner. If there is a signed agreement, the organization is further obligated under the agreement.
- ◆ Special provisions, such as seasonal placement and removal of signs, must be attended to in a timely manner.
- ◆ The organization must have the means to educate visitors about allowed uses and proper care of the land.
- ◆ The organization must contact the landowner at least annually (or at some other agreed-upon interval) to check on his/her satisfaction, problems, and intentions for continued use.
- ◆ The organization must make sure the activity does not conflict with the landowner's ability to manage the land or does not infringe on privacy.

Recreationists' Expectations of the landowner:

- ◆ The landowner should be involved from the beginning in the planning of any activity on his or her land. If the landowner intends to acquire land with trails, he or she should ask the seller about existing agreements with organizations.
- ◆ The landowner must check on any dangerous conditions on the property which might not be readily observable, such as a hidden quarry hole or obscured chain gate. The recreation organization(s) using the property should be alerted, as well. These hazards should be removed where possible; if not possible, they should be warned by signs, flagging, or barricades.
- ◆ The landowner should notify the recreation organization(s) using the property of changes in manage-

ment activities (e.g., logging, trail re-routing) which might affect recreationists.

- ◆ The landowner should periodically and preferably often, check on recreation use subject to the agreement with the organization, to make sure provisions are being met.
- ◆ If a problem arises, the landowner should immediately communicate with the organization before taking action to limit or close access, to give the organization the opportunity to correct the situation.
- ◆ If an organization invests time or money in mutually-desired improvements on the landowner's property (such as a trail or bridge), the landowner should allow use for a reasonable period after the investment is made, if there is no persistent misuse, abuse, or neglect.

LANDOWNER CONTROL OF PROPERTY



To emphasize again: public use of private property for recreation is a *privilege*, not a *right*. The landowner ultimately controls what occurs on his or her property.

Specifying the kind of use:

The landowner may choose to permit only certain uses while prohibiting others. This is done through legal posting; for details and procedures see 10 V.S.A. Section 5201 or contact your town clerk.

When property is misused or abused:

If feasible and if the landowner is comfortable in doing so, the landowner could contact the offender(s) directly to

correct the situation. Otherwise, the landowner should contact the representative of the organization using the land and/or the responsible representative under the agreement. If a violation of the law is known or suspected, the landowner may contact law enforcement authorities.

Changes in land use:

If an owner wishes to subdivide or develop property on which a trail exists, the trail may be a consideration in local zoning or an Act 250 permit. Check with town plans, zoning ordinances, and/or Act 250 officials to understand the significance of the trail and how the governing body deals with trail issues.

Acquisition:

- ◆ If an organization or government agency is interested in acquiring land or an easement for a trail or other public use, landowner participation is strictly on a voluntary, "willing seller/willing buyer" basis.
- ◆ Under Vermont law, the State of Vermont cannot use eminent domain (also called condemnation) as a way to acquire land for recreation or conservation purposes. The federal government does have this authority, but only for acquisitions associated with the Appalachian Trail.
- ◆ Under Vermont law, when a landowner grants permission for a form of public recreation on his or her land, individuals using it cannot claim "prescriptive easement" or "adverse possession" (acquisition of rights in a piece of property through habitual use and with the landowner's knowledge and consent). The act of granting permission clearly establishes ownership from the outset.

LANDOWNER LIABILITY

Acceptance of risk by the user:

Under Vermont law (12 V.S.A. Section 1037, "Acceptance of Inherent Risk" in *Appendix I*), recreationists accept the risk in the sport they perform. This means they cannot successfully sue a landowner for injuries sustained as a result of the risk inherent to the activity, when snowmobiling, cross-country skiing, mountain biking, or even walking.



Legal protection of landowners:

- ◆ Vermont's landowner liability statutes do an excellent job of protecting landowners from liability. The general statute (12 V.S.A. Section 5791) says that no owner is liable for any property damage or personal injury to a person who uses the property for recreation, providing a fee is not charged.*
- ◆ Other specific statutes provide additional protection for landowners who allow snowmobiling, all-terrain vehicle (ATV) riding, horseback riding, and bicycling. See *Appendix I* to this booklet.
- ◆ The strong landowner liability protection laws make it very difficult for a party to bring a successful suit unless the landowner has intentionally created a danger or engaged in willful or wanton misconduct.

* NOTE: Landowner liability increases if a fee is charged for use of the property for recreation, since a "higher level of care" (responsibility) is owed to recreationists.

Effect of posting on liability:

Posting does not affect liability. The landowner is protected whether or not the land is posted.

Effect of easements on liability:

Easements do not affect liability. Both the landowner and the party holding the easement are similarly protected, as if there were no easement.

Additional protection for the landowner:

Most standard homeowner's insurance policies cover legal expenses and damages awarded as a result of a lawsuit. Most policies apply to all land and structures. Check with your agent.



The landowner can also seek "contractual indemnification" (also called "hold harmless agreements") or become an "additional insured" with the organization or agency using the land. In contractual indemnification, an organization agrees to step into the landowner's liability shoes and pay the cost of defending a lawsuit and any judgements against the owner. As an additional insured, the landowner is added to the organization's or agency's insurance policy, and thus is covered.

ASSISTANCE FOR LANDOWNERS

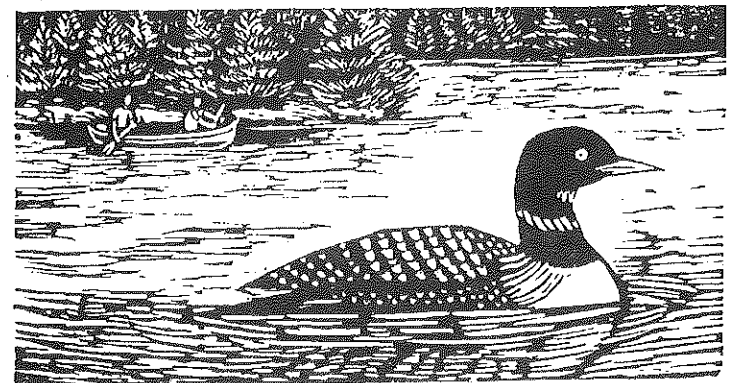
The Forest Land Enhancement Program (FLEP) is a federally-funded program that provides assistance to landowners for various sustainable forestry practices and wildlife habitat

improvement projects. For more information, contact the appropriate County Forester (look under "VERMONT STATE OF, FORESTS PARKS AND RECREATION" in the White Pages of your telephone directory to locate the County Forester for your county).

Some non-profit organizations and public agencies may purchase or accept donations of certain interests in private land (including recreation and public access), depending on their mission and goals. Examples of such organizations are the Vermont Land Trust, local land trusts, The Nature Conservancy, and the Vermont Housing & Conservation Trust Fund. See Directory (Appendix II).

Recreation organizations sometimes have their own sources of funds for these purposes. See Directory (Appendix II).

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APPENDIX I

VERMONT'S LANDOWNER LIABILITY PROTECTION STATUTES

Vermont Statutes Annotated (V.S.A.) have several sections pertaining to protecting landowners from liability for particular situations or activities. Below are very brief descriptions of the relevant laws. In each, the exact wording of its application is quoted.

General — 12 V.S.A. Section 5791:

This protects landowners from liability for all recreation use on their land where a fee is not charged. The statute's stated purpose is "to encourage owners to make their land and water available to the public for no consideration for recreational uses by clearly establishing a rule that an owner shall have no greater duty of care to a person who, without consideration, enters or goes upon the owner's land for a recreational use that the owner would have to a trespasser." Specifically:

"An owner shall not be liable for property damage or personal injury sustained by a person who, without consideration, enters or goes upon the owner's land for a recreational use unless the damage or injury is the result of the willful or wanton misconduct of the owner."

"Owner" means a person who owns, leases, licenses or otherwise controls ownership or use of land, and any employee or agent of that person.

"Land" means: open and undeveloped land, including paths and trails; water, including springs, streams, rivers, ponds, lakes and other water courses; fences; or structures and fixtures used to enter or go upon land, including bridges and walkways.

"Recreational use" means an individual's noncommercial activities on another person's land for hunting, fishing, trapping, hiking, gathering wildflowers or berries, birdwatching, horseback riding, picnicking, swimming, skiing, snowshoeing, and similar activities. It also means any noncommercial activity undertaken without consideration to create, protect, preserve, rehabilitate or maintain the land for recreational uses.

Acceptance of Inherent Risk — 12 V.S.A. Section 1037:

Recreationists must accept the risks that are natural aspects of the activities in which they engage.

"...a person who takes part in any sport accepts as a matter of law the dangers that inhere insofar as they are obvious and necessary."

Vermont Trail System — 10 V.S.A. Section 448:

This additionally and specifically protects landowners if the land is part of the Vermont Trail System. The VTS is a voluntary program in which trails have been recognized for their value to Vermont. Acceptance is according to a formal selection process through the Agency of Natural Resources (contact Department of Forests, Parks & Recreation — see Directory, Appendix II).

"No public or private owner of land which is part of the Vermont Trails System shall be liable for any property damage or personal injury sustained by any person using these trails unless the public or private owner intentionally inflicts damage or injury."

Bicycle Routes — 19 V.S.A. Section 2309:

This additionally and specifically protects landowners if a state or municipal bicycle route is on the property.

"No landowner shall be liable for any property damage or personal injury sustained by any person who is using, for any purpose permitted by state law or by a municipal ordinance, bicycle routes constructed on the landowner's property pursuant to this Chapter, unless the landowner charges a fee for the use of the property."

Snowmobiling — 23 V.S.A. Section 3206(d):

This additionally and specifically protects landowners whether or not permission has been given to the operator of a snowmobile to use the land.

"No public or private landowner shall be liable for any property damage or personal injury sustained by any person operating or riding as a passenger on a snowmobile, or upon a vehicle or other device drawn by a snowmobile upon the public or private landowner's property, whether or not the public or private landowner has given permission to use the land, unless the public or private landowner charges a cash fee to the operator or owner of the snowmobile for the use of the property, or unless said damage or injury was intentionally inflicted by the landowner."

All-Terrain Vehicle Riding — 23 V.S.A. Section 3206(C):

This additionally and specifically protects landowners whether or not permission has been given to the operator of an ATV to use the land. (The wording is the same as in the snowmobile section, but substitutes "all terrain vehicle" for "snowmobile".)

Horseback Riding/Equine Activities — 12 V.S.A. Section 1039:

This additionally and specifically protects landowners who allow horseback riding and other equine activities (e.g., shows, jumping events, steeplechases, etc.) on their land.

"No person shall be liable for an injury to, or the death of, a participant resulting from the inherent risks of equine activities, insofar as those risks are necessary to the equine activity and obvious to the person injured."

FOR MORE INFORMATION ON THE LAW

This document has tried to highlight selected sections of Vermont's law concerning landowner liability. For a complete copy of the law, please contact the Department of Forests, Parks, and Recreation at:

103 South Main Street
Waterbury, VT 05671-0601
802-241-3693