

Creating **Greenway** Nova Scotia

A NSPACTS Initiative



November 2009

Nova Scotians Promoting Active-transportation
on Community Trails



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I. Overview:

Nova Scotians Promoting Active transportation on Community Trails (NSPACTS) supports, advocates and promotes the development and management of the abandoned Rail Line corridor throughout Nova Scotia as an exclusive Active Transportation (non-motorized) *Greenway* corridor formally designated under the Provincial Trails Act. That is the crux of the position paper that follows. We set out our position with goal statements and a specific action plan to realize this commendable goal complete with reasoned argument, supporting references and recommended statutory amendments.

NSPACTS believes that a designated Active Transportation *Greenway* along the abandoned rail line corridor is in the best interests of all Nova Scotians. It fulfills the laudatory principles as set out in the recent Environmental Goals and Sustainable Prosperity Act,¹ namely that the health of the economy, the health of the environment and the health of the people of the Province are interconnected. It recognizes that this particular Provincial environmental asset, as both an economic and a health resource, is essential to the long-term prosperity of the Province. It recognizes and honours the principle that the environment and economy must be managed for the benefit of present and future generations. It demonstrates that innovative solutions are necessary and possible to mutually reinforce the environment and the economy. And it provides the long-term approach to planning and decision-making necessary to harmonize the Province's goals of economic prosperity, community health and environmental sustainability that will preserve and improve the Province's environment, overall health standing and economy for future generations.²

A Nova Scotia *Greenway* immediately and effectively demonstrates its worth, and it literally pays for itself. It bestows health benefits upon the citizens of Nova Scotia and accrues health savings to the government of Nova Scotia once it is implemented.

There is no question Nova Scotia is in need of a solution to its health crisis. Nova Scotia leads the nation in the rates of chronic diseases among Canadian provinces. Organizations like the Heart & Stroke Foundation, The Alliance for Healthy Eating, Doctors Nova Scotia and the Canadian Medical Association have all pointed out the lamentable state of the general population health in the province. They have also highlighted an affordable, sensible, long-term solution. Apart from a healthy diet, Nova Scotians have to exercise more. Study after study is telling us one of the easiest and most cost effective ways to achieve this

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essential goal is to get people out walking and cycling in their communities as part of their everyday congress to and from work, school and play. The best way a government can support and encourage these activities is to build infrastructure that promotes Active Transportation. It is NSPACTS' position that the Rails to Trails corridor offers the wonderful potential of an Active Transportation *Greenway* through the heart of the province, connecting towns and villages in the same way the trains used to³ and offers a provincial impetus that every town and village can build upon to develop its own interconnecting Active Transportation pathways. In a *Greenway* corridor, we have the path that could lead this province and its citizens out of the health crisis we find ourselves in and provide a healthy legacy for generations to come.

To achieve this goal requires the government to dramatically shift the focus of how it perceives the rail corridor so that it can be best utilized in the public interest. Currently 90% of the rail trail corridor has been opened up to motorized recreational vehicles – ATV's motorcycles and snowmobiles – under the provinces "shared use" policy.⁴ This policy, which has been carried out with significant government funding,⁵ has been used to support the conversion of the rail trail for motorized recreational use and to justify the rejection of proposals from community groups wishing to develop their section of the trail for active transportation. Nova Scotia stands alone in most of North America and across Europe, in supporting mixed use of its publicly owned trail systems.

In this paper, NSPACTS will present evidence that it is inadvisable to mix non-motorized uses like walking and biking with motorized vehicles on trails.⁶ In addition, we will show that, in contravention of the best advice coming out of a comprehensive study of off-highway vehicle use in the province sponsored by the government in 2004, motorized recreational vehicles have been allowed on the rail corridor in residential areas. This has had a negative impact on those who live next to the rail corridor and has ultimately resulted in a decline in property values along these trails.

In HRM, for instance, there are approximately 10,000 homes within a km of the rail corridor and in towns, villages and rural communities from Yarmouth to Cape Breton the rail trail passes through residential areas both big and small and within close proximity to many homes. Much social conflict exists around the issue of ATV's. The use of the rail corridor as a motorized trail has helped to create this conflict and continuing to use and manage this resource in the current manner denies the government and the people of Nova Scotia generally, access to a resource that can be of enormous value in addressing the pressing health crisis in the province.

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NSPACTS will discuss and offer examples of successful *Greenway* developments in both Canada and the United States that could be used as models for a successful greenway transportation trail system in Nova Scotia. It will endeavour to show that a *Greenway* is meritorious as a community health measure alone and yet will pay for itself time and time again, as other greenway communities have demonstrated, as an eco-tourism vehicle and in ancillary savings in highway development costs. Greenways are a positive, environmental, people- and taxpayer friendly solution to health and transportation needs now and into the future.

The Nova Scotia rail corridor was largely a gift to the Nova Scotia people⁷, a gift initially given by the railway companies to the Trans Canada Trail Foundation, who in turn handed it over to the province in the trust that it would implement their dream of a national Active Transportation corridor trail across the country. It is NSPACTS' belief that dream went off the rails, so to speak, in Nova Scotia and it is in the interest of all Nova Scotians that we can get it back on track as a Nova Scotia *Greenway*, as a healthy, sustainable, environmentally, fiscally responsible legacy, for the benefits of all Nova Scotians.

II. NSPACTS Provincial Policy Statement for the Rails to Trails Corridor

1. Goal Statements:

- NSPACTS supports, advocates and promotes the development and management of the abandoned Rail Line corridor throughout Nova Scotia as an exclusive Active Transportation (people powered) *Greenway* corridor formally designated under the Provincial Trails Act.
- NSPACTS promotes the development of the Rails to Trails Nova Scotia Greenway as both an alternative transportation corridor and community health resource, advocates for its recognition, support and protection as a primary vehicle for encouraging and promoting a physically active lifestyle, and encourages its development as the central, province wide, Active Transportation corridor linking up with a network of local/municipal alternative transportation initiatives.
- Consistent with other Maritime Provinces and the Trans Canada Trail, NSPACTS envisages the Rails to Trails as the basis of a *Greenway* corridor acting as a principle alternative transportation trail connecting Nova Scotia communities.

2. Policy Recommendations:

- Immediately designate the entire publicly owned rail corridor, approximately 100 feet wide and one thousand (1000) kilometres long, under the Trails Act as Nova Scotia's Provincial Active Transportation Trail public *Greenway*. One time. One designation.
- Develop a concept plan for the entire rail corridor as a public *Greenway*. Reclaim and promote this public resource as an exclusive Active Transportation corridor detailing how each municipality and community can build upon this central link for their own Active Transportation, health promotion purposes while addressing the trail's province-wide advantage as an eco-tourism attraction.
- Establish an Active Transportation Trail Section, with financial and human resources, under the Department of Natural Resources, Parks and Recreation Division, with the mandate to work with community and

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municipal trail groups to develop and maintain the corridor as a sustainable Active Transportation *Greenway* trail.

- Review the Ministerial Advisory Committee on Off-Highway Vehicles established to advise government of concerns, recommendations and opportunities related to Off-highway Vehicle (OHV) use in Nova Scotia.

3. Statutory Recommendations:

- Amend the present Nova Scotia Trails Act to designate the Rails to Trails corridor as Nova Scotia's *Greenway*. Incorporate the present Rails to Trails Policy guidelines for public consultation into law as stated objectives and procedures under the Trails Act.
- Amend the Municipal Government Act to permit municipalities to make by-laws governing the use and management of the rail trail corridor within their jurisdictions to protect, enhance and fund the development of an Active Transportation *Greenways* corridor.
- Amend the Off-Highway Vehicle Act to reflect the designation of the Rails to Trails corridor as non-motorized and to remove recent regulations that exempt the statutory requirement that OHV users must have prior written permission before accessing private land.

III. The Case for an Active Transportation *Greenway*

1. Vision & Goal Statements

The abandonment of the rail lines throughout Nova Scotia, their subsequent gift to the Trans Canada Trail Foundation and their eventual deed or license back to the province, offers an exceptional opportunity, and we believe an inherent obligation upon the province of Nova Scotia, to create a legacy in keeping with the generosity and vision of the gift. We believe creating an environmentally friendly, sustainable, Active Transportation corridor, a Nova Scotia *Greenway*, would fulfill that legacy.

NSPACTS believes it is essential that the rail corridor be protected as a designated Active Transportation trail and recognized as a primary health resource for the public good. The recommendation to formally designate the rail corridor as Nova Scotia's *Greenway* recognizes the unique opportunity the rail corridor represents:

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- It offers the potential to become the central connecting pathway within towns and communities allowing them to integrate alternative Active Transportation links to home, schools, and businesses.
- It offers a nexus point that connects downtown to the suburbs, community to community in a sustainable, environmentally responsible way that is in the best interests of the health of our citizens and our communities.
- As an additional environmental asset, the Rail Trail corridor has the potential to provide an easily accessible avenue for large numbers of people to get in touch with nature on a daily basis on their way to and from work, school and play. Sections of the trail are already recognized and protected as a bird preserve.
- The entire trail corridor offers an opportunity for the public to learn about, and appreciate nature close at hand, and should be protected in the public interest as a linear public park.

Goal statements #1 & #2 both deal with designating and preserving the Rails to Trails corridor as a exclusive Active Transportation Nova Scotia *Greenway* corridor, with the added recognition of its significance as an essential health and environmental resource.

Goal statement #3 recognizes the Rail Corridor, and proposed *Greenway*, is part of the Trans Canada Trail system, and should be developed and managed in a manner consistent with the Greenways vision and core principles as set out by the Trans Canada Trail. By doing so we will benefit both economically and socially and, at the same time, honour the vision of a national *Greenway*.

2. Successful Greenway Models

There are excellent examples of successful greenways to use as models in both Canada and the United States.

The Oregon Greenway Model

The state of Oregon in the United States has established an enviable reputation for how it has gone about developing their greenways trail system(s). The Case for An Active Transportation Strategy presented by the Blue Ribbon Committee for Trails Final Report in Oregon in 2008 offers a convincing rationale for why they, and why we here in Nova Scotia, should look at our rail trails strategically:⁸

“Congestion, climate change, burdensome fuel costs, lack of funding to even maintain roads, concern about making sure our transportation

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investments build, rather than destroy, communities—these challenges make it plain to each of us in our daily lives that the times are changing.

The good news is that we can take one relatively small step that will attack every one of these problems. It won't work overnight and it won't solve everything, but it will set us on a path towards a transportation network that is truly earth and community friendly. It is a policy that brings smiles to commuters, kids and communities (as well as taxpayers!)

Our region already has a good start, with Portland the most “bike friendly” city in America. But with smart investments in a network of routes and trails for biking and walking, in ten years we can more than double the number of people who choose to walk or bike. People like us in cities around the world with climates and hills as challenging as ours have done it. Their air and water are cleaner, their communities are stronger, and they are more active and healthy as a result”.⁹

NSPACTS suggests Nova Scotia can join this community of forward thinkers and realize the exceptional benefits greenways offer the environment, the taxpayer, and most importantly the health and well being of the citizens of the province.

“Some greenways connect population centers with a non-motorized, natural corridor that provides an unrivalled commute experience. Other Greenways connect the best natural gems our region has to offer and draw both residents and visitors for long recreational excursions. In either case, Greenways play a special role in the region’s mobility strategy.

Greenways are like parks. They are places for families and friends to be together and places to find the solitude and connect with nature. But unlike parks, they facilitate travel through the urban area, from neighbourhood to neighbourhood, or from park to school, or from home to work.

Greenways are like roads. They give us a way to get where we need to go. But unlike roads, they are built for non-motorized travel and so they are safer, less stressful and truly enjoyable. They are places where you can experience the wind in your hair or the sun on your shoulders as you travel.

Greenways are like public squares. They are places for community to gather and can be good locations for shops, restaurants, museums, benches, fountains or works of art. But unlike public squares, they extend in either direction as gateways to additional urban and natural experiences.

Greenways are like a local gym; except that the scenery is better and you can exercise while you get to work rather than before or after.

Greenways may pass through a park, natural area or stream corridor. The land may be newly developed, but usually it is redeveloped, having been formerly occupied by a railroad, highway, or other transportation route.

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*Many greenways in urban centers or developed areas are linear parks. Greenways are the premier travel corridor for walking and riding because they are safe and fast, and because they offer a natural experience that is removed from the noise and frenzy of the urban environment.*¹⁰

Principles for a Greenway Development

Principles for development of a greenway distilled by the Oregon Blue Ribbon Committee report are useful guidelines:

“Demonstration areas will test and refine a set of principles that can then guide the development of a region-wide system. Based on the work of the Blue Ribbon Committee for Trails and the German Marshall Fund study tour to Amsterdam and Copenhagen, the following principles are suggested as a point of departure:

- Focus on the users experience over their entire trip. Working with the “total trip” experience requires not just transportation engineering but landscape and recreational planning expertise.*
- Connectivity is key. Coordinate on-street, off-street, and transit facilities within key transportation corridors. Determine a range of mobility options to serve the corridors.*
- Factor health, the environment, personal and public costs, convenience, the travel experience and community health into investment decisions.*
- Consider the pattern of development and respond with effective mobility strategies; urban solutions are likely to be different from suburban solutions.*
- Emphasize bicycle trails and routes to connect population and employment centers that are accessible with a 30-minute ride.*
- Set Priorities. Focus on completing a few commute sheds at a time. Build regional equity into the sequence, so each part of the region gets a turn. This is similar to the way light rail was developed—first the east, then the west, then north, then airport, then south...*
- Provide separated bicycle and pedestrian facilities in high-volume corridors.*
- Set high standards for both the quality of the travel experience and a unified way finding system.*

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- *Consider principles used in Europe that the system should be coherent, direct and easy, safe and secure, self-explanatory, comfortable and attractive.*

For greenways, the quality of the experience, the destinations, and the opportunities along the route to enjoy nature are all important. The process also has a focus on development of tree canopy and understory for wildlife habitat with special sensitivity to stream bank conditions. The balance between providing access to nature while preserving fragile habitat and ecosystems requires judgment that must be further developed. The Portland region will be positioned as a national model on achieving the right balance.”¹¹

There is a wealth of information about developing a successful greenway contained in this one report. Oregon is standing on the shoulders of other communities around the world who have successfully proven this model works. The Association Européenne des Voies Vertes¹² offers a definition and a rationale for greenways that is common across Europe and across the seas for why this is such a successful model for trail development.

Other Canadian Greenway Developments

The development of a Nova Scotia *Greenway* is not exactly a radical concept in Canada. We would not be the first province in Canada with a greenway. La Route Verte in Quebec is an exemplary instance. A 4000 km Active Transportation trail that criss-crosses the province, it offers an excellent alternative transportation system to native Quebecers and has been the recipient of several international awards. Among them, it is recognized as the best bicycle route in the world by the National Geographic Society.¹³ La Rue Verte is a Greenway that has brought huge economic and tourism benefits, dramatically reduced cycling accidents and deaths, and has given Quebec a world’s best reputation.

It is time we brought this model - this practical, sensible, environmentally and fiscally responsible, health conscious concept to Nova Scotia.

3. The Health Benefits of an Active Transportation Strategy

It is as a provincial health resource that a *Greenway* has the potential to benefit Nova Scotians the most.

Nova Scotia leads the nation in the rates of chronic diseases among Canadian provinces. Heart disease, diabetes and various cancers are killing more of our fellow citizens than almost anywhere else in the country. We have the second

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highest provincial death rate from cardiovascular disease and the highest rates of disability in the nation. (NSHPP)¹⁴ We are a province challenged by a health crisis.

The **Canadian Medical Association** and our own **Doctors Nova Scotia** have pointed out the perils of a physically inactive lifestyle and the specific benefits of Active Transportation as one of the most effective means to achieve life saving health benefits and substantial health cost savings:

“The major diseases affecting the quality and quantity of life of Canadians, which include obesity, diabetes, coronary artery disease, depression and cancer, are all linked to physical inactivity. In Canada, 77% of women and 74% of men in Canada are considered physically inactive.(1) The cost of this inactivity and obesity was estimated at \$4.3 billion in 2001.(2) A 10% increase in physical activity could potentially reduce direct health care expenditures by \$150 million a year. This does not include indirect costs such as lost productivity due to illness, premature death or a range of other factors, including mental illness and poor quality of life.(3)

Thus far, efforts to increase physical activity by changing the behaviour of individuals have had limited success. One reason is that many people have difficulty sustaining behaviours that involve additional time commitments. That is one reason for the increasing emphasis being placed on active transportation, which is any human-powered form of transportation, such as walking and cycling.” (Canadian Medical Association)⁵

The **Alliance for Healthy Eating and Physical Activity Nova Scotia**, together with the **Heart & Stroke Foundation of Nova Scotia**, state their case for A Comprehensive Provincial Physical Activity Strategy in their document published in May 2009. They believe Nova Scotia is in the midst of a “physical inactivity epidemic”.

“The strength of the evidence makes it impossible to ignore. Our population at all age levels is increasingly inactive and efforts to change that need to happen now. Governments, communities and individuals cannot continue to bear the high costs associated with the growing levels of inactivity; it costs us in many ways... poor health; caregiver burden; decreasing productivity in schools and workplaces; increasing pollution; growing costs of drugs, physician, hospital and long term care; and in early death and disability. It is time to take action to reduce these debilitating losses to our health and to the economy.”¹⁶

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GPI Atlantic¹⁷ stated the problem in much the same way almost ten years ago in 2000:

“Tuesday February 8, 2000, Halifax, Nova Scotia – Atlantic Canadians will pay more per capita for their health care than most Canadians in the coming years, as a result of their own physical inactivity levels. Fifteen years ago, Atlantic Canadians were more physically active than most Canadians, exercising more frequently in their leisure time. Today all four Atlantic Provinces rank significantly below the Canadian average.

“While Atlantic Canadian men had a relatively lower risk of heart disease in 1985 compared to other Canadians, they now have a significantly higher risk,” says Jane Farquharson, Executive Director of Heart Health Nova Scotia. “Being inactive carries similar risks to smoking more than 20 cigarettes a day. Strategic investments in sports, recreation and exercise promotion programs at this time can reverse these disturbing trends, restore an earlier Atlantic advantage, and reduce long-term health care costs.”

With physical inactivity clearly identified as a primary risk factor in coronary heart disease, the decline in exercise levels has serious implications for long-term health care costs.

Regular physical activity greatly reduces premature mortality, and particularly the risk of dying from heart disease. It also reduces the risk of developing diabetes, hypertension, and colon cancer; enhances mental health; fosters healthy muscles, bones and joints; improves behavioural development in children and adolescents; and helps maintain function and preserve independence in older adults, all of which produce additional savings to the health care system.”¹⁸

A recent article in the Doctors NS newsletter (July/August 2009) by physicians Dr. Keith MacCormick and Dr. Chris Milburn¹⁹ points out:

“Recent research suggests the “built environment” has more impact on rates of physical activity in a community than availability of soccer fields and hockey rinks. Urban planners now refer to communities as “obese-ogenic” if they lack one fundamental ingredient – infrastructure for Active Transportation or AT.

Doctors Nova Scotia recognizes that walking and cycling form the core activities in a physically active culture, and should be promoted as the top

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priority activities when developing trails and pathways, as part of the battle against physical inactivity, diabetes, obesity and other medical illnesses.

The resolution from the association (Doctors NS) is a major step forward in promoting a healthier trails policy, and is consistent with the Canadian Medical Association's policy on AT.

To date provincial government policy hasn't prescribed the use of trails based on health, environmental, or behavioural concerns. By recognizing that the promotion of AT is more important (from a health perspective at least) than the promotion of motorized recreation, there is finally an order of priority when developing trails"²⁰

It is imperative Nova Scotia encourages its citizens to become physically active for their own personal health, the health of their communities and the fiscal health of the province. One of the least expensive and most effective ways of encouraging physical activity is getting people out walking and cycling as an everyday activity within their communities.

Active Transportation should be a priority in the policy and practices of our government and the Rails to Trails as a *Greenway* should be viewed as a cornerstone in this policy. It offers the primary access trail for many Nova Scotians living in communities throughout the province to participate in Active Transportation. As the former rail corridor, it passes through the center of towns and villages as a province-wide connecting link and is an ideal resource to allow the opportunity for the optimum number of people to participate in a low cost, physically active, lifestyle essential to correcting our province-wide unhealthy lifestyle choices.

4. Supporting the Trans Canada Trail Greenways Vision

The Nova Scotia rail lines were largely a gift to the Nova Scotia people²¹, a gift initially given by the railway companies to the Trans Canada Trail Foundation, who in turn handed it over to the province in the trust that it would implement their dream of a national Active Transportation corridor trail across the country. They presented the rail corridor trail to the Nova Scotia government as a gift but with an inherent obligation. Its goal then and today is the development of a primary Active Transportation trail system across the nation.

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The Foundation's gift to each province was an attempt to localize the development of each trail and to customize the trail to the particular needs of the individual communities through which it would pass. Its design in turning over ownership to each province in Canada was to facilitate this purpose. It was never the intent of the Trans Canada Trail Foundation to encourage the motorizing of this proposed national trail system. As recently as April 16, 2009, the Trans Canada Trail Foundation reaffirmed its Trans Canada Trails Greenways –Vision and Core principles.²²

The decision of the Nova Scotia government to motorize the Rail to Trail system was a misappropriation of the gift to the citizens of this province by the Trans Canada Trail Foundation and a repudiation of the Trans Canada Trails Greenways – Vision and Core principles. NSPACTS believe it is time for Nova Scotia to return to a Greenways vision for the Trans Canada Trail in the province.

We believe that a Nova Scotia *Greenway* vision offers the best use of the rail corridor from the perspective of improving lifestyle changes in our citizens. The health benefits and cost savings it will realize are significant on their own, but as a connected network across the country and across the province, it also offers excellent additional eco- tourism revenue potential.

5. Economic Benefits from Active Transportation

It is believed a *Greenway* will pay for itself in health savings alone as an Active Transportation trail at the same time contributing greatly to the quality of life of individuals and communities along the rail corridor. As has been seen in other provinces, *Greenways* and active transportation corridors represent excellent eco-tourism assets bringing tourism dollars into those areas with these assets.

Eco-tourism centered on Active Transportation is one of the fastest growing tourism trends. Eco-tourists stay more days and spend more per person during their stays than motorized tourists.²³ They come for the natural beauty, the pristine environment and their own personal health and relaxation.

Within Nova Scotia, much work has been done to examine and quantify the main benefits of Active Transportation.

Health Benefits: A study out of Acadia University provides excellent research on costs of physical inactivity and the benefits of active transportation.²⁴ Some of the quantitative highlights from this study are as follows:

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- In Nova Scotia the annual healthcare costs of inactivity are estimated to be \$354 million annually;
- Investments in active transportation infrastructure show increased participation rates - 270% in Toronto, 50% in Copenhagen, 75% in Eugene, Oregon, and 225% in Vancouver;
- Active Transportation infrastructure investments yield a high return – 480% Ontario, 108% Quebec and 104% in Alberta.
- Yearly returns on investments for trails in Ontario, Quebec and Alberta

Eco-tourism: Greenways generate economic activity from tourism. Eco-tourism centered on Active Transportation is one of the fastest growing tourism trends. Eco-tourists stay more days and spend more per person during their stays than motorized tourists.²⁵

Reduced Trail Costs: There is a significant difference in the cost of developing and maintaining active transportation trails versus motorized trails. HRM serves as an excellent example:

“In terms of trail maintenance costs alone, the Halifax Regional Municipality reports at least a three to fourfold increase when ATVs are given trail access. Based on a financial review of Rails to Trails projects in HRM over the past ten years, the cost of maintaining motorized trails as compared to Active Transportation Trails is approximately three to four times more expensive. This results in a life cycle requirement for Active Transportation Trails of nine to ten years and three years for Shared-use, Motorized Trails.”²⁶

6. Abandoning the “Shared Use” Policy

NSPACTS believe that motorized vehicles are not an optimal use of the rail corridor trail system and that the current policy of “Shared Use” needs to be abandoned:

There are many reasons why the “shared use” policy does not work.

- Displacement. Motorized recreation in the form of ATV and snowmobile travel, while a popular recreational activity among a minority of Nova Scotians, is known to inhibit Active Transportation pursuits generally and particularly where it shares the same space with Active Transportation activities in both urban and rural communities. This is well established and well documented in the academic literature.²⁷

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- Excessive Noise/Emissions. The noise and emissions generated from off road vehicles discourages hikers, walkers and cyclists attempting to enjoy a pleasant outdoor experience. A comprehensive EPA (US Environmental Protection Agency) compared emissions of various non-road recreational vehicle emissions with ordinary cars. Their study demonstrated one hour of snowmobile operation is equivalent to nearly 100 hours of automobile use²⁸ while a two-stroke ATV is equivalent to over thirty hours of car driving.
- Negative Impact on Communities. There is also solid evidence that motorized trails and the attendant noise²⁹ and environmental degradation³⁰ they entail discourages trail side development and lowers housing values³¹ while there is evidence that Active Transportation trails are highly desirable in residential settings and improve housing values.³² The noise factor alone from snowmobiles was a deciding factor in the successful class action suit in the Laurentides case in Quebec in 2004³³ that resulted in neighbours of the P'tit Train du Nord linear park receiving millions of dollars in compensation from the Quebec government. It should be a cautionary tale for any government.
- Safety. There are significant safety concerns from mixing motorized traffic with walkers and cyclists and in placing motorized trails in residential areas where they criss-cross roads and driveways.³⁴ Accidents between people and machines happened several times last year on trails.³⁵

The Rails to Trails system is too important to overall personal and community health to be compromised as a “shared activity” with motorized vehicles. Mixing motorized traffic with Active Transportation enthusiasts on community trails is particularly unsuited and inappropriate for the Rails to Trails corridor which runs through many residential areas from urban neighbourhoods to rural towns and communities. This was clearly acknowledged in the provincial Voluntary Planning Off-Highway Vehicle Task Force report published in 2004³⁸, which recommended against allowing OHV's in residential areas, and has been reinforced in the five years since.

Active Transportation trails are highly desirable in urban settings. They offer a greenbelt allowing people access to nature to walk the family dog, bird watch, study and enjoy nature and if interconnected to other pathways and transit can offer an everyday alternative to using the car. They encourage people to become physically active and significantly help reduce pollution and the carbon footprint in our communities.

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On a final note, it is disturbing to realize the Nova Scotia “Shared Use” model now has acquired national notoriety. Nova Scotia has recently been touted as a template by motorized lobby groups for trail development nationally, causing consternation and alarm in the trail community across the country. Trails BC withdrew from the Canadian Trail Federation over the \$25 million dollar Federal Government funding award they received recently for primarily multi-use motorized trails. Trails BC pointed out the Canadian Trail Federation now represented primarily motorized recreation on the trails and there was no longer a similar advocacy for non-motorized, Active Transportation trail development within the organization.³⁹

The government has other options, other trails, to realize the aspirations of motorized recreational enthusiasts. And there is no shortage of off-highway vehicle trails in the province. Nova Scotia has thousands of kilometres of designated off-highway vehicle trails,⁴⁰ better than 5,500 in one study and perhaps as many as 8,000 kilometres claimed by others,⁴¹ of backcountry trails already, and the land available to develop more.⁴² (The Task Force Report in 2004, referring to the large territory available, stated: *“The territory to cover is vast given the range of Off-highway vehicles, and they generally spread out on thousands of kilometres of trails of all types.”*⁴³

The public Rail Trail corridor is too valuable as a public health resource to be compromised. As a *Greenway*, it is ideally suited to encourage physically active pursuits, essential to improving individual and community health outcomes. Its proximity to residential areas makes it particularly appropriate for this purpose and conversely makes it particularly susceptible to the negative effects of a motorized trail. It should not be compromised by a flawed policy.

The government needs to review the development of OHV trails versus Active Transportation trails, revise its policies and resource allocation appropriately to ensure that it is truly serving the public good. Supporting the vision of the Rails to Trails as a Nova Scotia *Greenway* would be an excellent start.

7. The OHV Voluntary Task Force Report – 5 Years Later

How did 90% of the Rails to Trails corridor become motorized?

The “shared use” policy on the rail corridor came about largely as a result of the provincial government’s initiative to deal with problems with off road recreational vehicles. At that time there were significant issues including damage in wilderness areas, a lack of regulation and an absence of effective enforcement. Voluntary

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Task Force Report prepared at that time acknowledged it an “out of control” problem.

The Voluntary Task Force of 2004 in attempting to deal with the problem canvassed public opinion on all sides and made a series of thoughtful and well-deliberated suggestions. It was their consensus view that confining and enforcing off-highway vehicle use to a series of designated trails was better than the undisciplined, unrestricted access OHV’s had practiced previously that resulted in so much public opposition and environmental damage. However, many of the key task force recommendations were not employed and those that were initially became compromised as the implementation and oversight of these recommendations came under the influence of the motorized lobby.

Turning 90% of the Rail Trails in particular over to motorized use on the predominantly urban rail trail corridor didn’t solve anything. Instead, it accentuated the problem. It brought the motorized off-highway vehicle use, and the problems associated with it, right into the middle of towns and villages in direct conflict with a significant percentage of the population. And it allowed the Rail Corridor to become the access point, or spine, for a broader network of off road trails into more remote areas. It is one example of how the original intentions to control the problems with OHV’s have instead become tools of the motorized lobby.

At the same time, it ignored one of its best strategies to deal with a chronic health crisis, encouraging Active Transportation on community trails. The “shared use” policy became a way of denying approval, and funding, for any new trail development that did not allow motorized trails.

It is apparent that, five year later, the “out of control” problems didn’t go away, they just became legitimized. All the same problems remain and are now compounded by a growing level of social conflict in residential areas, continuing concerns as to the safety of both drivers and other users of trails, increasing environmental concerns about the effects of ATV and snowmobile use and an urgent need to address the decline in physical activity levels and the health of Nova Scotians.

Review of OHV Key Task Force Report Recommendations

A number of key recommendations made by the original Voluntary Planning Off-Highway Task Force Report can now be examined with the advantage of five years of practical experience.

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- Improve Enforcement: The original report recommended:

*Establish and fund a permanent Integrated Enforcement Task Force of at least 12 additional full-time equivalent positions exclusively dedicated to the enforcement of off-highway vehicle laws and regulations and to the coordination of all off-highway vehicle policing activities involving federal, provincial and municipal enforcement agencies.*⁴⁴

The Task Force realized it was pointless to draft laws and regulations that would not be enforced. To quote the Task Force executive summary: “*We found the single biggest change that must come about is enforcement. Good rules have no tangible effect if not enforced.*”⁴⁵

Current Situation: There is no effective enforcement of present statutory rules and regulations. The motorized community rides free of any reasonable expectation of enforcement. Provincial media have called the land shared by homeowners and off-road riders in populated residential areas a war zone.⁴⁶ In rural areas, the war has already been won. Motorized riders encounter no significant enforcement whatsoever. Citizens who complain feel their complaints fall on deaf ears. The situation is as “out of control” today as it was before the Task Force report in 2004 addressed the issue.

- Mandatory Registration: The original report recommended:

*Enforce mandatory registration for all off-highway vehicles.*⁴⁷

The Task Force realized without registration and mandatory licensing there was nothing to identify motorized users and hence no means of effective enforcement in the first place. They travelled with anonymity and effectively with immunity.

Current Situation: There is now a mandatory licensing requirement under the Off-Highway Vehicle Act but a large number of off-highway vehicle users still have not registered their vehicles, do not belong to organized clubs and travel where and when they want with little fear of what is ineffective to non-existent enforcement.⁴⁸

- Limiting OHV usage to Designated Trails: The original report recommended:

*Develop a network of designated trails and areas (on public and private lands with permission) for the recreational use of Off-highway vehicle users. Limit off-highway vehicle activity on public land to this network unless otherwise authorized by DNR issued permits.*⁴⁹

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Current situation: As will be discussed below, government reversed this recommendation, effectively hobbling the Act with regulations that allowed motorized riders to assume they had permission to ride over private lands unless they were expressly denied permission by the landowners themselves. At one point, the government by regulation deemed a designated trail as what they termed an “*established trail*,” meaning “*a route or path in existence before April 1, 2006, that has, through traditional use, become a trail for use by OHVs, and permission to use that route or path has not been withdrawn*”.⁵⁰

- Potential use of the Abandoned Rail Corridors: The original report recommended:

Include abandoned railway corridors as a potential component of a designated network of off-highway vehicle trails and areas under the following conditions:

a) In rural areas, permit off-highway vehicle access as a general rule, but consider proximity to residences.

b) In residential areas, give municipal governments the authority to allow or prohibit off-highway vehicle traffic on abandoned rail corridors.

c) Charge the municipal governments with the responsibility of enforcing provincial rules ...and allow municipal governments to set community-specific rules over and above provincial standards.

D) Require the appropriate authorities to immediately review the right of access for off-highway vehicles to sections of abandoned railway corridor exhibiting questionable ability to maintain order.

*e) Make every effort to develop alternate trails around the prohibited area when access to abandoned railway corridors cannot be accommodated.*⁵¹

The Voluntary Planning Off- Highway Vehicle Task Force report perceived the rail corridor as a potential solution by making it part of an OHV designated trail network but it was already aware this was problematic and clearly stated it was inadvisable in residential areas. They do not seem to have discussed or perhaps were not even aware of the concept or merit of the rail corridor as a province-wide exclusive/restricted Active Transportation trail system to address health issues or the eco-tourism potential possible here and already realized in other parts of the country. Perhaps they did not see that as part of their mandate, but it was clear they saw many other good reasons why the rail corridor could and should be excluded from an OHV network.

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Current Situation: None of the recommendations they suggested for controlling or restricting the use of the rail corridor were implemented. The government cherry picked any suggestion in favour of OHV use and ignored any caveats. Particular ministers even advocated using the rail trail to allow an OHV highway from one end of the province to the other, and using this vision to justify overriding the objections of municipalities and private owners alike, denying development funding and a Letter of Authority to any organization that wanted to develop a trail and did not want to allow motorized use. They even went so far as to overturn prior government decisions that favoured exclusive Active Transportation access on particular trails. The government generally made no distinction between the OHV lobby interests and the Conservative party line.

NSPACTS' position is not that far from the original Task Force position. We now have the advantage of hindsight to recognize it is essential to restrict residential areas to an Active Transportation trail merely to avoid the inherent conflict with motorized machines. That experiment has been tried and was a failure, but foresight and the recognized success of greenway trails in various countries around the world tells us it is time to take it the further step and recommend the province allocate the entire length of the trail corridor as an Active Transportation trail in the best interests of all our citizens and our shared environment.

- OHV Funding and Oversight: The original report recommended:

Establish an Off-Highway Vehicles Infrastructure Trust Fund for an initial period of 5 years managed by an executive committee consisting of a volunteer chairperson, volunteer members (including representatives from umbrella associations of off-highway vehicle enthusiasts, the medical and safety profession, the environmental sector, landowners, and the enforcement community,) and non-voting officials representing lead government departments. Mandate the Sport and Recreation Division of the Office of Health Promotion to act as the Secretariat to the Trust fund and the Executive Committee.⁵²

The creation of the Off Highway Advisory Committee was one of the few recommendations implemented following the Off-Highway Vehicle Task Force Report in 2004. It has now been in place the initial 5 year period recommended by the Task Force.

We believe the original intent of the government was to develop a balanced committee. Certainly, it followed the Task Force guidelines and included representatives from umbrella associations of off-highway vehicle enthusiasts, the medical and safety profession, the environmental sector, landowners, and the

enforcement community, along with non-voting officials representing appropriate government departments.

What resulted in practice, however, was not a balanced committee. The committee was weighted too heavily in favour of the off-highway vehicle organizations to the point where their opinions always dominated. One by one, the minority interests left. First, the medical doctor left in frustration⁵³ then the landowner representative and the enforcement community representative. They each cited their frustration with the effective monopoly opinion of the motorized trail enthusiasts. They felt personally ineffective, and saw themselves as mere window dressing. The Committee looked around for replacements without much success once the word got out and were unable to find reputable people for vacant positions for some time. Eventually they filled the representative categories with like-minded off-highway vehicle enthusiasts. The sole hold out has been the Ecology Action Committee representative who is meant to represent the environmental sector.

Current Situation: It is NSPACTS' opinion the Ministerial Advisory Committee on Off-Highway Vehicles is a stacked deck. Whatever the original intent, it was never a committee that presented a balanced view of the off-highway vehicle issues. It has effectively become a one-note lobby group for off-highway interests with a direct link to the ear of government at taxpayers' expense. Given the compliance of the most recent government, it became the first and last word on the subject and all too often, the only one heard. NSPACTS believes this committee has failed its purpose and lost credibility. Either it has to be dramatically restructured to allow for the initial intended balance, a dubious option given past experience, or disbanded and the participants recognized and registered as industry lobbyists.

8. Effective Government Support is Essential for Active Transportation

There are successful, well established Active Transportation trails in various countries that support the positive community health model we suggest. Countries in Europe as well as various states in the United States and several provinces in Canada offer excellent models. Mixing non-motorized trail use with motorized vehicles is not a common practice in other countries or most provinces in Canada. The merit in keeping Active Transportation and motorized trails separate has long been recognized and understood by experts in recreational trail development, and there is a large body of reputable literature in professional journals that make this case.

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Up to this point, Nova Scotia has been unique in ignoring the wealth of information available and by doing so demonstrates a lack of concern for the health of its own citizenry. It has not just missed an opportunity, it is NSPACTS' opinion the government has been irresponsible in its failure to establish Active Transportation trails as a genuine priority in combating its poor physical activity and related health statistics.

The Pathways for People Framework For Action document⁵⁴ commissioned by the Department of Health Promotion and Protection in 2006 made it clear they were well aware of the benefits of Active Transportation. Indeed, it claimed to promote Active Transportation as a concept while specifically denying its implementation. This is nowhere more evident than in the policies implemented by the previous Conservative government. The policy of no new trail development in the province unless it allowed motorized use politicized what was supposed to be an objective trail assessment process. It demonstrated a bias in favour of motorizing the provincial trail system regardless of the wishes of individual host communities and suborned community health and environmental concerns to the special interests of a minority lobby.

Moving Forward.

A key concern going forward is the new provincial governments approach to supporting Active Transportation. Clear priorities and goals have to be set and policies and procedures must be in keeping with the spirit and intent of those priorities and goals. Going forward, it is particularly important that those government departments groups involved in Active Transportation and the Rails to Trails development and management, primarily Health Promotion & Protection and Natural Resources, have clear and non-conflicting objectives and goals as it relates to Active Transportation.

IV. Policy Recommendations

1. Designation under the Trails Act.

Immediately designate the entire publicly owned corridor, approximately 100 feet wide and one thousand (1000) kilometres long, under the Trails Act as Nova Scotia's Provincial AT Greenway Trail. One time. One designation.

NSPACTS sees a one time designation of the Rails to Trails corridor as a primarily Active Transportation greenway trail under the statutory authority of the Trails Act as the most efficient and effective action the government could take to initiate innovative government policy that recognizes the Rails to Trails system as a valuable community health and environmental resource. It immediately honours the nature of the original gift from the Trans Canada Trail Foundation and opens up the opportunity for municipalities and individual communities all along the trail to plan how to integrate their own Active Transportation initiatives as part of this central core. In one fell swoop, the government implements a major shift in public policy that directly addresses the need for lifestyle changes in its populace and begins a whole new approach to improving the health outcomes of the citizens of Nova Scotia and improving our national standing.

2. Planning the Greenway

Develop a concept plan for the entire rail corridor as a public greenway. Reclaim and promote this public resource as an exclusive Active Transportation corridor detailing how each municipality and community can build upon this central link for its own Active Transportation, health promotion purposes while addressing the trail's province-wide advantage as an eco-tourist attraction.

NSPACTS suggests that the development of the rail corridor as a province-wide AT trail offers the province the opportunity to lead in the development of a comprehensive interconnected trail plan. It offers the opportunity of bringing provincial departments together with municipalities and rural communities to develop an integrated strategy for maximizing available resources to develop public alternative transportation infrastructure, infrastructure that will encourage people to become more physically active, to reduce their dependency on cars, to

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reduce pollution and health costs and to improve individual lives while enhancing the life of the participating communities. A protected, dedicated central corridor allows each municipality, each town, each village to tie their trail infrastructure into a provincial class alternative highway to the extent they are able and funds will allow, much as they presently do with the conventional highway system and as they did with the old rail system. The province has the significant opportunity to blend this development with a province-wide eco-tourism initiative to realize the true potential of the Trans Canada Trail foundation and to realize all the genuine Active Transportation benefits lauded in their own Pathways For People document.

In other words, completely shift the present mindset that unrealistically sees this as an off-highway vehicle highway. The more highly populated urban centers and rural communities alike will embrace a central Active Transportation model. It will reduce the conflict that off-highway motorized vehicles presently already engender, and indeed with proper consultation and planning the greenway will be easily integrated into present and future plans of these communities. The more people it encourages to “get active” the less it will cost. It effectively turns the motorized trail model cost formula on its head. The more people it encourages to walk hike or cycle the less it costs our health system. We are already paying handsomely for the health care system, and the health savings projected by an Active Transportation trail are sufficient to underwrite the cost of the trail system entirely.⁵⁵ It is a win-win formula even before the eco-tourism potential is factored in. Eco-tourism is a bonus. Less pollution costs are a bonus. Reduced need for highway development is a bonus. And on it goes.

The motorized model pales by comparison. Apart from the initial construction cost, it costs three to four times as much to maintain a motorized trail⁵⁶ and there are no health savings whatsoever. Indeed, the health costs of off-highway recreation vehicle accidents alone dwarf the original trail construction costs, not to mention the social costs to the families involved!⁵⁷ We could go on, but the point is not to outlaw motorized recreational vehicles entirely but to manage their use responsibly. Clearly, the most responsible development of off-highway vehicle designated trails is to build them away from urban centres and away from environmentally sensitive areas, to recognize fundamentally that motorized trails must be separate from Active Transportation trails, not masked for public relations

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purposes as dual or shared trails. Let them stand on their own merit and acknowledge their true costs. The highly urbanized rail trails must be off limits to motorized traffic, but it is NSPACTS' contention that an informed population, both urban and rural, will see the benefit of a central Nova Scotia Greenway corridor. It is NSPACTS' position that the best advantage to the province and its citizens will be realized by restricting the entire Rail Trail as an Active Transportation greenway trail exclusively.

3. Provincial Responsibility & Leadership

Establish an Active Transportation Trail Section, with financial and human resources, under the Department of Natural Resources, Parks and Recreation Division, with the mandate to work with community and Municipal trail groups to develop and maintain the corridor as a sustainable Active Transportation trail.

NSPACTS is convinced that the importance of Active Transportation to the health of the population deserves at least as much access to the ear of government as do the off-highway interests. Indeed, we think it should be the first priority. We are not alone. The Canadian Medical Association, Doctors NS, The Alliance for Healthy Eating of Nova Scotia, the Heart and Stroke Foundation, and the Union of Municipalities, to name a few, have all made public pronouncements about the dire consequences to the future health of the province and the escalating health costs of an inactive population. They all promote "getting active" and support the concept of Active Transportation.

We think it is time to recognize the significant resource available right at our doorsteps in the rail trail corridor and put words into action. It was the gift of the Trans Canada Trail Foundation for this very purpose. Let us put it to work for the benefit of all Nova Scotians. We propose the development of the rail corridor as a green belt. We recommend an Active Transportation Trail Section be established, with financial and human resources, under the Department of Natural Resources, Parks and Recreation Division, with the mandate to work with community and Municipal trail groups to develop and maintain the corridor as a sustainable Active Transportation trail. Let's invest in our trail system in the interest of the people of Nova Scotia first, not machines.

4. Review the Ministerial Advisory Committee

Review the Ministerial Advisory Committee on Off-Highway Vehicles established to advise government of concerns, recommendations and opportunities related to Off-highway Vehicle (OHV) use in Nova Scotia.

After 5 years - how has it worked out? NSPACTS believes it is time to establish whether the government, and more particularly the department tasked with implementing this recommendation, has created a balanced committee representing a broad array of stakeholder interests in keeping with the original task force objectives. And if not, or if that is no longer possible, disband the Committee and properly register industry representatives as lobbyists to allow their voice to be heard.

v. STATUTORY RECOMMENDATIONS

NSPACTS believes there are statutory implications that must be addressed as part of an effective action plan, both in the form of inclusions and deletions from present Acts in force. We make the following recommendations:

1. Amendment of the Trails Act

Amend the present Nova Scotia Trails Act to designate the rails to trails corridor as Nova Scotia's Greenway. Incorporate the present Rails to Trail Policy guidelines for public consultation into law as stated objectives and procedures under the Trails Act.

The Trails Act of Nova Scotia⁵⁸ is the one Act that purports to deal directly with the development of trails and related issues in Nova Scotia. NSPACTS recommends the government of Nova Scotia specifically amend the Trails Act to designate the rail to trail corridor as an exclusive Active Transportation greenway with all the protection, restrictions and privileges that entails.

Nova Scotia presently has formalized Rails to Trails Policy guidelines.⁵⁹ They set out in detail how to assess and develop a proposed rail trail. They explain the important considerations that should be placed on landowner interests and the essential requirement for the development of community planning, consultation and consensus. It is an excellent guide and a process that deserves the authority

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of law. Presently it functions only as a guideline open to the particular interpretation of an individual minister. These guidelines can be and have been ignored. In the last government term, only cursory attention was paid to the guidelines and new motorized trails were authorized under the Crown Lands Act as a ministerial prerogative ignoring the intent and purpose of the Trails Act altogether.

The most recent case of Paradise, Nova Scotia, presently before the court, is a dramatic case in point. The community followed all the Rails to Trails Policy guidelines and fulfilled all the requirements to ensure it safeguarded the trail that passed through its community as an Active Transportation rail. It received that acknowledgement and assurance from one minister of the Department of Natural Resources, only to have the decision reversed by a subsequent minister. This minister purported to follow the same guidelines to arrive at a different conclusion from his predecessor but when challenged in a court of law, rather than defend his interpretation, the government lawyer pleaded ministerial privilege to ignore the guidelines altogether based on the claim they did not have the authority of law. A recent decision by the provincial court⁶⁰ has stated the Paradise Active Healthy Living Society (PALS), the community group challenging the government's recent decision in Paradise, has standing to challenge the government on this issue. Indeed the decision offers the opportunity for any community group with a genuine interest to challenge the government's interpretation of its policy, a decision that could have wide-ranging repercussions.

It is NSPACTS' position that these well established guidelines deserve the status of law as stated objectives and procedures under the Trails Act.

2. Amend the Municipal Government Act

Amend the Municipal Government Act to permit municipalities to make by-laws governing the use and management of the rail trail corridor within their jurisdictions to protect, enhance and fund their development as an Active Transportation corridor.

This was one of the original recommendations of the Off-Highway Task Force back in 2004 although never implemented. ⁶¹

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NSPACTS agrees that where the rail system intersects towns and villages they should have the authority to develop rules and manage the trail system to best integrate the corridor trail into their own Active Transportation trail systems. Local stewardship and promotion is more likely to encourage citizen attachment and participation in the development and maintenance of the trail system. Local police forces would be in the best position to carry out enforcement in tandem with provincial enforcement bodies. Community-specific rules could be anything from noise by-laws to non-smoking and anti-littering rules, to authorizing Earth Day or Boy Scout/Girl Guide clean up days or beautification (communities in bloom) activities. Local stewardship encourages pride, community responsibility, and a vested “ownership” in the trail.

3. Amend the OHV Act Regulations.

Amend the Off-Highway Vehicle Act to remove recent regulations that exempt the statutory requirement that OHV users must have prior written permission before accessing private land.

The Off-Highway Vehicle Act section 14(1) expressly states that users of off-highway vehicles must have written permission to use private land:

Permission of owner or occupier

14 (1) No person shall operate an off-highway vehicle on a sidewalk, walkway, school grounds, utility service lane, cultivated land, private forest land, campground, golf course, park, playground or any private property, without the written permission of the owner or occupier.⁶²

This statutory clause was passed under the scrutiny of the entire provincial legislature. The purpose and intent of the law was then circumvented by subsequent regulations that reversed the original onus and intent of the Act, placing the onus on a landowner to deny access rather than requiring the OHV user to obtain permission to travel over private lands. It completely contradicts the original recommendation and intent of the Off-Highway Task Force report that recommended the Off-Highway Vehicle Act in the first place. NSPACTS believes that not only was this a bad public policy initiative by the government of the day, it was contrary to well established principles of law that clearly state a statutory clause is paramount and cannot be fundamentally changed by a regulation. We believe the conflict in this case between the statute and the regulation(s) is blatant and unavoidable. The intent of the original statutory protection should be honoured.

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Ruth Sullivan, in *Sullivan on the Construction of Statutes*,⁶³ clearly states the principle that statutes are paramount over regulations.

*“The presumption of coherence applies with respect to regulations as well as statutes. It is presumed that regulatory provisions are meant to work together, not only with their own enabling legislation but with other Acts and regulations as well. In so far as possible the courts seek to avoid conflict between statutory and regulatory provisions and to give effect to both. Where conflict is unavoidable, normally the statutory provision prevails”*⁶⁴

The Supreme Court of Canada in its decision in the case: *Friends of Oldman River Society v. Canada (Minister of Transport)* [1992] S.C.J. No.1, [1992] 1 S.C.R. 3 (S.C.C.) clearly states this principle as the law of the land:

*“Just as subordinate legislation cannot conflict with its parent legislation (Belanger v. The King, [1916] S.C.J. no 63, 54 S.C.R.265 (S.C.C.)) so it cannot conflict with other Acts of Parliament (R & W. Paul Ltd. V. Wheat Commission, [1936] 2 All E.R. 1243, [1937] A.C. 139 (H.L.)) unless a statute so authorizes RE Gray, [1918] S.C.J. No. 35, 57 S.C.R. 150 (S.C.C.)). Ordinarily then, an Act of Parliament must prevail over inconsistent or conflicting subordinate legislation. However, as a matter of construction a court will, where possible, prefer an interpretation that permits reconciliation of the two.”*⁶⁵

The regulations in question pertain to Section 2 of the Definitions for the Act and its regulations wherein it is stated:

*(2) In these regulations, “established trail” means a route or path in existence before April 1, 2006, that has, through traditional use, become a trail for use by OHVs, and permission to use that route or path has not been withdrawn.*⁶⁶

And

N.S. Reg. 224/2006, which stipulated a written exemption:

*16 Until December 31, 2007, a person who is issued a trail permit by SANS for a snowmobile is not required to obtain permission from a landowner in writing as required by subsection 14(1) of the Act to use a designated trail.*⁶⁷

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Both of these relatively recent amendments were instituted by the MacDonald government and are particularly self-serving to the interests of the off-highway vehicle community at the expense of private landowners.

The Voluntary Task Force report specifically recommended protection for landowners under the section of their report discussing Protection:

“Amend legislation to require that off-highway vehicle drivers (individually and through a recognized club or association) acquire written permission from landowners.”⁶⁸

And

“Amend legislation to ensure operators of off-highway vehicles do not acquire prescriptive rights of access against a landowner solely through the use of an off-highway vehicle, whether or not permission for use is granted.”⁶⁹

Clearly, the rights of private landowners were compromised by the reverse onus provisions of the new regulations. NSPACTS finds this unacceptable. It is persuasive evidence the Off-highway Vehicle Committee has no proper checks and balances. It has become primarily a promotion vehicle for the off-highway lobby rather than an appropriately balanced advisory/regulatory body and needs to be revisited.

The MacDonald government became entangled in a scandal over its purchase of kiddie ATVs and subsequently became embroiled in a controversy disseminating off-highway vehicle promotional materials through the provincial elementary school system. It is conceivable this regulatory initiative would have engendered a comparable controversy if it had come to light. It is just one more piece of evidence suggestive of a bias towards motorized recreation on behalf of the failed Conservative government. NSPACTS suggests this should not be a legacy that continues.

Why listen to or belong to NSPACTS?

NSPACTS was created primarily to promote and realize the health benefits of Active Transportation on Community trails and to give a voice to individuals and communities silenced by a vocal OHV lobby and ignored by their own government. Our group includes medical doctors, academics, lawyers, environmentalists, community leaders, trailside landowners, trail builders, and active transportation enthusiasts representing hiking and cycling organizations. We all have a common purpose to realize the best potential of the trails in our communities. We have evolved as an advocacy group in response to the failure of the government to properly address the province's long standing health issues and to realize the advantage of Active Transportation on community trails as a means of addressing that issue.

NSPACTS believes that a Greenway – a Green, non-motorized trail connecting people and communities – is the best solution both for Nova Scotia's "shared use" trail woes and for our crisis of inactivity and deteriorating environment.

We believe a Nova Scotia Greenway along the rail corridor would eliminate or minimize the primary area of conflict involving off-highway vehicles that cause so much community friction. They are clearly inappropriate along this largely urbanized corridor.

We know that where Greenways have been developed, they are popular and effective in encouraging the most common physical activities, walking and cycling, which in turn reduces illness and accidents and thus generates huge health cost savings. Greenways are convenient, they fit the prescription for daily walks, biking safely to the grocery store, work or school, or for cross-country skiing on a quiet snowy night.

Accepting the NSPACTS recommendation, the designation of the Rails to Trails as a provincially recognized Active Transportation greenway, would not only pay its own way in health savings, but if it was properly integrated into municipal Active Transportation initiatives save lives, enhance individual lifestyles and realize substantial budgetary health savings recreational trail costs. Put simply an Active Transportation trail pays.

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NSPACTS does not propose its goals or arrive at its recommendations as just an academic exercise. The medical professionals among our members are on the front line of health care, dealing not only with the chronic diseases too prevalent in our society but as emergency physician specialists dealing with the unnecessary carnage of off-highway vehicle accidents. Other members have expertise and personal knowledge working directly with OHV groups and government policies meant to address trail development issues. At least one member of NSPACTS was involved directly as a member of the Off-Highway Vehicle Committee before becoming disillusioned. Other members have been thwarted in their attempts to properly follow the provincial Rails to Trails Policy guidelines. Still others are landowners who have had their concerns ignored and municipalities and community groups have joined advocating for a change in how government has imposed motorized use on their community trails.

Each of us individually has witnessed the tactics practiced by the off-highway vehicle lobby and its representative organizations.⁷⁰ They all have been initially surprised, then saddened and eventually angered by the compliance of government, politicians and the various government departments that have carried out their wishes in an ongoing campaign that has seen an excellent natural resource owned by all the citizens of Nova Scotia turned over to the enjoyment of a select few, a small off-highway motorized lobby. It is time for the citizens of this province and the politicians they have elected to take this resource back and develop it in the best interests of all Nova Scotians.

NSPACTS believes the development of a Nova Scotia Greenway is the most sustainable, environmentally friendly, fiscally responsible model to follow. It is the most forward-thinking, all-inclusive, health-conscious model to follow, and we urge the newly elected government of Nova Scotia to implement it as a valuable legacy to be enjoyed by all Nova Scotians into the future.

Endnotes

¹ Environmental Goals and Sustainable Prosperity Act, Nova Scotia, April 2007.

(http://www.gov.ns.ca/legislature/legc/bills/60th_1st/1st_read/b146.htm)

² Section (2) of the Environmental Goals and Sustainable Property Act:

This Act is based on the following principles:

(a) the health of the economy, the health of the environment and the health of the people of the Province are interconnected;

(b) environmentally sustainable economic growth that recognizes the economic value of the Province's environmental assets is essential to the long-term prosperity of the Province;

(c) the environment and the economy of the Province are a shared responsibility of all levels of government, the private sector and all people of the Province;

(d) the environment and economy must be managed for the benefit of present and future generations;

(e) innovative solutions are necessary to mutually reinforce the environment and the economy;

(f) a long-term approach to planning and decision-making is necessary to harmonize the Province's goals of economic prosperity and environmental sustainability;

(g) the management of goals for sustainable prosperity, such as emission reduction and increasing the amount of legally protected land will preserve and improve the Province's environment and economy for future generations.

3. NSPACTS supports the retention of the rail corridor for the development of a future light train rail service. We believe that such a form of mass transit is in the best interests of both the economy and the environment of the province and expect that when that time comes it will be designed in a manner compatible with retaining or expanding a portion of the trail to accommodate a complementary Active Transportation greenway.

⁴ Motorized recreational vehicles are not to be confused with utility vehicles. NSPACTS does not see farm tractors or ATV's for that matter that serve a genuine practical purpose in the working lives of adjacent landowners to the trail as "recreational vehicles". Whether they are used for trail maintenance, search and rescue or genuine work, such as farm equipment in the Valley or clam digging in coastal communities or some such, they are not "recreational" vehicles in this context. They serve a practical purpose and are not at issue here. They are often used as red herrings by both politicians and motorized trail advocates to confuse the issue but they are not the focus of this discussion.

⁵ While funds from the OHV Infrastructure are used to build both “shared use” and OHV only trails, significant funds have also been allocated from other departments and budgets within the previous provincial government for this purpose. In addition, funding from federal agencies, including ACOA and more recently as part of the Federal stimulus package has also provided significant funding. By way of example, a section of the rail corridor from the Sissiboo River to the Bear River was completed using approximately \$400 thousand in funding from ACOA for the development of a walking trail while the OHV infrastructure fund provided \$50 thousand.

⁶ Deconstructing a myth - Identifying ATViNg’s Health, Environmental, Economic and Social impacts”, Glyn Bissix, PhD and Justin Medicraft, BKin, Centre for Lifestyle Studies, Acadia University Wolfville, NS, 2009. It is available in its entirety at: http://www.acadiu.ca/~bissix/AT_ATV/ATV-AT_Lit_Rev-July10_08.pdf . A substantive study, it compiled and examined the academic literature on the subject.

It looks at three studies in particular, two from Nova Scotia, that examine displacement, a term that defines when one activity inhibits or precludes another. Displacing physical active users is a key concern in the debate about shared use trails. An American study, Koontz, C.R. *Recreational trail conflict*, states that motorised recreational vehicles negatively impact and displace active transportation enthusiasts. The level of displacement motorized vehicles impose in Nova Scotia has been examined by two studies. A study by Janmaat and Vanblarcom (2009) quantified the level of displacement on a proposed trail in Nova Scotia’s Annapolis Valley and assessed this to be about 48% of potential users. An earlier study commission by the provincial government (Gardner Pinfold, 1999) interviewed over 500 trail users. This study showed that physically active trail users opposed sharing trails with motorised recreational vehicles and many indicated that they would not use trails open to their use. Some survey respondents gave their reasons as “these vehicles wrecked trails, disturbed the atmosphere of trails, disturbed wildlife, and were dangerous because of their speed”.

Koontz, C.R. *Recreational trail conflict: achieving equity through diversity*. University of Montana, Recreation Management, Missoula, May 2005, pp. 79.

Janmaat, J. and VanBlarcom, B. Impact of all terrain vehicle access on the demand for a proposed trail. *Managing Leisure* 14, 57-70 (January 2009).

Gardner Pinfold Consulting Economists Limited (January, 1999). *A Survey of Nova Scotia Hiking Trail Users*. Halifax: Nova Scotia Department of Economic Development and Tourism Nova Scotia Sport and Recreation Commission Human Resource Development Canada.

⁷ The majority of the abandoned line was donated for a dollar with major tax concessions given by the province at the time. Specific sections of this, however, were purchased by the Province, through the Department of Natural Resources at appraised values, eg. Portions of the Musquodoboit Line in HRM were thus acquired.

⁸ http://library.oregonmetro.gov/files/08478_brc_final_report_pks_11-12.pdf

⁹ Ibid p. 1

¹⁰ Ibid p.3

¹¹ Ibid p.12&13

¹² (<http://www.aevv-egwa.org/site/1Template1.asp?DocID=144&v1ID=&RevID=&namePage=&pageParent=>

¹³ http://www.routeverte.com/rv/index_e.php)

¹⁴ Nova Scotia Health Promotion and Protection business plan, 2008

¹⁵ Canadian Medical Association AT Policy available on the NSPACTS website at: <http://www.nspacts.ca/docs/CMA%20AT%20policy%20English1.pdf>

¹⁶ http://www.heartandstroke.ns.ca/site/c.inKMIPNIEiG/b.5137793/k.95E0/Provincial_Physical_Activity_Strategy

¹⁷ (GPI) Genuine Progress Index

¹⁸ http://www.gpiatlantic.org/releases/pr_couchpotatoe.htm

¹⁹ Both doctors are emergency medicine specialists in Nova Scotia and members of NSPACTS

²⁰ Doctors NS Newsletter (July/August 2009) p.13/14. Note The Chronicle Herald Voice of the People letter: “Part of the Solution”, June 27, 2009 where Anne Cogdon, Primary Health. IWK Health Centre, states:

“Our region’s families are nearing a crisis point when it comes to their overall health. In 1985, less than 10% of the Canadian population was obese. Almost 20 years later, in 2004, obesity rates in Newfoundland and Saskatchewan have tripled to more than 30%; and one in four residents of Nova Scotia, New Brunswick, P.E.I., Manitoba and Alberta was obese. We need to take action now to help ensure the picture does not become even more dire in the next 20 years.

As part of our commitment to the health of Maritime families, the IWK plans to part of the solution. We have begun to increase our focus on issues of primary health, including tackling obesity rates and improving overall regular participation in physical activities.

But no single organization can do it alone. The entire community needs to be part of the solution. That’s why, for example, we are partnering with like –minded organizations in the development of a physical activity strategy for the city. And that’s why we enthusiastically commend our colleagues at Doctors Nova Scotia for their motion own walking and bicycling on trails.”

²¹ The majority of the abandoned line was donated for a dollar with major tax concessions given by the province at the time. Specific sections of this, however, were purchased by the Province, through the Department of Natural Resources at appraised values, eg. portions of the Musquodoboit Line in HRM were thus acquired.

²² <http://www.tctrail.ca/blog/?language=en>

²³ <http://www.eastwindcycle.com/NS-Bikeways/View-category.html>

The BNS Final Report, January, 2009, prepared by Eastwind Cycle Consulting lays out its Nova Scotia Bikeways Feasibility Report, a report entitled: Nova Scotia Bikeways Scoping the "Blue Route", a nod to the successful rue verte in Quebec. Commissioned by Bicycle Nova Scotia and funded through HPP NS, it contains an inventory of existing bikeways assets plus a set of clear recommendations on how to move forward towards making a cycling network a reality in Nova Scotia. It looks at other successful cycle infrastructure programs in both the US and Canada that helped developed their eco-tourism potential. The report discusses the potential benefit of cycle tourism and the recognized benefits to community health in Nova Scotia in sections: 8.2.2 and 8.2.3. p. 33:

8.2.3 Economic Benefits of Cycling

Economic benefits to be gained from an increase in "cycling culture" as well as infrastructure were described in the following categories:

Tourism, specifically through increased length of stay, higher value tourists, and the potential to increase the overall amount of tourists visiting Nova Scotia as well as within province trips by Nova Scotians.

A reduction over time in health care expenses was also seen as an economic benefit, as a healthier and more active population will see lower rates of obesity, diabetes and related illnesses. Mental health benefits were also mentioned.

Business opportunities that specifically cater to cyclists were suggested as an untapped market for economic growth. Small rural and local businesses were seen as having the most to benefit from increased cycling in the province, from art galleries, to luggage transfer, to small inns and restaurants.

Savings to Nova Scotians were also mentioned through a reduction in vehicle use hence reduced maintenance and gasoline costs. This was specifically mentioned for youth who could increase their mobility at no great cost through bicycle transportation.

Overall the implementation of bikeways or the increase in bicycle infrastructure was seen as having low investment for high return rates. Respondents also saw that the economic potential was not being taken advantage of or encouraged by marketing or infrastructure investment and that Nova Scotia was a "gold mine" in terms of this. The need to develop better statistics on cycling and cycling tourism was also mentioned, so

that the effect of increased infrastructure could be easily measured.”

A study in New Hampshire sponsored by the Granite State All Terrain Vehicle Association entitled: *The Impact of Spending by ATV/Trailbike Parties on New Hampshire's Economy* traced spending during the July 2002 to June 2003 period (Okraant and Goss, 2004). Of particular note is that this study reported that the spending of ATVers was less than the average tourist which necessitated applying a smaller multiplier of 1.42 compared to 1.47 generally for spin-off expenditures. In comparison, in the Province of Quebec, bicycle tourism is seen as substantially more lucrative than that of the average tourist. Although equivalent multipliers are not provided, the average tourist in Quebec spends \$66.00 per night while the average sports bicycling tourist spends \$83.00. (Marc Panneton, Government of Quebec, e-mail message to Glyn Bissix, Acadia University, July 2, 2008.) One cycle tourism analyst went so far as to claim: “On Quebec’s developed cycling route, ‘La Route Verte’, cycle tourists spend an average of \$105 CDN a day, more than double that of typical tourists”. Experts can differ on statistics but agree that cycle tourists spend more than other tourists and as a group are a huge benefit to the economy of the area that attracts them.

<http://www.linkbc.ca/torc/downs1/cycleTourism.pdf?PHPSESSID=apvswvfkflhqgec>

The Impact of Spending by ATV/Trailbike Parties on New Hampshire's Economy, Okraant and Goss, 2004. <http://atfiles.org/files/pdf/NHeconOHV.pdf>

²⁴ Deconstructing a myth - Identifying ATVer’s Health, Environmental, Economic and Social impacts”, Glyn Bissix, PhD and Justin Medicraft, BKin, Centre for Lifestyle Studies, Acadia University, Wolfville, NS, 2009. p.15 & 16.

“The evidence supporting active travel is expected to translate into substantial healthcare dividends. Campbell (2004) estimates for example, the financial benefits of active travel to the Canadian economy at \$3.5 billion annually. This estimate not only represents the direct savings from a more active and consequently healthier than otherwise expected population, it also represents the less direct dividends from reduction in greenhouse gas emissions, traffic congestion, ground level air pollution, noise pollution, increased public safety, and the advantages of community connectivity and increased mobility for otherwise marginalised members of society such as the disabled, the young and the aged. Fortunately, some of Nova Scotia’s relevant healthcare costs and projected savings from a more active population can be estimated from Colman’s (2002) study entitled “The Costs of Chronic Disease in Nova Scotia.” According to Colman, the healthcare costs of inactivity are staggering. The annual costs are estimated to be \$66.5 million in Nova Scotia. When this is combined with productivity loss due to premature death and disability, this adds a further \$247 million. This amounts to \$354 million per year for Nova Scotia which represents an extra \$629 average annual cost for each inactive Nova Scotian. Every year there are 2,224 Potential Years of Life Lost (PYLL) to

inactivity. Colman describes this estimate, based on 2001 data, as conservative; present costs are expected to be substantially higher.

Basic economic analysis makes the case then for promoting increased activity and encouraging those with inactive lifestyles; that is those who do not meet basic guidelines for weekly physical activity to become more engaged. It is increasingly well documented that Active Transportation infrastructure increases physical activity among the general population. With active travel infrastructure improvements such as those for bicycle commuting, participation increased 270% in Toronto, 50% in Copenhagen, 75% in Eugene, Oregon, and 225% in Vancouver (Campbell et al, 2004). The evidence suggests that active transportation infrastructure pays for itself in healthcare costs savings alone which means that carbon emission mitigation, recreation, tourism and community development benefits can be seen as a bonus for infrastructure investment. Campbell reports yearly returns on investments for trails in Ontario, Quebec, and Alberta as 480%, 108%, and 104% respectively

²⁵<http://www.eastwindcycle.com/NS-Bikeways/View-category.html>

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The Impact of Spending by ATV/Trailbike Parties on New Hampshire’s Economy, Okrant and Goss, 2004. <http://atfiles.org/files/pdf/NHeconOHV.pdf>

²⁶ *“In terms of trail maintenance costs alone, the Halifax Regional Municipality reports at least a three to fourfold increase when ATVs are given trail access. Based on a financial review of Rails to Trails projects in HRM over the past ten years, the cost of maintaining motorized trails as compared to Active Transportation Trails is approximately three to four times more expensive. This results in a life cycle requirement for Active Transportation Trails of nine to ten years and three years for Shared-use, Motorized Trails.”* Paul Euloth, Halifax Regional Trails Coordinator, from a quote from a PowerPoint presentation to DNR on Motorized Rail Trails, summer of 09.

²⁷ See NSPACTS website directory: (<http://www.nspacts.ca/>) for “Deconstructing a myth - Identifying ATVing, Health, Environmental, Economic and Social Impacts” by Glyn Bissix, PhD and Justin Medicraft, BKin, Centre for Lifestyle Studies, Acadia University, February 2009, for a comprehensive assessment of the available studies.

²⁸ A separate study done on just snowmobiles in Yellowstone national park was revealing:

“The scale of the pollution documented in YNP was remarkable. Snowmobiles were responsible for 68% to 90% of HC emissions and 35% to 68% of CO emissions each year (NPS 2000), but make up only 6% of the total vehicles entering the park annually. On a peak day in YNP, snowmobiles released approximately 20 tons of hydrocarbons (HC) and 54 tons of carbon monoxide (CO) into the air (NPS 2000). For comparison, in an average day in July, cars in YNP emit 2.5 tons of HC and 17.9 tons of CO (NPS 2000). While the snowmobile season usually only lasts three months in YNP (mid-December to mid-March), their emissions equalled or exceeded the total annual emissions for CO and HC from other mobile sources combined (cars, buses, and snow coaches).”

<http://www.wildlandscpr.org/biblio-notes/infl-uence-snowmobile-emissions-air-quality-and-human-health>

²⁹ Deconstructing a myth - Identifying ATVing’s Health, Environmental, Economic and Social impacts”, Glyn Bissix, PhD and Justin Medicraft, BKin, Centre for Lifestyle Studies, Acadia University Wolfville, NS, 2009. P.21

“Another concern is noise. The EPA notes that manufacturers presently make ATVs that meet current noise standards and there are no plans for higher standards. Noise is; however, likely to interfere with other trail users and adjacent landowners, and as a consequence municipal governments will need to establish noise regulations. Significantly, the World Health Organization (WHO) reports that: “The recognition of the noise as a serious health hazard as opposed to a nuisance is a recent development and the health effects of the hazardous noise exposure are now considered to be an increasingly important public health problem.”

³⁰ “Deconstructing a myth - Identifying ATVing’s Health, Environmental, Economic and Social impacts”, Glyn Bissix, PhD and Justin Medicraft, BKin, Centre for Lifestyle Studies, Acadia University Wolfville, NS, 2009.p.20

“Recreational use of ATVs has also been shown to be a significant contributor in vehicle emissions and consequently air pollution. Emission regulations set in 2002 for ATVs and meant to come into effect in the USA in 2006 (EPA, 2002) was delayed to begin in 2014 (EPA, 2007). These regulations will only apply to newly manufactured vehicles (EPA, 2002). Significantly, ATV models previous to this year have been shown to emit about 130,000 tons of hydrocarbons (HC), 550,000 tons of carbon monoxide (CO), and 4000 tons of oxides of nitrogen (NOx) annually in the United States (EPA, 2002). In the absence of a similar Canadian data, it can only be assumed that comparable findings are found in Canada. In an effort to examine pollution, the EPA measured emissions from ATVs and snowmobiles. As emission characteristics vary depending on engine category, both two and four-stroke engines were assessed. Table 1 shows the comparison in emissions of various non-road recreational vehicle emissions with ordinary cars. Amazingly one hour of snowmobile operation is equivalent to nearly 100 hours of automobile use while a two-stroke ATV is equivalent to over thirty hours of car driving. While we might expect somewhat better emissions nowadays from recreational vehicles, we can expect similar improvements in cars.

Table 1: ATV Emission Rates: (A graphic of the statistics to follow can be found on p.20 of “Deconstructing a myth - Identifying ATVing’s Health, Environmental, Economic and Social impacts” see above)

New internal combustion engine emission regulations for automobiles have been prescribed in the Canada Clean Air Act (Bill C-30, 2006) but it is unclear whether this bill will be ratified or whether it or a similar bill will be extended to recreation vehicles. Importantly, the proposed emission regulations in the USA do not give specific direction to ATV manufacturers on how to improve the vehicle emissions; it is anticipated nevertheless, that most manufacturers will replace two-stroke engines with four-stroke engines. While the four-stroke engine is more expensive, it uses about 25% less fuel and oil than an equivalent two-stroke engine. Adding air to the exhaust stream or optimizing the air-fuel mixture is also anticipated to reduce emissions; in addition some manufacturers may also develop fuel-injection systems or add catalytic converters to control emissions. Regulations have also been introduced to control permeation emissions from ATV fuel systems which are also expected to reduce the strong smell of the gasoline emitted by ATVs”.

³¹“Pathway to Peace and Quiet”, Patricia Brooks Arenburg, Chronicle Herald, Sept. 22, 2009 reports the Smith Cove Community residents living adjacent to the trail have had their tax assessment reduced by Municipality of the District of Digby by 10%, and are appealing for more, in recognition of the depreciation in house values for residents living in proximity to a motorized trail. The recent article in the Chronicle Herald: “Noisy ATV’s Lighten the Tax Load”, Jeffrey Simpson, September 10, 2009 confirms a 5% tax break to trail side homeowners in the St. Margaret’s Bay area.

<http://thechronicleherald.ca/Front/1141692.html>) The letter from Bob Haagensen, St Margaret’s Bay, in the Chronicle Herald, “Push And Shove”, September, 10, 2009. <http://thechronicleherald.ca/Letters/1141543.html>) followed up by the Chronicle Herald editorial: “Tax Cut Doesn’t Cut It”, September 13, 2009 point out it is a Pyrrhic victory:

“IT’S ALWAYS nice to get a break on your municipal property taxes. But some of the reasons why you can end up paying less are not exactly a good-news story or a tribute to good government services.

Take the case of St. Margarets Bay resident Bob Haagensen. As reported by The Chronicle Herald’s Jeffrey Simpson last week, Mr. Haagensen has just lowered his property tax liability to Halifax Regional Municipality by appealing the assessed value of his home and winning a five per cent reduction.

Winning, however, is Pyrrhic victory in this situation. Mr. Haagensen got his break by convincing the assessment authority that the noise and nuisance of all-terrain vehicles

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using the public trail behind his house has lowered its market value and made it hard to re-sell. In fact, he thinks five per cent is merely “a good start” on recognizing the value he has lost because of noise bylaw and other violations by some riders on the trail. He plans to argue for further reductions and expects other homeowners who have been complaining for years to be encouraged by his precedent to follow suit.

Maybe a big enough tax hit, he says, will prompt the city to do something about the problem.

That’s a drastic and financially burdensome way for citizens to remind the city of its responsibilities – and not one they should have to resort to.

Yet the fundamental unfairness here – that failure to properly deliver public services can reduce the value of residents’ property – seems lost on Mayor Peter Kelly. People who win such appeals “have a right to get a reduction in their property tax,” he says, and he’s not worried about the impact on city revenue.

We can agree on the revenue point. City revenue is not the core issue here, nor even is the right to a tax break. The heart of the matter is that city nuisance bylaws and provincial rules that restrict ATV speeds, ban use of the trail between 11 p.m. and 7 a.m., outlaw muffler modifications that amplify noise are not being adequately enforced. The city (and province) should not be able to get out of obligations to Mr. Haagensen and his neighbours by treating a reduction in their assessments as a cost of not doing business, or not performing as they should.

Police and Natural Resources officers do patrol the St. Margarets Bay and other trails and have laid charges for ATV-related infractions. And ATV organizations have done a good job of promoting responsible use of trails by their members. But the problem riders are still enough of a problem to cause serious financial and intangible damages for homeowners. A tax cut is not even close to an adequate remedy.

Property Tax appeals based on the impact of motorized trails have occurred across the province with reductions of 14% to 20% in assessed property values. An article in the Chronicle Herald November 13, 2009 entitled “Noisy ATV’s cited for assessment appeal win” (<http://thechronicleherald.ca/Front/1152447.html>) recaps the results from two locations.

“A St. Margarets Bay homeowner has received a further reduction in his property assessment due to the disruption caused by all-terrain vehicles.

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Bob Haagensen learned recently that he won an appeal resulting in a 10 per cent reduction in the assessed value of his home. Its new market value is \$224,800.

That was on top of 4.8 per cent he got knocked off earlier this year in the first stage of his appeal.

Mr. Haagensen is happy with his victory at Nova Scotia Regional Assessment Appeal Court because it backs up his position that ATVs roaring along the trail at all hours are a serious nuisance that affect his quality of life and hurt the value of his investment.

It also means he'll pay less in property taxes.

"It's a two-edged sword," Mr. Haagensen, 64, said Thursday. "But it's a sacrifice people are willing to make just to get their point across."

He and his neighbours believe ATVs are forbidden to use the trail on a former rail line under Halifax Regional Municipality's noise bylaw N-200, which prohibits such vehicles from operating within 30 metres of any home. Mr. Haagensen's house is about 15 metres from the trail.

Mr. Haagensen and his wife tried selling their home a few years ago, listing it initially at \$330,000 before dropping it to \$290,000. There were no takers thanks to noisy ATVs, he said.

The assessment court of appeal agreed with the helplessness of Mr. Haagensen's position.

"I consider this noise nuisance factor akin to that of the smell of pig farms which has been considered in other cases," the written decision says. "It is further exacerbated by the intensity of revving engines after the ATVs (and snowmobiles in the winter) come to the stop sign adjacent to the subject property.

"Mitigating steps which neighbours to a pig farm could take, such as closing windows and installing air improvement systems, would not be of any use in the case of ATVs and snowmobiles."

Mr. Haagensen said RCMP patrols resulted in the number of ATVs dwindling this fall. But in the past, there had been 200 passing through on some days.

The fight between homeowners and ATV operators has become contentious throughout the province.

This fall, a Shelburne County man was charged with shooting an ATV rider. And RCMP officers investigated people setting traps to damage ATVs.

Mr. Haagensen said municipalities should be concerned. If more homeowners get their assessments reduced it will result in less money in taxes to pay for services.

Gail Smith, who owns a home 10 metres from an ATV trail in Smiths Cove, also won an appeal this fall of her property assessment based on grounds similar to Mr. Haagensen's.

"The only reason is because it's close to the trail," Ms. Smith, 51, said in an interview from her other home in Toronto. "The problem is we have noise, we have dust."

Ray Gouthro, director of the All Terrain Vehicle Association of Nova Scotia, said he didn't want to talk about the matter.

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"You're not going to get a statement out of me," he said, referring phone calls to another member of his organization who couldn't be reached.

Natural Resources Minister John MacDonell said he understands the frustration that homeowners may have with ATVs.

"I'd like as much as possible to minimize the conflict," he said.

"I haven't as yet personally had an opportunity to meet with any of these groups that have issues. But it is one that I don't think should be ignored.

"Your home is your castle."

³² A New York Times story reprinted in the Halifax Chronicle Herald in 2006 stated that "trails are the No. 1 amenity potential homeowners fifty five and over cite when asked what they would like to see in a new community, this was ahead of public parks and outdoor pools. According to the National Association of Home Builders, trails were cited by 52 percent of prospective buyers cited by the Association." (Chronicle Herald, September 9, 2006). This survey also indicated that

Walking and jogging trails are the most desirable amenity, with roughly half of active adults and older seniors (52%) saying the presence of trails would seriously influence the home-buying decision. This number increases substantially for those with annual incomes greater than \$75,000 (65%).

(<http://www.nahb.org/generic.aspx?genericContentID=6145>) In a recent study commissioned by the CEOs for Cities organisation a strong positive correlation was found between walkability and property values (Cortright, 2009).

Cortright, J. Impresa, Inc., August 2009, *Waking the Walk: How Walkability Raises Home Values in U.S. Cities*. Chicago, Illinois CEOs for Cities.

³³ Laurentides V. Province of Quebec :http://www.fasken.com/files/Publication/fb6f9697-1201-481f-9741-1cf992ace7f0/Presentation/PublicationAttachment/497082c6-7ded-4d71-816f-2e1fc1b69b7c/CLASS_ACTION_FOR_SNOWMOBILE_NOISE_IN_QU%25C3%2589BEC.pdf

³⁴ There was an accident when an ATV t-boned a tourist's car on a road to a local resort (the Mountain Gap Inn) in Smith's Cove this summer. There have been many near misses in this community. Smith's Cove is a particularly apt example of the problem where the rail trail corridor intersects with local roads and private driveways. In an area only five kilometres long, there are 5 road crossings and 19 intersections across private driveways – yet the posted speed limit on the trail is a ridiculous 30 kilometres per hour, higher than the posted speed limit on some of the side roads it crosses. This becomes not only a nuisance but a major safety hazard. (Petition sent to David Morse, Minister of Natural Resources, January 25, 2008)

³⁵ Chronicle Herald, October 12, 2009: The Danger on our Trails: Homeowners vs. ATV's by Dan Leger

³⁸ Final Report of the Off-Highway Vehicle Task Force Report, Published by Communications Nova Scotia, November 2004, (ISBN -0-88871-844-6
(<http://www.publicland.ca/issues/atvsandorvs.html>)

³⁹ <http://www.trailsbc.ca/news.html>

⁴⁰ "Shared- Use Trails in Canada," Novus Consulting, a study commissioned by the Canadian Off-Highway Vehicle Distributors Council (COHV) authored by Terrance Norman and Donald Shiner, 2008 presents table 11 on page 28 of their report indicating there are already 5,588 kilometres of trails in Nova Scotia available to Off Highway vehicles accounting for 80.1% of all available trails in the province.

Table 11

**Nova Scotia Managed Trails
Summary of Numbers of Kilometres by Use**

Trails							
Single Use Trails	Active Transport	Motorized	Water Route	Roads	Total	% of Total	
Hiking , walking, running	506	0	0	0	506	7.3%	
Cycling (touring)	0	0	0	89	89	1.3%	
Mountain biking	195	0	0	0	195	2.8%	
Cross country skiing	149	0	0	0	149	2.1%	
Equestrian	0	0	0	0	0	0.0%	
Snowmobiling	0	2,663	0	0	2,663	38.2%	
ATVing	0	900	0	0	900	12.9%	
Canoeing, kayaking	<u>0</u>	<u>0</u>	<u>263</u>	<u>0</u>	<u>263</u>	<u>3.8%</u>	
Sub-Total	850	3,563	263	89	4,765	68.3%	
Shared-Use Trails							
Walking & Cycling add	184	0	0	0	184	2.6%	
Equestrian add	0	0	0	0	0	0.0%	
Snowmobile add ATV	0	837	0	0	837	12.0%	
	<u>0</u>	<u>1,188</u>	<u>0</u>	<u>0</u>	<u>1,188</u>	<u>17.0%</u>	
Sub-Total	184	2,025	0	0	2,209	31.7%	
Total	1,034	5,588	263	89	6,974		

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% of Total	14.8%	80.1%	3.8%	1.3%	100.0%
TCT included	66	326	0	89	481
above TCST included	0	600	0	0	600
above NHTC included	0	0	0	0	0
above					0.0%

⁴¹ <http://www.nimbynovascotia.com/did-you-know.htm>

⁴² See http://nspacts.ca/docs/ATV_Snowmobile_Trails_Nova_Scotia.pdf for a comprehensive map outlining ATV and snowmobile trails in the province. A separate map of designated snowmobile trails can be found at: <http://www.gov.ns.ca/NATR/ohv/designatedtrails.asp>

⁴³ Nova Scotia Task Force Report 2004, p.14

⁴⁴ Final Report Voluntary Planning Off-highway Vehicle Task Force report, 2004, p.15

⁴⁵ Final Report Voluntary Planning Off-highway Task force, 2004, p.5

⁴⁶ “It’s an ATV “Battleground””, MailStar, Friday, October 24, 2008

“Noisy ATVs And ATV Lawbreakers Rousing Anger in ST. Margaret’s Bay, Masthead News, Nov. 5, 2008

“Mad About ATV’s” Macleans Magazine, Dawn Rae Downton, December, 2008.

<http://www2.macleans.ca/2008/12/01/mad-about-atvs/>

⁴⁷ Final Report Voluntary Planning off-highway Task Force, 2004, p.19

⁴⁸ Final Report of Voluntary Planning Off-Highway Vehicle Task Force, 2004, p.18

“We discussed at length the exemption for vehicles used only on the owner’s property. We concluded that without full participation in a mandatory registration system for all off-highway vehicles, enforcement officers would not have the solid foundation they need. The fact that just over half of the estimated 40,000 off-highway vehicles in Nova Scotia are currently registered speaks to the need to eliminate this significant loophole in the system.”

A Macleans Magazine article by Dawn Rae Downton: “Mad About ATV’s” published in December 2008 indicates the problem of vehicle registration is still ongoing in what appears now to be a declining market in Nova Scotia. It is still recognized that many ATVs go unregistered :

“Far down from the 43,427 Nova Scotia-registered ATVs reported by a manufacturers’ national umbrella group in 2005, Nova Scotia registered 22,426 ATVs last year. (Many go unregistered.) Halifax’s 9,000 run in the city outskirts where the province trumps the municipal noise bylaw. The rest are rural. The premier “would eat his young before he’d forfeit rural

votes,” says an observer who wouldn’t be named for fear of reprisal from off-roaders. This year, registrations are down again, by 13 per cent. Bob Connell, for 25 years a supervisor of trails in Nova Scotia and now retired, says it’s a three-year North American trend reflecting market saturation. “Who’s your next target? Kids,” he says. “It’s like Big Tobacco. To generate more sales, you indoctrinate eight-year-olds.”

<http://www2.macleans.ca/2008/12/01/mad-about-atvs/>:

⁴⁹ Final Report of Voluntary Planning Off-Highway Vehicle Task Force, 2004, p.26

⁵⁰ Off-highway Vehicles General Regulations made under Section 25 of the *Off-highway Vehicles Act* R.S.N.S. 1989, c. 323 O.I.C. 88-66 (January 21, 1988), N.S. Reg. 13/88 as amended up to O.I.C. 2007-199 (April 4, 2007), N.S. Reg. 208/2007

The change in the regulations did not go entirely unnoticed by the public. A Chronicle Herald article: “Wildlife at Risk as Tories Gut ATV Regulations” by Claire Robinson, May 2, 2007 pointed out the short comings of the government’s reversal of the legislation including that it contradicted the very purpose for why the legislation was enacted in the first place. Mr. Robinson, a graduate student at Dalhousie University, studying the effects of roads on wildlife had a special expertise to offer on the subject. Among other things he claimed: “*Mr. Morse (the Minister of Natural Resources) has sacrificed public faith in fair and inclusive consultation to satisfy a handful of riders and dealers – and of course, a group of government MLAs who are uncompromising ATV enthusiasts*”. This view became shared by NSPACTS members. One group eventually took the Minister to court to challenge his consultation process.

⁵¹ Final Report of Voluntary Planning Off-Highway Vehicle Task Force, 2004, p.27

⁵² Final Report of Voluntary Planning Off-Highway Vehicle Task Force, 2004, p.29

⁵³ Resignation of Dr. Michael Howlett: MLA: ATV Rules Too Weak, Jeffrey Simpson, Chronicle Herald, August, 2007:

“MD Quits Off-road Vehicle Board, Jeffrey Simpson, Chronicle Herald, August 16, 2007:

“A member of the committee tasked with coming up with rules for off-road vehicles has quit because he feels the province hasn’t taken its work seriously.

Michael Howlett, a doctor who works at Colchester Regional Hospital in Truro and a member of the Nova Scotia Trauma Advisory Committee, sent notice of his resignation to the chairman of the Off Highway Vehicle Committee earlier this month.

Dr. Howlett said Wednesday that changes the province made to rules for all-terrain vehicles and other off-highway vehicles in March demonstrated it’s not committed to safety.

“In the spring, unbeknownst to many of us, the government put in place regulations that were a total surprise to many of us that we didn’t know about in advance and basically circumvented the work of the committee,” he said in an interview.

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"They watered down the recommendations for training programs."

Natural Resources Minister David Morse had announced regulatory changes that included providing off-highway vehicles access to old logging roads on Crown land and exempting veteran drivers from a training course. Another change gave children younger than 15 more time to complete a safety training course.

Off-highway vehicle enthusiasts had protested against the previous rules, which took effect last year, because they felt they were too strict.

"We were beginning to make inroads and some good planning efforts and, as far as I'm concerned, the government came back with an ad hoc approach and doesn't take the committee seriously," Dr. Howlett said. "I don't feel that the work we want to do on safety is going to get done at the table.

"I'm too busy to put up with that."

The planning task force was set up by the government last year to make recommendations on how to bring the recreational use of ATVs under reasonable control.

"The committee is a very good group of people and I really enjoyed working with them," Dr. Howlett said. "My feeling is there's a constituency within the government that doesn't hold to the same values as some of us in the health-care community do, or at least they're not as much of a priority for them.

"We take this issue very seriously and don't feel it should be politicized."

Laurie Cranton, the committee's chairman, said he accepted Dr. Howlett's resignation reluctantly.

"I understand some of his frustration," Mr. Cranton said. "However, we are there to advise government. They're not always going to take our advice. We can only advise and I feel we have a strong voice by being at the table."

He said there has been some frustration within the group but the government has also accepted several of its recommendations.

Natural Resources Minister David Morse said he only found out about Dr. Howlett's resignation on Wednesday and would've preferred if he hadn't resigned.

"I'm sorry to hear the news," Mr. Morse said. "We've had a pretty terrific group.

"I value each and every one of them."

Mr. Morse said his government values safety highly and the changes made earlier this year were necessary to give riders places to practise their pastime."

(jsimpson@herald.ca)

“Mad About ATV’s” MacLeans Magazine, Dawn Rae Downton, December, 2008.
<http://www2.macleans.ca/2008/12/01/mad-about-atvs/>;

“In 2006 the province struck an off-highway vehicle (OHV) advisory committee that was to include all stakeholders in the ongoing conflict. But doctors were frustrated and left a year ago, and municipalities, whose OHV bans are continually overridden by the province, chose never to attend. Connell has a seat on the committee but he’s leaving. The Canadian Off-Highway Vehicle Distributors Council, the national industry group that came up with Rascal Raccoon, has a committee member; another seat is held by a dealer. Other off-roaders hold 15 more of the 23 seats; with the manufacturers’ and dealers’ reps, they make up 90 per cent of the committee, since four of the remaining six seats are now vacant. According to the U.S. Environmental Protection Agency, ATVs made before 2006 throw 35 times the emissions of cars, and environmentalists routinely decry OHVs for wrecking wilderness and nature trails. But judging by committee minutes, the lone environmental rep hasn’t spoken in a year. “He’s too conciliatory,” says Mark Dittrick of the Sierra Club. The committee chair did not return calls.

The one group never represented, Connell says, “was 95 per cent of Nova Scotians”—who, for the most part, don’t realize they help fund Nova Scotia’s 500 km of “motorized” trails (as trails that walkers, runners, hikers, cyclists and horseback riders must share with OHVs are called), or that they contribute to salaries and operating costs of some OHV lobbyists via funds paid out by the Department of Health Protection and Promotion. When asked for salary amounts, a department spokesperson did not reply. Federal taxpayers also contribute to trail-building for motorized vehicles, maintenance, and the operations of some lobbyists via the Atlantic Canada Opportunities Agency. In one case, ACOA’s \$402,135 contribution to a 44.6-km walking trail went to develop a motorized trail instead.”

⁵⁴ Nova Scotia Pathways for People Framework for Action, prepared by the Department of Health Promotion and Protection in 2006. Authored/ edited by Renée Hartleib.
(<http://www.gov.ns.ca/hpp/publications/P4PFramework.pdf>) See the opinion piece: "ATV Trails Are Now AT Infrastructure?" by Sandy MacKinnon on the NSPACTS website (<http://www.nspacts.ca/docs/Pathwaysforpeople1a.pdf>) calling attention to the duplicity of the document and by association to the government of the day.

⁵⁵ Deconstructing a myth - Identifying ATving’s Health, Environmental, Economic and Social impacts”, Glyn Bissix, PhD and Justin Medicraft, BKin, Centre for Lifestyle Studies, Acadia University, Wolfville, NS, 2009. p.14 &15.

⁵⁶ *“In terms of trail maintenance costs alone, the Halifax Regional Municipality reports at least a three to fourfold increase when ATVs are given trail access. Based on a financial review of*

Rails to Trails projects in HRM over the past ten years, the cost of maintaining motorized trails as compared to Active Transportation Trails is approximately three to four times more expensive. This results in a life cycle requirement for Active Transportation Trails of nine to ten years and three years for Shared-use, Motorized Trails.” Paul Euloth, Halifax Regional Trails Coordinator, from a quote from a PowerPoint presentation to DNR on Motorized Rail Trails, summer of 09.

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“There are numerous epidemiological studies conducted over the last thirty years that have documented the frequent and serious injury and deaths resulting from snowmobiling and ATV use, particularly among children. We have counted over 150 substantive studies. Widespread ATV recreational use began in the early 1970s and injury rates in children and adolescents during this early period were substantial (Kirkpatrick, 2007). Despite widespread publicity and the eventual withdraw of three wheeled ATVs from the marketplace in 1988 which were particularly dangerous, the Consumer Products Safety Commission 2002 annual report (2003) revealed that 5,239 deaths in the USA were attributed to ATVs between 1982 and 2002. Significantly one third of these deaths involved children younger than 16 years.

Interestingly, a news release by the Canadian ATV Association (CATVA) claimed that riding a bicycle was more dangerous than driving an ATV. The National Electronic Injury Surveillance System (NEISS) was quoted as the data source in a study released by the Consumer Product Safety Commission in the fall of 2002. We were unable to locate the original information sources. Be that as it may, it is indeed true that more cyclists are injured on bicycles but it is false to say that ATVs are safer. This statistic simply recognizes that there are many more cyclists than ATVers and if the risk was the same for cycling as it is for ATVs, we would expect substantially more cycling injuries and the morbidity and mortality rates would be astronomical (see Brown, 2002 for a comparison of injury types).

In a news brief appearing in the April 29, 2003 issue of the Canadian Medical Association Journal quoting statistics from the “2003 National Trauma Registry Report Hospital Injury Admissions in Canada”, the number of ATV trauma admissions rose by 50% over 1996/7 admissions. While New Brunswick experienced the largest increase, Alberta and Nova Scotia followed with Quebec registering the largest number of incidents. It is clear that while ATV participants represent but a small fraction of the Canadian population, they represent 1.3% of all trauma hospitalizations. That means that for every 100 patients passing through an emergency room door, on average one will be the result of an ATV trauma incident. See the American Academy of Orthopedic Surgeons – Orthopedic Trauma Association (AAOS - OTA, n.d.) advertisement for a particularly poignant reminder of the dangers of ATVing (see Figure 3).

Studies led by Kirkpatrick reported that ATV trauma continues to be a prominent source of morbidity and mortality among children (see also Curran and O’Leary, 2008; Kirkpatrick et al, 2007; Kute et al., 2007; Helmkamp, 2007; Wang et al., 2007; Alawi et al. 2006 and Prigozen, 2006 as examples). They note that helmet and other legislation alone has failed to curtail these incidents and that increased educational programs may be beneficial in lowering child and adolescent injury and death rates. Related studies led by Wang (2007) support the notion that child ATV injuries are a significant contributor to healthcare costs, they also note that the

number of reported incidents is steadily increasing, and that passengers are particularly vulnerable. They further report that the average age of children admitted to hospital resulting from ATV incidents was about 12 years of age for drivers and 10.5 years for passengers, and of this group seventy-six percent of children were not wearing helmets. Furthermore, they reported that the average hospital stay was 6 days, with 81% of cases discharged to their homes and the remaining 19% either died or were sent to rehabilitation programs.

A study by Sibley and Tallon (2002) considered ATV injuries over a five year period in Nova Scotia, Canada and noted that young male adults as well as youth are particularly vulnerable to injury. The results from hospital discharge records indicated that the vast majority of patients were male (92%), and 64% were between 16 and 34 years of age. The average ISS (Injury Severity Score [ISS] ≥ 12) was 22.1 (see <http://www.trauma.org/archive/scores/iss.html>), and injuries to the central nervous system comprised 39% of all major injuries. Alcohol was involved in 56% of all incidents, and only four patients (16%) were known to be wearing a helmet at the time of injury. One indicator of healthcare costs is that the average hospital length of stay (LOS) reported was reported to be 21.6 days (see also Balthrop, 2007).

There are numerous other epidemiological studies identifying the health burden of ATVs and snowmobiles (see for example: Centers for Disease Control and Prevention, 2006; Mullins et al, 2006; NLPHA/ARNNL/NLMA, 2004; Rodgers, G.B. & Adler, P., 2001). It is important to note, given the healthy living claims of the ATV community that not all injuries and healthcare costs associated with ATVs are due to collisions and trauma. A study led by Rehn et al (2005) for example, investigated whole body vibration (WBV) and the resulting effects on the spine and neck. Rehn noted that in general WBV contributed significantly to lower back and neck pain and was rated in the high caution zone of the European Union health guidance classification system.”

⁵⁸ Trails Act, Chapter 476 Of The Revised Statutes Of The Revised Statutes, 1989 (<http://www.gov.ns.ca/legislature/legc/statutes/trails.htm>)

⁵⁹ (<http://lin.ca/resource-details/4334>)

⁶⁰ A court hearing took place on August 10, 2009, at which PAHLS successfully argued that the actions of the government in Paradise "warrant legal review". The case will now go forward. The brief was filed on behalf of PAHLS in Response to an Application for Summary Judgment on the Pleadings. Paradise Active Healthy Living Society was the applicant with the Attorney General of NS the respondent. Judge Bob Wright.

⁶¹ Final Report of Voluntary Planning Off-Highway Vehicle Task Force, 2004 p. 9, paragraph 18:

⁶² Off-highway Vehicles Act , Chapter 323 Of The Revised Statutes, 1989, S.14 (1) (<http://www.gov.ns.ca/legislature/legc/statutes/offhighw.htm>)

⁶³ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, ON: LexisNexis Canada, 2008)

⁶⁴ Ruth Sullivan, *Sullivan on the construction of statutes*, 5th ed., p. 341

⁶⁵ *Friends of Oldman River Society v. Canada (Minister of Transport)* [1992] S.C.J. No.1, [1992] 1 S.C.R. 3 (S.C.C.) p.38; see also at 48-49.

⁶⁶ Specifically O.I.C. 88-66 (January 21, 1988), N.S. Reg. 13/88 as amended up to O.I.C. 2007-199 (April 4, 2007), N.S. Reg. 208/2007 Section 2

⁶⁷ N.S. Reg. 224/2006 number 16

⁶⁸ Final Report of Voluntary Planning Off-Highway Vehicle Task Force, p. 11, paragraph 31

⁶⁹ Final Report of Voluntary Planning Off-Highway Vehicle Task Force, p. 11, paragraph 33

⁷⁰ One NSPACTS organization (The Kieran Pathways Society), appearing before a municipal council advocating that a portion of rail trail that went through their community be restricted to Active Transportation, was faced with a phalanx of off-highway vehicle enthusiasts. They were all uniformly dressed in camouflage gear and proceeded to shout from the public gallery throughout their presentation calling out “Where do you live?” and other similar intimidating comments. Repeated council requests that they honour the decorum of the town hall were ignored and eventually the presentation had to be stopped. The presenters were ushered into a back room for what the council considered their own protection and waited for an hour until the OHV crowd had dispersed. Council avoided addressing the issue in future rather than deal with a repeat of such tactics.

It is common any time a trail issue is to be discussed in a community hall to see a large turnout of off-highway vehicle enthusiasts, often people who do not live in the community, but they show up as part of an organized cabal to thwart any local attempts to arrive at a consensus on local trail development different from their own.

Individual off-highway enthusiasts and their association representatives have presented a sense of entitlement in public forums and in the media. James Anderson, the public relations spokesperson for ATVANS (the ATV Association of Nova Scotia) stated it succinctly on a public radio show in Halifax earlier this year. ((James Anderson, interview by Rick Howe, *The Afternoon News*, News 95.7 FM, November 19, 2008.) He made a statement that in effect said: ATVANS represented 50,000 off-highway vehicle users. Their numbers were more than the entire population of some towns he named. He felt ATVANS should have more say on how a particular trail was to be used than the citizens in the towns through which his club membership wished to pass. (The entire broadcast can be found at http://nspacts.ca/docs/atv_broadcast.zip and the extracted relevant part at http://nspacts.ca/docs/municipal_broadcast.zip)

When this quote was used in a brochure NSPACTS provided on the “Myths and Facts About “Shared Use Trails in Nova Scotia”, Mr Anderson phoned up many of the leaders of NSPACTS organizations and in some cases their employers and associates and implied he would be proceeding with a law suit for libel. The implication was they would be wise to withdraw their membership from NSPACTS. His tactic did not succeed. There was no viable defamation case in the first place, but it did result in a town administrator in Lunenburg threatening to discontinue administrative support for a small trail organization in his town unless they renounced their membership in NSPACTS. (Voice of the People: “Municipality walks away from hiking club, Chronicle Herald, May 23, 2009.) The trail association challenged the right of the administrator to sanction what organization it could belong to in a free society and at this time the town administrator has not carried through on his threats, but there is no denying the off-highway lobby representatives play to win by their own rules.

The OHV owner’s tactics were well known to the Voluntary Off-Highway Task Force Report back in 2004:

“The Task force has received many reports of people being intimidated, threatened and harassed by irresponsible off-highway users. This situation is intolerable and the provincial government should take immediate steps to affect the rights of those so affected.

“With regard to numbers of irresponsible off-highway vehicle operators, we do not know how many are part of the problem. However, we do know that the numbers are sufficient to cause the range of problems and complaints throughout the province that created the need for the task force.

We believe that an Integrated Enforcement Task Force provides an important means of changing the behaviour of those who choose to act irresponsibly. In fact, all responsible off-highway vehicle operators, as individuals and through their associations, need to part of the solution. Their continued co-operation is essential to the success of enforcement efforts and the acceptance of off-highway vehicles on trails through out the province” P.14”

A Macleans Magazine article; Mad About ATV’s”, published in December last year pointed out the intimidating influence of the off-highway vehicle lobby is still going on and reaches all the way to the Nova Scotia legislature. It has finally led to at least one community fighting back in the courts:

“The OHV lobby has demonstrated it can hobble community consensus, hijack public consultations, and jettison laws. At least that’s what seems to have happened in Paradise, a hamlet on the Annapolis River where a provincial government ban on ATVs lasted 10 months before the same government reversed it. “Now we have wheelies in the cemetery, farmers’ fields, people’s lawns—dust two storeys high,” reports a Paradise resident who won’t be named. “Night riders are scary and noisy, sometimes impaired.” (Like a number of trails that some riders drive drunk in order to avoid police on highways, Paradise’s ends at a pub.) A gouged, muddy, garbage-strewn trail divides farmer George Lilly’s house from his barn, just

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yards from each building. “It’s unfortunate,” says Anderson. “But the trail isn’t on [Lilly’s] property and technically doesn’t go through his backyard.” Dale Dunlop, a lawyer representing Paradise homeowners pro bono, says the government acted above the law by rescinding the ban because its flip-flop subverted its own policy rules for changing binding agreements. He’s seeking judicial relief to return the trail to nature.” (Mad About ATV’s”, MacLeans Magazine, Dawn Rae Downton December, 2008)

NSPACTS believes this finding is as true today as it was back in 2004 and 2008. There is clear evidence of the intent by OHV enthusiasts, not only individuals but the organizations that represent their interests, to threaten and intimidate both individuals and governments to get their way. It is a bully tactic that obviously has been successful for them. However five years after the original Task Force Report attempted to deal with the “out of control” problem” in Nova Scotia it persists. More recently a government was thrown out of office partly for being caught in a scandal pandering to their (OHV) interests. It may be time to think of a better way of addressing the issues.