

ATVs IN THE TUG HILL REGION: ISSUES TO CONSIDER

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TUG HILL COMMISSION ISSUE PAPER SERIES

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The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.

Summary

The rising popularity of ATV riding for recreational purposes has led to the opening of many town and county roads for ATV use in the four counties that comprise the Tug Hill Region – Jefferson, Lewis, Oneida and Oswego - over the past several years. Municipalities at all levels are working to take steps to manage this popular recreational activity, and many ATV user groups are looking for ways to enhance their ATV riding experience. A number of things to consider for both municipalities and ATV recreationists are outlined here, and a concluding section suggests blending a few middle ground options as one approach that could be considered. The challenges for management of ATV networks are: compliance with New York State Vehicle and Traffic Law; better enforcement; better club organization; liability coverage for landowners; and funding for trail maintenance and improvements.

A Mix of Problems, Benefits and Opportunities

The options and issues outlined in this paper cover a variety of ideas for municipalities to consider when deciding what level of ATV activity, at least on municipal roads and land, fits their community best within the available legal framework. It also touches on many issues ATV users might consider as they look to expand their opportunities for recreation.

The increasing number of ATVs, coupled with issues associated with the impacts created by these vehicles and the trespass associated with their use, is creating a great deal of tension between ATV users, municipalities, landowners and those pursuing other recreational activities. Problems created by ATV use should be weighed against benefits that come from ATV use (jobs, income to businesses, tax income, individual recreational benefits, etc.), and with a balance between private rights to use ATVs and private rights to be free of ATV-created problems kept in mind.

While this paper examines a range of options and issues, the ones that seem to be most important to Tug Hill communities are those that minimize the problems created by ATV use, while optimizing the benefits that come from ATV use.

Options for Management

As discussed more thoroughly in the following sections, the Vehicle & Traffic Law has given municipalities a significant role to play in determining how to address ATV recreation at the local level. First, municipalities must actively designate public lands as open for ATV use. They may charge a fee for use, and they can also regulate when and how they may be used on public lands. Secondly, municipalities may also designate sections of roads under their jurisdiction as open to travel by ATVs in order to travel between designated ATV use areas (on public and private property) where other non-highway access is not available. Both of these municipal actions should be carefully studied and planned in conjunction with the community's overall recreational, community planning, and highway needs.

Recreation on private property is another option available for ATV recreationists, and is discussed below. Finally, a brief section discusses possible changes to the classification and design of ATVs.

Use of Public Lands

One option for municipalities is to allow use of public lands for ATVs. Section 2405 (2) of the Vehicle and Traffic Law essentially says that public lands are not open for ATV use unless the municipality or designated governmental agency specifically opens land for ATV use. For towns and villages this option includes municipal forest or park land; for counties it involves county reforestation land; and for New York State it includes State Forests (State Reforestation and Unique Areas). According to NYSDEC, Forest Preserve lands cannot be opened to ATVs per the Adirondack Park State Land Master Plan, and ATVs are prohibited in Wildlife Management areas per DEC regulation.

Town and village property is under control of the town or village government, and county forest land use is under the control of county government. For example, ATV use, although not promoted, is generally informally allowed on access roads and fire trails within the approximately 3,000 acres of Lewis County forest. These lands could be closed to ATV use, or could provide an option for one aspect of ATV trail system development. Use of ATVs on public property in any municipality faces the same issues as elsewhere, particularly with potential damage to roads and trails not designed for sometimes-heavy ATV traffic.

State Forests (State Reforestation and Unique Areas) could be closed to ATV use. For example, New York State Department of Environmental Conservation Region 7 (including only Oswego County in the Tug Hill region, but also several more southern, central New York counties) has a policy that presently prohibits ATV use on all state forests in Region 7.

State land in NYSDEC Region 6 (Jefferson, Lewis, and Oneida counties on Tug Hill), in particular state truck trails in State Forests and roads in the Forest Preserve, have historically provided for some public ATV use and access opportunities. This situation is changing, however, with the recent approved amendments to the Aldrich Pond, Black River and Independence River Unit Management Plans. NYSDEC closed almost all roads open to ATVs in the Forest Preserve Wild Forest lands, with the exceptions that ATV use permits will be issued for seasonal and, pursuant to the DEC Commissioner's Policy 3, for disability access on five roads. All ATV access will be eliminated in 3 years. This action was taken because roads on public lands provide access for motor vehicles. Therefore they are considered public highways, making them subject to Vehicle and Traffic Law that prohibits ATVs with access to adjacent trails and areas which they could not otherwise access. This the use of ATVs on roads that are opened to motor vehicle use unless the purpose of such opening is to provide provision of the Vehicle and Traffic Law has implications for motor vehicle roads open to cars and trucks on all public lands, unless the roads are needed to access off-road trails.

However, as DEC increasingly obtains “working forest” conservation easements in the North Country, there may be opportunities to develop ATV trails on those easement properties, depending on the terms of the easement as negotiated with the fee landowner.

There are several ATV bills being considered by the state legislature. They would do a variety of things, from further restricting ATV use on state land, to increasing penalties for illegal operation, to establishing an ATV fund – all indicators of state-level interest in ATVs.

Use of Municipal Public Roads

The great bulk of the current ATV network in the Tug Hill region are those town and county roads opened to ATV use. In some cases towns have opened all town roads. The perceived benefits of this approach is that it is uncomplicated, so long as an ATV rider knows where town (and perhaps selected county) roads are located. It also allows many residents to ATV from their homes, or visitors from their lodging, to travel local roads, and thereby minimizes the need for facilities such as parking lots, signs, etc. Opening all or many town roads to ATVs also has the decided drawback of increasing the exposure of ATV riders to accidents with other ATVs and other vehicles on the roads. It also means many residents are dealing with ATV impacts, from noise, to safety concerns and more.

Recently, however, there has been much discussion on the state level as to the legality of widespread opening of public roads to ATV use. State law says the use of ATVs on municipal roads is essentially banned unless a municipality takes action (through either a local law or ordinance) to specifically designate highways under its jurisdiction for ATV use. Section 2405 (1) of the Vehicle and Traffic Law speaks to the designation of highways for travel by ATVs, stating that governmental agencies (including towns and villages) “may designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the governmental agency concerned, ***it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway*** (emphasis added).”

This was reinforced by three recent court decisions that questioned the legality of widespread town, village, and county road openings to ATVs (January 1999 Santagate vs. Franklin County, March 2003 Brown Vs. Town of Pitcairn, and August 2003 Brown vs. Town of Pitcairn - copies of these court decisions are available by contacting the Tug Hill Commission’s Watertown office or on its website www.tughill.org). In 2003 the State Supreme Court found that some of the road openings by the Town of Pitcairn, St. Lawrence County, were illegal because the town failed to document that all of the roads needed to be open in order to provide access between off-road ATV trails. Most recently the town has modified their documentation and re-opened roads. Lewis County has requested guidance from the State Attorney General's office on their policy for ATV use on town and county roads. The outcome of that guidance coupled with past and current litigation may influence how counties, towns, and villages deal with ATVs for years to come. Opening all local roads could mean more liability exposure for the town, village or county, particularly where roads have been opened without clear documentation of a need to link off-road trails.

One ATV policy option could be the closing of all public roads to ATV use. In one sense this would be an easy option, since public roads are essentially closed to ATV use unless a municipality acts to open one or more of its roads. Practically, it would be a very challenging action, requiring demanding and expensive enforcement. Given the current nature of ATV trails, the enforceable closing of all public roads would mean the effective end of ATV use and the loss of all benefits coming from ATV use.

Perhaps the best option at this time is a conservative approach that argues for opening very few, if any, roads. For those roads that a municipality decides are in compliance with Vehicle & Traffic Law Section 2405 (1) are necessary for ATV recreation, towns and villages would protect themselves from some liability by doing a study for each road or segment of road which is intended to be opened to ATV use, and providing a rationale consistent with the statute for why this section of road needs to be opened.

A more comprehensive solution to the issue of ATVs on public roads could be a change in State legislation that allows the roads themselves to be considered part of the trail system. This, however, still raises safety, noise, environmental and maintenance issues that would need to be addressed.

Private Land Operation

State law prohibits use of ATVs on private property without the consent of the landowner in Section 2403 (3) of the Appendix A to Vehicle and Traffic Law (see reference all sections of law mentioned in this issue paper). There is no requirement for posting the land, although it is recommended to help prevent violations. Therefore, unauthorized use of ATVs on private property is clearly a violation of law.

Many of the problems cited in ATV use involve problems that occur on private lands where ATV operators do not have permission to ride. The public role in controlling these situations is primarily one of law enforcement related to charge for trespass or nuisance. The problem is often that the abuse takes place in out of the way locations without witnesses. This makes enforcement difficult, and making the ability to enforce restrictions on private lands limited. It is suggested that if greater enforcement is to take place, more public funds will need to be dedicated to law enforcement services to provide the necessary equipment and techniques for this type of enforcement.

Working to obtain additional public funds for enforcement holds the potential of helping deal with ATV related problems.

Classify ATVs as Vehicles; Change ATV Design

At least one speaker at the ATV public meetings held in 2003 suggested that the best course of action might be to define ATVs as motor vehicles, similar to the way in which motorcycles are defined, and allow them to use all public roads, state as well as local.

This is clearly an option, but one that would need to be taken at the state level, and one that seems unlikely at this time, given current attitudes toward the relatively recent technology of modern ATVs, and the industry's own statements in advertisements that ATVs are not intended to be ridden on public roads or paved roads. Changing the basic design of ATVs would probably be necessary to make them road compatible in all ways (including safety). These changes might not be compatible with off-road use of ATVs.

This approach also raises several other needs. It would likely require that ATV drivers have licenses, and fulfill additional state requirements.

Middle Ground Alternatives to Minimize Problems and Optimize Benefits

In view of the many limitations of the options that either prohibit ATV use, or expand ATV use to that of other licensed motor vehicles, it seems a more likely course of action would be some middle ground measures that minimize the problems now associated with ATV use, and optimize the benefits to people on Tug Hill.

A blend of actions may be the most likely to help the current situation if villages, towns and counties decided to be more involved in ATV use. The following sections deal with the nature of ATV trails and a range of “middle ground” actions that might be taken.

Develop Off-Road ATV Trails

One of the clearest points of agreement heard consistently around the region is the need for more off-road ATV trails. Off-road trails would provide more of the experience ATV riders are seeking, and could reduce many of the safety, environmental and aesthetic issues associated with on-road use.

More off-road trails accessed by selected public roads - perhaps low volume roads where possible - could create a better recreational experience for ATV riders, and ultimately contribute more to the local economy. This would, however, necessitate an amendment to the State's Vehicle & Traffic Law.

The challenge in developing more off-road trails has to do with the nature of ATVs, a range of landowner and environmental concerns, and funding availability.

Environmental Impacts and the Issue of Trail Hardening – A Crucial Difference Between Snowmobiles and ATVs

A problem all ATV use options face is that of environmental damage, or the perception of environmental damage. Much could be done to insure that ATVs generate less air pollution and noise. Those actions are most likely to be taken by ATV manufacturers as they respond to state or federal guidelines.

On a more local basis, many of the concerns related to ATV off-road environmental problems come from where the rubber meets the trail. Unlike snowmobiles, ATVs do not ride on a cushion of snow and ice. Landowners often see little environmental impact from snowmobile use because of the protection afforded land and water bodies by Tug Hill's considerable snow and cold temperatures. (It should be noted, however, landowners do still experience problems with seedling damage and other impacts of snowmobiles.)

ATVs can travel across land most of the year, which can lead to soil being churned up, washed away, or otherwise damaged. Seasonal access limitations (i.e. mud season) can reduce these impacts. This kind of management is challenging because wet periods vary, and in some cases damage is likely almost any time of year, especially if ATV travel is heavy.

It seems inevitable that ATV off-road trails acceptable to landowners in many cases will require hardening trails beyond that done for snowmobiles. Some of the areas that have had the best experiences with ATV trail development are those that have invested in significant trail improvements so as to minimize environmental damage and safety problems.

Such improvement to trails requires money and trail construction standards. Both are lacking in New York State for ATV riders and their organizations. Providing more money could be one of the best ways to improve ATV options on Tug Hill. Determining whether that money best comes from a state trail fund, local permit system, or some other source is a challenging problem.

A Dedicated ATV Trail Fund – A State or Local Action?

One of most frequent comments at a series of ATV public meetings in 2003 was the need for a dedicated state ATV trail fund, financed through ATV registration fees. Such a fund has existed for snowmobile trail development and maintenance for about two decades. New York State has an ATV registration fee, but those funds are not set aside for ATV trail development or other ATV uses. However, there have been proposals to provide money for an ATV trail fund, including one for an increase from the current \$10 registration fee to a \$45 registration fee in the 2004-2005 state budget. This could amount to an additional \$3.4 million in registration fees. Currently, it is estimated that approximately \$850,000 from this proposed fee increase would be earmarked for trails on easements, municipal and private lands, education, and enforcement.

Establishment of such a fund could help in the development of hardened ATV trails that would go a long way toward improving ATV benefits and reducing ATV problems. Such a fund would require state legislation, and an administrative mechanism similar to that in place at the New York State Office of Parks, Recreation and Historic Preservation for the snowmobile trail fund.

Not only could such a fund pay the cost of building trails that are safer and have less environmental impact, but use of the fund by local ATV clubs would likely increase the capacity to manage trails and landowner relations to a much greater extent, as has been the case for snowmobile clubs over the years.

If state legislation to create a dedicated ATV trail development fund were not enacted, the option does exist for a local trail permit system such as was considered for Lewis County snowmobile

trails in the 1990s. One of the major drawbacks of that proposal was that New York State had pretty much preempted the local fee and permit system option by making any such local system ineligible for any share of the state funds. If a local snowmobile permit system were put into place today on Tug Hill, hundreds of thousands of dollars in state registration fee reimbursements would be lost, unless the law was changed.

The problem of lost state funds does not exist for ATV trails, since there is no provision for local reimbursements for ATV trails at this time. Nonetheless, development of a local ATV permit and trail development system would be complicated and would require considerable research before any decision was made to proceed.

Action on creating a state ATV fund would largely be a lobbying effort, perhaps a coordinated one of local government and ATV groups.

Trail Funding Could Encourage Off-Road Trails on Private Lands

A dedicated ATV trail fund could make possible the creation of an ATV off-road trail system on private lands. While adequate funding is no guarantee private landowners will be willing to participate, without adequate funding to build good quality trails, private landowners are unlikely to participate.

An additional element of ATV trail design for private lands could incorporate the advice of a forester so that ATV trail development could be incorporated during logging road construction. This could be a significant cost savings to the landowner who wants both ATV trails and logging roads. While active logging jobs and ATV riding are likely conflicts, use of an ATV trail designed to be used as part of ongoing management of forest lands would likely only be in conflict with logging jobs intermittently. However, for the landowner who is not concerned with building ATV trails, building logging roads to meet ATV hardening standards would likely add additional road cost.

The greater safety of well-designed and constructed trails might help reduce liability exposure of private landowners, another crucial measure if private landowners are to participate. Such trails might also provide landowners with improved access to their own forest lands.

A trail fund could also foster the essential discussions needed between ATV groups and landowners if there is ever to be an off-road ATV trail network that utilizes private lands. A dedicated trail fund would also enable greater enforcement and education activities.

Additional Liability Protection for Private Landowners

Safer trails likely will not be enough to convince private landowners to allow construction of ATV trails on their property. ATV clubs will need to be able to offer liability insurance to landowners.

Provision of good quality, consistent insurance options for ATV trail systems may well require a statewide effort, as snowmobile organizations in New York State have found in the last year or so. That in turn requires organizational capability to deliver, something that will come with time and work on the part of ATV clubs and associations.

It would also be a help to give a greater degree of landowner liability protection through changes to New York State law, in particular the state's General Obligations Law. Although the General Obligations Law 9-103 does protect landowners from liability as long as a fee is not charged for recreational use of their private property, it does not protect them from being sued and incurring the associated legal costs. However, making changes to that law presents some challenges. ATV organizations should be prepared to deal with the liability insurance issue on their own while trying to effect beneficial changes in state law.

A Role for Trail Easements on Private Lands?

Several years ago, Lewis County did considerable work on the possible use of trail easements as a way of improving landowner participation in snowmobile trail development. That effort ran into stumbling blocks, but raised several tantalizing possibilities regarding easements. One of them was the potential for greater liability protection.

An ATV trail easement might work something like this: a county ATV association, the county itself, or the state would purchase the right for a stretch of trail to cross a private landowner's property. The landowner would no longer own the private, individual right to use that trail for ATV travel – the trail would be available for all ATV users to ride. In the event of a lawsuit for an injury resulting from ATV use, it would be the holder of the easement, not the landowner, that would have the liability exposure. Some landowners where the state holds snowmobile trail easements have said they feel this level of liability protection is well beyond any protection they would get from the state's General Obligations Law.

Limited ATV Trails on Public Lands and State Forest Truck Trails

Another option for getting ATV trails off-road, or almost off-road, could be limited miles of hardened trail on state and/or county forest land, and use of specifically designated miles of State Forest truck trails.

As mentioned earlier, New York State policy seems to be trending toward exclusion of ATV from state lands, yet in many North Country counties state truck trails have played an important role in providing ATV recreation opportunities. In some states, state natural resource agencies do provide for hardened ATV trails as a way of providing recreation while mitigating environmental damage.

The hardened condition of DEC truck trails suggests that they could continue to provide ATV recreational opportunities. Any ATV recreational opportunities on state land must go through the Unit Management Planning (UMP) process. Through the UMP process, DEC could designate roads open for ATV access in areas where the resource can support the use without

serious degradation, where there are minimal impacts to other users of State Forests, and where it can be demonstrated that roads and trails proposed to be open to public ATV use will be safe for the operation of ATVs. It must be recognized, however, that shifting ATV use from private lands to state lands places the burden on the State to create and maintain ATV access on lands that have been set aside primarily for the management and protection of natural resources. If additional trails were opened, the state would need a funding mechanism for maintenance and enforcement. Assistance from ATV clubs would also be essential to ensure that ATV riders remain on designated roads or trails, and that ATV trails or roads are maintained so as to not create impacts on the environment or other users.

A Possible Role for Seasonal and Low Volume Roads

Public roads could continue to play a role in a future ATV trail network, especially seasonal maintenance and low volume (minimum maintenance) roads that do have lower traffic volumes and often are not paved. Advancing this would require amending the State Vehicle & Traffic Law.

More communities on Tug Hill are designating stretches of minimum maintenance road as a means of controlling highway costs, and phasing development. These roads could play a significant role in providing ATV recreational opportunities that could be compatible with snowmobile use, mountain biking and other recreation, as well as vehicular uses. Important to note, however, is that if minimally maintained roads become higher volume roads because of ATV traffic, they will likely require more maintenance.

Work with Towns and Villages to Identify Limited Mileage of On-Road Trails for Access

Experience in the Tug Hill region has shown that if a combination of off-road trails, posted truck trails and portions of low volume traffic roads (as connectors) were designated as ATV trails, they could form the nucleus of an ATV trail network on Tug Hill. Those areas of trail might then be accessed by specifically designated roads intended for ATV use. A deliberate approach could provide recreational and economic benefits, and reduce safety problems, noise, adverse environmental impact, and trespass by providing a clear option for recreation. Implementing such an approach would probably require technical assistance to towns similar to the snowmobile trail planning assistance Lewis County offered towns this year. Towns would, however, need to carefully develop criteria for identifying and designating such roads as part of an ATV trail system could also reduce the legal problems created by the wholesale opening of local roads. Towns would also need funds to implement this.

Need for Additional Parking

If Tug Hill communities were to support a better planned ATV trail network, rather than the opening of many or most roads to ATVs, this would create the problem of difficult access to that trail system for residents and visitors, since many would find their location not on a road open to ATV use.

One means of addressing this would be provision of additional parking areas at key trail access points. Parking area planning for snowmobile use has worked extremely well in many areas over the past 25 years. A similar effort related to ATVs could make a key difference in keeping ATVs off of roads deemed inappropriate for ATVs.

As with road designation for ATV use, planning for and developing ATV parking areas would likely require significant technical assistance to town and villages to help create a coordinated system of parking areas.

Law Enforcement Essential

Regardless of the policy options outlined in this paper, greater law enforcement efforts are needed to control the problems associated with ATV use. One option is to increase penalties. This, coupled with strengthening enforcement efforts, may work to insure that those who abuse the privilege of riding an ATV will not ruin it for those who follow the rules.

A middle ground approach could try to direct ATV use to a trail system that has a blend of off-road and planned on-road use along with adequate parking opportunities as described above. This could have the advantage of strict enforcement, keeping ATVs off roads and properties where they should not be, while having an outlet for recreational pressures on the designated system.

A Uniform ATV Local Law?

Even with a well-planned ATV system, law enforcement would not be easy, and it still would be costly. Two actions could help this situation.

One could be a uniform ATV law for adoption by Tug Hill municipalities, similar to the uniform snowmobile law used by Lewis County and its towns and villages. A uniform local law makes the job of law enforcement officials easier by not having to deal with a variety of standards and violations in differing laws, and can help in bring more revenue to local governments when fines are imposed. Uniform laws also make it easier for the ATV rider to know what standards are in place without having to distinguish what town they are in.

As was the case with uniform snowmobile laws, a uniform ATV law could be developed through cooperative action of towns, villages, the county, and perhaps the Tug Hill Commission.

ATV Rider and Public Education Would Be Essential

Laws alone are not nearly as effective as laws combined with an educational effort. To be responsible recreationists, ATV riders need to know what the law is, what areas are designated for riding and which are not, and know how to access facilities and emergency services.

Educational materials for ATV riders could be developed in cooperation between ATV clubs and the county association, the county, and town and village government. In addition, it would be essential for local ATV clubs to spend more time and efforts discouraging illegal ATV use. The Tug Hill Commission has assisted local governments and ATVers in the region by providing mapping services for several years. Good quality maps can be a good vehicle for conveying educational messages, making local laws regarding ATVs known, and increasing safety.

Additional educational opportunities, or requirements, for ATV riders could also reduce problems associated with ATV use, especially improving ATV riding skills, an area now largely un-addressed. Improved ATV rider skills education is most likely to come from ATV organizations themselves, or state level requirements for ATV riders.

More Off-Road Trails, Better Planned On-Road Sections of Trails, Could Create Much More Marketable Trail System Benefiting All

Overall, an approach of more off-road trails, coupled with well-planned use of state truck trails, seasonal and low volume roads, and other limited, designated roadways, and the use of state-owned easements could lead to a much more attractive, more marketable ATV trail network that ultimately would be much more acceptable to Tug Hill residents, and more profitable for businesses and taxing jurisdictions.

An economic impact study of ATV use on Tug Hill is listed as an option below. That study might also examine the difference in success of various ATV trail development programs around the U.S. and Canada to determine what sort of experiences ATV riders seek. It seems logical that a system that is attractive and safe is more likely to draw business to Tug Hill, while also providing a better ATV experience for residents. Impacts of increased ATV use on other non-motorized forms of recreation, as well as law enforcement and trail maintenance costs, should also be analyzed in any economic impact study.

Work Cooperatively with Counties, Towns and Villages, ATV Clubs on Joint Action

To the extent that organization is needed to change state law in regard to ATVs and in particular, a dedicated ATV trail fund, and in that the real economic potential lies in a more regional system, Tug Hill towns and counties may find it more effective to work cooperatively with other municipalities that have similar concerns and potentials.

One way of building strength in numbers in this regard, could be to hold a meeting of all four counties (to include county planning offices, sheriff's departments, ATV clubs and associations, and landowner groups), along the lines of the Tug Hill Commission sponsored "Snowmobile Summits" of several years ago.

Back to Need for State ATV Trail Fund, or ...

Many of the suggested policy options above come back to the need for more money for ATV trail development, especially off-road trail development. That money is not likely to come from general public revenues. The most likely source is from ATV riders themselves.

Currently funds supporting ATV activity are raised through voluntary measures and donations, and through private ATV efforts such as Trail Pass. If changes are to be made, however, a state registration fee going to a designated ATV trail fund seems the most likely option, especially since a state registration fee already exists. The need for a dedicated trail fund was also one of the comments most often expressed by ATV riders attending a series of public meetings held by Lewis County in September 2003.

... the Potential for a Regional ATV Permit System

If New York State did not create an ATV trail fund, the option does exist for a local permit system as a means of generating revenues. Section 2286 of the Vehicle and Traffic Law authorizes municipalities to establish a permit system and fee for ATV use on the municipality's public lands.

The alternative of a local permit system for snowmobiles was examined in great detail by Lewis County in 1990s. It was concluded as not feasible largely due to the state's pre-emption of a snowmobile trail fund and the loss of all those funds should the county or region create its own fee system.

There is not a situation of state preemption in the case of ATVs, since no reimbursements are there to be lost. Nonetheless, a local permit system would still be administratively complex, and would need thorough evaluation and business planning to determine its feasibility.

A regional "summit" on ATVs, as suggested above, could be a help in assessing whether or not any consideration ought to be given to a local, regional permit system for ATVs as an alternative if a state ATV trail fund is not created.

Assess Economic Impact and Learn from Experiences of Other States and Canada

When Lewis County studied snowmobiles so carefully in the 1990s, that study included a thorough assessment of the economic impact of snowmobiling in Lewis County.

A similar study of ATV economic impact could inform the current debate over ATVs, and any deliberation on what more could be done about snowmobiles in the county. If done like the snowmobile study, it would provide a wealth of information on what approaches are being used to manage ATV use elsewhere in the U.S. and Canada, and could incorporate a business evaluation of a local ATV trail permit system.

There are a number of federal and state agencies, and provinces in Canada, that are taking an active role in managing ATV trails. Some examples of the range of measures being taken by organizations such as the U. S. Forest Service, the U. S. Bureau of Land Management, the Pennsylvania Department of Conservation and Natural Resources, the New Hampshire Division of Parks and Recreation, and the New Jersey Department of Environmental Protection are cited in the report *All-Terrain Vehicles in the Adirondacks: Issues and Options*, Wildlife Conservation Society, April 2003.

The state of Maine, in particularly, has a fairly comprehensive management strategy for ATVs. It is available for review at <http://www.state.me.us/doc/parks/programs/ATV/atv.html>. See Appendix B for a listing of additional websites of interest.

A Blending of Approaches

If municipalities concluded that some change from current measures regarding ATVs was needed, they blend the policy approaches outlined in this report.

For example, a county might conclude that it could work with ATV groups and others in advocating creation of a state ATV trail fund, while also working on a model ATV local law, and could begin exploring possible funding for an ATV economic impact and permit system study.

Another example could be offering increased technical assistance to ATV organizations and municipalities on ATV trail planning to include road openings (in compliance with Vehicle & Traffic Law Section 2405 (1)), while joining in ATV “summit” meetings to work toward a state ATV trail fund.

Many other blends of approaches could be taken, all of which might improve the situation from the present, where most speakers at the September 2003 public meetings noted serious shortcomings in the present approach.

Appendix A: *Applicable Sections of Vehicle and Traffic Law*

Appendix B: *Websites for additional information*

Appendix C: *Article from Talk of The Towns, July/August 2004, Volume 18, Number 4
All-Terrain Vehicles and Municipal Liability*

Appendix A: Applicable Sections of Vehicle and Traffic Law

§ 2286. Licensing by municipalities. No municipality shall require licensing or registration of ATVs which are covered by the provisions of this article. Nothing herein shall prohibit the requirement of a permit by the agency or municipality having jurisdiction over any state or local park or any other public lands for use of ATVs on such public lands. A municipality may charge a fee for use of ATVs on such public lands.

§ 2403. Operation of ATVs where permitted.

1. Highways. No person shall operate an ATV on a highway except as provided herein. (a) An ATV may make a direct crossing on a highway other than an interstate highway or a controlled access highway, provided: (i) the crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; (ii) the vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway; (iii) the driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard; (iv) in crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway, and (v) if the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in conditions of reduced visibility, only if both front and rear lights are lighted. (b) An ATV may be operated on any highway which has been designated and posted as open for travel by ATVs in accordance with the provisions of section twenty-four hundred five of this article.

2. Public lands other than highways. No person shall operate an ATV on any public lands, waters and property other than a highway, except that an ATV may be operated on any such lands which have been designated and posted for travel by ATVs in accordance with the provisions of section twenty-four hundred five of this article.

3. Private property. No person shall operate an ATV on the private property of another without the consent of the owner or lessee thereof.

4. Emergency vehicle. The provisions of subdivisions one, two and three of this section shall not apply to operation as emergency vehicle by any authorized emergency, police or civil defense all terrain vehicle.

§ 2404. Operating rules.

1. No person shall operate an ATV: (a) at a rate of speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing; (b) in a careless, reckless or negligent manner so as to unreasonably endanger the person or property of another or cause injury or damage thereto; (c) on the tracks or right-of-way of an operating railroad; (d) in any tree nursery or planting in a manner that damages or destroys growing stock, or creates a substantial risk thereto; (e) while pulling a person on skis or drawing or towing a sleigh, sled, toboggan or trailer which carries or transports any person unless attached by a rigid support, connection or towbar; (f) on the frozen surface of public waters: within one hundred feet of any person other than a person riding on an ATV except at the minimum speed required to maintain forward movement of the ATV, nor within one hundred feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the ATV nor on an area which has been cleared of snow for skating purposes unless the area is necessary for access to the public water; (g) within one hundred feet of a dwelling between midnight and six a.m., at a speed greater than minimum required to maintain forward movement of the ATV; (h) on public lands, other than highways, or on private property of another while in an intoxicated condition or under the influence of narcotics or drugs.

2. The operator of an ATV shall: (a) stop and yield to an authorized ambulance, civil defense, or police ATV or police vehicle being operated as an emergency vehicle and approaching from any direction; (b) comply with any lawful order or direction of any police officer or other person duly empowered to enforce the laws relating to ATVs.

3. No person shall ride on or in a sleigh, sled, toboggan or trailer which is being towed or trailed by an ATV unless attached by a rigid support, connection or towbar.

4. A person operating an ATV shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on an ATV unless such ATV is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the ATV at the rear or side of the operator.

5. For the purposes of title seven of this chapter, an ATV shall be a motor vehicle and the provisions of such title shall be applicable to ATVs.

6. Local laws and ordinances. Nothing contained in this article shall be deemed to limit the authority of a county, city, town or village from adopting or amending a local law or ordinance which imposes stricter restrictions and conditions on the operation of ATVs than are provided or authorized by this section so long as such local law or ordinance is consistent with its authority to protect the order, conduct, health, safety and general welfare of persons or property.

§ 2405. Designation of highways and public lands for travel by ATVs.

1. Highways. Except with respect to interstate highways or controlled access highways, the department of transportation with respect to state highways, maintained by the state and any other governmental agency with respect to highways, including bridge and culvert crossings, under its jurisdiction may designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. Such designations by a state agency shall be by rule or regulation, and such designations by any municipality other than a state agency shall be by local law or ordinance.

2. Public lands other than highways. A governmental agency other than a municipality, by regulation or order, and a municipality, by ordinance or local law, may designate any appropriate public lands, waters and properties other than highways under its jurisdiction as a place open for travel by ATVs upon written request for such designation by any person, and may impose restrictions and conditions for the regulation and safe operation of ATVs on such public property, such as travel on designated trails and hours of operation. In addition thereto, such agency or municipality may not require the operator of an ATV to possess a motor vehicle operator's license. A municipality may charge a fee for use of ATVs on such public lands.

3. Signs and markers. (a) Such designated highways or portions thereof or designated lands shall be identified by markers in such manner as may be provided by rules and regulations of the commissioner. (b) All signs or markers shall be erected at the expense of the state or municipality, provided, however, that the municipality may accept funds or contributions therefore from private persons, clubs or associations interested in the promotion of ATVs.

4. Any regulation, order, local law or ordinance which designates a highway or portion thereof or designated lands which may be used for ATV operations may include rules and impose restrictions and conditions for the regulation and safe operation of ATVs on the highways and lands so designated, such as travel on designated trails and hours of operation. Any restriction or condition not contained in this chapter must be posted.

5. Copies of orders, regulations, local laws or ordinances adopted by governmental agencies pursuant to this section shall be filed with the commissioner.

§ 2406. Equipment.

1. No person shall operate an ATV unless it is equipped with: (a) brakes in good operating condition; (b) a muffler system in good operating condition which meets federal standards as established in 40 CFR (Code of Federal Regulations) Part 205.166, sub Part E; (c) a spark arrester approved by the United States Forest Service; (d) tires having at least two-thirty seconds of an inch of tread with no visible breaks, cuts, exposed cords, bumps or bulges; (e) a lighted white headlight approved by the commissioner and a lighted red taillight approved by the commissioner when operated for one-half hour after sunset to one-half hour before sunrise.

2. No person shall operate an ATV or ride as a passenger on an ATV unless he is wearing a protective helmet of a type approved by the commissioner pursuant to subdivision six of section three hundred eighty-one of this chapter.

3. No person shall operate an ATV: (a) on a highway with tires equipped with any studs other than automotive studs; (b) except as an authorized emergency ATV, police, or civil defense ATV as an emergency vehicle, while displaying one or more lighted red or a combination of red or white lights which are revolving, rotating, flashing, oscillating or constantly moving; (c) as an authorized emergency ATV or civil defense ATV, as an emergency vehicle unless it is equipped with one or more lighted, red or combination red or white light or lights which is or are revolving, rotating, flashing, oscillating or constantly moving and which has or have minimum candle power of sufficient intensity to be plainly visible from a distance of five hundred feet in all directions under normal atmospheric conditions.

§ 2407. Liability insurance.

1. An ATV which is operated anywhere in this state other than on lands of the owner of the ATV shall be covered by a policy of insurance, in such language and form as shall be determined and established by the superintendent of insurance, issued by an insurance carrier authorized to do business in this state. Such policy shall provide for coverages required of an "owner's policy of liability insurance" as set forth in paragraph (a) of subdivision four of section three hundred eleven of this chapter. In lieu of such insurance coverage as hereinabove provided, the commissioner, in his discretion and upon application of a governmental agency having registered in its name one or more ATVs, may waive the requirement of insurance by a private insurance carrier and issue a certificate of self-insurance, when he is satisfied that such governmental agency is possessed of financial ability to respond to judgments obtained against it, arising out of the ownership, use or operation of such ATVs. The commissioner may also waive the requirement of insurance by a private insurance carrier and issue a certificate of self-insurance upon application of any person or any other corporation, having registered in its name, one or more ATVs and furnishing of proof that a certificate of self-insurance has been issued and is in effect pursuant to the provisions of section three hundred sixteen of this chapter.

2. Proof of insurance as required by this section shall be produced and displayed by the owner or operator of such ATV upon the request of any magistrate or any person having authority to enforce the provisions of this chapter. The failure to produce such proof upon the request of any such person shall not be an offense but shall be presumptive evidence that the ATV is being operated without having such insurance in force and effect.

3. Proof of insurance as required by this section shall be produced and displayed by the owner or operator of such ATV to any person who has suffered or claims to have suffered either personal injury or property damage as a result of the operation of such ATV by the owner or operator, if such insurance coverage was required under the circumstances of such operation. It shall be an affirmative defense to any prosecution for a violation of this subdivision that such proof was so produced or displayed within twenty-four hours of receiving notice of such injury or damage, or the claim of such injury or damage.

4. No owner of an ATV shall operate or permit the same to be operated anywhere in this state other than on lands of the owner of the ATV without having in full force and effect the liability insurance coverage required by this section, and no person shall operate an ATV anywhere in his state other than on lands of the owner of the ATV with the knowledge that such insurance is not in full force and effect.

§ 2409. ATV safety course and safety certificate.

1. Safety course or courses. The commissioner shall establish a curriculum or curricula for an ATV safety training course or courses. Any such curriculum may include, but not be limited to, on-vehicle training and safe riding practices. The commissioner may establish different courses and curricula for different types of all terrain vehicles. The commissioner may permit any such safety-training course to be given by any private person, club, association or municipality which meets standards established by the commissioner. The commissioner may establish a reasonable fee which any such person or entity may charge for such course or courses.

2. Safety certificate. Upon successful completion of a safety course given in conformity with subdivision one of this section by a person ten years of age or over, the person or entity which gave the course shall notify the commissioner of such completion in a manner prescribed by the commissioner. The commissioner shall, upon

receipt of such information, issue an ATV safety certificate to the person who has successfully completed the course. Such certificate may be limited to the type of vehicle for which the course was given.

§ 2410. Operation by minors.

1. Except as provided by subdivision two of this section, no person under the age of sixteen years shall operate an ATV except upon lands owned or leased by his parent or guardian, unless he is under general supervision of a person eighteen years of age or over or a person sixteen years of age or over who holds an ATV safety certificate. "Leased lands" as herein used shall not include lands leased by an organization of which said operator or his parent or guardian is a member.

2. A person ten years of age but less than sixteen years of age who has received safety training as prescribed by the commissioner and has received the appropriate ATV safety certificate issued by the commissioner may operate an ATV in the same manner as a person who is sixteen years of age or older.

3. The failure of a person to exhibit an ATV safety certificate upon demand to any magistrate or any other officer having authority to enforce the provisions of this article shall not be an offense, but shall be presumptive evidence that such person is not the holder of such certificate.

4. No parent or guardian shall authorize or knowingly permit his child or ward, if under sixteen years of age, to operate an ATV in violation of any provision of this article, any rules or regulations promulgated thereunder, or the provisions of any local law or ordinance.

5. No owner or other person in possession of any ATV shall authorize or knowingly permit any person under sixteen years of age to operate such an ATV in violation of any provision of this article, any rules or regulations promulgated thereunder, or the provisions of any local law or ordinance.

§ 2411. Liability for negligence. Negligence in the use of operation of an ATV shall be attributable to the owner. Every owner of an ATV used or operated in this state shall be liable and responsible for death or injury to person or damage to property resulting from negligence in the use or operation of such ATV by any person using or operating the same with the permission, express or implied, of such owner, provided, however, that such operator's negligence shall not be attributed to the owner as to any claim or cause of action accruing to the operator or his legal representative for such injuries or death.

Appendix B: Websites for additional information

ATV Clubs in the Northeast

<http://4wheeldrive.about.com/od/atvclubsnortheast/>

State of Maine, Bureau of Parks and Lands, ATV Program

<http://www.state.me.us/doc/parks/programs/ATV/atv.html>

State of Minnesota, Department of Natural Resources, Off-Highway Vehicle Recreation

<http://www.dnr.state.mn.us/ohv/trails/index.html>

State of New Hampshire, Fish & Game Department, Off-Highway Vehicle Recreation

<http://www.wildlife.state.nh.us/OHRV/ohrv.htm>

State of Pennsylvania, Department of Conservation and Natural Resources, ATV Program

<http://www.dcnr.state.pa.us/forestry/atv/index.aspx>

State of Wisconsin, Department of Natural Resources, ATV Program

<http://www.dnr.state.wi.us/org/caer/cs/Registrations/ATV.htm>

Wildlife Conservation Society report “All-Terrain Vehicles in the Adirondacks: Issues and Options,”

April 2003.

http://wcs.org/media/file/ATVs_in_ADKs.pdf

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