ATV RECREATION: CONSIDERATIONs FOR MUNICIPALITIES

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Why Write This Paper?

ISSUE PAPER SERIES

ATV Recreation: Considerations for Municipalities

September 2025

NEW YORK STATE TUG HILL COMMISSION

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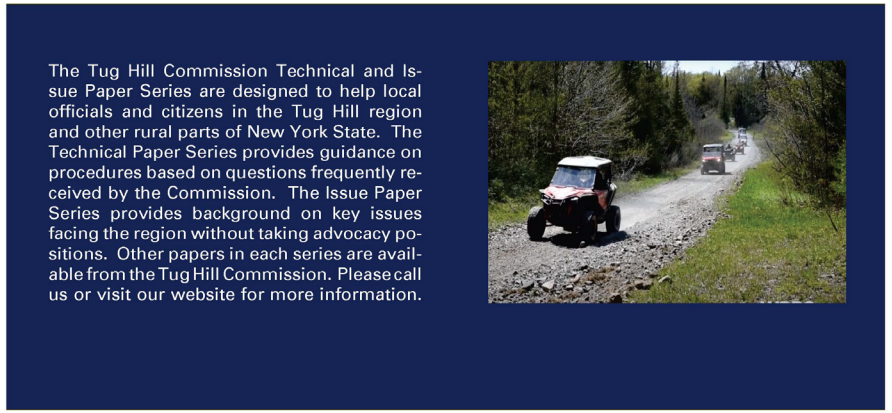
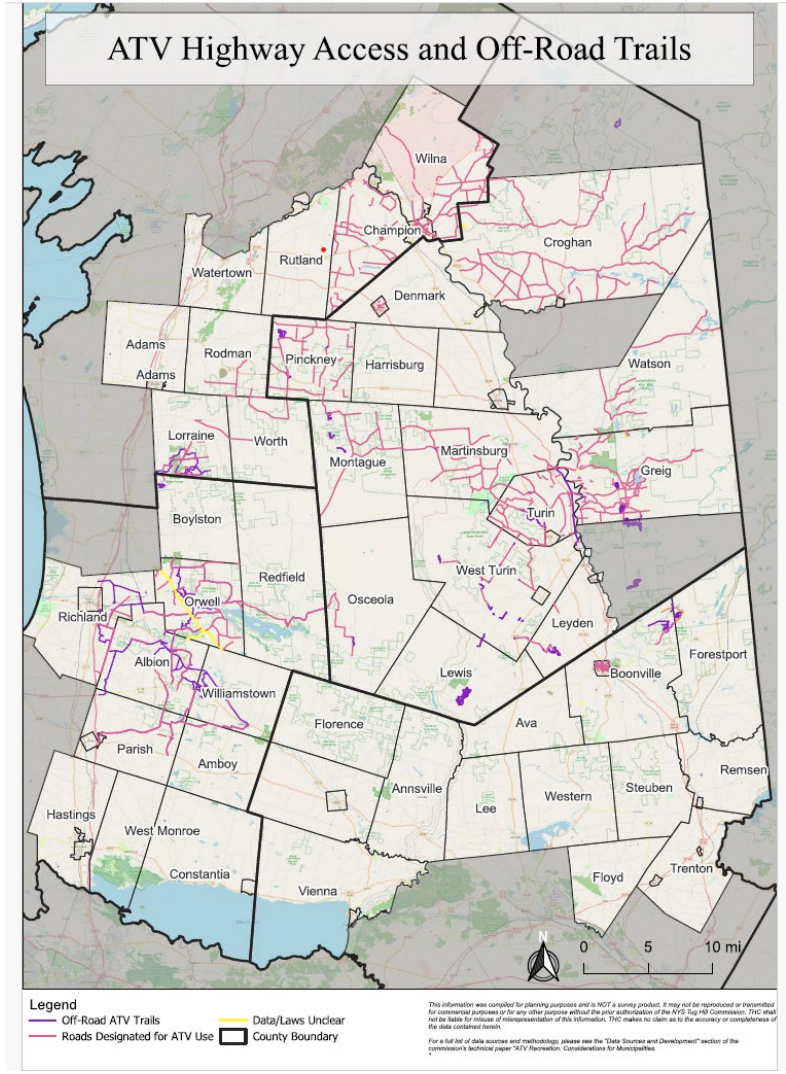

The Tug Hill Commission Technical and Issue Paper Series are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The Technical Paper Series provides guidance on procedures based on questions frequently received by the Commission. The Issue Paper 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. Please call us or visit our website for more information.

- Early in 2024, the commission received mapmaking requests and technical assistance questions from its communities
- Our goals: Generate a dataset, and update our internal knowledge to better assist communities
- Previous paper, *ATVs In the Tug Hill Region: Issues to Consider*, was written in 2004, effectively archived
- Time for a refresh!
  - What is the modern conversation around ATVs for municipalities?
  - What has changed in the twenty years? What hasn't?
  - What new information is available?

Developing the Paper and Dataset

Dataset

- No central source of ATV off-road trail data or highway corridors in NYS
- Off-road trail data: fragmented, incomplete, collected in piecemeal
- Highway data: far more complex. This required a deep dive into local laws, county laws, state law, attorney general opinions, decades' worth of significant court case review, state land management plans, community outreach and verification, and reconciling laws that might be duplicative or even contradictory in a community over a period of several years

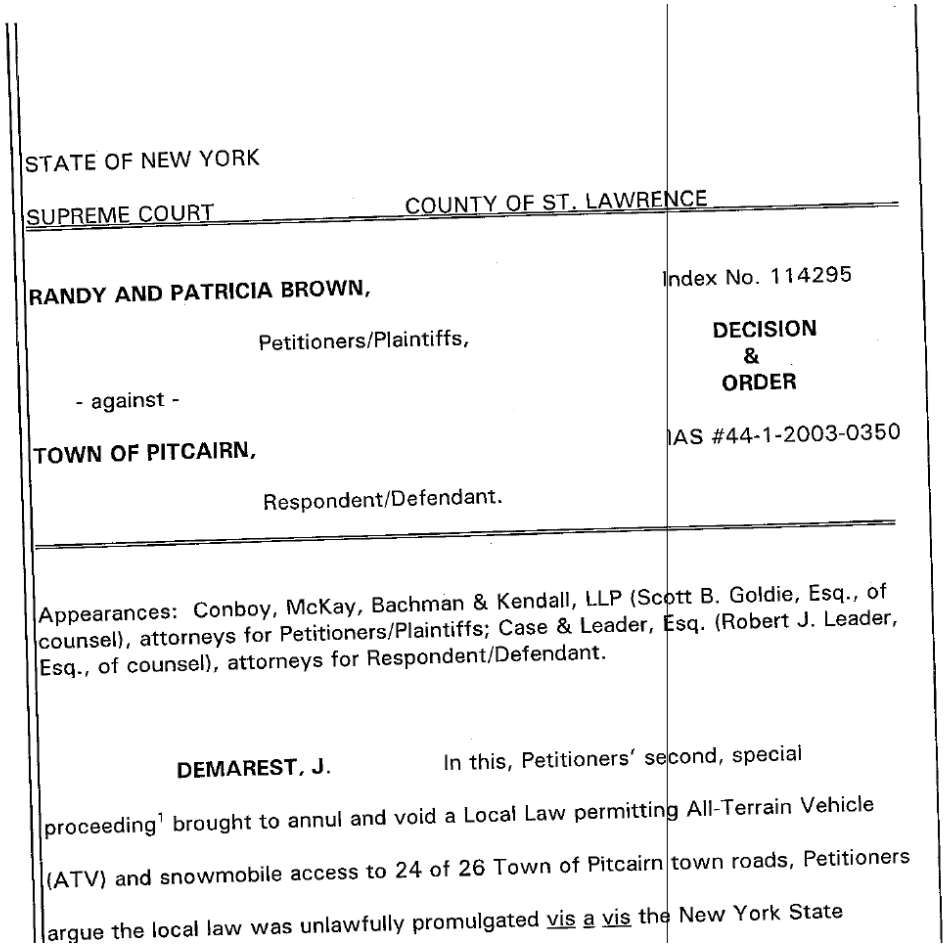


Developing the Paper and Dataset (continued)

Paper

- Target audience: Written for municipalities to use as a resource
- In spirit: a literature review of law, AG opinions, and case law
- Comprehensive, new information:
  - Consulted with various partners including municipalities, counties, DEC, EMS, highway departments, insurance carriers, law enforcement resources
- Á la carte: Municipalities with good information can make the best decisions for their communities. Take what you need from this paper to make an informed decision, whether your town wants to integrate ATVs into your local laws or chooses to abstain and rely on existing state legislation.

Just the Facts



STATE OF NEW YORK

SUPREME COURT COUNTY OF ST. LAWRENCE

RANDY AND PATRICIA BROWN,

Petitioners/Plaintiffs,

- against -

TOWN OF PITCAIRN,

Respondent/Defendant.

Index No. 114295

DECISION & ORDER

IAS #44-1-2003-0350

Appearances: Conboy, McKay, Bachman & Kendall, LLP (Scott B. Goldie, Esq., of counsel), attorneys for Petitioners/Plaintiffs; Case & Leader, Esq. (Robert J. Leader, Esq., of counsel), attorneys for Respondent/Defendant.

DEMAREST, J. In this, Petitioners' second, special proceeding[1] brought to annul and void a Local Law permitting All-Terrain Vehicle (ATV) and snowmobile access to 24 of 26 Town of Pitcairn town roads, Petitioners argue the local law was unlawfully promulgated vis a vis the New York State

Several relevant court cases were researched and summarized, with original decisions gathered from corresponding counties.

- Commission approach: neutral perspective research, pros and cons, with municipalities in mind
- Centralize all the information and offer insight into steps municipalities may or may not want to take – make their own decisions
- We have done our best review of information and tried to synthesize it, and will try to answer questions, but we always advise talking to your municipal attorney

ATV Benefits

- ATV recreation is a growing sport and industry, and ATV-related spending benefits businesses and generates sales tax
- "Economic and Fiscal Impact of OHV Activity on Lewis County (2022)", Camoin Associates
  - $8.2M in sales alone in Lewis County
  - Supports businesses especially related to lodgings, food and drink, gas, equipment, etc.
  - Non-local users spent ~$93/day
  - Strong trend of non-local users outnumbering local users (e.g. OHV brings in people who otherwise might not be here)
- This helps bolster a year-round recreation and tourism economy, balancing with the snowmobile season, which is not always reliable based on weather
- Sense of community, quality of life for recreationists who live here

ATV Challenges

- Legal hurdles
- Court case precedent unfavorable to towns
- Landowner controversy
- Implications for Insurance and Liability
- Implications for EMS, Law Enforcement, and Highway

Legally, Snowmobiles ≠ATVs

Snowmobiles

- Must be registered at the NYS Department of Motor Vehicles (VTL Article 47 § 2220)
- VTL Article 47: Determines the rules for licensing, registration, and disposition of fees
- PRHPL Title D
  - General Provisions (§ 21.01 - § 21.07)
  - Control Provisions (§ 25.01- § 25.29)
    - Specifically, § 25.01 concerns operation on highways

All-Terrain Vehicles

- Must be registered at the NYS Department of Motor Vehicles (VTL Article 47-B § 2280)
- VTL Article 47-B: Determines the rules for licenses, registration, and disposition of fees
- VTL Article 48-C: Rules for Operation of All-Terrain Vehicles
  - Specifically, § 2281 (1) determines the procedure of jurisdictional agencies allowing for highway access (e.g. “otherwise impossible”)

Legal Sources

- **Title XI - Vehicle and Traffic Law**
  - Article 48-B: ATV jurisdiction, registration and permitting
  - Article 48-C: rules for the operation of ATVs
  - Special attention paid to § 2403 - § 2405, which relates to highways and an entity's right to designate its jurisdictional roadways for ATV traffic under very specific conditions
- **Article 48-C § 2405 (1)**
  - *"The department of transportation… 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."*

More Legal Sources

- **County Law (Jefferson, Lewis, Oneida, Oswego)**
- **Local Laws (60+ towns and villages)**
- **State land UMPs**
- **Court Cases (***Santagate v. Franklin County* (1999); *Brown v. Pitcairn* (2003 & 2003); *Hutchings v. Town of Colton* (2004); *ADK Council et al. V. Lewis County (2007); State of NY v. Horicon* (2007); *Krug v. Town of Leyden* (2008), *O'Brien Daily v. Town of Lyonsdale (2009), ADK Council v. Town of Forestport* (2015), *DeSantis v. Village of Constableville* (2018), *Pena v. State of NY* (2019); *ADK Council v. Town of Clare* (2021)
- **New York Attorney General's Opinion (2005-21)**

Highlighted Court Cases

- *Pena v. State of New York* (2019)—solidified that ATVs are not a "vehicle" under VTL
- *Brown v. Pitcairn* (March 2003)—blanket law, enabled all roadways; struck down
- *ADK Council v. Town of Forestport* (2015)—failure to substantiate highway findings; struck down
- *DeSantis v. Constableville* (2018)—local law struck down, balanced response by Judge

DeSantis v. Village of Constableville (2018)

- Local law struck down, however, the Decision and Order included input from the judge that was fair, balanced, and insightful
- Excerpt:
  - *As Justice Demarest [in Brown v. Pitcairn] noted, had [large-scale road openings] been the intention of the Legislature when it enacted [VTL 2405], then there would have been no need to require a determination by the municipality regarding impossibility of access. The fact that the Legislature included the term "otherwise impossible" and mandated a specific determination by the municipality requires the Court to conclude it was not the Legislature's intent to allow any section of public highway to be opened to ATV use simply by a municipality deciding to do so. There must be fact finding following an investigative process which then concludes with the required determination.* ***Quite frankly, clearing the "otherwise impossible" hurdles seems like a daunting, if not impossible task. However, modifying or eliminating that hurdle is a matter for the Legislature***. (emphasis added)

ADK Council v. Town of Clare (2021)

- Local law upheld in full
- Trail connectivity and obstructions were named explicitly in the law itself
- The town was able to produce meeting minutes from public meeting, project input from a county senior civil engineer

New York Attorney General's Opinion (2005-21)

To summarize the informal opinion of the New York Attorney General,

"Municipal highways may be designated for use by ATVs only when necessary to provide access to adjacent trails. Highways previously designated for use by ATVs do not quality as "adjacent trails" for this purpose. Trails on private land that are open to the public for recreational ATV use may qualify as "adjacent trails."

This informal opinion clarifies that, so long as trail or area is open to the public, municipalities may designate public highways to provide access to such trail or area. However, each roadway in consideration must still meet the "otherwise impossible" criteria outlined in VTL2405(1) and routinely upheld by local courts (*Brown v. Pitcairn, Hutchins v. Town of Colton, Santagate v. Franklin County*.)

Where Does That Leave Municipalities?

- As things currently stand, Vehicle and Traffic Law ("otherwise impossible") sets a very high bar for what is allowable when enabling highway connectors pursuant to VTL 2405.

- Case law precedents seem to indicate one very narrow interpretation of VTL 2405: that a highway connecter, as designated by local law, is meant briefly connect one trail to another trail segment via a short segment of highway.

- In all the case law the commission was able to find in its research, only ONE town managed to successfully defend itself against a suit in full (*ADK Council v. Town of Clare*, 2021), and one town (*Brown v. Pitcairn*, Aug. 2003) had the majority of its local law overruled, with the court allowing for a handful of the road designations to remain.

- Every other local law, when challenged and brought to court, was ruled invalid due to **unlawful procedure** pursuant to VTL 2405. Half of those towns were also ruled to have violated **SEQRA process**, particularly if the town's failed to produce any paperwork showing that they had done their due diligence on the VTL side.

Legal Takeaways

- If Road mileage > Off-road trail mileage = increased liability
- Blanket laws opening all town or village roads to ATV use is not advised
- A road is *never* considered a trail
- Roads intended to serve as trail connectors need to be thoughtfully planned
- Trail development may be more expensive and involve more planning, but has less risk for municipalities
- Pay special attention to the procedural requirements of SEQRA and VTL throughout the process if working on a local ATV law. DOCUMENT EVERYTHING at board meetings and public hearings (meeting minutes, written correspondence, affidavits, photographs, etc.), especially concerning justifications as to why roads or road segments meet the "otherwise impossible" criteria, and note any obstructions in off-road trails that support this.
- When in doubt, refer back to the enabling legislation (VTL) and consult your municipal attorney.

Contact Info

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Paper Link:

https://tinyurl.com/thatvpaper

Managing Liability Risks For ATV Use on Public Roads and Trails

NYS Vehicle Traffic Law – Section 2405

VTL § 2405(1) governs all highway designations

Local Government Authority:

- May designate specific highways or portions as open for ATV travel in limited circumstances

"Otherwise Impossible" Standard:

- VTL § 2405(1) requires road openings only when "otherwise impossible" to reach lawful off-road trail or area
- Must justify road is necessary connector between trail segments

Requirements:

- Authorized by local law or ordinance
- Physically posted with official signs at each end of designated segment

SEQR – State Environmental Quality Review

SEQR Applies:

- Opening a road or creating a trail = typically an "action" under SEQR

Required Steps:

- Conduct Environmental Assessment Form (EAF)
- Public hearings may be required
- Document the need for each road opening

Legal Risk:

- Compliance can be questioned through Article 78 (NYS Civil Practice Law and Rules) legal action
- NYS court system consistently ruled in favor of strong SEQR compliance
- Failure to follow SEQR = common reason for law being struck down

Municipal Liability and NY's Recreational Use Statute

Municipal Duty of Care:

- When allowing ATVs on property or roads you maintain, municipality has legal duty to exercise **reasonable care**
- Post rules regarding ATV/snowmobile use
- Periodically inspect trails and surrounding areas
- Remove physical hazards that obstruct pathways
- Post warning signs for terrain changes (lakes, ponds, dead-end roads)
- Maintain roads and trails in reasonably safe condition

- **Standard:** Reasonable care to keep areas safe and warn users of hazards

Municipal Liability and NY's Recreational Use Statute (continued)

New York State Law

G.O.L. § 9-103: Recreational Use Statute

Recreational Use Immunity (G.O.L. § 9-103):

- Grants limited immunity to landowners for certain recreation activities including ATV riding
- If someone hurt while lawfully riding on your land: no duty of care for ordinary negligence
- **Condition:** Provided you didn't charge a fee

Limits of Immunity:

- **NOT absolute**
- Does NOT apply to gross negligence or willful misconduct
- Municipality still must exercise reasonable care

ATV Liability Issues

General Liability (Bodily Injury or Property Damage):

- Trail and street intersections
- Roadway use for ATVs
- Trail maintenance

Automobile Liability (Bodily Injury or Property Damage):

- Municipal vehicle collides with ATV
- Shared roadway conflicts

ATV Liability Issues (continued)

Public Officials Liability (Errors and Omissions):

- Quality of life complaints
- Diminished property value claims

Possible Coverage Exclusions:

- Challenge to municipal law via Article 78
- Distinction: Article 78 challenge vs. monetary reward claims
- Insurance policies may exclude certain types of legal challenges

Potential Claims

5 common claim scenarios identified

- ATV operating on designated snowmobile trail (wrong vehicle type)
- Snowmobile access road with chain barrier installed (obstruction hazard)
- Trail maintenance in question leading to snowmobile malfunction
- ATV roll-over with possible roadway hazard involving storm drain
- Oil & stone roadway ATV accident with possible maintenance issue

Common thread:

Maintenance, signage, and proper designation critical to defense

Avoiding Liability

Proactive risk management strategies reduce municipal exposure

Key Strategies:

- **Rules/Regulations for Use:** Clear, posted, and enforced
- **Trail grooming/maintenance:** Regular and documented
- **Signage:** Compliant with standards, properly placed
- **Trail/Rule Enforcement:** Consistent and documented
- **Contracted Groups:** For grooming/maintenance/signage with proper agreements
- **Trail Mapping:** Accurate and updated
- **Written Prior Notice Law/Notice of Defect:** Strong legal defense

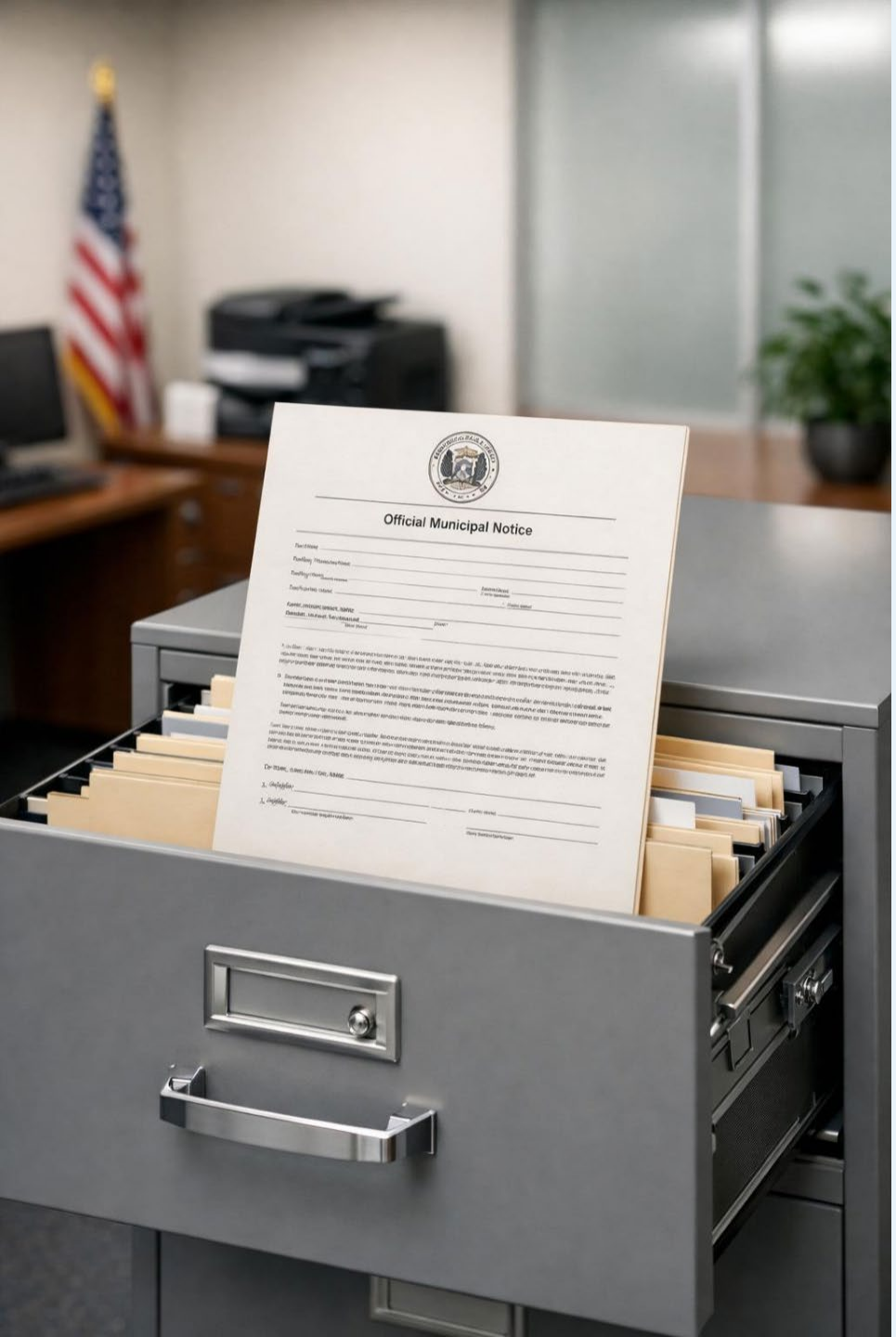
Trail Maintenance

Best Practices:

- Periodic, documented inspections
- Posted signage compliant with standards
- Rules for use posted and enforced
- Reporting format for defects (standardized, trackable)
- Warning equipment on vehicles

Contracted Maintenance:

- Written agreement (clear scope, responsibilities)
- Risk transfer provisions (indemnification, hold harmless)



Prior Notice Law in NYS

Prior Written Notice Laws:

- Require written notice as prescribed in local law before liability attaches
- Notice must:

  Describe location and nature of defect

  Be served on the appropriate authority

Benefits:

- Prior written notice laws are a good defense!
- Protects municipality from claims where no prior notice given
- Establishes clear documentation requirements

Use of Risk Transfer for Trail Maintenance Contracts

Risk Transfer Mechanisms:

- Transfers responsibility to do something (performance obligation)
- Transfers responsibility to pay for something (financial obligation)
- Compels a third party to indemnify or hold someone harmless (legal protection)
- Compels a third party to release another (liability release)

Application: Essential for contracted trail maintenance, grooming, and related services

Types of Risk Transfer

- **Hold Harmless/Indemnification Agreements** shift legal responsibility and financial exposure from municipality to third party
- **Use of Facilities agreements** establish terms for property access and liability allocation between parties
- **Contracts, Bid Specifications, Agreements** with embedded risk provisions define performance obligations and liability limits
- **Certificates of Insurance** provide proof of adequate coverage from contractors or service providers
- **Name Municipality as Additional Insured** on contractor policies extends coverage to municipality for contractor operations

Additional Insured Endorsements

Endorsement Interpretation:

- Courts interpret terms of endorsement to decide extent of transfer
- "Arising out of" often interpreted as full coverage for direct and vicarious liability

ISO Endorsement Evolution:

- Have become more restrictive over time
- Restrict coverage to "ongoing operations" only
- Require written contract for coverage
- Establish fault-based system for endorsements

Critical: Review endorsement language carefully to ensure actual coverage transfer

References

[1] Camoin Associates. (2022). Economic and Fiscal Impact of OHV Activity on Lewis County. Retrieved from Scribd.

[2] New York State Vehicle and Traffic Law, Article 48-B & 48-C.

[3] New York State General Obligations Law § 9-103 (Recreational Use Statute).

[4] New York Attorney General's Opinion 2005-21.

[5] Court Cases: Santagate v. Franklin County (1999); Brown v. Pitcairn (2003); Hutchings v. Town of Colton (2004); ADK Council et al. v. Lewis County (2007); State of NY v. Horicon (2007); Krug v. Town of Leyden (2008); O'Brien Daily v. Town of Lyonsdale (2009); ADK Council v. Town of Forestport (2015); DeSantis v. Village of Constableville (2018); Pena v. State of NY (2019); ADK Council v. Town of Clare (2021).

[6] Tug Hill Commission. (2004). ATVs In the Tug Hill Region: Issues to Consider (archived).