



ATV RECREATION: CONSIDERATIONS FOR MUNICIPALITIES

Issue Paper Overview

This paper consolidates information on the legal landscape of All-Terrain Vehicles (ATVs), challenges municipalities may face when legislating on this topic, and suggestions on best practices. Topics include relevant New York State laws, Attorney General opinions, a literature review of recent court cases, and municipal considerations concerning insurance and liability.



SCAN TO READ
THE FULL PAPER

ATVs in Vehicle and Traffic Law

Vehicle and Traffic Law (VTL) Article 48-B of the state constitution governs the registration of ATVs. VTL Article 48-C provides the rules for operation of ATVs. According to state law, ATVs:

- must be equipped with brakes, muffler, spark arrester, and tires;
- must be registered under the Department of Motor Vehicles;
- are disallowed on public lands, forest preserves, and state forests unless explicitly permitted as an Motorized Access Program for People With Disabilities, listed as an allowed use in a Unit Management Plan, or otherwise permitted and posted;
- are ineligible for highway travel unless the highway is designated by the road's jurisdictional owner (town, village, county) through local law or ordinance.

VTL Section 2405

Highways may only be designated for ATV travel when specific legal action is taken by the road's jurisdictional owner; these entities may only do so under very limited circumstances. Under VTL 2405 (1), governmental agencies "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)."

In the current legal landscape, case law and Attorney General input has routinely upheld that these road segments are meant to be discrete in length, well-planned, and directly connect one trail to another trail.

Notable Court Cases

For a complete summary of recent court cases, see pp. 14-17.

- **Pena v. State of New York (2019)** – An ATV is not considered a vehicle under NYS law.
- **Brown v. Pitcairn (March 2003)** – town passed a blanket law opening all town roads to ATV traffic; it was struck down.
- **DeSantis v. Village of Constableville (2018)** – the court acknowledged the steep burden of proof concern VTL 2405(1)'s "otherwise impossible" hurdle, but ultimately nullified the local law based on legal precedent.
- **ADK Council v. Town of Clare (2021)** – the only case in New York where the town's local law was fully upheld when challenged; town successfully provided a fact-based rationale for the highway opening, provided documentation, and was able to prove they followed the procedures outlined under VTL and SEQRA.



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Municipal Liability

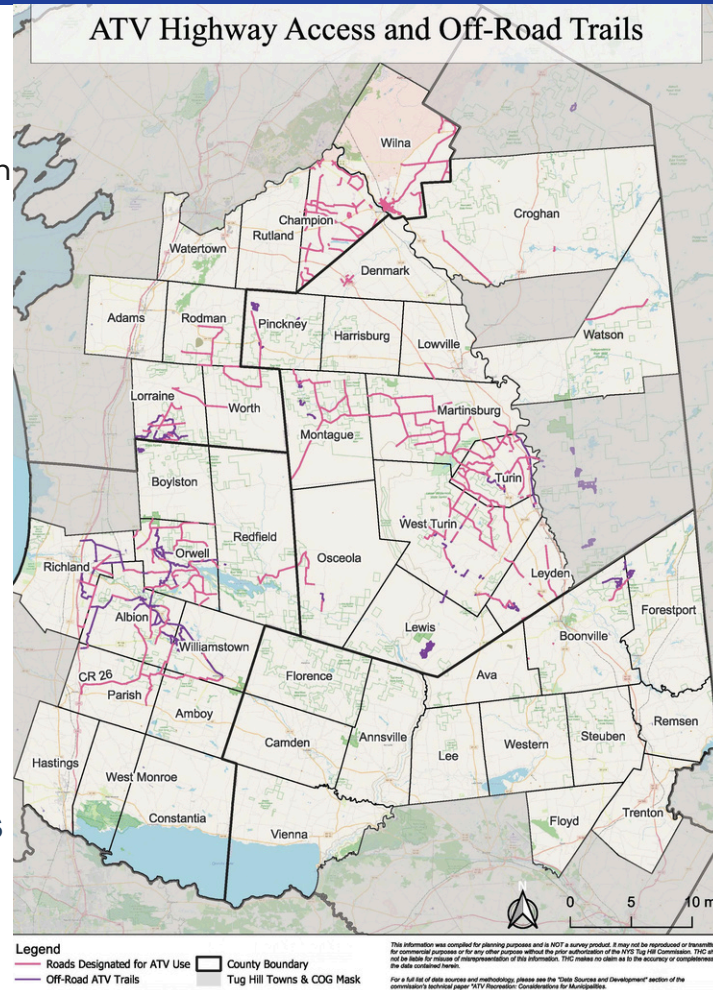
Municipalities have a legal duty of “reasonable care” toward their assets, including motorized recreation areas or highway connectors, to keep these areas in a reasonably safe condition for users. Strategies to minimize municipal liability against claims include:

- Clearly posted and enforced rules and regulations for use
- Regular and documented trail and highway connector grooming and maintenance
- Signage that is compliant with standards and properly placed
- Proper agreements with contractor groups or clubs
- Updated and accurate trail mapping
- Written prior notice law or notice of defects

It is important for municipalities to pre-plan for how enacted local laws regarding ATV use on their roads may affect their liability and coverage with insurance carriers (e.g. cost increases). Municipalities are responsible for insuring their roads; this risk is not transferred to any other entity.

Additional Considerations for Municipalities

- Insurance (p. 20)
- Highway departments and maintenance (p. 20)
- Signage (pp. 22-25)
- Emergency response (pp. 25-26)
- Law enforcement (pp. 27-29)
- Ticket citation data (pp. 30-32)



KEY TAKEAWAYS

- Legislative authority for a legal entity to designate portions of its jurisdictional roads is found in Vehicle and Traffic Law Article 48-C § 2405.
- Municipalities consistently face an uphill battle when local laws designating roads for ATV use are challenged in court. Nearly every local law, when challenged, was fully or partially overturned by the courts (except *ADK Council v. Town of Clare*).
- Municipalities aiming to open road mileage to ATVs should keep thorough records of their factual deliberation process (e.g. municipal board minutes, public feedback, expert input) and how those processes align with those described in SEQRA and Article 48-C.
- In general, designating municipal roads for ATV use will increase a municipality's exposure to liability from an insurance perspective.
- Municipalities have a legal duty of “reasonable care” for designated ATV areas and highway connectors.



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