

Winter Logging, Winter Recreation, and Town Roads

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TUG HILL COMMISSION ISSUE PAPER SERIES

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Supporting material developed by Mark Gebo, Attorney-at-Law.

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.

WINTER LOGGING, WINTER RECREATION, AND TOWN ROADS

The forested and remote nature of Tug Hill has made it a destination for many types of recreation, including snowmobiles and all-terrain-vehicles (ATVs), particularly in recent years. Traditionally, logging is one of the primary uses of the land on Tug Hill, and continues to be a major influence on the character of Tug Hill. Both of these activities provide economic benefits to local communities.

Serving both logging and recreation are town roads, which create most of the transportation and trail network in many areas of Tug Hill. Although trails are often thought of as "off-road," for snowmobile and ATV activity trails are often on roads, including year-round, seasonal, and minimum maintenance roads. At times the three – recreation, logging, and town roads – come together to create challenges for towns trying to manage their communities. This paper addresses many of the questions that surround these issues.

An example of a challenge facing a community might be a logger who needs to finish a logging job in December, using a town road that is also designated as a snowmobile trail. Does the town plow the road for the logger, or leave it unplowed for the trail? Another example could be dealing with a camp on a seasonal road becomes a year-round home, and the owners are demanding year-round maintenance of the road. There would then be considerations on the town level as to what designation and level of maintenance to continue with on that road.

Please also see the Commission's two technical papers that provide additional information on minimum maintenance roads, entitled **Procedure for Implementation of Low-Volume Roads Designation** and **Questions and Answers About Low-Volume Road Designation**.

What Is The Difference Between “Minimum Maintenance” Road Designation And “Seasonal Use” Designation?

“Seasonal use” is an annual designation by a resolution of the town board for the primary purpose of limiting snow plowing. However, such roads must be plowed upon the request of anyone living or operating a business on the road, even if they have located on the road following the designation. A camp is generally not considered a residential use, as telephone and mail service are usually not available at camps, children do not attend school from a camp, and it is not used for purposes of voter registration or as an address on motor vehicle records. Therefore it is generally considered a recreational use only, and plowing is not required.

“Minimum maintenance” roads are a particular type of low-volume road designated by local law for which maintenance standards are adopted by the town, which may include limitations on snowplowing. The minimum maintenance standard is continued until such time as the highway superintendent deems that maintenance standards should be changed, or the town board removes the minimum maintenance designation by local law.

There is considerable difference between the designation by a town of a seasonal use road and a minimum maintenance road. A seasonal use road is designated annually by resolution of the board. Minimum maintenance road standards, however, are established only after extensive study by the highway superintendent. The highway superintendent needs to determine what portions of what roads are appropriate for minimum maintenance and what degree of minimum maintenance is required on those sections. In this sense, there could be several categories of minimum maintenance roads depending on the different level of activity anticipated. Once the study is done, a local law must be drafted and a public hearing process must take place in typical local law fashion.

While a number of Tug Hill communities and others around the state are implementing minimum maintenance road standards, there is no clear statutory authority to do so. However, the Local Road Classification Task Force has developed guidelines for minimum maintenance roads, and Town law gives town boards wide discretion over the regulation of its roadways. This is confirmed in the Highway law and the Vehicle and Traffic law as well. These sections coupled with Municipal Home Rule law provisions empower a Town to categorize its roads into categories and determine the level of maintenance on them accordingly.

Does A Logging Job Constitute A Business On A Seasonal Road?

A review of agency and court decisions related to seasonal roads does not show logging to be a business that would require a seasonal road to be plowed. The spirit of the seasonal road law seems to deal with the need for fire protection services to have access to any structures that may have people residing or working in them. This would not apply to a logging job.

Can Weight Concerns On Town Roads Impact Logging?

Many seasonal and minimum maintenance roads may have weight limits (often on vehicles with a gross weight of 4 or more tons) that would prohibit logging vehicles from accessing those roads. The general procedure used when a logger has concerns about weight limitations is for the logging contractor to petition the town for an exemption. If the town were to grant the petition, it would issue a permit with terms and conditions (see Appendix A for an example of a permit). Terms and conditions may include: logger contacting the town highway superintendent on the days it intends to use the road; the superintendent taking into account the weather conditions before granting permission; and documentation of the condition of the road before and after use, with the logger responsible for restoration of the road in a reasonable amount of time if damage is done.

Can A Minimum Maintenance Road Be Upgraded To Allow For Plowing For Winter Logging?

Yes, if the town wishes to. If the current maintenance regime does not call for plowing, the town would need to amend the maintenance standards. The other option would be to remove the minimum maintenance designation, which would require a local law.

If A Minimum Maintenance Road Is Also A Designated Snowmobile Trail, What Are The Implications For Plowing For A Winter Logging Job?

Plowing would create a break in the snowmobile trail. Aside from the liability and safety issues raised below, disrupting the snowmobile trail system could have a negative economic impact on businesses in the area that depend on snowmobiling.

Can A Town Plow A Seasonal Road For Winter Logging?

A town could, if it wished, plow a seasonal road to provide access for winter logging. Plowing in effect would remove the seasonal designation. The town board would likely want to reinstate the seasonal status on the road when it wished to once again discontinue plowing on the road.

Why Would A Town Want To Avoid Plowing A Seasonal Or Minimum Maintenance Road?

It is not advisable for minimum maintenance and seasonal town roads to be plowed for a variety of reasons. First of all, most of these roads are lower quality roads. Improvements would need to be made to the roads to bring them up to a reasonable standard for a year-round road, so that snowplows would be able safely operate on them without causing damage to the road. This incurs significant costs for the town. If the road is plowed without improvements being made, significant damage could be done to the road, also incurring costs for the town.

Additionally, minimum maintenance and seasonal roads are often designated snowmobile trails. Plowing of the road could create a situation with the potential for snowmobile accidents, either by baring the road or creating a wall of snow. This could create a huge liability for the town.

Overall, plowing a road that is not normally plowed would in general cause confusion for both town residents and visiting recreationists.

Can A Town Close A Seasonal Road To Snowmobiling?

No, since according to state Parks, Recreation, and Historic Preservation law, all seasonal roads are available for snowmobiling, whether or not designated for snowmobile use by the town or a governmental agency.

What If A Logger Or Other Private Individual Wants To Plow A Seasonal Or Minimum Maintenance Road?

Although there is no law against it, it is not a good idea to allow a private individual not employed by the municipality to plow a town road. An accident to the individual or to anyone traveling the road could mean huge liability costs for the town, as that individual would not be covered by the town's liability insurance. Issues of negligence on the part of the town could also be raised, creating more legal problems.

Can A Town Contract With A Logger To Plow A Seasonal Or Minimum Maintenance Road?

The town has responsibility for the maintenance of its roads, and cannot delegate this responsibility to others. The town would take on a great liability to allow a third party, such as a logger, to take responsibility for plowing a seasonal or minimum maintenance road. If the town is going to open up a seasonal road for loggers, it should be the town's responsibility to do so and make sure it is done in a safe manner. Certain signage may also be required to alert snowmobile and ATV users to the change.

Does The Town Have To Provide Access To State Lands?

There is no provision in state law that requires a town to provide access to state lands.

What Kind Of Access To State Land Would Be Useful To The NYS Department Of Environmental Conservation (NYSDEC)?

NYSDEC would like to see roads that access their property of adequate quality so that tandem axle and semi-tractor log trucks can get in and out of State Forest lands from mid-May to mid-December each year. Additionally, NYSDEC would like to have adequate access for administrative and recreational usage by 2-wheel drive vehicles during the same time period.

Why Would A Town Want To Provide Access To State Lands?

State lands provide resources for logging, hunting, fishing, and recreation, all of which provide economic benefits to municipalities. In an emergency situation good access to state lands helps emergency vehicles reach injured persons. State lands provide for many traditional uses of the land that communities may want to foster. And, as state lands are owned by "the public," it is helpful for that public to have ready access to them.

How Do You Designate A Snowmobile Trail?

On a state highway, only the NYS Department of Transportation has the authority to designate the state highway a snowmobile trail. On a county road within a town or village, the town or village can designate the road a snowmobile trail, but must have the prior written approval of the county superintendent of highways or public works department. On a town or village road, the town or village can designate the road a snowmobile trail without any additional approvals. Town designation of snowmobile trails must be made by local law. The local law can also include rules and impose restrictions and conditions for the regulation and safe operation of snowmobile trails on the designated roads.

How Do You Designate An ATV Trail?

Designation of an ATV trail is similar to designation of a snowmobile trail. The NYS Department of Transportation has the authority to designate the state highway an ATV trail, and the county has the authority to designate a county highway an ATV trail. On a town or village road, the town or village can designate the road an ATV trail by local law. However, a town or village cannot designate a county highway within their town or village as an ATV trail without prior written approval of the county superintendent of highways or public works department. The local law can include rules and impose restrictions and conditions for the regulation and safe operation of ATV trails on the designated roads.

What Does State Law Say About What Roads Should Be Designated An ATV Trail?

The purpose of the state statute authorizing ATV trails is to allow towns to designate portions of town roads as ATV trails to connect portions of trail that cannot be connected another way. Nonetheless, many towns have opened some or all of their roads to create an ATV trail network largely comprised of roads – year-round, seasonal, and otherwise.

OVERVIEW OF DESIGNATING TYPES OF ROADS AND TRAILS

	How often does it need to be designated?	How is it designated?
<i>Minimum Maintenance Road</i>	Once designated, no need to redesignate until change in standard is needed.	Pass local law, file it with attached map, and install signs.
<i>Seasonal Use Road</i>	Annually.	Resolution.
<i>Snowmobile Trail</i>	Once designated, no need to redesignate until necessary. However, should be reviewed on an annual basis.	Local law.
<i>ATV Trail</i>	Once designated, no need to redesignate until necessary. However, should be reviewed on an annual basis.	Local law.

REFERENCES TO LAW

Seasonal use highways are defined in Section 205-a of the Highway Law.

There is not clear statutory authority for local governments to create *minimum maintenance road programs*. However, Article 16-B of the state Executive Law, Chapters 565 and 652 of the Laws of New York, established the NYS Local Roads Research and Coordination Council to continue the work of the Local Road Classification Task Force, which was charged with developing alternative road guidelines for town and county roads.

Weight limits on town roads are provided in Section 1660 of the Vehicle & Traffic Law.

See Section 25.09 of the Parks, Recreation, and Historic Preservation Law to *designate a snowmobile trail*.

See Section 2405 of the Vehicle and Traffic Law to *designate an ATV trail*.

Information on *closing a seasonal road to snowmobiling* was provided by Kevin Crawford, counsel for the Association of Towns. It references Section 25.05 of the Parks, Recreation and Historic Preservation Law.

APPENDIX A: Model Exemption Permit for Road Weight Exemption

Provided by Mark Gebo, this draft permit is provided as an example for a town to use when weight limitations on town roads are an issue with a logging job.

AGREEMENT

AGREEMENT MADE THIS ___ day of _____, 2002, by and between the Town of Anywhere, (*insert address here*) (the "Town") and ABC Lumber, (*insert address here*) ("ABC Lumber").

RECITALS

1. ABC Lumber has entered into and intends to enter into timber contracts with land owners bordering XYZ road in the Town;
2. The Town has posted XYZ Road to exclude any vehicle with a gross weight of over four (4) or more tons;
3. The posting of XYZ Road effectively prohibits ABC Lumber's logging contractor from using said road to complete its logging operations;
4. ABC Lumber has petitioned the Town for a permit to use XYZ Road; and
5. The Town is willing to issue a permit pursuant to authority granted the Town Board under New York State Vehicle and Traffic Law Section 1660(a) (11), to ABC Lumber upon the terms and conditions hereinafter provided.

NOW, THEREFORE, it is agreed as follows:

1. The Town hereby grants ABC Lumber a permit ("Permit") to allow ABC Lumber, its employees, agents, representatives and its logging contractors to use XYZ Road in the Town solely for its logging operations. This Permit is expressly conditioned upon the following:
 - a. ABC Lumber or its representatives shall contact the road superintendent for the Town to obtain permission to use the road.
 - b. The road superintendent of the Town will take into account all appropriate weather conditions and the condition of the road in making his determination to grant permission to use the road.
 - c. No logging operations shall be conducted prior to June 1, 2001.
 - d. Prior to the commencement of logging operations, the road superintendent for the Town and an ABC Lumber representative will take photographs of the roads to show the condition of the road prior to the commencement of the logging

operations. Copies of the photographs shall be furnished to the road superintendent and ABC Lumber.

- e. Once the logging operations commence, the road superintendent of the Town may, at any time, stop ABC Lumber, its employees, agents, representatives and/or its logging contractor from using the road when, due to weather conditions, use of the roads for logging operations could result in damage to the road, or where damage from logging operations is interfering in the use of the road by others.
 - f. In the event that ABC Lumber's logging contractor damages the road during the logging operations, ABC Lumber agrees to restore the road to the condition depicted in the photographs taken prior to the commencement of logging operations. The Town represents and acknowledges that its sole goal is to assure that the road is returned to the same condition that it was in prior to the logging operations and not to require ABC to upgrade, strengthen, widen or otherwise improve the road.
 - g. Any restoration required to be made to the road by ABC Lumber must be performed within a reasonable period of time from the conclusion of logging operations to the satisfactions of the road superintendent of the Town. If ABC Lumber believes that the road superintendent of the Town is arbitrary or capricious in requiring restoration of the road, the Town acknowledges that ABC Lumber has the right to bring an Article 78 proceeding or other appropriate proceeding to review the superintendent's determination.
 - h. ABC Lumber agrees to post cash security in the sum of five thousand dollars (\$5,000.00) with the Town Clerk for the benefit of the Town to insure that it will restore the road, if damaged by ABC Lumber or its logging contractor, to the condition it was in as shown in the photographs taken before the commencement of logging operations. This cash security shall be held by the Town Clerk in a separate account until road restorations are certified to be complete. The five thousand dollars (\$5,000.00) sum is not intended to limit in any way the obligation of ABC Lumber to perform and complete restoration of XYZ Road.
 - i. ABC Lumber agrees to hold the Town harmless for any injuries to ABC Lumber's employees and/or property or employees and/or property of its logging contractors or subcontractors arising out of the use of Dobbins Road.
2. Upon the completion of logging operations, ABC Lumber shall notify the road superintendent of the Town, in writing, that the road is ready for inspection and, within ten (10) days after notice is given, the road superintendent shall inspect the road with an ABC Lumber representative to ascertain whether the road has been damaged. If the road superintendent determines that the road has been damaged as a result of the logging operations based upon the photographs taken prior to the commencement of the logging operation, the road superintendent shall direct ABC Lumber to restore the road to the condition shown in the photographs. Upon completion of the restoration work, ABC

Lumber shall notify the road superintendent, in writing, that the road has been restored to the condition it was in as shown in the photographs. The road superintendent shall inspect the road with an ABC Lumber representative within ten (10) days after notice is given. If the road superintendent determines that additional restoration work is required, he shall so advise ABC Lumber, in writing, setting forth the additional work required to be performed. If ABC Lumber agrees with the road superintendent's determination, it will proceed with the restoration work and notify the road superintendent upon completion of the work. The same inspection procedure as set forth above will apply. If ABC Lumber disagrees with the road superintendent's determination, at any time, and the matter cannot be resolved by negotiation, ABC Lumber may commence an Article 78 or other proceeding to determine whether the road superintendent is acting in an arbitrary and/or capricious manner. Upon the completion of the restoration work to the reasonable satisfaction of the road superintendent, or, if the road superintendent determines on the initial inspection of the road after completion of the logging operations that no damage has occurred, or, if there was damage, it has been restored to the condition of the road shown in the photographs, the road superintendent shall notify ABC Lumber, in writing, that the road is accepted "as is" or "as restored". At such time the cash security shall be returned to ABC Lumber by the Town Clerk.

3. Any notice hereunder shall be in writing and sent to the party at its address indicated below. Such notice shall be deemed given if delivered in person or, if mailed by first class mail, post prepaid.

Town of Anywhere
Main Street
Anywhere, NY 01234

ABC Lumber
Main Street
Anyplace, NY 98765

4. This Agreement shall inure to the benefit of the parties hereto and their legal representatives, successors and assigns.
5. ABC Lumber agrees that prior to the commencement of logging operations it shall reimburse the Town for all costs including attorney's fees incurred in the issuance of this permit in a sum not to exceed two hundred fifty dollars (\$250.00).
6. In the event that the Town has to take any action to enforcement this Agreement or otherwise obtain compliance with its terms, ABC Lumber agrees to reimburse the Town for all such costs so incurred including reasonable attorney's fees and further agrees that such sums may be deducted from the cash security posted under this Agreement.
7. This Agreement shall be governed by the laws of the State of New York.

Town of Anywhere

By: _____

ABC Lumber

By: _____

APPENDIX B: Model Snowmobile Management Local Law

*From the issue paper **Snowmobiling in the Tug Hill Region and Lewis County**, this draft law is provided as an example for towns to use when designating snowmobile trails.*

Prepared by the Tug Hill Commission and Lewis County Planning Department

October 31, 1996
Revised – September 3, 1997

This model is prepared as a guide. Communities should consult their municipal attorney before adopting.

Town/Village of _____
Local Law # _____ of _____

A local law regulating the use and operation of snowmobiles on public highways and public lands in the Town/Village of _____.

BE IT ENACTED by the Town/Village Board of the Town/Village of _____ as follows:

Section 1. Purpose

The purpose of this local law is to protect the public health, safety, and welfare by regulating the operation of snowmobiles on public highways and on public lands, which includes designated trails open to the public in the Town/Village of _____, so that all snowmobiles are operated in a manner which will be compatible with the use of such highways and public lands for vehicular and pedestrian travel and other uses, and which will promote the safe and proper use of snowmobiles for recreation and commerce and minimize detrimental effects of such use on the environment.

Section 2. Operation Generally Prohibited

It shall be unlawful, except as provided in Section 5 of this law, for any person to drive or operate any snowmobile on, over, or across any public highway or public trail. Further, for purposes of this law, it is hereby determined that outside banks and shoulders of all public roadways and highways are non-existent by reason of the fact that they are impassable due to normally prevailing snow conditions and terrain in the Town/Village of _____. *(Note: In order to close the outside banks the town/village will need documentation, which attests to their “impassability”. This information could come from the highway super-intendent. A community does have the option of not restricting travel on outside banks.)*

Section 3. Definitions

- 1.1 “Highway” shall mean the entire width between the boundary or right-of-way lines of any way or place when any part thereof is open to the use of the public as a matter of right for the purpose of vehicular traffic including all highways designated as seasonal limited use highways and minimum maintenance roads.
- 1.2 “Operate” shall mean to ride in or on, other than as a passenger, or use or control the operation of a snowmobile in any manner, whether or not said snowmobile is under way.
- 1.3 “Operator” shall mean every person who operates or is in actual physical control of a snowmobile.
- 1.4 “Owner” shall mean any person having title to a snowmobile. If a snowmobile is sold under a contract of conditional sale whereby the title remains in the vendor, such vendor or his assignee shall not, after delivery of such snowmobile, be deemed an owner within the provisions of this section, but the vendee or his assignee, upon receipt of possession thereof, shall be deemed such owner notwithstanding the terms of such contract, until the vendor or assignee shall retake possession. A person holding only a security interest in a snowmobile shall not be deemed an owner unless such person also has possession of such snowmobile.
- 1.5 “Snowmobile” shall mean a self-propelled vehicle designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats.
- 1.6 “Snowmobile trail” shall mean a way designated as open to the public for snowmobiling.
- 1.7 “Special Event” shall mean an organized rally, race, exhibition or demonstration of limited duration, which is conducted according to a prearranged schedule and in which general public interest is maintained.

Section 4. Operation of Snowmobiles Generally

It shall be unlawful for any person to drive or operate any snowmobile in the following unsafe or harassing ways:

- 4.1 Imprudent speed: At a rate of speed greater than reasonable or proper under the surrounding circumstances. *At no time shall the rate of speed exceed 55 mph.*
- 4.2 Reckless operation: In a careless, reckless or negligent manners so as to unreasonably endanger the person or property of another or to cause injury or damage thereto.
- 4.3 Intoxication and drugs: While in an intoxicated condition or under the influence of narcotics or drugs as defined by Section 114-a of the Vehicle and Traffic Law.
- 4.4 Lights:

- a. Between sunset and sunrise, or when lights are required for safety, without displaying at least one headlight and taillight.
 - b. Operating other than as an emergency vehicle and displaying one or more lighted red or combination red and white lights which are revolving, rotating, flashing, oscillating, or constantly moving.
- 4.5 Railroad tracks: On the tracks or right-of-way of an operating railroad.
- 4.6 Plantings: In any tree nursery or planting in a manner which damages or destroys growing stock, or creates a substantial risk thereto.
- 4.7 On the lands of another: On private property without the consent of the owner or lessee thereof. Any person operating a snowmobile upon lands of another in violation of this section shall stop and identify himself upon the request of the landowner, his duly authorized representative or lessee, and, if requested to do so by said landowner, representative or lessee, shall promptly remove said snowmobile from the premises.
- 4.8 Towing a sleigh, sled, or toboggan: Towing a sleigh, sled, or toboggan, by a snowmobile, unless attached by a rigid support, connection or towbar.
- 4.9 Failure to stop and yield: In any place at any time, failing to stop and yield to an authorized ambulance, civil defense or police snowmobile or police vehicle being operated as an emergency vehicle and approaching from any direction.
- 4.10 Failure and refusal to comply: In any place at any time, failing or refusing to comply with any lawful order or direction of any police officer or other person duly empowered to enforce all laws of the state relating to snowmobiles.
- 4.11 Speeding prohibited: Snowmobiles operating in the Town/Village shall under no circumstance exceed any posted speed limit when operating on any snowmobile trail or highway designated as open to snowmobiling in Section 5.5 of this law. In addition, snowmobiles shall always be operated at a speed, which is reasonable and proper under existing circumstances as determined by any peace or police officer.
- 4.12 Obedience to vehicular traffic controls: Each person operating a snowmobile on any town/village highway shall observe all vehicular traffic signs and signals and all other rules and regulations applicable to vehicular traffic, and shall obey the orders and directions of any state or local police or other law enforcement officer authorized to direct or regulate traffic.
- 4.13 Hours of operation: No person shall operate a snowmobile within one hundred feet of a dwelling between twelve o'clock midnight and six o'clock A.M. at a speed greater than minimum required to maintain forward movement of the snowmobile. (Note: To make this more objective and thus more enforceable a community could add a particular speed limit

here provided that if they do s they note that this act supersedes NYS Parks and Recreation Law Section 25.05.)

Section 5: Conditions of Operation

A snowmobile may be operated on the public highways and public lands in the Town/Village of _____ only under the following conditions:

- 5.1 **Snowmobile trails:** Snowmobiles may be operated on snowmobile trails open to the public as so designated under the Parks and Recreation Law of the State of New York, or as designated by the Town/Village board from time to time in a manner consistent with provisions of this law and all other county or state laws relating to the operation of snowmobiles. *(Note: A Community could require that maps be filed with the Town/Village board for any trails which are to open to the public. To cover those trails open to the public, which is not registered with the State, a community could say in this section that “Snowmobiles may be operated on all snowmobile trails open to the public”.)*
- 5.2 **Emergencies:** Snowmobiles may be operated for the purpose of emergency travel only on all highways in the Town/Village of _____, during the period of time when and at locations where snow upon the highways renders travel by motor vehicles impractical as so declared and permitted by the chief executive officer of the Town/Village of _____, or when the specific travel for a specific purpose is authorized or directed by a peace or police officer or other duly recognized emergency personnel.
- 5.3 **Highway crossings:** Snowmobiles may be operated so as to take a direct crossing of a highway at any time of the day, provided that the crossing is made at an angle approximately 90 degrees to the direction of the highway, at a place where no obstruction prevents a quick and safe crossing, the snowmobile is brought to a complete stop before crossing the main traveled way of the highway, and the driver yields the right-of-way to all oncoming traffic.
- 5.4 **Culverts and bridges:** Snowmobiles may be operated on highways when necessary to cross a bridge or a culvert for a distance not to exceed 200 yards.
- 5.5 **Highways open for snowmobiling:** A snowmobile may be operated on those highways or sections of highways in the Town/Village of _____ as designated by resolution of the board. Such designations will be posted in the village clerks office and published in the official paper of the Town/Village. Such resolution shall be adopted prior to August 1 each year when necessary to open highways to snowmobiling or to change the status of highways previously opened to snowmobiling. *(Note: publication is not required by statute; however the public should be informed in all possible ways re: changes.)*

(Designate all highways, or sections of highways, which the community wishes to have opened to snowmobiles. Include all seasonal limited use highways that the community wishes to have open in addition to all sections of highways which need to be open for

trail head access. If the town/village has decided to take the approach of closing all outside banks, they could designate certain ones as open in the resolution.)

- 5.6 Special events: Snowmobiles may be operated at special events in a manner consistent with this local law, or in a manner as defined in Parks, Recreation, and Historic Preservation Law and upon authorization by the New York State Commissioner of Parks, Recreation, and Historic Preservation.

Section 6: Financial Responsibility

No snowmobile shall be operated on a highway or public lands which includes snowmobile trails designated as open to the public in the Town/Village of _____ unless the owner of such snowmobile has secured a policy of insurance affording coverage against liability imposed by law for bodily injury or death, and for property damage, to at least the minimum limits as required by the provisions of Section 25.13 of the Parks, Recreation, and Historic Preservation Law of the State of New York and regulations promulgated thereunder.

The owner of a snowmobile shall maintain proof of financial security by means of a certificate of insurance indicating compliance with the minimum coverage requirements of this section. The failure to produce such certificate of insurance, when required to do so, upon the demand of a magistrate, police officer, or state policeman while such vehicle is being operated on any highway (including trail designated as open to the public) in the Town/Village of _____ shall be presumptive evidence of operating a snowmobile without securing such policy of insurance. Upon the production of such certificate of insurance, the presumption is removed.

This section specifically supersedes those provisions of Section 25.13(1) of New York State Parks and Recreation Law by requiring liability insurance for operation on trails and outside banks.

Section 7: Operation by Youthful Operators

7.1 Age of Operator

- (a) No person under the age of ten years shall operate a snowmobile except upon lands owned or leased by his/her parent or guardian, unless (s)he is accompanied by a person over eighteen years of age or a person over fourteen years of age who holds a snowmobile safety certificate as issued by the Commissioner of the New York State Office of Parks, Recreation, and Historic Preservation. "Leased lands" as herein used shall not include lands leased by an organization of which said operator or his/her parent or guardian is a member.
- (b) A person under ten years of age may operate a snowmobile when accompanied by a person specified in paragraph (a) on trails or highways designated for snowmobile use by the Town/Village of _____. A person under

ten years of age shall not operate a snowmobile elsewhere on or across a highway at any time.

- (c) A person who is at least ten years of age but who has not attained his/her sixteenth birthday shall have the same right of operation as a person under ten years of age, except as provided in subdivision 7.2.

7.2 Snowmobile safety certificate: A person ten years of age but less than sixteen years of age who has received safety training as prescribed by the Commissioner of the New York State Office of Parks, Recreation, and Historic Preservation and has received the appropriate snowmobile safety certificate issued by said Commissioner may operate a snowmobile in the same manner as a person who is sixteen years of age or older.

7.3 Exhibition of certificate: The failure of such a youthful operator to exhibit a snowmobile 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.

7.4 No owner of a snowmobile shall authorize or permit the operation thereof within the state by any person in violation of the provisions of this section.

(This section is taken directly from Section 25.19 of Parks and Recreation Law. If a community decides to implement a stricter provision in this regard, they must state that the stricter provisions superseded Section 25.19 of Parks and Recreation Law.)

Section 8: Violation

In addition to any penalty contained in any other provisions of law, any person who shall violate any provision of this local law shall be guilty of a violation and shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250.00) and or fifteen days in jail. *(A community could have an escalating fine for second or third violations committed within a specified period of time.)*

A notice of violation may be issued by any State Police Officer, County Sheriff, Town/Village police officer or constable, conservation officer, parks and recreation officer, or by any other law enforcement official or other person so designated by the Town/Village Board of _____ . Such authorized individual may initiate a violation by service of an appearance ticket.

Section 9: Severability

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 10: Liability for Negligence

Negligence in the use or operation of a snowmobile shall be attributed to the owner. Every owner of a snowmobile used or operated in the Town/Village of _____ or in this state shall be liable and responsible for death or injury to a person or damage to property resulting from negligence in the use or operation of such snowmobile 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.

Section 11: Prior Notice

11.1 With respect to injuries arising from the operation of snowmobiles, no civil action shall be maintained against the Town/Village of _____ or an officer thereof in charge of highway supervision and maintenance, for damages or injuries to person or property sustained by reason of any highway, bridge, street, sidewalk, crosswalk or culvert being defective, out of repair, unsafe, dangerous, or obstructed, unless prior written notice of such defective, unsafe, dangerous, or obstructed condition on such highway, bridge, or culvert was actually given to the municipal agent, officer, or employee authorized by Section 311 of the Civil Practice Law and Rules to receive service or to the chief municipal officer in charge of highway supervision and maintenance, and there was a failure or neglect within a reasonable time thereafter to repair or remove the defect, danger, or obstruction complained of. No such action shall be maintained for damages or injuries to person or property sustained solely due to conditions caused by snow and/or ice removal, or the non-removal thereof, from highways designated as open to snowmobiles in the Town/Village of _____.

11.2 The municipal officer in charge of highway supervision and maintenance and any other municipal agent, officer, or employee designated to received service of process shall transmit in writing to the clerk of the municipal body involved within twenty-four (24) hours or as soon as practical after the receipt thereof, all written notices received by him pursuant to this section.

11.3 This section is included to clarify the application of section 71-b of General Municipal Law in the Town/Village of _____.

Section 12: Effective Date

This local law shall take effect immediately upon its filing in accordance with the provisions of Section 27 of the Municipal Home Rule Law of the State of New York.

APPENDIX C: Model ATV Law

Provided by Mark Gebo, this draft law is provided as an example for towns to use when designating ATV trails.

Article 1. – Statement of Authority. The Town Board of the Town of Anywhere, pursuant to the authority granted it under Article 48-c of the Vehicle and Traffic Law and Sections 10 and 20 of the Municipal Home Rule Law, hereby enacts as follows:

Article 2. – Statement of Purpose and Findings. The Town Board of the Town of Anywhere has been requested to open certain Town roads in the Town of Anywhere to the use of ATV's. It appears from examination that the roads requested present no safety issues, are needed to allow ATV's access to existing trails, and are otherwise also used by ATV's at the present time. It is the purpose of this local law to provide for the use of certain Town roads by all-terrain vehicles.

Article 3. – Enactment. The Town Board of the Town of Anywhere hereby enacts as follows:

Section 1. – Definitions.

1. All-Terrain Vehicles shall mean vehicles as defined by Article 48-c of the Vehicle and Traffic Law as all-terrain vehicles hereinafter referred to as "ATV's".
2. Highways shall mean Town highways as shown on the inventory of highways of the Town of Anywhere.

Section 2. – ATV Use on Town Highways.

Pursuant to Section 2405 of the Vehicle and Traffic Law, the following Town Highways shall be designated as open for ATV traffic:

(Listing of highways or sections of highways inserted here.)

Section 3. – Rules and Regulations.

1. No ATV shall be operated on any Town highway open for ATV use except in accordance with the provisions of the Vehicle and Traffic Law of the State of New York.
2. No ATV shall be operated on any Town highway unless properly registered and insured as required by the Vehicle and Traffic Law of the State of New York.

Section 4. – Signage.

The Superintendent of Highways of the Town of Anywhere shall post all roads open to ATV traffic with appropriate signs or markers in the manner provided by the rules and regulations of the Commissioner of the Department of Motor Vehicles.

Section 5. – Filing.

The Town Clerk of the Town of Anywhere is hereby directed to file a copy of this local law with the Commission of the Department of Motor Vehicles.

Article 4. – Severability.

Should any sections or provisions of this local law be declared invalid, such decision shall not affect the validity of the remaining portions of this local law.

Article 5. – Effective Date.

This local law shall become effective after filing in the office of the Secretary of State of the State of New York.