

**DRAFT**  
**ATV Policy for**  
**Public ATV Access to Recreational Programs**  
**on the**  
**Forest Preserve, Reforestation, Multiple Use, Unique,**  
**Wildlife Management Areas, Environmental Education**  
**Centers and**  
**Conservation Easement Lands**

New York State Department of Environmental Conservation

**DEC Policy**

**Issuing Authority:** Commissioner

**Date Issued:** \*\*\*\*DRAFT\*\*\*\*

**Latest Date Revised:** 3-9-05

**I. Summary:**

All Terrain Vehicles (ATVs) are one of several possible modes of access to public and easement lands owned and/or managed by the Department. These lands include Forest Preserve lands, Reforestation, Multiple Use and Unique Areas, Conservation Easements, Wildlife Management Areas and Environmental Education Centers. This policy sets forth criteria for determining the suitability of roads or trails to be opened or remain open to public ATV access (1) through the Unit Management Planning (UMP) process established for Forest Preserve, Reforestation, Multiple Use and Unique Areas and (2) pursuant to the terms of each individual Conservation Easement and associated Recreational Management Plans. Finally, this policy prohibits the public use of ATVs within the boundaries of Wildlife Management Areas and Environmental Education Centers, with the exception of ATV use by persons with CP-3 permits and Non-Ambulatory Hunting permits.

**II. Policy:**

**A. PUBLIC LANDS**

All Terrain Vehicle (ATV) riding is not a specific program offered on public lands owned in fee and managed by the Department. Further, the Department does not encourage ATV use on such lands. ATV use, however, is one of several possible means that the public may utilize to access Department programs (e.g., hunting, fishing, camping, and hiking) on public and easement lands that are deemed appropriate for such use and are open to public ATV access. The suitability of roads or trails in the Forest Preserve, Reforestation, Multiple Use

and Unique Areas to be opened or remain open to public ATV access will be established through the Unit Management (UMP) process, and only if the relevant requirements of the Adirondack Park State Land Master Plan (APSLMP) and Catskill Park State Land Master Plan (CPSLMP) (when applicable), Department rules and regulations, Vehicle and Traffic Law provisions, and other policy criteria have been satisfied.

Public Use of ATVs within the boundaries of Wildlife Management Areas and Environmental Education Centers is prohibited, with the exception of ATV use by persons with CP-3 permits and Non-Ambulatory Hunting permits.

In evaluating whether a road or trail in the Forest Preserve, Reforestation, Multiple Use and Unique Areas should be opened or remain open to the public use of ATV's through the UMP process, each of the following criteria will be followed:

### **1. Forest Preserve**

Criteria for Evaluating Suitability of Roads on the Forest Preserve for Public ATV Access: these criteria establish that there are very few circumstances where public ATV access can be provided on the Forest Preserve.

- b. Natural Resource Protection. If the natural resources cannot sustain continued motor vehicle use by ATVs (as demonstrated by such signs as: soil erosion within the road bed or into streams, wetlands or water bodies; impacts of ATV traffic outside the road corridor; or other inappropriate impacts), the road will not be opened to public ATV access or, if already open to public ATV access, will be closed to public ATV access. Roads that are open to ATV use, but which are suffering significant adverse environmental impacts as a result of such use, may be closed by the Department in order to protect the resource. A road that was opened to public ATV access but was closed due to such impacts may be reopened to public ATV access only where such impacts have been mitigated and each of these criteria is satisfied.
- c. APSLMP and CPSLMP. On State lands within the Adirondack Park classified as Wild Forest by the APSLMP and on State lands within the Catskill Park classified as Wild Forest by the CPSLMP, ATVs are allowed only on public motor vehicle roads, under certain circumstances (see d. below).
- d. 6 NYCRR §196.1. On Forest Preserve lands, ATVs are permitted only on roads.
- e. Vehicle and Traffic Law §2405(1). ATVs are allowed on public highways only where the purpose is to provide access to adjacent trails and areas that are legally open to the public use of ATVs and such trails and areas cannot be accessed by ATVs unless such roads are opened to ATVs. Roads open to public motor vehicle use are considered public highways.
- f. Compatibility with other public use. Public ATV access must be compatible with other public use of the area as authorized by the UMP.
- g. Program access. Public ATV riding is not a program in the Forest Preserve. Public ATV use is only to provide access to a recognized recreational program, such as hunting, fishing, trapping, camping or wildlife observation in compliance with the other criteria set forth here.

- h. Public Safety. It must be demonstrated that roads proposed to be open to public ATV use will be safe for the operation of ATVs including the posting of signage for speed limits, stopping, caution and curves. The UMP must establish that the road and trail surface can be constructed or rehabilitated and maintained to prevent dangerous conditions. Trail design should consider the use of one-way trails in situations where the passage of two way traffic is limited by site conditions.
- i. Maintenance. Appropriate soil conditions and maintenance funds must exist to ensure that the road can be maintained to prevent muddy or eroded conditions.
- j. Illegal off-road ATV use. It must be demonstrated that no significant illegal ATV use off of the road has occurred and that sufficient measures can be taken to ensure that such use will not likely occur.
- k. Passable to passenger vehicles. For roads in Forest Preserve in the Adirondack Park, the road surface must be designed for travel by automobiles. For roads in Forest Preserve in the Catskill Park, the road surface must be designed for travel by motor vehicle.
- l. Seasonal use. Notwithstanding APSLMP and CPSLMP requirements set forth above, if it is determined that public ATV access on a particular road (not suitable for automobile access) is needed to access Department programs on a seasonal basis then a road that is otherwise closed to public motor vehicle use may be opened on a seasonal basis solely to public ATV access and by Temporary Revocable Permit (TRP) only. If it is determined that a particular road is needed to access Department programs in the Unit on a seasonal basis, and criteria a through h, as set forth above, are satisfied, then a road that is otherwise closed to public motor vehicle use may be opened through the UMP process solely to public ATV access on a seasonal basis and by TRP only. This permitted seasonal access may only be provided if (1) such access does not alter the fundamental nature of the programs offered by the Department to the public, (2) only for a time period specified in an approved UMP and (3) only as an interim measure until maintenance of the road occurs so that the road is again suitable for travel by automobiles.
- m. Education and Enforcement: Management actions involving public ATV access must also address the need for monitoring, education and enforcement. All public ATV access routes, whether remaining open or being closed, must be monitored on a periodic basis for compliance with the management action. It is not expected that immediate compliance with management actions will occur, but monitoring efforts should show a higher rate of compliance over time. If noncompliance continues to exist, alternative management actions (including road closure) need to be developed and implemented. Efforts need to be made to inform users where legal and safe public ATV riding opportunities exist. This will be accomplished through providing adequate signage, unit brochures and maps, and increased enforcement patrols.
- n. ATV Access for Persons with Disabilities. Notwithstanding the APSLMP and CPSLMP requirements set forth above, limited access to programs by persons with disabilities in Wild Forest units may be allowed to provide program access, provided such access does not alter the fundamental nature of the programs offered in this area by the Department to the public. The APSLMP (Section I, Introduction, Unit Management Plans), notes that UMPs should include management objectives that address, on a site-specific basis as may be pertinent to the area, “the identification, in . . . appropriate portions of wild forest areas accessible by motor vehicles, of measures that can be taken to improve access to and enjoyment of these lands, and associated

structures and improvements, by the physically handicapped.” Accordingly, roads which are otherwise closed to public motor vehicle use may be opened to persons with qualifying disabilities on a permit basis under Commissioner Policy 3 through the UMP process. In both the Adirondack and Catskill Parks, if it is determined that a particular road is needed to access Department programs by people with qualifying disabilities to Department programs in the Unit, and criteria a through h, as set forth above, are satisfied, then a road that is otherwise closed to public motor vehicle use may be opened through the UMP process solely to ATV access to persons with disabilities who have CP-3 permits.

## **2. Reforestation, Multiple Use and Unique Areas**

### **Criteria for Evaluating Suitability of Roads or Trails on Reforestation, Multiple Use and Unique Areas for Public ATV Access**

- a. **Natural Resource Protection.** If the natural resources cannot sustain continued motor vehicle use ( such as: soil erosion within the road bed, trails or into streams, wetlands or water bodies; impacts of ATV traffic outside the road or trail corridor; or other inappropriate conditions), the road or trail will not be opened to public ATV access or, if already open to public ATV access, will be closed to public ATV access. Roads or trails that are open to ATV use, but which are suffering significant adverse environmental impacts as a result of such use, may be summarily closed by the Department in order to protect the resource. A road or trail that was opened to public ATV access but was closed due to such impacts may be reopened to public ATV access only where such impacts have been mitigated and each of these criteria is satisfied.
- b. **Vehicle and Traffic Law §2405(1).** ATVs are allowed on roads only where the purpose is to provide access to adjacent trails and areas that are legally open to the public use of ATVs and such trails and areas cannot be accessed by ATVs unless such roads are opened to ATVs.
- c. **Compatibility with other public use.** Public ATV access must not displace or significantly interfere with other public use of the road or trail as provided for in the UMP.
- d. **Program Access.** Public ATV riding is not a program on Reforestation, Multiple Use and Unique Areas. Public ATV use is only to provide access to a recognized recreational program, such as hunting, fishing, trapping, camping or wildlife observation in compliance with the other criteria set forth here.
- e. **Public Safety.** It must be demonstrated that roads and trails proposed to be open to public ATV use will be safe for the operation of ATVs including the posting of signage for speed limits, stopping, caution and curves. The UMP must establish that the road and trail surface can be constructed or rehabilitated and maintained to prevent dangerous conditions. Trail design should consider the use of one-way trails in situations where the passage of two way traffic is limited by site conditions.
- f. **Maintenance.** Appropriate soil conditions and maintenance funds must exist to ensure that roads and trails can be maintained to prevent a recurrence of muddy or eroded conditions.
- g. **Illegal off-road ATV use.** It must be demonstrated that sufficient measures will be taken to prevent illegal ATV use off of the designated road or trail.

- h. Seasonal use. If it is determined that public ATV access on a particular road or trail is needed to access Department programs on a seasonal basis, and the above criteria are otherwise satisfied, then a road or trail that is otherwise closed to public motor vehicle use may be opened on a seasonal basis solely to public ATV access.
- i. Education and Enforcement: Management actions involving public ATV access must also address the need for monitoring, education and enforcement. All public ATV access routes, whether remaining open or being closed, must be monitored on a periodic basis for compliance with the management action. It is not expected that immediate compliance with management actions will occur, but monitoring efforts should show a higher rate of compliance over time. If noncompliance continues to exist, alternative management actions (including road closure) need to be developed and implemented. Efforts need to be made to inform users where legal and safe public ATV riding opportunities exist. This will be accomplished through providing adequate signage, unit brochures and maps, and increased enforcement patrols.
- j. ATV access for Persons with Disabilities. Access to programs by persons with disabilities may be allowed to provide program access, provided such access does not alter the fundamental nature of the programs offered in the area by the Department to the public. Roads or trails which are otherwise closed to public motor vehicle use may be opened to persons with qualifying disabilities on a permit basis under Commissioner Policy 3.

## **B. CONSERVATION EASEMENT LANDS**

On Conservation Easements lands, ATV use is one of several possible means that the public may utilize to access Department programs (e.g., hunting, fishing, camping, and hiking). Also, ATV riding opportunities will be considered on conservation easement lands in appropriate areas that are compliant with the criteria below. The suitability of roads or trails on conservation easement lands to be opened or remain open to public ATV access will be established through negotiations with the landowner for public access rights and through the recreational planning process. In evaluating whether a road or trail should be opened or remain open to the public use of ATV's, the following criteria will be followed:

### Criteria for Evaluating Suitability of Roads or Trails on Conservation Easement Lands for Public ATV Access

1. Terms of the Easement: The right to provide public ATV access will be established pursuant to the terms of each individual Conservation Easement and through the subsequent development of Recreational Management Plans for such areas.
2. Underlying Fee Title Interest: The rights of the underlying fee owner will be respected to ensure that any proposed public ATV access does not interfere with the reserved rights of the underlying fee owner to manage its lands.
3. Natural Resource Protection. If the natural resources cannot sustain continued motor vehicle use (such as: soil erosion within the road bed, trail or into streams, wetlands or water bodies; impacts of ATV traffic outside the road or trail corridor; or other inappropriate conditions), the

road or trail will not be opened to public ATV access or, if already open to public ATV access, will be closed to public ATV access. A road or trail that was opened to public ATV access but was closed due to such impacts may be reopened to public ATV access only where such impacts have been mitigated and each of these criteria is satisfied.

4. Vehicle and Traffic Law §2405(1). The purpose of VTL section 2405(1) is to prevent the simultaneous public use of passenger vehicles and ATVs on public highways except when necessary for ATVs to access trails or areas adjacent to such highways where it is otherwise impossible for them to access such trails or areas. Roads on Conservation Easement Lands that are closed to the public use of passenger vehicles are private roads. Consequently, with respect to Conservation Easement Lands, the provisions of VTL section 2405(1) are not applicable.
5. Compatibility with other public use. Public ATV access must not displace or significantly interfere with other public use of the road or trail as provided for in the recreation plan.
6. Public Safety. The road or trail surface must be able to be maintained to prevent dangerous conditions. Trail design should consider the use of one-way trails in situations where the passage of two way traffic is limited by site conditions.
7. Maintenance. Appropriate soil conditions and maintenance funds must exist to ensure that roads and trails can be maintained to prevent a recurrence of muddy or eroded conditions.
8. Illegal off-road ATV use. It must be demonstrated that sufficient measures will be taken to prevent illegal ATV use off of the designated road or trail.
9. Seasonal use. If it is determined that public ATV access on a particular road or trail is needed to access Department programs on a seasonal basis, and the above criteria are otherwise satisfied, then a road or trail that is otherwise closed to public motor vehicle use may be opened on a seasonal basis solely to public ATV access.
10. Education and Enforcement: Management actions involving public ATV access must also address the need for monitoring, education and enforcement. All public ATV access routes, whether remaining open or being closed, must be monitored on a periodic basis for compliance with the management action. It is not expected that immediate compliance with management actions will occur, but monitoring efforts should show a higher rate of compliance over time. If noncompliance continues to exist, alternative management actions need to be developed and implemented. Efforts need to be made to inform users where legal and safe public ATV riding opportunities exist. This will be accomplished through providing adequate signage, unit brochures and maps, and increased enforcement patrols.
11. ATV access for Persons with Disabilities. Access to programs by persons with disabilities may be allowed. Roads or trails which are otherwise closed to public motor vehicle use may be opened to persons with qualifying disabilities on a permit basis under Commissioner Policy 3 by mutual consent of the underlying fee owner and the Department and provided in the specific terms of the easement.

## C. DEFINITIONS

1. Adirondack Park State Land Master Plan Guidelines. At pages 17-18, the APSLMP defines “motor vehicle” in relevant part as “a device for transporting supplies or material, incorporating a motor or an engine of any type for propulsion and with wheels . . . for traveling on or adjacent to land and water or through water” and specifies that the term includes all-terrain vehicles. The APSLMP defines “All Terrain Vehicle” on page 16 as “a motor vehicle designed or used for cross country travel on unimproved roads or trails,” including “jeeps or other four wheel drive automobiles, dirt or trail bikes and all forms of ATVs, ATCs, and ORVs,” but excluding snowmobiles. Thus, for purposes of the APSLMP, an ATV is a “motor vehicle.”

The APSLMP defines “road” on pages 18-19 as “an improved or partially improved way designed for travel by automobiles and which may also be used by other types of motor vehicles except snowmobiles, unless the way is a designated snowmobile trail, and is either:

- (i) maintained by a state agency or a local government and open to the general public;
- (ii) maintained by private persons or corporations primarily for private use but which may also be open to the general public for all or a segment thereof; or (iii) maintained by the Department of Environmental Conservation or other state agency and open to the public on a discretionary basis.

The APSLMP provides at page 33, in Basic Guideline 4 for units classified as Wild Forest that “public use of motor vehicles will not be encouraged and there will not be any material increase in the mileage of roads . . . open to motorized use by the public in wild forest areas that conformed to the Master Plan at the time of its original adoption in 1972.”

The APSLMP, on page 34 in Guideline 2 for “Motor vehicles, motorized equipment and aircraft,” provides further instruction on the public use of motor vehicles in Wild Forest units. This Guideline allows the use of motor vehicles by the general public, subject to the “no material increase” provision cited above, but only on existing public roads and Department of Environmental Conservation roads designated as open for public use by motor vehicles by the Department of Environmental Conservation. This Guideline also limits the public use of ATVs to “existing public roads or Department of Environmental Conservation roads open to such vehicles.”

Thus, the APSLMP authorizes the use of ATVs in the Forest Preserve in areas classified as Wild Forest only on roads that are open for public motor vehicle use. Simply, ATV use is not allowed in Wild Forest units on trails or trail less areas adjacent to roads.

2. Catskill Park State Land Master Plan Guidelines. At page 100, the CPSLMP defines “motor vehicle” in relevant part as “a device for transporting personnel, supplies or material that uses a motor or an engine of any type for propulsion and has wheels, tracks, skids, skis, air cushion or other contrivance for traveling on, or adjacent to air, land and water or through water. The term includes such vehicles as automobiles, trucks, jeeps, motorbikes, all-terrain vehicles, duffle carriers, snowcats, bulldozers and other earth moving equipment and motorboats, but does not include snowmobiles”. Thus, for purposes of the CPSLMP, an ATV is a “motor vehicle.

The CPSLMP defines “road” on page 102 as “an improved way designed for travel by motor vehicles and:

- (i) either maintained by a state agency or a local government and open to the general public; or
- (ii) maintained by private persons or corporations primarily for private use but which may also be partly or completely open to the general public for all or a segment thereof; or
- (iii) maintained by the Department of Environmental Conservation for administrative use only.

The CPSLMP provides at page 35, Guidelines for Management and Use for units classified as Wild Forest that “public use of motor vehicles will not be encouraged and there will not be any increase in the number or length of roads and trails open to motorized use”.

The CPSLMP on page 37 in “Motor vehicles, Motorized Equipment and Aircraft,” provides further instruction on the public use of motor vehicles in Wild Forest units. This Guideline allows the use of motor vehicles by the general public, subject to the “no material increase” provision cited above, but only on existing public roads, maintained by the Department of Transportation or local governments or on designated roads now open to the public at the discretion of the Department of Environmental Conservation.. This Guideline also limits the public use of ATVs to existing public roads or Department of Environmental Conservation roads open to such vehicles. Further, the CPSLMP states on page 38 that “no new roads will be constructed”.

Thus, the CPSLMP authorizes the use of ATVs in the Forest Preserve in areas classified as Wild Forest only on roads that are open for public motor vehicle use. Simply, ATV use is not allowed in Wild Forest units on trails or adjacent trail less areas.

3. Department Regulations. 6 New York Code of Rules and Regulations (“NYCRR”) Part 196 implements the APSLMP and CPSLMP provisions on motor vehicle use on Forest Preserve lands in the Adirondack and Catskill Parks. Pursuant to 6 NYCRR §196.1, the operation of motorized vehicles is allowed only on roads.
4. The Vehicle and Traffic Law. V&TL §2405(1) sets forth the requirements that municipalities and state agencies must follow in order to open highways to ATVs:

. . . any . . . governmental agency with respect to highways . . . 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.

V&TL §118 defines “highway” as “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.” Thus, a road, as defined in the Master Plan, is a “highway,” as defined in the Vehicle and Traffic Law, if the road is open to public vehicular traffic.

V&TL §2405(1) requires that state agencies and municipalities which open highways to ATVs must first determine that “it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway.” Implicit in this provision is a requirement that such adjacent areas or

trails must be legally opened to ATV use.

Three recent State Supreme Court decisions have interpreted the “otherwise impossible to gain access to areas or trails adjacent to the highway” requirement in V&TL § 2405(1). See, e.g., Santagate v. County of Franklin, Supreme Court, Franklin County, Index No. 99-23, January 28, 1999, Decision and Order; Brown v. Town of Pitcairn, Supreme Court, St. Lawrence County, Index No. 113023, March 13, 2003; and Brown v. Town of Pitcairn, Supreme Court, St. Lawrence County, Index No. 114295, August 19, 2003. These three decisions have each held that, in order to satisfy the “otherwise impossible to gain access to areas or trails adjacent to the highway” requirement, a municipality must make a specific finding that the purpose of opening a road is to provide ATVs with access to areas or trails adjacent to the highway which are otherwise impossible to access. The decisions in these cases, although involving municipal local laws or ordinances, are applicable to State agencies because State agencies, like municipalities, are charged by the statute with making the “otherwise impossible to gain access to areas or trails adjacent to the highway” finding.

In summary, the APSLMP provides that in Wild Forest units ATVs are not allowed on trails or trail less areas and are allowed only on roads that are open to the public for use by other types of motor vehicles. However, the V&TL provision prohibits the use of ATVs on such roads except for the limited purpose of providing access to areas or trails adjacent to the roads which are legally open to ATVs and which cannot otherwise be accessed. Therefore, ATV’s cannot be allowed on Forest Preserve except for short distances on roads open to other motor vehicles where the road provides a connection to a route open to the public on private or other public lands, including easement lands.

With respect to Reforestation, Multiple Use and Unique Areas, V&TL §2405(1) is equally applicable. ATV’s are not allowed on public highways unless the purpose of such opening is to provide ATV’s with access to areas which they otherwise cannot access. If adjacent trails or areas are opened to ATVs in these areas, opening the roads requires a specific finding, through the UMP process, that ATVs cannot access such trails or areas unless adjacent roads are open to ATVs.

The purpose of VTL section 2405(1) is to prevent the simultaneous public use of passenger vehicles and ATVs on public highways except when necessary for ATVs to access trails or areas adjacent to such highways where it is otherwise impossible for them to access such trails or areas. Roads on Conservation Easement Lands that are closed to the public use of passenger vehicles are private roads. Consequently, with respect to Conservation Easement Lands, the provisions of VTL section 2405(1) are not applicable.

#### D. FUTURE LEGISLATION

Any future adopted legislation addressing **Public ATV Access on the Forest Preserves, Reforestation, Multiple Use and Unique Areas, and Conservation Easement Lands** will take precedence and this policy will be implemented consistent with this legislative action.

### III. Purpose and Background:

The **ATV Policy for Public ATV Access on the Forest Preserves, Reforestation, Multiple Use and Unique Areas, and Conservation Easement Lands** has been developed as a result of the critical need to address the impending impacts of public ATV access on these lands and to respond to issues surrounding public ATV access on these lands. The purpose of the **policy** is to provide the Department and its staff with a set of criteria for evaluating the suitability of roads on these public lands for public ATV access and to establish that the determination to open any roads for public ATV access will be made through the UMP process for Forest Preserves, Reforestation, Multiple Use and Unique Areas and Unique Areas and pursuant to the terms of each Conservation Easement and the subsequent Recreational Management Plans.

### IV. Responsibility:

It shall be the responsibility of all Department Divisions and staff to implement the guidelines set forth in this policy. It shall also be the responsibility of the Department to periodically review the provisions of this policy and recommend amendments, where necessary.

It shall also be the responsibility of the Department to consider the promulgation of appropriate controls, including equipment requirements, to minimize adverse environmental impacts of public ATV use through regulations.

### V. Procedure:

This policy will be implemented through the UMP process established by the APSLMP, CPSLMP, Reforestation, Multiple Use and Unique Areas Handbook and pursuant to the terms of each individual Conservation Easement and associated recreational management plans.

#### Related References:

- Adirondack Park State Land Master Plan (APSLMP), Adirondack Park Agency, June 2001
- Catskill Park State land Master Plan (CPSLMP), NYSDEC, 1985
- Policy LF 91-2
- 2003 Adirondack Park Agency/Department of Environmental Conservation Memorandum of Understanding
- Hutchins et al. v. Town of Colton et al., St. Lawrence County Supreme Court, Index N. 116349, Decision and Order dated August 31, 2004.
- Santagate v. County of Franklin, Supreme Court, Franklin County, Index No. 99-23, January 28, 1999, Decision and Order
- Brown v. Town of Pitcairn, Supreme Court, St. Lawrence County, Index No. 113023, March 13, 2003;
- Brown v. Town of Pitcairn, Supreme Court, St. Lawrence County, Index No. 114295, August 19, 2003.