

Old roads in legal limbo

DEC decision leaves observers wondering if Forest Preserve routes could be opened to motor vehicles.

By Adam Federman

Old roads run like fault lines through the Adirondack Park. Sources of conflict since the early 1900s, they have been at the heart of several land-use battles over the last two decades. Indeed, Crane Pond Road in Schroon and the Old Mountain Road in Keene and North Elba have become symbols of discord.

It's hard to say how many old roads crisscross the Forest Preserve, though they probably number in the hundreds. Wells Supervisor Brian Towers says just about every town in the Park has at least one or two of these roads—and there are 103 towns in the Park. Some estimates run higher. Former Schroon Councilman Donald Sage contends that the state has illegally closed more than three hundred town roads just since the late 1980s.

What if all the old roads were suddenly open to pickup trucks, snowmobiles, and all-terrain vehicles?

Adirondack Council spokesman John Sheehan says the implications could be far reaching. "There would be widespread destruction of wildlife habitat, disturbance of the peace of the wilderness that we have right now, and attempts to get permission from the state to take what are footpaths and turn them into highways," he said.

It's a scenario, however scary, that Sheehan and other green activists have been forced to contemplate as a result of a controversial ruling by state Environmental Conservation Commissioner Pete Grannis concerning the Old Mountain Road, which dates back to the early 1800s.

The road runs through the Sentinel Range Wilderness and had been closed to motor vehicles since 2002. It's now part of the twenty-five-mile Jackrabbit Ski Trail that runs from Keene to Saranac Lake. In 2005, Jim McCulley, the president of the Lake Placid Snowmobile Club, challenged the closure of the road by driving his pickup truck on it. He was ticketed by the state Department of Environmental Conservation (DEC).

Last spring, Grannis dismissed the charge against McCulley and agreed with him that the road had never been properly abandoned. In short, he said the road belonged to the towns of Keene and North Elba and DEC never had the right to close it to motorized vehicles.

DEC spokesman Yancey Roy contends that the Grannis decision applies only to the Old Mountain Road and has “no impact on other closed roads in the Adirondacks.” But few people on either side of the debate over motorized access agree with him.

“As much as the DEC says that this doesn’t set a precedent, it does,” said Robert Diehl, the recreational trail coordinator for Lewis County on the western edge of the Park, where ATV use is common. “This decision opens up a big can of worms for the state,” he added.

Indeed, DEC’s own staff foresees trouble. Randall Young, an attorney in DEC’s Watertown office, writes in a rare “motion for clarification” that the decision “misapprehended or misapplied” the law. He notes that “many of the Department’s trails on state land may follow former roads that were arguably highways ... at some point in the distant past.”

The Adirondack Council and Adirondack Park Agency (APA) also have asked Grannis to reconsider his ruling and close the road under a provision of the state highway law. In a letter to Grannis, APA Chairman Curt Stiles argued that the decision “reaches the wrong conclusion and provides a precedent that could lead to years of unnecessary litigation and conflict over long-closed motor vehicle roads, particularly in various Wilderness-classified portions of the Adirondack Forest Preserve.”

Grannis has yet to rule on the motion for clarification.

Of particular concern to environmentalists is the fact that the Old Mountain Road passes through a tract classified by the APA as Wilderness. Under the Adirondack Park State Land Master Plan, motorized use is prohibited in Wilderness Areas.

“We feel that the DEC has an obligation when it owns all the land around a former roadway like this to ensure that the wilderness resources are protected against motorized uses,” said Dan Plumley of Protect the Adirondacks. A resident of Keene, Plumley says the trail runs past beaver meadows and other sensitive areas that could be damaged by motor vehicles.

It doesn’t appear that any old roads have been reopened since the ruling, but snowmobilers, ATV riders, and other advocates of motorized use have taken notice.

“It does definitely set a precedent,” said Jim Jennings, president of the New York State Snowmobile Association. “How we can take advantage of this is really up to each club and local government to do that. But we’re not actively out there looking for roads that have been abandoned illegally.”

The Property Rights Foundation of America, an advocacy group in Stony Creek that opposes conservation easements and land trusts, wrote that, “Whatever the future holds specifically for Old Mountain Road, the ... order by DEC Commissioner Grannis ... should serve premier guidance for the legal treatment of old town roads and rights-of-ways in New York State, especially for those roads and rights-of-way in the Forest Preserve.”

McCulley says he's received calls from snowmobile clubs in Elizabethtown, Lake George, St. Lawrence County, and elsewhere interested in the status of roads that have been closed to motorized traffic. He contends that the decision allows snowmobilers to ride on roads within the Forest Preserve that have not been legally abandoned, even in Wilderness Areas.

He also argues that few, if any, old town roads in the Preserve have been legally abandoned. Under state law, a road is considered closed if a town files for abandonment or if the road hasn't been traveled or used as a highway for at least six years.

"None of the roads have been legally closed by the DEC—zero," McCulley said. "Unless the towns themselves have closed it, a road is open." He added that he knows of no instances in which a town took the legal steps required to abandon a road.

What about roads that DEC closed pursuant to the State Land Master Plan? Presumably, most of these have not been used by motor vehicles for more than six years—perhaps for decades. McCulley says they were closed unlawfully. "They cannot illegally post a road as closed and then benefit by their illegal action to close the road," he said.

Furthermore, he said the Grannis decision acknowledges that other forms of use, including hiking, bicycling, and cross-country skiing, keep the public right of way intact along an old road. "Any public use of that road continues it as a highway," he said.

Yet even McCulley is leery of the ramifications of the Grannis decision. The worst outcome, he said, would be if all the old roads in the Forest Preserve were opened to motorized vehicles. "I am a conservationist," he said. "I do not believe roads should be everywhere."

Proponents of motorized use say opening up more of the Preserve to snowmobiles would benefit the regional economy. (Two studies put the economic impact of snowmobiling in the Park at somewhere between \$46 million and \$52 million.) In fact, McCulley says his battle over the Old Mountain Road is less about the road itself than about establishing a snowmobile connection between Lake Placid and existing trails to the south and east.

Many land-use debates in the Park revolve around motorized access—whether for snowmobiles, powerboats, ATVs, or floatplanes. And past efforts to close old roads have aroused passions on both sides. The most well-known case involved Crane Pond Road, a 120-year-old town highway in Schroon that cuts into the Pharaoh Lake Wilderness Area. As amended in 1987, the State Land Master Plan describes the road as a "significant intrusion into the Pharaoh Lake Wilderness" and calls for its closure. In 1989, DEC placed boulders across the road, but when local residents removed them, DEC essentially acquiesced.

"The DEC stopped enforcing the closure, although the road remained officially closed," writes Catherine Henshaw Knott in a history of land-use conflicts in the Park.

In 1990, about twenty Earth First activists decided to enforce the closure by blockading the road. They were confronted by close to a hundred residents. Warrensburg Supervisor Maynard Baker eventually approached Earth Firster Jeff Elliot and threw a punch, an encounter featured on 60

Minutes in a report on violence within the anti-environmental movement. Twenty years later, the road remains open.

“It is a disgrace that should not be allowed to stand,” Sheehan said.

The State Land Master Plan also declares that the Old Mountain Road (which it refers to as Old Military Road) “has been closed and the area now fully conforms to wilderness standards.” In his letter to Grannis, APA Chairman Stiles argues that the McCulley decision contradicts the “State’s factual determination in 1987 that the road was barricaded and abandoned in fact.”

Indeed, the state has sent somewhat mixed signals on the subject of town roads and whether, in the absence of formal abandonment, they should be open to motorized traffic. In 2002, the Horicon Town Board passed a resolution opening eight roads that traverse Forest Preserve, including one in the Pharaoh Lake Wilderness Area. The state immediately filed suit, and five years later the state Supreme Court ruled in the agency’s favor.

As in the Crane Pond Road case, however, DEC apparently has chosen not to enforce the law. “People are just using the roads now as they were before, and they’re not enforcing it,” Horicon Supervisor Ralph Bentley said. And if DEC were to start issuing tickets? “Maybe we could get Mr. McCulley to come down here and drive on our roads if they want another challenge,” Bentley replied.

Wells Supervisor Brian Towers, who also serves as president of the Adirondack Association of Towns and Villages, said the McCulley case will make it harder for DEC to shut down other roads, including one in his town.

DEC’s management plan for the Silver Lake Wilderness calls for closing the last seven-tenths of a mile of the West River Road, a stretch that lies inside the Wilderness borders. The town has long allowed snowmobiles and ATVs to use the entire eight-mile road, which ends in a parking lot a stone’s throw from the Northville-Placid Trail. The DEC plan says closing the road should curb illegal ATV use in the Wilderness Area.

Three years after the management plan was approved by the APA, the road remains open. In theory, DEC could put up a gate and close the road tomorrow, but Towers said the gate might be removed by residents. He added that he wouldn’t be surprised if the DEC reverses itself in light of the McCulley decision.

There also has been talk of closing the Pine Pond Road, which forms part of the northern boundary of the High Peaks Wilderness, but no decision has been made. McCulley, who says the road is owned by local towns, predicts a firestorm if DEC does try to ban ATVs and other motor vehicles. “You want a fight?” he says. “Try closing that. All the local boys hunt in there.”

As for the Old Mountain Road, Keene Supervisor William Ferebee, announced in September that the town would allow local hunters to ride ATVs on the route during hunting season, effectively permitting motorized vehicles in a Wilderness Area from mid-October to mid-December. North Elba has yet to make a decision on its portion of the road, but Supervisor Roby Politi thinks it

unlikely that the town board will approve the use of motorized vehicles of any kind.

Whatever DEC does about the Old Mountain Road, West River Road, and other old routes in the Forest Preserve, it's sure to upset someone.

On the one hand, if Grannis doesn't modify his decision, "we're going to have to take legal action because we can't allow the precedent to stand," said the Adirondack Council's Sheehan.

McCulley, on the other hand, warns that if the environmental community fails to compromise on motorized access, he'll seek to reopen other roads. He just may take a ride on the old route that goes through Indian Pass in the heart of the High Peaks Wilderness. "If they keep pissing me off, that's the next one I'm going to be on," he said.