



Photo by Nancie Battaglia

The Old Mountain Road is now part of the Jackrabbit Ski Trail.

# Leave our road alone

By Roby Politi

The Old Mountain Road has been a historic travel corridor between Lake Placid and Keene for over two hundred years. In 1810, the New York State Legislature specifically dedicated the road for public use, and it originally served as a military turnpike during the War of 1812. John Brown's body was carried over this road in 1859 to its final resting place in North Elba.

In some ways the road has served as reminder of times past and a tribute to free men and free thought. This public roadway has been used and enjoyed by residents of the towns of North Elba and Keene and the many guests and visitors to the area for two centuries. Although not used in its entirety in recent years for automobile or truck traffic, the road has seen regular recreational use by snowmobile and ATV riders as well as cross-country skiers, snowshoers, hunters, hikers, horseback riders, and mountain bikers between the two Adirondack communities.

The Old Mountain Road has always been an undisputed town road open to the public—that is, until 2003. That year the state Department of Environmental Conservation (DEC) challenged the public status of the Old Mountain Road, claiming it had been abandoned, and arrested Jim McCulley, president of the Lake Placid Snowmobile Club, for driving his truck on the North Elba end of the road.

The arrest set off a six-year enforcement proceeding that included a lengthy evidentiary hearing, which resulted in a thirty-seven-page decision by a DEC administrative law judge in 2009 that Old Mountain Road is in fact a town road, “a legal right-of-way for public use ... under the jurisdiction of the Towns of North Elba and Keene.” This decision was adopted by then-DEC Commissioner Alexander “Pete” Grannis, whose decision was final and not subject to appeal.

Six years later, in July 2015, DEC Commissioner Joseph Martens signed an order summarily reversing the 2009 decision (disingenuously calling it a “clarification”), thereby attempting to revive the discredited claim that Old Mountain Road is no longer a town road and legal right-of-way under the jurisdiction of the two towns. Remarkably, Commissioner Martens signed this order on his last day of service as commissioner, making it look like nothing more than an eleventh-hour pardon by a president or governor as a final courtesy to close friends.

Equally remarkable is the fact that the Martens decision was made without any notice to the towns of North Elba and Keene. The fundamental requirement of due process under the New York State and United States constitutions requires that necessary parties be given notice and the opportunity to be heard. Unfortunately, neither town was given any such opportunity.

The state's flawed conjecture that the road may be declared abandoned because it has not been repaired or maintained in recent years has no merit. The word *abandon* as defined by Webster's means “to give up with the intent of never again claiming a right or interest.” At

no time has this been the case with Old Mountain Road, as amply demonstrated by documentation in DEC's own records and the evidence brought forth at the lengthy DEC hearing that led to the 2009 decision.

Jim McCulley filed a lawsuit against DEC in state Supreme Court claiming that the Martens decision was illegal. The town of North Elba has filed an independent lawsuit (known as an Article 78 proceeding) in the same court, and the town is confident that it will be successful in this challenge. Old Mountain Road is a legal right of way that exists for public use of any kind. It was dedicated to the public, specifically for the benefit of the public. It has never been abandoned by either North Elba or Keene, and the people of North Elba and Keene will ultimately decide the road's usage and fate, not the Department of Environmental Conservation.

This is not just a local concern. In standing up for its rights, North Elba is upholding the principle of local control. Towns and villages throughout the Adirondack Park should be allowed to make their own decisions insofar as the law provides. At this time, I don't know if North Elba will do anything different with Old Mountain Road, but that is for the town to decide.

Frankly, it's time for the DEC to pull the plug on its Old Mountain Road folly and move on to the more pressing challenges facing the Adirondacks, such as the intrusion of invasive species into our lakes, the overuse of road salt, recycling initiatives, boat-cleansing stations, and better community relations.

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