



The easement in question provides access to property owners at the northern tip of Cape Poge. *Ray Ewing*

Trustees Exceeded Easement Rights on Cape Poge, Judge Rules

Ethan Genter *Thursday, August 13, 2026 - 11:05am*

A new land court ruling this week leaves the future of public oversand vehicle access to the tip of Cape Poge in limbo.

In a long, technical order that deals with deeds going back more than 100 years, state Land Court Judge Sarah Turano-Flores found that the Trustees of Reservations, which manages miles of unpaved trails, has overburdened an easement that allows passage to the outermost point on the sandy spit.

The ruling on Tuesday did not delve into whether the Trustees needs to change its operations on Chappaquiddick, but explicitly said that the sale of oversand vehicle permits to the public exceeded what an 1891 easement allowed.

The order is the latest chapter in long-running legal battle over the long, thin barrier beach that is popular with fishermen and beachgoers. The lawyer who filed the lawsuit for a pair of Cape Poge property owners said the order was an important step toward protecting the

environment of the fragile landscape.

“This decision provides a long overdue environmental reckoning on Cape Pogue,” attorney Denise Chicoine, who is representing Victor and Dawn Colantonio, said on Wednesday. “This was really driven by — the whole litigation — the Trustees monetizing the resource out there.”

At issue in the case is who gets to use an easement for a five-mile stretch of trail not far from the Cape Pogue lighthouse that provides the only land access to areas known as the Cape Pogue Elbow and Gut.

The easement, granted to property owners at the northern edge of Cape Pogue, allows the different owners to use the trails to access their respective properties.

The easement was created in 1891 for the 11 landowners in the area and rights to the easement were passed down to the Trustees in 1959 to allow the nonprofit the ability to drive out to parts of its wildlife refuge.

The Trustees has sold permits to four-wheel vehicle drivers that let the public also use the trail and drive out to the end of Cape Pogue.

In 2022, landowners Victor and Dawn Colantonio filed a lawsuit that contended the easement over their land did not allow the Trustees to open the trail to just anyone in the public who had an oversand vehicle permit.

The Colantonios have long argued that the Trustees has mismanaged its properties on Cape Pogue, overburdening the environment.

The Trustees pushed back by saying the easement allowed for wide-ranging use and didn’t put limits on who can use the different trails that criss-cross the northern tip of the Cape Pogue barrier beach.

But Judge Turano-Flores didn’t believe the deeds laid out those liberties.

“In the fact-specific context of this case, it is clear that the Trustees’ actions in selling unlimited OSV permits to the public, and in so doing, permitting members of the public to drive their own vehicles over the Partition Ways, impermissibly transforms the original purpose of the 1891 Easement to one that exceeds the scope of the original easement,” she wrote.

The Trustees can use the trails over the Colantonios’ property for internal use or even public tours in Trustees vehicles, but the easement doesn’t cover revenue-generating access to driving beachgoers.



Victor Colantonio filed the lawsuit in 2022. — *Ray Ewing*



The oversand vehicle trails on Cape Pogue have been the center of several lawsuits and appeals. — *Ray Ewing*

“By inviting this use, the Trustees are impermissibly transforming the purpose of the easement, and in consequence, overburdening it,” Judge Turano-Flores wrote.

Both the Trustees and Mr. Colantonio said Tuesday’s ruling is complex and will take time to digest.

The Trustees has not decided on an immediate course of action going forward.

“At this time, we are still reviewing this with our attorney and considering our options,” spokesperson Mary Dettloff told the Gazette. “We will have more to say in the coming days regarding beach operations.”

Oversand vehicle use of Chappaquiddick trails has been a contentious issue for years on the Island, with some Chappy residents and beachgoers at odds over what is best for the small island. There have been several lawsuits and appeals over the rules, leaving the issue changing as much as the shore’s ever-shifting sands.

This new ruling could again change how things operate, but Judge Turano-Flores did not prescribe any specific remedy. The Colantonios have made a renewed effort to get a preliminary injunction against the Trustees; a further hearing is scheduled for August 18, and Ms. Chicoine, the attorney for the Colantonios, expected more details to come out then.

“I presume that there will be discussion about how this is going to be implemented,” she said.

Judge Turano-Flores also left several other issues that involved highly-disputed facts for a trial, including if the Trustees use of the easement constituted trespassing, and if the sale of oversand vehicle permits for public passage over the easement has been going on for so long that it should now be allowed.

In her 43-page ruling, Judge Turano-Flores invoked famed American naturalist Aldo Leopold, and his belief that “conservation is a state of harmony between men and land.”

“His philosophical construct, known as the Land Ethic, proposes that humans have a moral duty to protect and respect the natural land community,” the judge wrote at the onset of the decision. “It cannot be said that the parties on either side of the ‘v’ in this litigation do not share this ethos.”

The claims and defenses in this case stem from the desire to preserve and protect the pristine coastal formations that make up Cape Pogue, but unfortunately the relations between the two parties have been less than harmonious, the judge continued.

“A carefully crafted final decision in this case...should drive to resolve those tensions and restore the harmony Leopold envisioned, finding the right balance between the property rights of the parties and their mutual desire to protect the fragile environment within which they exercise those rights,” Judge Turano-Flores wrote.

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