

Off Road Vehicle (ORV) use in the McCarthy/Kennicott area

When and where is it allowed by law?

Several state and federal regulations apply to the use of ORV's, also known as ATV's, in the local area. This handout is meant to inform those who have questions about this topic. Regulatory language is in *italics*.

1. Q. Can ORV's be legally driven on the McCarthy road (state right-of-way)?

A. No

Alaska Statute 28.10.011 requires all motor vehicles driving "*upon a highway or other public parking place*" shall be registered. However, ATVs do not comply with Federal Department of Transportation standards for tires and rims. Therefore, they are deemed unsafe for road use and cannot be registered as motor vehicles. (Language directly from a brochure titled Alaska's ATV Law, created and distributed by the Alaska State Troopers)

2. Q. Can ORV's be legally driven across the Kennicott River foot bridge?

A. No

Alaska Statute 13 AAC 02.455 (f) states *no snowmobile or other off highway vehicle may cross or travel on a sidewalk, a location intended for pedestrian or other non-motorized traffic, an alley, or a vehicular way or area which is not open to snowmobile or off-highway vehicle operation.* (Language directly from a brochure titled Alaska's ATV Law, created and distributed by the Alaska State Troopers.)

The Kennicott River foot bridge was designated and built specifically for pedestrian access. The State Department of Transportation and Alaska State Troopers have management authority over this bridge and the McCarthy road (state right-of-way).

3. Q. Can local rural residents operate ORV's on public (NPS managed) lands in the McCarthy/Kennecott area while engaged in subsistence uses under federal regulations?

A. Yes

If the resident qualifies as a local rural resident as defined in *36 CFR 13.420(1) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and*

whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

Title 36 CFR 13.460 (a) states, Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas, except at those times and in those areas restricted or closed by the Superintendent.

36 CFR 13.460(d)(2) stipulates that ORV's shall be operated: *In such a manner as to prevent waste or damage to park areas.*

To minimize resource damage, it is recommended that ORV users travel on established trails and dry river beds. (Language from NPS brochure titled Subsistence User's Guide)

The 1986 Wrangell-St. Elias National Park and Preserve (WRST) General Management Plan made the determination that ORVs were a traditional means of access to subsistence resources in the park and preserve.

4. Q. Can a summer resident of McCarthy/Kennecott whose primary residence is outside the WRST area use an ORV on NPS managed lands in the area for subsistence use?

A. No

If this person's summer residence is not their primary permanent residence as defined above in Title 36 CFR 13.420(1) then they are not eligible to hunt, fish or gather firewood within WRST under federal subsistence regulations and are prohibited from using ORV's for this purpose.

5. Q. Can any resident or the visiting public in general, including sport hunters, legally use ORV's on public (NPS managed) lands in the McCarthy/Kennecott area for recreational purposes? (*For ORV use by Kennecott Subdivision property owners and their guests within the Kennecott Subdivision easements, see question #6)

A. No, not in the immediate McCarthy/Kennecott area.

While the NPS has exercised authority granted by the Organic Act to generally prohibit ORV use in park areas, current regulations permit the recreational use of ORVs under two separate regulatory provisions: 1) section 4.10(b) of 36 C.F.R., which allows Alaska park superintendents to designate routes and areas in non-wilderness national preserves pursuant to a special regulation after considering the impacts discussed in section 3 of Executive Order 11644; and 2)

43 CFR 36.11(g)(2) which allows superintendents to issue permits for ORVs on existing ORV trails, but not in wilderness, upon determining such use is compatible with park purposes. Both provisions must be implemented consistent with the Organic Act non-impairment standard since the Organic Act is the statutory source of authority for both regulations.

At this time the park does not issue permits for recreational ORV use in the McCarthy/Kennecott area because the park supports maintaining Kennecott/McCarthy as a pedestrian visitor destination and because of private land issues. Additionally, the park has not done a special regulation necessary under 36 CFR 4.10(b) and/or has not determined that recreational ORV use is compatible with the purposes and values of the Kennecott Mines National Historic Landmark.

6. Q. Can a Kennecott property owner or a guest of a Kennecott property owner, use an ORV within the easements of the Kennecott Subdivision?

A. Yes

The road easements within the Kennecott Subdivision are not public, state managed, rights-of-way. The McCarthy road, state ROW ends at the entrance of the Kennecott Subdivision, just below the Millers property near a large metal gate. The roads within the Kennecott subdivision are easements across private and public (NPS managed) lands. The legal description of these roads is found on the subdivision plat, number 77-12, which was recorded with the State recorder's office in 1977.

This plat states; These rights-of-way are private, reserved for the use of the ... owners of lots in the KENNICOTT SUBDIVISION and their guests, but not for the public in general.

This legal description did not change when the NPS purchased the majority of lots in Kennecott in 1998. The NPS has no authority to unilaterally impose restrictions on the use of the Kennecott Subdivision easements, for transportation purposes, by the other lot owners and their guests.

The majority of private lot owners and residents of the Kennecott Subdivision have requested that the NPS post signs with the message that park visitors not use their personal motorized vehicles on the Kennecott easements. The NPS plans to participate with other subdivision lot owners in cooperative educational signing to inform visitors regarding appropriate use of the easements.

The NPS discourages park visitors from utilizing ORV's in Kennecott as it is unlawful for them to drive across the Kennecott River footbridge or the McCarthy road State right-of-way. This use

is also at odds with the majority of Kennecott property owners who are partial owners of the private easements within the subdivision.

7. Q. What is the message given by the NPS to Park visitors regarding ORV use in Kennecott.

A. For the past several years, WRST has been distributing an informational brochure to visitors which contain the following message. "Park visitors are invited to Kennecott in a pedestrian way. Please park on the west-side of the Kennicott River and take a shuttle to Kennecott. Vehicles in Kennecott are limited to private property owners and their guests. Please do not bring your ATV to Kennecott."

8. Q. Are there any trails anywhere near McCarthy on public (NPS managed) land that are open to recreational ORV use?

A. Yes

The closest trail is the Nugget Creek trail near Strelna (mile 14) of the McCarthy road. Use of this trail for recreation on an ORV requires a permit. Recreational ORV permits for the Nugget Creek trail are available at WRST headquarters visitor center in Copper Center, the Chitina ranger station and the Kennecott visitor center.

9. Q. Can someone who owns property in the area, whose property is within or effectively surrounded by NPS managed lands, (an inholding) access their land with an ORV?

A. Yes

Section 1110 (b) of ANILCA states: *Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.*

Title 43 CFR 36.10 (a) sets forth the procedures to provide adequate and feasible access to inholdings within WRST in accordance with section 1110 (b) of ANILCA.

A Right of Way Certificate of Access (ROWCA) can be acquired by the land owner which can include the use of ORV's to access their property. The WRST Lands Manager, Danny Rosenkrans facilitates the ROWCA process. He can be contacted at 907-822-7240 or by email danny_rosenkrans@nps.gov.