

Cantwell Subsistence Traditionally Employed ORV Determination

Final Determination



Denali National Park and Preserve

July 22, 2005

Determination of Traditional ORV Use for Access for Subsistence Purposes on Denali National Park Lands in the Cantwell Area by Federally Qualified Subsistence Users

Introduction

In 1992 a Cantwell subsistence user submitted a letter to the Superintendent along with eight affidavits¹ from other Cantwell residents describing their use of ORVs for subsistence purposes. They requested the Superintendent to revise the 1986 GMP determination to allow traditional subsistence ORV use in park additions near Cantwell.

The Denali Subsistence Resource Commission² (SRC) recommended ORV access near Cantwell at the same levels as 1980, based on traditional use for subsistence purposes by local residents³. The SRC further recommended reasonable restrictions to protect the environment, but suggested that in some areas, because of lack of vegetation and presence of a harder, less-eroding surface, ORV use for off-road/trail retrieval of moose meat from harvest locations should be permitted. The SRC acknowledged that such use could be restricted or suspended, depending on the level of impact. A trial period, perhaps of one hunting season, with restrictions (to mapped routes, etc.), was also suggested to test the advisability of such use. The SRC expressed the view that flexibility in vehicle type could reduce impacts, and that use determinations should be community-wide, and be made on the basis of routes and effects, not on an individual basis.

As a result of the Cantwell request and the SRC recommendations the NPS conducted a review of information regarding traditional subsistence ORV access for the Cantwell area. This request and subsequent review did not address ORV use for subsistence access in other areas of the park and preserve additions or by any other Resident Zone communities.

Consultation

The National Park Service (NPS) consulted widely with involved and interested organizations and individuals, including governmental entities, subsistence users, special interest groups, and the general public. We received substantial comment from the following entities:

State of Alaska
Native Village of Cantwell, Tribal Council
Alaska NPS Subsistence Resource Commission Chairs
Denali Subsistence Resource Commission
Southcentral Regional Subsistence Advisory Council
Eastern Interior Regional Subsistence Advisory Council
Western Interior Regional Subsistence Advisory Council

National Parks Conservation Association
The Wilderness Society
Denali Citizens Council

The NPS held four public meetings in Cantwell to explain and clarify the Determination process, develop and refine the criteria, develop the study design, and to gather information pertinent to the determination. Three Denali Subsistence Resource Commission public meetings were held during this past year in Kantishna, Cantwell and Denali Park National Park in which the Cantwell Traditional ORV issue was presented and discussed. The proposed Cantwell Traditional ORV Review process and Determination Criteria was also presented to the Alaska NPS Subsistence Resource Commission Chairs at their Annual SRC Chairs' Workshop for review. After completion of the Draft Compilation Report, each of the key informants involved in the 2004-2005 Cantwell ORV Use Oral History project was given the opportunity to review and comment on their portions of the report to ensure the information they provided was accurately presented in the Draft Compilation Report.

During the seven-day public comment period following release of the Draft Determination the NPS received comments from 9 individuals, organizations and agencies, including the State of Alaska. The comments generally supported the NPS findings in the Draft Determination, as well as the conclusions and the determination, while emphasizing the need to engage in a future public review and consultation process to develop long term solutions that provide for reasonable access while protecting the park's resources and values. We have incorporated those comments as applicable into the final Determination.

Six of the written comments addressed the definition of "traditional" used in the criteria. The State of Alaska commented that nothing in ANILCA or its legislative history indicates that Congress intended to limit access to those methods that had been used for multiple generations. However, five other commenters supported the NPS definition of "traditional" from the 1986 General Management Plan (GMP) which requires "...transmission of knowledge and institution through successive generations without written instruction..." These commenters emphasized that for ORV's to be "traditionally employed" for subsistence access in the Cantwell area of Denali National Park additions, they must have been used over at least two generations prior to December 1, 1978, when the additions were withdrawn and designated a National Monument. The NPS believes that the definition of "traditional" used in the 1986 GMP, is valid, and no changes to the definition were made. The term "multigenerational" in the draft has been replaced by the equivalent term "successive generations" at the request of the State of Alaska, as it is the term used in the definition in the GMP. We also included the GMP language stating that "the National Park Service recognizes that it would be valuable to pursue, with those affected, the refinement of this definition in the context of the legislative history." We have changed the December 2, 1980 date to December 1, 1978 to reflect that there was no legal ORV use authorized in this area after the National Monument designation.

History and Mechanical Access

To understand the mechanical access patterns that have evolved for the community of Cantwell it is helpful to review some of the early history and developments that have occurred in the area. The community of Cantwell was established in 1916 in Broad Pass as a construction camp on the Alaska Railroad and equipment including cats and tractors were brought in for the railroad construction. Other private entrepreneurs also acquired and brought in mechanical equipment for their business as well as their own personal use such as skidding in cabin logs, firewood and game.

John Carlson and Jack West established a store in Cantwell in 1919 and stocked it with supplies for prospectors, miners, natives, and trappers. They established a very lucrative and profitable business, and became an important supply source for the Valdez Creek mining district east of Cantwell until the mine closed in the early 1940's. Even before the railroad was completed, equipment and supplies could be shipped up the railroad right-of-way to Cantwell then cross-country on a trail to Valdez Creek via overland cat trains. Cat trains continued to supply the mine from Cantwell after completion of the railroad in 1922. Early Cantwell resident Oley Nicklie worked for many years as a cat skinner for Carlson and West during this period.

Patrick McCafferty was an early foreman on the railroad construction crew who settled in Cantwell and acquired mechanical equipment. His daughter Maggie McCafferty described her father's use of an Oliver OC-4 cat which he used to skid cabin logs, firewood, and moose from upper Windy Creek to Cantwell during the 1930's and 1940's. She has described her own experience of riding in a sled behind an Oliver cat her father drove, while her mother walked alongside into the upper Windy Creek drainage in the early 1950's. The trip into what is now the park addition was made to bring out a moose they had harvested. She also identified three other households who utilized cats and weasels in the 1940's to bring out cabin logs and firewood from the Windy Creek drainage.

Foggy and Windy passes were found to have cement grade limestone in the 1940's, and these properties received attention from both private and government mining interests. A winter road was built to access mining claims in the upper Windy Creek and Foggy Pass area sometime prior to 1951, the earliest date that the route appears on USGS maps. Bulldozer trails were later developed in the 1950's from Cantwell to the Windy Creek drainage on the north side of Windy Creek and in upper Windy Creek-Foggy Pass areas for discovery and assessment work. The mining claims were never put into production and these trails were used primarily by local rural residents for subsistence purposes. These bulldozer trails became primary access corridors for a variety of other ORVs utilized by Cantwell residents for subsistence purposes. ORV subsistence use was also occurring along the northern portion of the old roadbed built in the 1960's that goes from the Cantwell airstrip south towards the Summit airstrip for approximately one mile within what would later become the park additions.

In 1939 the CAA (Civil Aeronautics Authority) built an airstrip at Summit, just south of Cantwell adjacent to the Alaska Railroad. The airstrip was part of a system of internal Alaskan air routes facilitating transportation across the vast distances in Alaska. The CAA established eight single-family dwellings there, plus a power plant and radio equipment with the purpose of providing weather reporting services and radio navigation aids to pilots. There were no aircraft stationed there and the strip was primarily used for weather reporting and use as an alternate strip⁴. Some resident CAA employees supplemented their supplies and incomes by hunting and trapping in the area. A variety of mechanized equipment was available at this facility, including tracked vehicles that could be used for hunting purposes. Oral testimonies by several former Summit FAA (Federal Aviation Administration) residents who now reside in Cantwell indicate that they utilized Cantwell Creek and portions of the Bull River drainage for subsistence hunting, including portions now within the park additions.

Wesley Dunkle operated the Golden Zone mine in the early 1900's near the West Fork of the Chulitna River. The Alaska Road Commission built a road in 1938-39 into the Dunkle Hills to transport coal to the railroad at Colorado Station south of Cantwell. In 1942 the infrastructure of the Golden Zone mine was completely relocated - including manpower, equipment and buildings - to dig for coal at what became known as the Dunkle mine. Dunkle's small operation was not producing enough on its own, so the army supplied a seventy five man engineering company to increase output. The Dunkle mine produced about 5000 tons of coal to be shipped by railroad to military bases before closing in March 1943. The mine re-opened in 1952 and an additional 59,000 tons of coal were mined before its final shut-down in 1955. Local residents of Colorado Station and several families from Cantwell utilized the Dunkle Hills within the park additions for subsistence purposes, accessing the hills via the Colorado-Dunkle Hills road. A few Cantwell residents have accessed the Dunkle Hills overland via the Cantwell Creek and Bull River drainage.

The above history indicates there were a variety of corridors and routes available for mechanized access by businesses as well as local residents for subsistence into areas that are now included within the ANILCA park additions. Information contained in the 1992 affidavits, 1993 ATV interviews and mapping, and the 2005 oral history project demonstrates there has been evolution of mechanized equipment used over time by Cantwell subsistence users along these primary routes and corridors, and into adjacent areas for subsistence harvests.

Background

The Alaska National Interest Lands Conservation Act⁵ (ANILCA) authorizes subsistence uses where traditional in the ANILCA additions of Denali National Park (Denali additions) by local residents⁶. ANILCA also provides for reasonable access with methods of surface transportation traditionally used for subsistence purposes⁷.

ANILCA and NPS regulations do not recognize off-road vehicles (ORVs) as a form of access for subsistence, except that section ANILCA Section 811(b) and 36 CFR 13.46(a),

provides for “other means of surface transportation traditionally employed”. Therefore, ORVs are permitted for subsistence use where determined to be traditionally employed, subject to reasonable regulations including those found at 36 CFR 13.46. The NPS determined in the 1986 Denali General Management Plan (GMP) that ORVs had not been regularly used for subsistence purposes and were not considered a traditional means of subsistence access⁸. The GMP determination was made on existing information and applied on a park-wide basis. The GMP also provided that in the future as additional information became available the park will review traditional means of subsistence access on a case by case basis⁹.

Definitions

The 1986 Denali GMP (page 195) referred to Webster’s Third New Dictionary of the English Language to define “traditional” for purposes of determining what means of surface transportation were traditionally employed for subsistence¹⁰.

“2.) The process of handing down information, opinions, beliefs, and customs by word of mouth or by example: transmission of knowledge and institution through successive generations without written instruction. . . .

3.) An inherited or established way of thinking, feeling or doing: a cultural feature (as an attitude, belief, custom, institution) preserved or evolved from the past: usage or custom rooted in the past (as of a family or nation); as a (1): a doctrine or practice or a body of doctrine and practice preserved by oral transmission (2): a belief or practice of the totality of beliefs and practices not derived directly from the Bible . . .

5.a): Cultural continuity embodied in a massive complex of evolving social attitudes, beliefs, convictions, and institutions rooted in the experience of the past and exerting an orienting and normative influence on the present. b: the residual elements of past artistic styles or periods.”

“The National Park Service recognizes that it would be valuable to pursue, with those affected, the refinement of this definition in the context of the legislative history. In the interim, the Park Service will continue to use this definition in applying the above-referenced provisions of ANILCA. To qualify under ANILCA, a ‘traditional means’ or ‘traditional activity’ has to have been an established cultural pattern, per these definitions, prior to 1978 when the unit was established.”

The U.S. Senate, in its ANILCA deliberations, clearly states its intent that a customary and traditional use be one that has “played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation.” (S. Rep. No.96-413, at 269 (1979); H. Rep. 96-97, at 280 (1979). The GMP definition, in addition to adhering to the plain meaning of the word “Traditional”, meets this intent as set forth by Congress.

In its 1992 Final Environmental Impact Statement (EIS) for Subsistence Management for Federal Public Lands in Alaska, Interior¹¹ includes three criteria that further emphasize the necessity that any activity associated with subsistence use of federal lands be a “long-term, consistent pattern of use...” with “the means of handling...fish and wildlife that have been used traditionally by past generations.” EIS at II-4 to II-5. The EIS reiterates that the “use pattern...include(s) the handing down of knowledge of fishing or hunting skills, values, and lore from generation to generation.” *Id.*

In Title 5, Chapter 99 of the Alaska Administrative Code, the state shows a parallel understanding that a definition of customary and traditional subsistence uses includes more than one generation, including in its criteria of traditional use:

“a long-term consistent pattern of noncommercial taking, use, and reliance on the fish stock or game population that has been established over a reasonable period of time of not less than one generation, excluding interruption by circumstances beyond the user's control, such as unavailability of the fish or game caused by migratory patterns.” (5AAC 99.010 (b)(1)).

ORVs are defined for Alaska park areas as “... any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, ice, marsh, wetlands, or other natural terrain, except snow machines or snowmobiles as defined in this chapter”¹².

Decision Criteria and Determination

The following criteria will be used to evaluate the available information¹³ to determine whether ORVs were a means of surface transportation traditionally employed for subsistence purposes by local residents of Cantwell:

Criterion

There must be an established traditional pattern of ORV use for subsistence access that occurred within the evaluated area in what is now Denali National Park and Preserve prior to when the additions were created by Presidential proclamation in 1978.

Evaluation

As described in the history and access section above, there were a variety of corridors and routes available for mechanized access by businesses as well as local residents for subsistence into areas that are now included within the ANILCA park additions. Information contained in the 1992 affidavits, 1993 ATV interviews and mapping, and the 2005 oral history project demonstrates there has been evolution of mechanized equipment used over time by Cantwell subsistence users along these primary routes and corridors, and into adjacent areas for subsistence harvests.

Formal studies of subsistence use patterns for the Cantwell community specific to Denali National Park ANILCA additions, or their traditional subsistence access, were not available prior to the completion of the Denali GMP in 1986. However, field observations¹⁴, statements at Denali SRC meetings, and contacts with community members, indicated that the majority of Cantwell's in-park subsistence use areas were focused on portions of the Denali Park additions near the community of Cantwell, primarily in the Windy Creek and Cantwell Creek drainages. The NPS was also aware that some members of the Cantwell community had used ORVs for subsistence within the park in the area from Windy Creek to the Dunkle Hills for at least 10 years prior to ANILCA. The observed signs of subsistence ORV use on ANILCA park lands in 1981 were primarily on fifteen to twenty square miles of park additions in the Windy Creek and Cantwell Creek drainages, and to a lesser extent into the Bull River drainage.

NPS Windy Creek Observations: Observations in 1979 indicated that ORV use in connection with hunting and gathering in what would later become park additions near Windy Creek was primarily along the main bulldozer trails and a few spur trails. Observations indicated the Windy Creek bulldozer trails formed the primary access routes and the spur trails were used less consistently. The main trail was worn down to soil and muddy in many areas with subsequent spur trails still vegetated for the most part. ORV subsistence use was also occurring along the northern portion of the old roadbed that goes from the Cantwell airstrip south towards the Summit airstrip for approximately one mile within what would later become the park additions.

NPS Cantwell Creek Observations: Observations in 1979 indicate a well developed main access trail for hunting existed on the south side of Cantwell Creek. The trail crossed the creek in one location onto what would become park addition lands. That section was less than one mile in length, and is primarily along gravel bars of Cantwell Creek. During aerial helicopter surveys for ORV use in 1981, three spur trails off the main route were noted that crossed into park additions. The main Cantwell Creek trail was used for access to camps and hunting observation locations and many areas of this trail were already worn down to bare ground. In contrast, the spur trails were still primarily vegetated and intermittent because they were used less consistently. They would only be used if game was actually shot in that area and was retrieved¹⁵.

One spur trail of approximately one mile in length extended into a small drainage on the northeast side of a small peak locally called "Pyramid Peak". Lower portions of the trail outside of the park additions were more obvious than the upper section within the additions. Another spur trail of approximately one mile in length was in a small drainage on the southwest side of "Pyramid Peak" peak. This trail was barely visible during the 1981 helicopter survey for a short section through heavy brush.

Yet another spur trail was observed on the northeast side of Cantwell Creek at the point where the creek crosses the present day park addition boundary and was visible for approximately ½ mile on the north side of creek. Intermittent trails were also observed in the creek bed of Cantwell Creek from the ANILCA park addition boundary for approximately two miles upstream toward the boundary of the former Mt. McKinley

National Park. Examination on the ground indicated these upper Cantwell Creek trails appeared to be made from just a few passes, not a uniformly flattened consistent trail.

NPS Bull River Observations: Sections of intermittent ORV trails leading from the southwest side of Cantwell Creek into the Bull River drainage were observed on park additions during the 1981 survey. These intermittent ORV tracks occurred in a three mile long corridor within the park additions. Another short section of approximately a half mile of ORV tracks were observed on the northeast side of upper Bull River within the park additions. Other ORV trails were noted during the 1981 survey on other lands immediately adjacent to the boundary of the park additions in the area between lower Cantwell Creek, lower Bull River, and Squaw Creek. These trails seemed to originate at the Summit Airstrip and a related spur road off Highway 3 to the south. They were more visible and appeared to have had more consistent use than any of the intermittent trails identified within the park additions.

In 1993 the NPS held a public hearing in Cantwell to gather and document additional information and comments regarding pre-ANILCA use of ORVs in support of subsistence activities within the park additions near Cantwell¹⁶. Sixteen Cantwell subsistence users representing different households attended the public hearing and completed ORV Use Work Sheets and identified areas on topographic maps where they had used ORVs for subsistence purposes prior to passage of ANILCA. Another individual submitted a letter in 1993 describing his pre-ANILCA use of ORVs on park lands. NPS staff also made six telephonic interviews with other Cantwell Federal Subsistence Registration Hunt Permit holders representing four additional Cantwell households in an effort to gather further information regarding subsistence ORV use specific to the park additions, although ORV use maps were not received from these individuals at that time. Additional information came from two long time Cantwell residents (since 1942 and 1960 respectively) who were unable to attend the public hearing, but had submitted affidavits in 1992 attesting to their pre-1980 use of ORVs for subsistence purposes on park additions. Data from the 1993 ATV Use Work Sheets and Mapping effort, and the 1992 affidavits, document seventeen households in Cantwell using ORVs for subsistence purposes prior to ANILCA on what are now Denali park additions near the community of Cantwell¹⁷.

In the 2004-2005 Cantwell ORV Oral History Project¹⁸ seventeen respondents from fourteen different households talked about their history of ORV use both within and adjacent to the ANILCA park additions. Information from the Stratton and Georgette (1984) and the Simeone (2002)¹⁹ community use profiles and harvest assessments were also analyzed for this the Oral History report. The data indicates there is a long-term pattern of sharing subsistence harvested resources, a long-term community practice of sharing or assisting others with the use of ORVs for retrieval of their subsistence harvests, and the sharing of knowledge-skills-and resources between households and over two or more generations about the maintenance and operation of various types of ORV equipment. The report documents the passing on of these traditions, behaviors and values by Cantwell residents to their children or grandchildren and sometimes of mentoring unrelated young adults in the community. The data indicates a varied use of

ORV technology for the Cantwell community from the early 1940's to the present. This information is consistent with information collected from the 1993 interviews and mapping, particularly for the Windy Creek and Cantwell Creek drainages.

Criterion

A consistent pattern of use by successive generations, excluding interruptions beyond the control of the community or area.

Evaluation

Information presented in the 1992 affidavits, the 1993 interviews, and the 2005 oral histories indicates that training, use and inheritance of ORV technology occurred between generations. There are a number of examples provided in the oral history transcripts and affidavits showing that parents took their children on subsistence hunts. In several cases, subsistence hunting was described as a family event involving husbands, wives and children. Not only were children trained in how to harvest animals, they were also schooled in maintaining some brittle ORV technology. In other cases, fathers and sons (and sometimes daughters) were using ORV technology for subsistence purposes.

During Cantwell's early history not all families had the income or mechanical skills to own and maintain cats, jeeps, buggys, weasels or other types of early ORV equipment. Sharing of subsistence resources and use of ORV equipment was a community norm. In the 1970's as newer, smaller, and less expensive ORVs became available, Coots became the preferred technology for the Cantwell community. Perhaps a quarter of the households owned Coots (ten households) and another four households owned other ORV equipment such as weasels and bombardiers, and almost the entire community benefited from their presence and use. This benefit came about in two ways: 1) the technology was shared with other households, and 2) often portions of the meat obtained by households who owned the ORVs were widely shared throughout the community.

The Oral History Project identifies the long-term and inter-generational use of ORV technology by the households in Cantwell to obtain subsistence resources, particularly moose and caribou. Beginning in the 1940's right up to the present there has been an evolution of types of technology applied by Cantwell residents in access and retrieval of wild game for subsistence purposes. This includes the evolution of track vehicles, jeeps, buggies, and modified four-wheel drive pick-up trucks, bombardiers, lighter duty four-wheel drive vehicles such as coots, to three wheel ATVs used prior to 1980. All of these types of vehicles have been utilized for subsistence purposes, in various decades, and to various levels of use, on what are now park additions in the Cantwell area.

Histories and testimonies indicate a multi-generational use of ORV technologies for the Windy Creek, Cantwell Creek and Bull River areas, with some families demonstrating ORV use for subsistence purposes for as many as three generations before ANILCA and continuing in succeeding generations to the present. The most extensive multi-

generational use occurred in the McCafferty, Oliver, Carlson, Nicklie, Tansy, Smith and Cotter families. Other pre-ANILCA multi-generational families include the Caress, Bulard, Goble, Gore, and Wiebe families. One interviewee with first hand knowledge identified three other families during the 1940's and two in the 1960's who used ORVs on lands that became park additions, however park staff were unable to contact or interview them.

Other Cantwell interviewees have identified twenty other individuals who were residents of Cantwell prior to ANILCA that have owned and utilized ORVs for subsistence purposes.

Proximity to Cantwell was important for harvest of subsistence resources (timber and game) for reasons of efficiency and economy of effort as well as the concerns regarding reliability of many early types of ORV vehicles. From the 1992 affidavits and 1993 interviews specific to pre-1980 use of park additions, seventeen Cantwell households indicated their ORV use included park additions in the Windy Creek drainage, sixteen in the Cantwell Creek drainage, ten Cantwell households indicated that their ORV use included portions of park additions in the Bull River drainage, and four Cantwell households indicated their ORV use included park lands in the Dunkle Hills.

In the 1993 interviews, the first reported ORV use in the Dunkle Hills was by two Cantwell residents in 1972. Another resident reported use in 1976, and the final record is of use in 1979. In the 2005 Cantwell oral history interviews, which reported on lifetime history use areas, four additional Cantwell residents reported use in the Dunkle Hills. One Cantwell resident's use began after 1980, and two residents reported their use was for the purpose of providing commercial guiding and outfitting activities with access by aircraft. The final resident reported use in 1961, but only hunting in the area on a few occasions. The reported pre-ANILCA subsistence ORV use pattern in the Dunkle Hills by just five Cantwell families, two of which use began there after 1975, does not constitute a consistent pattern of community use for that area over successive generations.

Criterion

A significant community practice and pattern of subsistence ORV use reoccurring in specific seasons for many years (rather than individual practice).

Evaluation

Based on standardization of census reporting areas between 1970 and 1980, the Cantwell population in 1980 was reported to be 89 people²⁰. In 1983 the State subsistence program identified 47 households, with approximately 136 people residing year around in Cantwell, which equates to approximately 2.9 people per household²¹. Assuming there were roughly the same number of people per household in 1980, there would have been approximately 31 Cantwell households in 1980 at the time ANILCA was passed.

In 1993 park staff conducted interviews and mapping of pre-ANILCA ORV use areas in what are now Denali park additions with local residents. Of the twenty-one Cantwell household records received in 1993, four households reported their use of ORVs for subsistence purposes in the Denali additions starting after 1980. Their ORV use is not included in the analysis because it began after the passage of ANILCA in 1980. Two other households reported they have subsistence hunted in the Denali additions before ANILCA using either dogs or horses to pack out harvested game, or packed it out themselves. A total of fifteen Cantwell households reported in 1993 that they have used ORVs on park additions prior to ANILCA.

The data from the 1993 Cantwell ORV Interview Work Sheets and mapping effort combined with the two additional records from the 1992 affidavits document seventeen out of approximately thirty-one Cantwell households which used ORVs for subsistence purposes prior to ANILCA on what are now Denali park additions near Cantwell. These records represent approximately one-half of the Cantwell community at the time ANILCA was passed. Data presented indicates one household's use of mechanical access for removal of subsistence harvested timber and game began at least in the 1940s and possibly as early as the 1930's (no definitive first-person confirmation of use on Denali park additions provided for the 1930's, however Patrick MaCafferty's daughter reports the equipment was in use in Cantwell by her father in 1935)²², two households' use began in the 1950's, three households' ORV use began in the 1960's, eleven households use began in the 1970's, seven of which began prior to 1975.

From the 1992 affidavits and 1993 interviews specific to pre-ANILCA use of park additions, seventeen Cantwell households indicated their ORV use included park additions in the Windy Creek drainage, sixteen in the Cantwell Creek drainage, ten Cantwell households indicated that their ORV use included portions of park additions in the Bull River drainage, and four Cantwell households indicated their ORV use included portions of park lands in the Dunkle Hills. Maps available during the 1993 interview effort did not include the Dunkle Hills, however, two Cantwell households reported that they used ORVs in the Bull River drainage and the east flanks of the Dunkle Hills, one reported access to the Dunkle Hills through the Colorado-Bull River road, the one indicated the general Bull River and Dunkle Hills as an area. The Windy Creek and Cantwell Creek drainages were clearly the most frequently and consistently used areas²³.

The 2004-2005 Oral History Project further documents several households' lifetime ORV use in the harvest of wildlife resources for subsistence purposes in the Cantwell area. The major source of information for this report came from seventeen oral history interviews with longtime Cantwell area users having knowledge and experience of ORV use prior to ANILCA. However, one couple interviewed were never Cantwell residents but had some use of the Cantwell area in the past. Of the Cantwell residents, four of the twelve Cantwell households identified ORV use in the Dunkle Hills during the 2005 mapping effort. Two of these households had not indicated use of ORVs in the Dunkle Hills during the 1993 interviews, so it is uncertain whether their use occurred

before or after the passage of ANILCA. Another two Cantwell households reported that their use in the Dunkle Hills was associated with commercial guiding and outfitting operations with access by aircraft. The fifth household indicating use in the Dunkle Hills during the 2005 interviews had not indicated use in the 1993 interviews, however now reports his first use in occurred in 1961 and has used the area on a few occasions. This households' primary use area reported in 1993 was the Cantwell and Windy Creeks, and the Bull River.

While much of Cantwell's subsistence use area encompasses lands adjacent to the Denali Park additions²⁴, there is sufficient evidence and testimony presented in the 1992 affidavits, the 1993 ORV interviews and mapping efforts, and the 2005 Cantwell Oral History Project to demonstrate there was a Cantwell community practice and pattern of subsistence ORV use reoccurring in specific seasons for many years for the Windy Creek and Cantwell Creek drainages, and portions of the Bull River drainage. Only five Cantwell households out of approximately 31 households reported pre-ANILCA subsistence use of the Dunkle Hills, one began in 1961, two in 1972, one in 1976 and the fifth in 1979. This information does not constitute a significant community practice and pattern of subsistence ORV use reoccurring in specific seasons for many years for the Dunkle Hills. Personal subsistence use with ORV access in the Dunkle Hills appears to be very limited and not a consistent or significant community practice for the Cantwell community, subsistence users may continue to use the state owned Colorado-Dunkle Hills road right-of-way for ORV access into the Dunkle Hills.

Conclusion:

Based on the additional information now available which demonstrates successive generational use by local residents of Cantwell of ORVs for subsistence purposes in the portions of the Denali Park additions referenced in the attached map, we conclude that ORVs are a traditional means of access for subsistence purposes in the following area listed below. Such use is subject to the provisions of 36 CFR 13.46, 50 CFR Part 100, and other applicable laws and regulations. This determination applies only to ORV use for subsistence purposes. All travel by ORV (primary access on existing trails and necessary off-trail access for subsistence resources) shall be conducted in a manner that minimizes; a) disturbance of vegetation, soil stability or drainage; b) changing the character of, polluting, or introducing silt and sediment into streams, lakes, ponds, water holes, seeps, and marshes; and c) disturbance of fish and wildlife resources:

That area of the 1980 Denali National Park additions between Windy Creek and the south bank of the Bull River excluding the portion of the South Fork of Windy Creek drainage in the Foggy Pass area as shown on the map below: "Traditional ORV Use Areas for Subsistence Purposes on Denali National Park Lands in the Cantwell Area by Federally Qualified Subsistence Users."

Next Steps:

Based upon a finding that ORVs were a traditionally employed for subsistence access in the Cantwell area, the NPS will take the following steps to promulgate permanent regulations and a management program:

- 1) Implement an emergency or temporary closure within the Cantwell Area under 36 CFR 13.46 (b) in 2005 to protect sensitive park resources from adverse impacts until a final management program can be developed and implemented. This closure will be fashioned to ensure reasonable access to subsistence resources on specific routes that are determined to be able to withstand projected ORV use during the 2005 subsistence harvest season without suffering adverse impacts.
- 2) Complete field work and resource studies in 2005 necessary to prepare an environmental assessment.
- 3) Develop an environmental assessment in accordance with the National Environmental Policy Act to evaluate management alternatives.
- 4) Implement the selected alternative and promulgate necessary permanent regulations to manage subsistence ORV use in the Cantwell area in park additions.

Endnotes:

¹ Park Files, Letter and eight affidavits of pre-ANILCA ORV use by Cantwell residents asking for a traditional determination by the Superintendent.

² 16 USC 3118

³ Subsistence Management Plan, Denali National Park and Preserve, (Rev., 8/18/00), Chap. 5, p. 5-8

⁴ Bryant, Jane. Denali National Park and Preserve, Unpublished Report. 2005. *Summit: CAA/FAA Station, Site #50725*.

⁵ 16 USC 3101 et seq, Pub. L. No. 96-487, December 2, 1980

⁶ 16 USC 410hh-1(3)(a)

⁷ 16 USC 3121

⁸ General Management Plan (GMP), Denali National Park and Preserve, October 7, 1986, p. 45

⁹ General Management Plan (GMP), Denali National Park and Preserve, October 7, 1986, p. 45

¹⁰ General Management Plan, Appendix I: Definition of Traditional, p. 195

¹¹ Federal Subsistence Board, Final Environmental Impact Statement: *Subsistence Management for Federal Public Lands in Alaska*, 1992 (II-4, II-5).

¹² 36 CFR 13.1

¹³ Denali National Park and Preserve, Report to the Superintendent: *A Compilation and Review of Information Pertaining to Use of ORVs as Access for Subsistence Purposes in the Cantwell Area by Federally Qualified Subsistence Users*, 2005 (Report).

¹⁴ Denali National Park and Preserve, Park files and reconnaissance flights for wildlife surveys and ORV trails surveys, 1979, 1981.

¹⁵ Van Horn, Joe. Denali National Park and Preserve, Draft Report: *Denali ATV Use Miscellaneous Park Notes*, 1/28/02, to the Regional NPS Off-Road Vehicle Use Committee.

¹⁶ Denali National Park and Preserve, Report to the Superintendent: *A Compilation and Review of Information Pertaining to Use of ORVs as Access for Subsistence Purposes in the Cantwell Area by Federally Qualified Subsistence Users*, 2005 (29-30).

¹⁷ Denali National Park and Preserve, Report to the Superintendent: *A Compilation and Review of Information Pertaining to Use of ORVs as Access for Subsistence Purposes in the Cantwell Area by Federally Qualified Subsistence Users*, 2005, (composite map of 1993 Cantwell subsistence ORV pre-1980 used areas, pg 31).

¹⁸ Denali National Park and Preserve, Report to the Superintendent: *A Compilation and Review of Information Pertaining to Use of ORVs as Access for Subsistence Purposes in the Cantwell Area by Federally Qualified Subsistence Users*, 2005 (32-107).

¹⁹ Simeone, William E. 2002. *Wild Resource Harvests and Uses by Residents of Cantwell, Alaska, 2000: Technical Paper Number 272*. Alaska Department of Fish and Game Division of Subsistence. Juneau Alaska.

²⁰ Institute of Social and Economic Research report, *MMS Census Database*, 1996.

²¹ Stratton, Lee and Susan Georgette, *Use of Fish and Game in Communities in the Copper River Basin, Alaska: A Report on a 1983 Household Survey*. Technical Paper No. 107. Alaska Department of Fish and Game, Division of Subsistence, Anchorage, Alaska.

²² Affidavit and Interview with Maggie (MaCafferty) Oliver of her father, her own use, and her husband's use of ORVs for subsistence purposes, Appendix VII.

²³ Composite map of pre-ANILCA ORV use areas from 1993 interview and mapping effort. Compilation and Review Report to Superintendent, pg 31.

²⁴ Denali National Park and Preserve, Report to the Superintendent: *A Compilation and Review of Information Pertaining to Use of ORVs as Access for Subsistence Purposes in the Cantwell Area by Qualified Subsistence Users*, 2005, (Cantwell Subsistence Harvest Areas map for bear, moose and caribou. pg 101).