

## Nancy Lake ATVs nixed by high court

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NANCY LAKE — A ruling by the Alaska Supreme Court this month stands to impact about 200 property owners who rely on all-terrain vehicles to access private lands within the Nancy Lake State Recreation Area.

An Alaska Supreme Court ruling issued July 19 invalidates property owners' state permits, which had allowed motorized vehicles to use Butterfly Lake Trail in the Nancy Lake State Recreation Area.

The appeal sides with a lawsuit filed by SOP Inc. in February 2011 to enjoin the Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation from issuing permits for ATV use within the state park.

SOP Inc. appealed to the state Supreme Court after Superior Court Judge Patrick J. McKay denied its motion for summary judgment, saying "there is nothing in the statutes or regulations that justifies court intervention and invalidation of the permits."

On appeal, SOP Inc. argued that: 1. the permits constitute disposals of state park land in violation of Alaska law; 2. the permits violate the park's governing statutes and thus are illegal; 3. the park superintendent's new findings in support of the permits were retroactively adopted and "are a sham"; 4. the park's regulations grant impermissibly broad discretion to the park superintendent; 5. the permits actually create a regulation, which is impermissible because the regulation was not adopted in accordance with the Administrative Procedure Act; and 6. "issuance of the permits violates public policy by circumventing the constitutional restrictions on dispositions of state land."

The Supreme Court weighed in on the question of unlawful dispositions of state land, saying "that issuance of the permits violates public policy by circumventing the constitutional restrictions on dispositions of state land."

The state defended the practice, arguing it was granting licenses, not easements to use for motorized vehicles to use the trail.

"The Alaska Constitution prohibits the park from disposing of property that the Legislature has set aside as a state park. Thus, we find the permits are illegal and we reverse," the high court says in its ruling. It sent the case back to Superior Court for "further proceedings consistent with this opinion."

The high court said the Alaska Legislature established Nancy Lake State Recreation Area for the purpose of public recreation in 1966. Justices said motorized use violates the parks governing regulations, which prohibit “all uses incompatible with their primary function as public recreation land.”

### **Plat designates ‘fly-in-only access’**

The roots of the conflict predate the establishment of the area as a state park when a local property owner created a trail for winter snowmobile use from Lynx Lake to Butterfly Lake in the 1960s. The trail is now within park boundaries and is used by hundreds of people as the only practical way to travel via land to certain areas of remote private property beyond park boundaries. Back then, the trail was limited to winter use.

But as ATVs became more popular and more powerful, people who had purchased fly-in-only property outside the park began illegally using the vehicles on the trail for summer access, too.

The court ruling says that the Mat-Su Borough plat also denotes the private properties as fly-in only access, and that the plat’s designation as fly-in-only access was a condition of its approval by the borough’s planning board.

However, recently owners have listed properties for sale in the area as having ATV access and some people may have purchased land believing it included motorized access.

ATV use is a concern because of the damage users have caused to the Butterfly Lake Trail and the surrounding wetlands, SOP Inc. said in its appeal.

Plaintiffs said when the black mud along the trail became too deeply rutted to be traveled, riders widened the trail, extending the damage.

“The widened trail sections ranged from 32 to 73 feet in breadth,” according to the ruling.

After a September 2000 meeting between park representatives and property owners about the damage, property owners in 2002 were to use private funds to upgrade and maintain the trail to support ATV use.

Since then, the park has allowed only nearby landowners to use the trail under special park use permits, the court wrote.

“Despite the agreement between the property owners and the park that the property owners would upgrade the trail so that the ATV use would not damage it, the trail continues to suffer harm,” the ruling says.

Further, to facilitate ATV access, landowners illegally cleared trees and created landing for barges that are stored on park property year-round, and the park had issued special use permits for this activity, too, the court wrote.

At the heart of the case is Article VIII, § 10 of the Alaska Constitution, which provides that “[n]o disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.”

That this provision allows the Legislature to reserve recreational lands for public use, it also conversely means that those lands cannot be conveyed by the executive branch for private use, the court said.

“In practice, it appears that owning private property on or near Butterfly Lake entitles the property owner to a permit, and that ownership is the sole factor controlling who has a right to obtain a permit to use an ATV on the Butterfly Lake Trail,” the ruling says. “We conclude the rights of use granted by the Park are easements, and therefore they are illegal.”

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