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Off Highway Vehicle (OHV) Use on Creeks

The County of Wetaskiwin is committed to ensuring that OHV use is done in a safe and responsible manner. Part of that commitment includes addressing land use issues that may arise from time to time without infringing on the rights of all individuals using the public creeks for recreational use.

Common Questions & Answers

Am I allowed to ride my OHV on the creek?

In accordance with the *Public Lands Administration Regulation*, Section 43(a)(ii), the public can access the creek for recreational purposes that involves travel on frozen ground or on ice capable of holding the weight of the conveyance without making a depression on the ground or ice or breaking the ice. However, once you leave the ice on the creek, you may be on private land and charged with trespassing. Further, if your OHV damages the creek or lands adjacent to the creek then you are liable for those damages, including the making of a depression on the ground or ice.

Where does the creek end and private land begin?

In accordance with the *Surveyors Act*, Section 17, the creek ends, and private land begins:

> *"Natural boundary*
>
> *17(1) A surveyor who needs to determine the position of a natural boundary when performing a survey under this Act may do so by any survey method that has the effect of accurately determining its location at the time of survey, relative to the surveyed boundaries of the affected parcel.*
>
> *(2) When surveying a natural boundary that is a body of water, the surveyor shall determine the position of the line where the bed and shore of the body of water cease and the line is to be referred to as the bank of the body of water.*
>
> *(3) For the purposes of this section, the bed and shore of a body of water shall be the land covered so long by water as to wrest it from vegetation or as to mark a distinct character on the vegetation where it extends into the water or on the soil itself."*

How does the 1894 *Northwest Irrigation Act* (NWIA) apply in the case of creeks?

The provisions provided under the NWIA only apply for landowners who have applied for water rights for irrigation. Internet research found states:

> "The *Northwest Irrigation Act* unequivocally revoked or rescinded common law riparian rights, declaring that the water in all streams, lakes, ponds, springs, or other sources belongs to the Crown. It then defined the conditions under which federal officials could grant water rights or concessions to companies or individuals for a variety of uses. Those applying for water rights for irrigation purposes had to define the quantity of water required, the specific lands to be irrigated, and the irrigation works to be constructed. Successful applicants were given indisputable title to the water granted them under their licenses if they used it only in accordance with the terms and conditions of their application. The licensees also enjoyed rights of expropriation of land needed for the development of approved works. But failure to develop the works, or misuse of the water, could result in the revocation of the rights granted. Decisions of government officials regarding revocations were final and without right of appeal to the courts."

Can I consume alcohol on private land?

Yes, provided you have the permission from the landowner you are consuming alcohol on. However, the laws that apply to drinking and driving your vehicles also apply to operating an OHV. You must be aware of how much alcohol/drugs you have consumed and take that into account before operating any type of transportation device. You can be charged under the *Criminal Code of Canada* for impaired driving.

- The Gaming Liquor and Cannabis Act also applies.
- This means no open liquor, public consumption, minor possess etc.

What are the noise regulations for OHV use?

The County of Wetaskiwin Noise Bylaw 2013/05 could apply. Generally, the Bylaw applies between the hours of 11 p.m. and 7 a.m. the next day. However, the Bylaw also applies for any person who makes any unreasonable noise which may be a nuisance. The definition of nuisance and the entire Bylaw can be found on the website at www.county.wetaskiwin.ab.ca.

Further, the *OHV Regulation* outlines the rules for mufflers:

> *"8(1) No person shall drive an off-highway vehicle unless the off- highway vehicle is equipped with an exhaust muffler that complies with this section.*
>
> *(2) An exhaust muffler must cool and expel the exhaust gases from the engine without excessive noise and without producing flames or sparks.*
>
> *(3) No person shall drive an off-highway vehicle if the exhaust outlet of the muffler has been widened.*

(4) No person shall drive an off-highway vehicle if a device is attached to the exhaust system or the muffler that increases the noise made by the expulsion of gases from the engine or allows gases in or leaving the exhaust system to be ignited.

(5) No person shall drive an off-highway vehicle if the exhaust muffler

(a) is cut out or disconnected from the engine, or

(b) has had a baffle plate or other part removed."

What were the complaints that led to the enforcement?

The County has had numerous complaints throughout the County against recreational users that mostly relate to damage of lands and garbage being left behind. The complaints against the landowners are tied to barricades/fences in place that impede the recreational users from accessing public lands, creeks and road allowances.

Does the RCMP have resources to be able to monitor activity on the creeks?

Both the RCMP and Fish & Wildlife have access to snow sleds and quads. The County of Wetaskiwin Community Peace Officers may conduct foot patrols of frozen creeks from time to time, usually under bridges in high traffic areas

As a landowner, do I need to install 'No Trespassing' signs in order to keep the public off my property?

With respect to having to install signs, the *Petty Trespass Act* summarized states:

"Entry on land is prohibited without any notice posted on land;

(a) that is a lawn, garden or land that is under cultivation,

(b) that is surrounded by a fence, a natural boundary or a combination of a fence and a natural boundary, or

(c) that is enclosed in a manner that indicates the owner's or occupier's intention to keep persons off the land or to keep animals on the land."

If the creek is impassable, what are my options?

By strict letter of the law, you must turn around. If the reason for the impassability is movable and not permitted, then you have the option to move it out of the way but cannot damage private land in doing so. With permission of the landowner, you can go around using private land.

What are some of the regulations that apply to OHV use?

The *Traffic Safety Act* applies to the frozen creek. It is a highway under this definition:

"highway" means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestle way or other place or any part of any of them, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of vehicles.

Provincially there is the *OHV Regulation* that generally relates to operation on Crown Land and Public Lands. Locally, the County has passed Bylaw 2026/13 that relates to operation on County roadways and ditches, not including Primary or Secondary Highways. A copy of the OHV Bylaw can be found on the website at www.county.wetaskiwin.ab.ca.

What are the rules regarding licencing and registering my OHV?

For both Provincial and Municipal Regulations, the OHV must be licenced, insured and registered unless it is only operating on private land owned by yourself or private land that you have permission to be operating on.

Can my children under 14 years of age operate an OHV on the creek?

For public lands and private lands:

- A person 14 or older can ride on both public and private land independently but requires proper insurance/registration on public land;
- A person under 14 years can ride unsupervised on private land but requires a licenced adult to accompany them on public land as well as the proper insurance and registration.

For County roads/ditches:

- No person shall operate an Off-Highway Vehicle on a Highway unless the person is:
    - at least 16 years of age and holds a valid Class 1 to Class 6 Operator's Licence, or
    - at least 14 years of age and holds a valid Class 7 Operator's Licence and is supervised by a person who is:
        - at least 18 years old and holds a valid Class 1 to Class 6 Operator's Licence, and
        - either occupying the passenger seat on the Off-Highway Vehicle or is on another Off-Highway Vehicle that is travelling near the Off-Highway Vehicle.

As interpreted by the regulations, an individual under 14 years of age can operate an OHV on the creek, but that same operation is not allowed within the roadway/ditch of a County Road until the individual is 14 years of age and is accompanied by an adult who holds a valid Class 1 to Class 6 Operator's Licence.

If there are any questions related to the above, please contact Jeff Chipley, Assistant Chief Administrative Officer at jchipley@county10.ca or (780) 361-6223 or Mike Zajac, Director of Emergency Services at mzajac@county10.ca or (780) 361-6240.