



**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

**Administrative Decision
General Permit ADL 233982
Winter Cross Country Travel
AS 38.05.850**

Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) will authorize an Over-the-Counter (OTC) Permit Program to allow for winter cross-country travel (WCCT) on state-owned, DMLW-managed lands. To qualify for the WCCT OTC permit, the applicant must meet specific parameters. The permit will be valid for one year from the date of signature and will require an annual fee of \$240.

Scope of Decision

The scope of this decision is limited to determining if it is appropriate for DNR to issue OTC permits for winter cross country travel for up to a one-year term as a revocable-at-will land use permit (LUP).

Statutory Authority

This decision is being adjudicated pursuant to AS 38.05.035(a) (powers and duties of the director), AS 38.05.850 (permits), 11 AAC 96.010 (uses requiring a permit), and 11 AAC 05.180 (fees) as modified by the current Director's Fee Order.

Background

The purpose of the WCCT OTC permit program is to streamline the permitting process and reduce backlog for de minimis activities on state land. WCCT fits within the scope of an OTC permit because this type of activity is commonly authorized, has not resulted in conflict, has little associated infrastructure and complexity, and is low impact.

Traditionally, DMLW has authorized WCCT under a land use permit (LUP) as the activity is not a generally allowed use of state land per 11 AAC 96.020. As land use permits may take up to 30 days to adjudicate, this process may not be necessary for low-impact activities like WCCT. DMLW can streamline the authorization of WCCT activities by allowing individuals to apply for an OTC permit provided that the WCCT falls within the parameters identified in this decision. If the WCCT falls outside of the parameters identified here, the applicant may apply for a permit.

Agency Scoping

DNR conducted agency scoping from February 11, 2022, through February 25, 2022. The purpose of scoping was to collect feedback from other agencies on establishing parameters and stipulations for the WCCT OTC permit.

The following agencies received the scoping notice:

- DOT: heather.oclaray@alaska.gov
- ADF&G:
 - chelsea.clawson@alaska.gov

- marla.carter@alaska.gov
- DEC:
 - Spill Response: laurie.silfven@alaska.gov
 - Commissioner's Office/Compliance: gary.mendivil@alaska.gov
- Forestry:
 - Fairbanks: jeremy.douse@alaska.gov
 - Anchorage: alison.arians@alaska.gov
- Division of Agriculture: erik.johnson@alaska.gov
- Office of History & Archaeology: oha.revcomp@alaska.gov
- DMLW:
 - Easements: aj.wait@alaska.gov
 - Permits: dianna.leinberger@alaska.gov
 - Water Section: dnr.fairbanks.water@alaska.gov, clint.gundelfinger@alaska.gov
 - Mining: dnr.fbx.mining@alaska.gov, david.charron@alaska.gov
 - Land Sales: land.development@alaska.gov
 - SAIL: dnr.dmlw.sail@alaska.gov
- Army Corps:
 - ellen.h.lyons@usace.army.mil
 - regpagemaster@usace.army.mil
- Soil and Water Conservation District:
 - Salcha-Delta: info@salchadeltaswcd.org
 - Fairbanks: jonisc@gmail.com
 - Anchorage: anchoragewcd@gmail.com
 - Palmer: palmerwcd@alaska.com
 - Homer: info@homerswcd.org
 - Kenai: kenaiswcd@gmail.com

DMLW received the following feedback:

DNR Water Comment: If applicants are withdrawing water or ice to build ice bridges, they may need an authorization if they are using a significant quantity of water as defined under 11 AAC 93.035. Some language should be added that addresses a yes/no answer to water use that would trigger AS 46.15.180.

DNR Lands Response: We will add the following stipulation to the OTC permit, which will inform the permittee of the need to obtain a water authorization if their water use is significant:

If, while operating under this authorization, the use of water or ice exceeds any of the following criteria, you may need to apply for a water right or temporary water use authorization per 11 AAC 93.035 and 11 AAC 93.220: Consumptive use of more than 5,000 gallons of water from a single source in a single day, consumptive use of more than 500 gallons per day from a single source for more than 10 days per calendar year, or non-consumptive use of more than 30,000 gallons per day (0.05 cubic feet per second) from a single source. Please contact the Department of Natural Resources Water Section at (907) 269-7495 or dnr.twua@alaska.gov for more information.

DNR Forestry Comment: DOF would still like to receive notification for proposed cross-country travel when the route passes through state forest parcels. It appears under this proposal the travel could only occur on general state lands, so we should still receive notification.

DNR Lands Response: As the OTC permit would only be for general state lands, an applicant requesting to travel through an LDA, such as the state forest, would not be within the parameters of the OTC process. The applicant would be required to get a standard land use permit and go through the agency review process.

Land Sales (Development) Comment: no concerns or objections with the proposal. We recommend considering whether or not the permit should require the permittee to document the depth of snow cover and ground frost prior to starting travel. Since the permit is only issued for a year we think stipulation #13 (Renewal/extension) is not necessary. Stipulations 26 (ground disturbance), 38 (Operation of vehicles), and 39 (cross-country travel) might be modified since the immediate repair of disturbed soil may be impractical in winter.

DNR Lands Response: Noted. DNR will review stipulations for applicability to the authorization to ensure clarity.

DEC Comment: Please include the most up to date DEC Spill reporting placard as an attachment to the permit <https://dec.alaska.gov/media/17434/spill-reporting-placard.pdf>. Some edits of Stipulation 30, Fuel and Hazardous Substances, could include best practices of using a drip pan or other surface liner during refuel operations and conducting an inspection prior to cross country travel of any containers that will be used to haul fuel to ensure that they are in good condition and won't be compromised during transport. Best practices also recommend using double walled tanks, when possible.

DNR Lands Response: The content of the placard will be included as part of our standard notification of discharge stipulation. Standard stipulations also include requirements to have drip pans and materials such as sorbent pads on hand during refueling operations.

SAIL Comment: Concur with DEC's comments. Also, please update the Notification stipulation to the most current version

DNR Lands Response: Noted, we will update our stipulation.

DOT Comment: No comments

ADF&G Comment: This permit should not be valid in legislatively designated areas (LDAs). We request that the permit include language that states a fish habitat permit from the ADF&G Habitat Division is required for the crossing of cataloged anadromous water bodies. If a request does not fit within the parameters of the general permit, the applicant can apply for an individual fish habitat permit.

DNR Lands Response: As the OTC permit would only be for general state lands, an applicant requesting to travel through an LDA would not be within the parameters of the OTC process. The applicant would be required to get a standard land use permit and go through the agency

review process. We will include language in the permit application notifying the applicant of the potential need for a fish habitat permit if they are crossing water bodies.

Environmental Considerations

The environmental risks associated with this authorization are minimal and are mitigated by the stipulations of the permit.

Discussion

To qualify for an OTC WCCT permit, the following parameters must be met:

- Travel must be winter only. Winter Travel is defined as:
 - 6 inches of snow and 12 inches of ground frost must exist.
 - Ice and/or snow bridges and approach ramps must be of sufficient strength to adequately support the weight of vehicles crossing them.
- Total fuel being hauled must not exceed 500 gallons.
- Travel must be less than 200 miles round trip total.
 - Exception: Travel for trail grooming purposes only.
- No more than three vehicles that exceed GAU.
- Requires an annual fee of \$240.00.
- Permit is only valid for travel on general State-owned land. It does not apply to state parks, University of Alaska lands, Alaska Railroad lands, Alaska Department of Transportation & Public Facilities land, or Alaska Mental Health Trust lands. Other exceptions may occur because of special conditions in a state land use plan or management plan, or by a “special use land” designation under 1 AAC 96.014.

Cross-country travel of heavy equipment for grooming trails is considered a de minimus activity and though it does not meet the less than 200 miles round trip parameter, it will be permitted under the OTC WCCT permit if it meets the other parameters outlined above.

Applicants will be required to meet the parameters outlined on the OTC WCCT permit application. If the travel falls outside of the parameters identified here, the applicant must apply for a permit.

The permit will convey no interest in state land and is revocable with or without cause. No preference right for use or conveyance of state land is granted or implied by the issuance of this permit. It is not transferable and cannot be assigned, subleased, or rented.

Performance Guaranty and Insurance

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the grantee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

DMLW will not require permit applicants to furnish a performance guaranty or insurance prior to permit issuance due to the limited risk and temporary nature of the activity. General permit stipulations will reserve DMLW's ability to require a performance guaranty or insurance at any time if determined to be in the best interest of the State.

Fees

As per 11 AAC 05.180(d)(2)(J), other land use permit under AS 38.05.850 for a use not covered by (B) - (I) of this paragraph that does not hinder other public use, such as moving heavy equipment across state land, \$300 annually. Fees adjusted for the Director's Fee Order #3 to \$240.

Fee: \$240

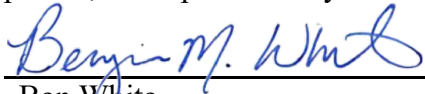
Relevant Fee Regulation(s): 11 AAC 05.180(d)(2)(J), and Directors Fee Order #3

Term

Effective use dates: One year from the date of signature.

Manager's Decision

Based upon the information received by other agencies, the need to streamline the permitting process, as well as review of relevant planning documents, statutes, and regulations related to this activity, it is the decision of DMLW to issue this General Permit on the condition that all permit stipulations are followed as described in the attached OTC permit. During the term of any OTC permit, an inspection may be conducted at the discretion of the DNR to ensure permit compliance.



Ben White
Southeast Regional Manager

March 22, 2022

_____ Date

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to (907) 269-8918, or sent by e-mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a) and (b).

This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.