



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

**Amended Administrative Decision
General Permit ADL 234164**

AS 38.05.850

Amended Administrative Decision

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) issued a state-wide General Permit (GP) for Recreational Off-highway Vehicle (ROV) use on DMLW managed general state lands. Since issuance of the GP on July 21, 2023, DMLW has learned that the criteria as outlined in the original decision, GP, and Wheeled Vehicle Factsheet need corrected based on new information. DMLW also wants to clarify terms used within the decision to eliminate confusion.

Using the term ROV to describe the vehicles authorized by the GP has caused confusion; therefore, DMLW is eliminating the term and simply using All-Terrain Vehicle (ATV) and Utility Task Vehicle (UTV) to describe the types of vehicles authorized by the GP. There are a variety of terms and acronyms used for different off-road vehicles: ATV, Light Utility Vehicle (LUV), quad, UTV, Off Highway Vehicle (OHV), ROV, Multipurpose Off-Highway Utility Vehicle (MOHUV), Side by Side (SxS), All Purpose Vehicle (APV), etc. Some criteria are needed to describe what vehicles are authorized under the GP. For the purposes of this amended decision and the GP DMLW is using the following terms and definitions:

ATV is a vehicle that travels on low-pressure tires, *has a seat that is straddled by the operator*, and has handlebars. The term ATV can include vehicles with 3 wheels or 4 wheels. Three-wheelers are not widely used anymore, though they still exist. The GP does not include 3-wheelers as they are likely less than 1,500 lbs. and can be operated as a Generally Allowed Use under 11 AAC 96.020.

A “quad” or LUV for the purposes of this decision are considered the same type of vehicle as an ATV.

UTV is an off-road vehicle *with a minimum of two seats positioned side by side* and enclosed with a roll cage structure. They have a minimum of four wheels and are operated by foot controls and a steering wheel.

MOHUV and SxS are terms often used to describe the same type of vehicle as a UTV. For the purposes of this decision MOHUV and SxS are considered the same type of vehicle as a UTV.

ROVs are motorized vehicles having four or more tires designed for off-road use and intended by the manufacturer for recreational use by one or more persons. In the original decision the term ROV was intended to encompass ATVs and UTVs, but since there is no standard for terms, it caused confusion. ROVs could be ATVs or UTVs, although UTVs are not manufactured primarily for recreational use.

The GP authorizes the use of ATVs and UTVs provided they meet the following criteria:

- 80 inches or less in width
- Having a curb weight of 2,500 pounds or less
- Designed to travel on four or more non-highway tires

While there is no definition of non-highway tires, there is a definition for highway tires. Highway tires are defined by the National Highway Traffic Safety Administration with the Uniform Tire Quality Grading Standards. If the tires do not meet the definition of highway tires, then they are non-highway tires. The intent of this criteria is to clarify that the GP is for ATVs and UTVs, not highway vehicles that have been modified for off-road use.

Two previous criteria are being eliminated:

- Unable to be lawfully registered for on-highway use
- Manufactured for recreational use by one or more persons

In the State of Alaska ATVs and UTVs can be registered for highway use. ATVs, UTVs, dirt bikes, moose-buggies, snowmachines and other *off-highway vehicles* may be registered but are not titled. If these vehicles are driven on public property, they are required to be registered with the Division of Motor Vehicles.

ATVs and UTVs can be registered for off-highway use or they can be *titled* and registered for on-highway use. Once titled and registered for on-highway use, these vehicles are referred to as APVs. Once a vehicle is titled and registered as an APV it can be driven on roads where the maximum speed is 45 miles or less and where is not prohibited by local law or ordinance.

Public Safety regulations created these two types of registered vehicles, those registered for off-highway use and those titled and registered for highway use where allowed.

13 AAC 40.010 definitions (Public Safety)

(30) "off-highway vehicle" means a vehicle designed or adapted for cross-country operation over unimproved terrain, ice or snow, and which has been declared by its owner at the time of registration and determined by the department to be unsuitable for general highway use, although the vehicle may make incidental use of a highway as provided in this title; it does not include implements of husbandry and special mobile equipment;

(67) "all-purpose vehicle" (A) means any self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground and is commonly used to transport persons for recreational purposes, including vehicles such as four-wheel drive units, all-terrain vehicles (ATVs), or utility terrain vehicles (UTVs); (B) does not include off-highway vehicles. [this is title and registration for on-highway use]

For the purposes of this decision, the GP authorizes the use of OHVs and APVs as defined above, provided they meet the three criteria listed previously.

Scope of Decision

The scope of this decision is limited to amending the criteria for which vehicles are authorized for use under the GP and clarifying terms.

Statutory Authority

This decision is being adjudicated pursuant to AS 38.05.035(a) (powers and duties of the director) and AS 38.05.850 (permits).

Background

The purpose of this GP is to facilitate the use of general state land, streamline the permitting process, and reduce backlog. Traditionally, off-road vehicles weighing more than 1,500 lbs. required authorization via a Land Use Permit (LUP), as the vehicle exceeded the Generally Allowed Use (GAU) thresholds per 11 AAC 96.020.

The original decision was signed July 21, 2023. Since issuance of the GP DMLW has identified a need to amend the criteria, thus the decision, GP, and factsheet must be amended.

Agency Review

Agencies will be notified of the amended decision and will be invited to provide comments on the GP in general.

Notice to the Public

DMLW posted the original decision, the GP, and the Wheeled Vehicle Factsheet on the State of Alaska Online Public Notice System for 30 days to notify the general public of the issuance of the GP. This amended decision will also be posted on the Alaska Online Public Notice System for 30 days. Based on feedback received from the public on the original decision, DMLW is providing an opportunity for the public to comment on the issuance of the GP to include the amended criteria.

Environmental Considerations

The ATV-UTV GP provides authorization for ongoing and existing ATV and UTV use. Therefore, the environmental risks associated with the proposed GP are minimal. Potential risks may be minimized by operators following the permit stipulations outlined in the GP.

Discussion

As was described in the original decision ATVs and UTVs have grown in popularity over the last two decades. Manufacturers have continued to improve and upgrade these vehicles; thus, weights and dimensions have also greatly changed since these vehicles were previously addressed in GAU.

DMLW has been evaluating the issue of the use of ATVs and UTVs that exceed the weight limit defined in GAU on state land. GAU activities for general state land are outlined in regulation (11 AAC 96.020). Activities listed in GAU do not require a permit; all other activities require some type of authorization from DMLW. Users of ATVs and UTVs that exceed the weight limit of 1,500 lbs. curb weight are required to obtain a Land Use Permit (LUP) from DMLW. By issuing a GP, individual ATV and UTV users would not be required to obtain an LUP from DMLW. The GP authorizes ATV and UTV use generally across state land provided it adheres to conditions outlined

in the GP. This is not unlike GPs issued by ADF&G for stream crossings. No fees would be associated with a GP. GPs can be issued under the delegated statutory authority (AS 38.05.850).

DMLW has issued the GP as an alternative way to manage ATV and UTV use on state land that meets the following criteria: adheres to state regulation, does not contribute to backlog applications, does not contribute to compliance issues, and facilitates the use of state land by ATV and UTV users.

Issuance of a GP also provides an opportunity for staff to evaluate the effectiveness of increasing the weight limit, while also identifying any unintended consequences. There has been some discussion regarding changing the GAU regulation to increase the weight limit. Many ATV and UTV users are already familiar with GAU. While DMLW may pursue a regulation change in the future, a GP can be issued now. A GP offers more flexibility than a regulation change. Using the GP while a regulation change is being considered may help inform the regulation change. In addition, it is anticipated that through a proposed GAU regulation change process DMLW will receive additional stakeholder input through the scoping and public notice steps.

DMLW recognizes that the proposed alternative does not take into consideration the current impacts of ATV and UTV use on state land. Since the use is already occurring, it is not anticipated that issuance of a GP will increase impacts. The use is already occurring, but it is not authorized under GAU. Although impacts to land may not increase with issuance of a GP, DMLW understands the importance of developing methods and practices to assess current impacts of motorized use to determine if impacts are at an acceptable level, or if other alternatives or mitigation measures need to be developed.

Issuing a GP for ATV and UTV use on general state land adheres to state regulation, does not contribute to backlog applications, does not contribute to compliance issues, and facilitates the use of state land by ATV and UTV users.

This GP authorizes the use and operation of ATVs and UTVs on general state lands managed by DMLW. The GP is not valid for use on private land, state parks, legislatively designated areas, or land owned or managed by other state agencies such as the University of Alaska, Alaska Mental Health Trust, Department of Transportation and Public Facilities, or the Alaska Railroad. Some special use areas may also restrict ATV and UTV use.

If the vehicle is outside the parameters of this GP or GAU, then the user is required to obtain a standard land use permit which includes agency review and public notice.

Issuance of a GP for ATV and UTV use does not alleviate users from obtaining a Fish Habitat Permit from ADF&G for crossing waterbodies if needed.

ATV and UTV users operating under the GP are subject to the following conditions:

- (1) activities employing ATVs and UTVs must be conducted in a manner that minimizes surface damage;
- (2) vehicles must use existing roads and trails whenever possible;

- (3) activities must be conducted in a manner that minimizes
- (A) disturbance of vegetation, soil stability, or drainage systems;
 - (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;

Nothing in this decision restricts DNR-DMLW authority to require a land use authorization for any ATV or UTV if deemed necessary for the protection of state land and resources.

Performance Guaranty and Insurance

Performance guarantees are a 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.

DNR-DMLW will not require those covered under the GP to furnish a performance guaranty or insurance due to the limited risk and temporary nature of the activity. GP stipulations will reserve DMLW's ability to require a performance guaranty or insurance at any time if determined to be necessary.

Fees

The general permit is not subject to an application fee or an annual use fee.

Term

Effective use dates: Up to 5 years.

Decision

Based upon the need to address the unauthorized use of ATV and UTV on that state land that exceeds GAU, 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 a GP for ATV and UTV use on general state lands on the condition that the proposed use meets the criteria, and all permit stipulations are followed as described in the attached GP. During the term of the GP, an inspection may be conducted at the discretion of DMLW to ensure permit compliance. 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.



Kaitlyn Raffier, Natural Resource Manager 3
DMLW Permit Policy Team Lead

10/20/2023

Date

Attachments

General Permit

Wheeled Vehicle Factsheet

An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals 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)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.