

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
NORTHERN REGION
2020 Amended Administrative Decision
Rex Trail – RST 119, ADL 421302, ADL 412566, ADL 401880**

AMENDED ADMINISTRATIVE DECISION

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Northern Regional Land Office (NRO) is amending the Rex Trail 2008 Administrative Decision to authorize an Over-The-Counter (OTC) Permit Program to allow the following vehicles on the Rex Trail during hunting season:

1. Rubber tracked vehicles up to 26,000 lbs curb weight (e.g. Foremost Nodwell 110); and
2. Wheeled vehicles up to 10,000 lbs curb weight.

This amendment constitutes a modification to the original 2008 Administrative Decision that temporarily restricts summer motorized travel on a portion of the Rex Trail (RST 119, ADL 412566, and ADL 401880) to vehicles with a curb weight of 1,500 lbs or less.

This amendment is intended to replace the 2009 Amended Administrative Decision, which authorized rubber tracked vehicles up to Nodwell 110 in size via an OTC permit. This amendment adds larger wheeled vehicles to those which may be authorized under an OTC permit, clarifies the nature of what constitutes a trailer, and updates the stipulations which condition the OTC permit.

To be approved for a fall permit, unladen vehicles must meet the weight requirements listed above, wheels and tracks must be made of rubber, and the vehicle may not pull a trailer. Articulated vehicles are not considered to have a trailer if wheels or tracks of all sections are powered by the engine. Vehicles (tracked or wheeled) weighing less than 1,500 lbs curb weight will still be allowed to travel as allowed under 11 AAC 96.020-.025 without the need for a permit.

Individuals who wish to obtain a permit must apply to the DMLW and pay a permit fee of \$240. All fees for the DMLW were updated and increased on July 1, 2018 pursuant to updated state regulation 11 AAC 05 as modified by the current Director's Fee Order. All other conditions as noted in the original 2008 Administrative Decision remain in effect. Permits will be issued annually and be effective from August 28, 2020 through April 15, 2021. This amendment will be implemented on August 28, 2020 and will remain in effect until April 15, 2025, unless extended or superseded by another decision.

SCOPE OF DECISION

This amendment to the 2008 Administrative Decision is intended to replace the 2009 Amended Administrative Decision and is limited to amending the 2008 Administrative Decision by authorizing an OTC permit program for certain tracked and wheeled vehicles.

The area affected by this decision is limited to the portion of the Eastern Rex Trail – which is mostly unimproved – between the intersection with ADL 415819, Southwind Homestead Access, and the southern boundary of Fort Wainwright near the Wood River.

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 51 (easement management), 11 AAC 96.010 (uses requiring a permit), and 11 AAC 05.180 (fees) as modified by the current Director’s Fee Order.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of: the Constitution of the State of Alaska; the Alaska Land Act as amended; applicable statutes and regulations referenced herein; the 2014 Yukon Tanana Area Plan; casefiles RST 119, ADL 401880, and ADL 412566; and the casefile for Rex Trail management serialized by DNR as ADL 421302.

LEGAL DESCRIPTION

Within the Fairbanks Meridian, Alaska:

Sections 11 and 12, Township 8 South, Range 8 West, that portion of the Rex Trail (RST 119 and ADL 412566) lying east of the intersection with the connecting road from Rochester Lodge, ADL 415819;

Sections 7-12, Township 8 South, Range 7 West;

Sections 1-4, 7-9, Township 8 South, Range 6 West;

Sections 2-6, 11-12, Township 8 South, Range 5 West;

Sections 7-8, 14-17, 23-24, Township 8 South, Range 4 West;

Sections 19, 27-30, 34-36, Township 8 South, Range 3 West;

Sections 13-15, 21-22, 26-27, 33-34, Township 8 South, Range 2 West;

Sections 4-6, 8-9, Township 9 South, Range 2 West;

Sections 1-2, 7-11, Township 8 South, Range 1 West; and

Sections 12-13, 24-25, 36, Township 7 South, Range 1 West.

BACKGROUND AND DISCUSSION

Decision History

In response to public safety concerns, reduced access, and escalating resource damage from deteriorating trail conditions, the NRO issued a management decision on May 12, 2008 temporarily restricting summer and fall motorized travel on a portion of the Rex Trail (RST 119, ADL 412566 and ADL 401880) to vehicles with a curb weight of 1,500 lbs or less. The intent of the short-term, temporary restrictions is to facilitate the long-term management goal of preserving access for all users of the trail. As part of reaching this decision, DNR recognized the need for a comprehensive evaluation of trail conditions, an assessment of the potential feasibility of trail upgrades or realignments, and to determine the relative impacts of different types of vehicles.

On August 25, 2009, the original decision was amended to allow the issuance of permits to rubber tracked vehicles up to and including Nodwell 110 or similar sized vehicles during the fall 2009 hunting season. In addition to offering a wider range of transportation options for fall hunting, the amendment was designed to collect vehicle use patterns and to monitor impacts of this additional

use. The amended decision created a special streamlined OTC Rex Trail permit application for main stem trail travel and established a trail condition monitoring program.

The term of the original 2009 Amended Decision was for the 2009 hunting season only. The decision was extended annually or biannually through 2019. This allowed continued offering of the specialized Rex Trail OTC permits and subsequent monitoring of the test plots in order to provide more comprehensive baseline data about trail conditions over time.

Accomplishments

The review and analysis of accumulated trail condition data was published in 2016 and is available in the Rex Trail Monitoring Report on the DNR Rex Trail Website at <http://dnr.alaska.gov/mlw/rextrail/>. This report finds that while trail conditions continue to vary with microtopography and differing soil types, overall trail conditions have remained stable, and some portions of the trail have improved, since the initiation of the 2009 Amended Administrative Decision.

In addition to completing the Rex Trail Monitoring Report, the DMLW completed two trail reroute pilot projects. These projects were initiated based on information from a prescription report produced by Interior Trails in 2013, funded by the Alaska State Legislature and a Recreational Trails Program grant (via the Alaska State Trails Program). In 2014, a small vehicle reroute (for off-road vehicles 1,500 lbs or less) was constructed, and in 2019, a 1.5 mile trail reroute for all traffic was constructed around Seven Mile Lake. Both projects serve as test routes to evaluate the feasibility and effectiveness of the construction methods and to assess long-term durability given the level of traffic they were designed for. Post-construction and post-hunting-season field inspection of the Seven Mile Lake Reroute in 2019 have indicated that the reroute appeared passable after a single fall season of travel by large tracked vehicles authorized by the OTC permit system. Additionally, the Seven Mile Lake Reroute bypasses a particularly bad section of trail that crosses private property and is often impassible to even larger off-road vehicles. The removal of traffic from this section of trail offers a unique opportunity to assess how the trail recovers when traffic is removed.

New Management Regime

After the completion of the Rex Trail Monitoring Report and construction of reroute pilot projects, the DMLW can now assess how additional traffic during the hunting season may impact trail condition and newly constructed reroutes. This may be accomplished by temporarily lifting certain restrictions put in place by the 2008 Administrative Decision while continuing to monitor trail conditions as outlined in the monitoring report. The 2018 extension of the 2009 Amended Decision specifically addressed the possible future management the Rex Trail upon completion of the Seven Mile Reroute project by stating that the current management of the eastern Rex Trail would be reassessed, and a potentially new management regime will be evaluated. This decision noted that new management might include but is not limited to: the lifting of vehicle restrictions to allow wheeled vehicles up to 10,000 lbs, continued OTC permitting of non-GAU vehicles such as rubber tracked vehicles up to and including the Nodwell 110, and the possibility of allowing custom off-road vehicles.

CURRENT MANAGEMENT UNDER THIS AMENDMENT

The original 2008 Administrative Decision shall be temporarily amended by this decision to expand and refine the OTC program for motorized traffic allowed on the trail, and to continue gathering data for the trail monitoring program. This amendment will replace the 2009 Amended Decision and will expand and refine the OTC permit program for motorized vehicles on the Rex Trail.

This amendment makes the following changes to the 2008 Administrative Decision:

1. Temporarily allow greater access opportunities on the trail during the hunting season by allowing the following vehicle types through an OTC permit process:
 - a. Rubber tracked vehicles (no steel tracks or cleats) up to 26,000 lbs curb weight. This weight limit is based on the tare weight of a Foremost Nodwell 110 as published in the 2015 manufacturer's brochure.
 - b. Rubber-tired vehicles up to 10,000 lbs curb weight, consistent with Generally Allowed Uses on state land per 11 AAC 96.020. This includes stock and modified highway vehicles, as well as custom fabricated vehicles.
2. Apply specific travel related stipulations to the OTC permit. These stipulations are substantially similar to previous stipulations and are intended to reduce the impact of travel to both the Rex Trail itself as well as the surrounding landscape. There were three substantive changes: the definition of what constituted a trailer was clarified as it was previously unclear whether vehicles such as a Nodwell Chieftan with an unpowered rear detachable unit qualified for a permit; a fuel limit was established to ensure commercial quantities of fuel were not being hauled, limiting risk in the event of a spill or breakdown for these OTC permits; and our standard indemnification language was added to the permit. Permits issued pursuant to this decision will include, at a minimum, the following:
 1. The vehicle operator must keep the signed and approved permit on site and available for inspection in the field at all times.
 2. Travel is only authorized on the main stem of the East Rex Trail.
 3. No new trails or routes shall be created.
 4. No travel is authorized off the main stem of the Rex Trail by vehicles over 1500 pounds, except that vehicle parking may occur within 100 yards of the main stem within naturally occurring or existing clearings.
 5. No trailers are allowed. Articulated vehicles (those that are made of two sections, both sections using powered wheels or tracks, and separated by a pivot point) are not considered to have a trailer.

6. The main stem of the Rex Trail may be cleared of downed timber or brush provided that said clearing does not tear or otherwise destroy the vegetative mat (if present).
7. General vehicle operations shall be conducted in a manner which causes the least amount of impact to the vegetation and soil so as to avoid additional damage to the trail.
8. Stream crossings shall be conducted according to the following:
 - a. Crossings shall be made from bank to bank in a direction substantially perpendicular to the direction of stream flow.
 - b. Crossings shall be made only at locations with gradual down sloping banks. There shall be no crossings at locations with sheer or cut banks.
 - c. Beyond ordinary impact, stream slopes or banks shall not be altered or disturbed in any way to facilitate crossings.
 - d. Stream crossing activities shall avoid sensitive fish life stages. The Alaska Department of Fish & Game may restrict or prohibit activities during certain sensitive periods as necessary.
9. Permittee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this permit, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this permit. Permittee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Permittee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, Permittee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the permit.
10. This permit does not eliminate the need to obtain other necessary authorizations from federal, state and local agencies and affected private entities.
11. Up to 500 gallons, combined, of fuel, hydraulic fluid, lubricants, etc. may be transported in appropriate external tanks and containers in addition to amounts contained within the operating vehicle.
12. The Division of Mining, Land & Water reserves the right to modify these stipulations or use additional stipulations as deemed necessary.

3. Update the permit fee specified in the 2009 Amended Decision to be consistent with current regulations and Departmental Fee Order.

Per 11 AAC 05.180(d)(2)(J) effective July 1, 2018, and as modified by the current Director's Fee Order, the annual use fee for moving heavy equipment across state land in a way which does not hinder other public uses is \$240.

4. Assess the resource impact of the additional traffic on the trail during the hunting season.

The trail monitoring program will continue as it has in previous years, measuring trail conditions both before and after the hunting season. This will quantify the impact of increased access by more diverse motorized means on state resources. Should trail conditions change, the management strategy may be changed to promote public safety, adjust potential means of access, prevent the degradation of state resources, and preserve long-term access for all users.

5. Automatic termination of this amendment to the 2008 Administrative Decision and Rex Trail OTC permitting program.

Upon discovery of significant resource damage during trail inspections or monitoring, the OTC permit program will terminate for Subsections a and/or b of Point 1 above. The termination threshold metrics represent DNR's best estimate of trail degradation from which the trail may not recover adequately for continued reasonable access by multiple trail users. The threshold metrics were developed using institutional knowledge acquired over ten years of active trail management, including data from trail plot monitoring (available in the 2016 Rex Trail Monitoring Report) and observations from agency field inspections. The magnitude of change identified in the threshold metrics represent high levels of trail degradation over a short time frame beyond the variability observed and recorded on the trail over the last 10 years. If termination is triggered, DNR will reevaluate the management strategy for the Rex Trail in a new amendment to the 2008 Administrative Decision. Termination of the amendment will not occur while permittees are actively on the trail during hunting season. DNR retains the right to reverse the termination at their discretion.

For the purposes of this amendment, significant resource damage is defined below:

- a. For trail monitoring, significant resource damage is occurring if data collected on one or more established plots deviates from data collected prior to this amendment according to threshold criteria described in Appendix A; or
- b. Significant resource damage is occurring if the following is observed during trail inspections: additional braiding and/or widening of the trail, an increase in the ponding of water at several locations within the alignment of the trail, or an increase in winter trail hazards such as deep ruts, jumbled shelf ice, or other hazardous features that may be hard to see in snow.

Rex Trail OTC permits are standardized and designed for fast-turn-around issuance for a specific, well-documented route (the main stem of the existing trail), which has systematic monitoring sites already established for DMLW trail condition assessment. If the OTC permit program does not fit the needs of an applicant, the DMLW can consider their use of state land through the standard Land Use Permit (LUP) process. This may include travel off the main stem of the trail greater than 100 yards, hauling larger quantities of fuel, hydraulic fluid or other lubricants, or using equipment not authorized under the OTC program. The LUP process allows the state to consider the risks of the individual proposed activity and mitigate those risks through stipulations, bonding, and/or insurance. An application is available through the Public Information Center in Anchorage and Fairbanks, or by calling 1-800-770-8973. An application fee and annual use fee will apply.

Amending the 2008 Administrative Decision is appropriate. The expedited Rex Trail OTC permit system and vehicle restrictions represent a balance of considerations for travel during the fall hunt, with timely permitting and resource/access protection. Expansion of the OTC program will allow assessment of resource degradation and construction longevity with additional traffic. Copies of the 2008 Administrative Decision, 2016 Rex Trail Monitoring Report, and information regarding the pilot trail route projects are available on the Rex Trail website at <http://dnr.alaska.gov/mlw/rextrail/>.

It is imperative we document the most current pre-season baseline trail conditions and conduct post-season inspection to evaluate and monitor changing impacts, if any, from the additional permitting of larger wheeled vehicles. As such, permits for large wheeled vehicles as described in this decision, will not be issued until such time as it is verified that the pre- and post- season trail monitoring program can be conducted.

PUBLIC NOTICE

A Notice of Decision regarding this 2020 Amended Decision will be conducted from July 16, 2020 through August 6, 2020, will be posted to the State of Alaska Online Public Notice website, and mailed/emailed to the list of groups and individuals who indicated they wished to receive Rex Trail updates through the Rex Trail website.

DECISION

It is the decision of the Northern Region to amend the 2008 Administrative Decision to issue permits for certain wheeled and rubber tracked vehicles heavier than 1,500 lbs to travel on the Eastern Rex Trail. This amendment will be effective on August 28, 2018, and will remain in effect until April 15, 2025, unless superseded by a future decision. All permit requirements and conditions as noted this Decision, and all other conditions and restrictions as noted in the original 2008 Administrative Decision remain in effect. As noted above, permits for large wheeled vehicles will not be issued until it is verified that the trail monitoring program can be conducted.



Jeanne Proulx

Northern Regional Manager

Department of Natural Resources, Division of Mining, Land & Water

7/16/2020

Date

APPEALS

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 1-(907) 269-8918, or sent by electronic 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 Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

ATTACHED DOCUMENTS

Appendix A

Eastern Rex Trail Travel Permit

REFERENCED DOCUMENTS

2008 Administrative Decision

2009 Amended Administrative Decision

2016 Rex Trail Monitoring Report

Director’s Fee Order Number 3

APPENDIX A

Data collected during the Trail Monitoring Program from 2009 to 2019 represent a base line of trail conditionsⁱ upon which the effects of the 2020 Amendment to the 2008 Administrative Decision will be comparedⁱⁱ. If significant degradation of the trail is measured in at least one monitoring plot during subsequent sampling periods, automatic termination of the 2020 Amendment and the OTC permit program is triggered. This appendix lists the measurement criteria by which significant degradation is determined and termination is triggered:

1. An increase in the depth of rut(s) by two times (2x) previously recorded levels in a one-year interval, or by 3x previously recorded levels in a three-year interval.

Example A

Prior to data collection in 2020, a rut at plot "A" was 10 inches deep. After data collection in 2020, the rut was found to be 21 inches deep. Because:

$$21 \text{ in}/10 \text{ in} = 2.1$$

the magnitude of change from 2019 to 2020 is 2.1x, triggering termination.

Example B

Prior to data collection in 2020, a rut at plot "A" was 10 inches deep. The rut was then measured at 15 inches in 2020, 25 inches in 2021, and 33 inches in 2022. Because:

Year 2020 $15 \text{ in}/10 \text{ in} = 1.5$

Year 2021 $25 \text{ in}/15 \text{ in} = 1.7$

Year 2022 $33 \text{ in}/25 \text{ in} = 1.3$

no single year interval value triggers termination. However, the magnitude of change over a 3-year interval (2020-2022) is:

$$33 \text{ in}/10 \text{ in} = 3.3$$

and a magnitude of change of 3.3x over a 3-year interval triggers termination.

2. An increase in trail incision by 1.25x previously recorded levels in a one-year interval, or by 1.5x previously recorded levels in in a three-year interval.

Example A

Prior to data collection in 2020, the trail at plot "A" was found to be incised to a depth of 10 inches. After data collection in 2020, incision was found to be 13 inches deep. Because:

$$13 \text{ in}/10 \text{ in} = 1.3$$

the magnitude of change from 2019 to 2020 is 1.3x, triggering termination.

Example B

Prior to data collection in 2020, the trail at plot "A" was found to be incised to a depth of 10 inches. The trail incision was measured to be 11 inches in 2020, 13 inches in 2021, and 16 inches in 2022. Because:

Year 2020 $11 \text{ in}/10 \text{ in} = 1.1$

Year 2021 $13 \text{ in}/11 \text{ in} = 1.2$

Year 2022 $16 \text{ in}/13 \text{ in} = 1.2$

no single year interval value triggers termination. However, the magnitude of change over a 3-year interval (2020-2022) is:

$$16 \text{ in}/10 \text{ in} = 1.6$$

and a magnitude of change of 1.6x over a 3-year interval triggers termination.

3. An increase in trail width by 1.25x previously recorded widths in a one-year interval, or 1.5x in a three-year interval.

Example A

Prior to data collection in 2020, trail width at plot “A” was 20 feet. After data collection in 2020, the trail width was found to be 25 feet. Because:

$$25 \text{ ft} / 20 \text{ ft} = 1.25$$

the magnitude of change from 2019 to 2020 is 1.25x, triggering termination.

Example B

Prior to data collection in 2020, trail width at plot “A” was 20 feet. The width was then measured at 22 ft in 2020, 25 feet in 2021, and 33 feet in 2022. Because:

Year 2020 $22 \text{ ft} / 20 \text{ ft} = 1.1$

Year 2021 $26 \text{ ft} / 22 \text{ ft} = 1.2$

Year 2022 $31 \text{ ft} / 26 \text{ ft} = 1.2$

no single year interval value triggers termination. However, the magnitude of change over a 3-year interval (2020-2022) is:

$$31 \text{ ft} / 20 \text{ ft} = 1.6$$

and the magnitude of change of 1.6x over a 3-year interval triggers termination.

4. The addition of 2 new braids in a one-year interval, or the addition of 3 new braids in a three-year interval (a braid is a short distance alternative trail to the main trail stem, usually to circumvent an obstacle).

Example A

Prior to data collection in 2020, there was one braid at plot “A.” After data collection in 2020, there were a total of 3 braids. Because two braids were added in a one-year interval, termination is triggered.

Example B

Prior to data collection in 2020, there was one braid at plot “A.” In subsequent data collection periods, two braids were documented 2020, three braids in 2021, and four braids were documented in 2022. As a single braid was added in each one-year period, termination is not triggered. However, because three braids were added in a three-year interval (2020 – 2022), termination is triggered.

ⁱ It is recognized that some measurements made during the course of the Rex Trail monitoring project were the result of environmental factors outside traffic effects. This includes observed instances of erosion due to flowing water across transects. Measurements that are the result of such causes are not included as a baseline of conditions on which termination will be triggered.

ⁱⁱ Because DNR reasonably expects some trail damage by the addition of wheeled vehicles, chosen threshold values are much higher than the variation seen in trail plot transect measurements. If threshold values that were “significantly different” than observed measurements were chosen, those thresholds would have tolerated much less trail damage than DNR is willing to accept.