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

Administrative Decision
Over the Counter Permit ADL 109490
Scientific Research
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 to allow for de minimis research activities on state-owned, DMLW-managed lands. To qualify for a research OTC permit, the applicant must meet specific parameters that will be outlined in this decision and the OTC permit. Permits may be issued for up to a 5-year term and are subject to application and annual fees.

# **Scope of Decision**

The scope of this decision is limited to determining if it is appropriate for DNR to issue OTC permits for certain scientific research activities on state land.

# **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**

For de minimis activities on state land, DMLW intends to move towards a more streamlined permitting process. Many research activities fit 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, is low impact, and can be removed quickly.

Traditionally, DMLW has authorized research permits with either a Land Use Permit (LUP)or a letter of authorization depending on the extent of the equipment proposed to be used, potential impacts of the equipment and access to the sites, third-party interests in the area, and land use planning requirements. An authorization is required for equipment that remains on state land for longer than 14 days, as the activity is not a generally allowed use of state land per 11 AAC 96.020. LUPs may take up to 30 days to adjudicate. Adjudication includes agency review and public notice, a written decision, and is followed by an appeal period. This process is unnecessary for many low-impact research activities, e.g., thermistors or stream gauges. DMLW can streamline the authorization of research activities by allowing applicants to apply for an OTC permit, provided that the research activity and equipment used are within the parameters identified in this decision. If the research activity does not meet the parameters identified within this decision, then the applicant is required to apply for a LUP.

### **Agency Scoping**

DNR conducted agency scoping from March 8, 2024, to April 5, 2024. The purpose of scoping was to collect feedback from other agencies on establishing parameters and stipulations for the research OTC permit. DNR-DMLW respectfully thanks the agencies that have participated in the creation of this OTC.

The following agencies received the scoping notice:

- Alaska Department of Fish and Game (ADF&G)
- Department of Environmental Conservation (DEC)
- DNR, Division of Parks, Office of History and Archeology (OHA)

## **Agency Scoping Summary**

DMLW received the following comments:

ADF&G Comment: ADF&G objected to the issuance of OTC Research Permits and raised questions surrounding the scope of de minimis activities and potential impacts to other user groups, as well as any travel and transportation associated with the authorized activities. They also emphasized the importance of ADF&G's review process and their ability to share their expertise in providing comments and recommendations to both the applicant and DMLW.

DMLW Response: Specifics on the parameters of di minimis activities are described in the Discussion section of this decision. Should the proposed activity exceed the constraints of di minimis activities, described herein, the applicant would need to secure a Land Use Permit or other appropriate authorization. However, should other considerations suggest that an OTC Research Permit is not a suitable authorization, DMLW reserves the right to require a Land Use Permit. Additionally, the application has been amended to require details related to site access to and from the site. If the proposed activity would require travel or transport that exceeds Generally Allowed Use, a separate authorization would be needed, or the collective activities would need to be authorized under a singular Land Use Permit. Lastly, DMLW intends to provide courtesy notification to ADF&G of all issued OTC Research Permits, similar to the courtesy ADF&G provides DMLW through their distribution of issued Fish Habitat Permits. This affords ADF&G the opportunity to review the issued OTC Research Permit and reach out to the permittee should their activity warrant an authorization from their office.

#### **Environmental Considerations**

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

#### **Discussion**

The OTC program is intended to expedite the authorization process for applicants pursuing di minimis activities on state land. Instead of pursuing a regular Land Use Permit, which may take 30 days to adjudicate, applicants could get their authorization in a short period of time. The OTC permits will only be used to authorize research that would otherwise be authorized by an LUP by DMLW. DMLW will not be authorizing activities that are under the purview of other sections or divisions within DNR.

The OTC permit will only authorize research on general state-owned land. It does not apply to private land, state parks, nor to land owned or managed by other state agencies such as the University of Alaska, Alaska Mental Health Trust, Department of Transportation and Public Facilities, Department of Fish and Game, or the Alaska Railroad. 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 11 AAC 96.014.

The OTC permit program is for state owned, DMLW managed lands. As there is the potential for controversy by issuing OTC permits for use of state shorelands (submerged lands) within navigable waters within Conservation System Unit (CSU), DMLW proposes to not issue research OTC permits within state shorelands within CSUs at this time.

OTC permits will not be issued in areas where the Area Plan or Management Plan prohibits such activities.

To qualify for an OTC research permit, the following parameters must be met for the research to be considered de minimis:

- Fuel use and storage must be temporary and may not exceed 55 gallons in either a single container or a combination of containers. The container(s) must be removed at the end of the seasonally authorized period (i.e., if fuel is stored during the summer, it must be removed before winter). No year-round fuel storage will be permitted.
- Batteries should be protected from hazardous material leaks. Batteries should be removed or need to be contained in a box or placed over absorbent material as they are prone to freezing and leaking during the winter months. Containment should be placed around any fuel-operated vessels in case of leakage from the stored vessel.
- No other hazardous materials beyond what is listed above are permitted by this OTC permit.
- Structures permitted under the OTC shall be limited in nature and not be habitable. Any structure that can be occupied will need a LUP.
- Footprint for individual sites shall be limited to an area 10' x 10'. Individual sites shall be separated by enough distance to not impact other uses and the cumulative area shall not exceed 10' x 10'. Regardless of dimensions, DMLW retains the ability to require a land use permit if the activity does not seem de minimis in nature.
- Anchors must be removed at the end of the term of the OTC permit; they cannot be
  abandoned in place. Anchors must be made of material that is stable and does not degrade.
  Anchor lines should be sinking line and not floating on the surface with the exception of
  the retrieval line.
- Buoys may be required to meet Coast Guard requirements for markings and must be related to research.
- Does not restrict access.
  - Research term can be up to 5 years. Longer-term research/monitoring projects may require an LUP.
- All activities shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems per stipulation requirements of the permit.

Applicants will be required to meet the parameters outlined on the OTC research permit application. If the nature of the research falls outside of the parameters, the applicant must apply for an LUP.

## **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.

DMLW will not require permit applicants to furnish insurance or performance guarantees prior to permit issuance due to the limited risk 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 the Research OTC would allow for a multi-year term there is increased staff time involved in the authorization. As such a \$240 application fee is due with the application per 11 AAC 05.180 (d)(1)(C) and Directors Fee Order #3.

The annual fee for de minimis research activities will be implemented as follows:

Per 11 AAC 05.180(d)(2)(K) and Directors Fee Order #3, the fee for activities which may interfere with public use which are not covered by sections (B)-(J), is the greater of, \$240 annually.

Per 11 AAC 05.020(b)(5) fees may be waived or reduced for a federal, state or municipal agency if the waiver or reduction for the proposed activity is determined by the department to be in the public interest. As is the current practice in the Regions, fees are not waived for universities outside of Alaska regardless of being public or private. State of Alaska Universities are considered state agencies for purposes of fee waivers.

#### **Term**

Up to five years.

#### 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 research OTC permits on the condition that the proposed research meets the criteria, and 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 DNR 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 31<sup>st</sup> calendar day after issuance.

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Kaitlyn Raffier, Southeast Regional Manager	Date	
Permit Policy Team Lead		

#### **Attachments**

**OTC** Research Permit

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.