

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

**Administrative Decision
General Permit ADL 109224
Event or Assembly of over 50 people
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 an event or assembly of over 50 people (herein referred to as “Event”) on state-owned, DMLW-managed lands. To qualify for an Event OTC permit, the applicant must meet specific parameters that will be outlined in the decision and the OTC permit document. Permits may be issued for up to a single calendar year, expiring on December 31 of the year issued.

Scope of Decision

The scope of this decision is limited to determining if it is appropriate for DNR to issue OTC permits for an event or assembly of over 50 people for a 1-year term as a revocable-at-will permit.

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), 11 AAC 96.020 (generally allowed uses) and 11 AAC 05.180 (fees) as modified by the current Director’s Fee Order.

Background

The purpose of the OTC permit program is to streamline the permitting process and reduce backlog. Traditionally, DMLW has authorized an Event under a land use permit since an Event is not a generally allowed use of state land per 11 AAC 96.020. Processing permits is time consuming for staff, and for low-impact activities such as events or assemblies of over 50 people, this process is not always necessary. DMLW can streamline authorization of an Event by allowing individuals to apply for an OTC permit as long as the Event falls within the parameters identified in this decision. If the Event falls outside of the parameters identified here, the applicant must apply for a land use permit.

For de minimis activities on state land, the division intends to move towards a more streamlined and efficient permitting process. An Event 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, is low impact, and can be removed quickly.

Environmental Considerations

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

Discussion

An event or assembly of 50 people or less, including events sponsored by non-profit organizations or a commercial event, does not require an authorization and is covered under Generally Allowed

Uses (GAU), 11 AAC 96.020. DMLW has determined that large-scale commercial activities that occur over a single multi-day period on state land require a land use permit (LUP) because they can occupy significant areas of state land, limit public use not associated with the event, and need to be properly insured and bonded to mitigate potential impacts on state land. On April 1, 2013, DMLW adopted a memorandum entitled “Event Permits”. This Director’s Policy File (DPF) 13-01 provided a policy for commercial activities associated with Events. The DPF allowed for Events following certain conditions to be authorized under the “day use registration” regulation 11 AAC 96.018. Commercial activities meeting the criteria would not need to obtain their own individual Commercial Recreation Permit (CRP) or LUP independent of the LUP for the Event. An example of this would be vendors participating in larger events authorized under a LUP; a vendor associated with the event would not need their own individual authorization but would only need to day use register. Given the Division’s desire to streamline authorizing low impact activities, authorizing an Event that falls outside of GAUs for a 1-year term under an OTC permitting process is warranted.

Both noncommercial and commercial events are common activities on state land that typically have de minimis impacts to state land or resources. Many of these activities exceed the duration which would only require day use registration due to timeframes outside of a day or a multiday event. Under the OTC permit authorized by this decision, each permit will be evaluated based on the impact to state land and resources. Any proposed event activity may require a LUP if the following are met:

- A particular site designation may require further adjudication (i.e. Special Use Area, Public Use Area, Alaska Department of Fish & Game (ADF&G) managed and co-managed area, etc.).
- There is a substantial impact to state land and resources that would require insurance and bonding,
 - Substantial impact may include, but is not limited to:
 - Participants using motorized vehicles exceeding GAUs.
 - Activities requiring use of heavy equipment.
 - Activities exceeding the 14-day timeframe which includes any setup and removal.
 - Anything that involves physical modifications to the land (i.e. race track construction, etc.).

Adjudicators will still be receiving and reviewing Event OTC permits and will be able to determine whether the proposed event would have significant impacts to resources and state land which would require insurance and bonding. In such cases, the applicant will be encouraged to obtain a LUP.

The OTC permit authorizes an Event on state land. This includes non-commercial events such as weddings, non-profit race events, or events that are not for financial gain. For commercial events for business or financial gain, a business license, higher fee, and visitor day use fees may apply.

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. The OTC permit is subject to annual land use fees outlined in the fee section below.

DMLW reached out to the Alaska Department of Fish and Game (ADF&G) with a draft decision and permit document seeking feedback since events often occur in areas jointly managed. This was not conducted as an official scoping process as in previous OTC permits since feedback was requested after a draft decision and permit. ADF&G expressed concern over DMLW requiring these OTC permits within ADF&G co-managed lands. DMLW does not plan to require OTC Event Permits for activities in ADF&G Special Areas developed for public use, but the right to do so is reserved in the permit stipulations if determined necessary upon review of the permit application. ADF&G would also not be required to obtain a permit for any ADF&G sponsored events within a co-managed area if the activity is within the area's developed purpose.

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 and the limited impact to state land and resources. 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

11 AAC 05.180(d)(2)(M) – Permit for non-commercial event or assembly of more than 50 persons. This fee is for activities that don't present a financial gain to a business or individual. Events that raise money for an organization qualify under this fee.

\$240 annual use fee

11 AAC 05.180(d)(2)(G)(i): Permit for commercial recreational events. This fee is for activities that have a financial gain for a business or individual. \$1200 plus \$4 each visitor day for use. The visitor day is for the event participants not the spectators.

Fees:

11 AAC 05.180(d)(2)(M) Non-commercial/non-profit event: \$240 annually

11 AAC 05.180(d)(2)(G)(i): Commercial Events/for profit events \$1200 annually plus \$4 each visitor day for use.

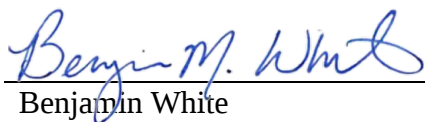
Relevant Fee Regulation(s): 11 AAC 05.180(d)(2)(M), 11 AAC 05.180(d)(2)(G)(i), and Directors Fee Order #3

Term

One calendar year. Expires on December 31st of the permitted year. If proposed activity spans the calendar year (i.e. December 31st to January 1st) two OTC permits will be required.

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 period of any OTC permit, an inspection may be conducted at the discretion of the Department of Natural Resources to ensure permit compliance.



Benjamin White
Southeast Regional Manager

12/16/2021

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.