

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

Regional Manager's Decision

ADL 234033

City of Valdez

Cooperative Resource Management Agreement
Mineral Creek Trails

REQUESTED ACTION

On May 12, 2022, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO), received an application from the City of Valdez (The City; the applicant) for a proposed Cooperative Resource Management Agreement (CRMA) to facilitate management of State-owned, DMLW-managed uplands near Mineral Creek in Valdez, Alaska pursuant to existing Valdez Municipal Code (VMC), including 12.08.010 – Mineral Creek Trail usage. The proposed CRMA would authorize the City to manage the underlying lands for the primary purpose of operating and maintaining the Mineral Creek Trail system and related infrastructure on approximately 80 acres of state land that also contains the Mineral Creek Nordic Ski Trails, serialized as ADL 224602.

RECOMMENDED ACTION

The request shall be modified, and this authorization will be issued with the following parameters:

- Type of authorization: CRMA
- Acreage: Approximately 80 acres, to be determined by survey.
- Term: 50 years
- Grantee: City of Valdez
- Use and Restriction: The project area will be managed in accordance with VMC for the Mineral Creek Trail usage for the primary purpose of a non-motorized ski area in the winter and non-motorized multi-use trails in the summer pursuant to VMC 12.08.010 and any subsequent revisions.
- Allowable Development and Infrastructure: The City may construct, maintain, and operate infrastructure within the project area consistent with the current development plan. Any development or infrastructure in excess of the current request must be approved in writing by DMLW.

BACKGROUND

Recreational use of the requested project area in the vicinity of Mineral Creek has existed since the development of the new Valdez Townsite following the Good Friday Earthquake in 1964. Use of the area continued to grow in the 1980s as the local population expanded. On October 10, 1988, the City of Valdez applied for a public easement, serialized as ADL 224602, to recondition an existing Nordic ski trail and construct additional segments located on DMLW-managed lands in the vicinity of Mineral Creek. On April 24, 1989, SCRO issued a decision to approve the request which recommended issuance of a public easement following completion of an as-built survey.

However, on September 23, 1999, ADL 224602 was inadvertently closed due to the mistaken belief that all the lands underlying the trail system had been conveyed to the City per their municipal entitlement (ADL 225454). When the error was discovered, the City submitted two requests to SCRO; that the casefile serialized as ADL 224602 be reopened to continue adjudication of the proposed easement, and that SCRO allow the area to be closed to motorized use out of concern for public safety, management of user conflicts, and protection of the City's existing investment in the recreational use of the area.. On October 29, 2002, SCRO provided written concurrence to the City's request to restrict motorized access over approximately 80 acres of state land surrounding the trails in anticipation of finalizing the easement but noted that there were significant deficiencies with the current as-built survey provided by the City. In response to SCRO's concurrence the City incorporated the motorized use restrictions into VMC 12.08.010, however, efforts to secure a long-term easement over the trail system stalled in the following years.

On June 26, 2019, the City submitted a new application for a public easement (ADL 224602) to encompass the trail system in an effort to finalize the decades long process. The application did not specifically request the restriction of motorized use of the trails or surrounding area as the City understood that such restrictions were allowable per SCRO's 2002 concurrence letter. A new decision was issued by SCRO on September 20, 2021, which recommended the issuance of a public easement (ADL 224602) to authorize the existing trails but did not address motorized use restrictions as none had been requested. The City currently holds a valid entry authorization in order to construct, maintain, operate, and survey the trails, which is set to expire on October 21, 2024.

Following issuance of the entry authorization, SCRO received a series of complaints from a member of the public who noted that motorized access in the area was being restricted by way of signage, gates, and verbal advice of City staff. After consultation with the City, SCRO became aware that motorized use restrictions were being enforced pursuant to VMC 12.08.010 which the City established following SCRO's 2002 concurrence letter. However, SCRO has determined that the 2002 concurrence was granted in anticipation of an imminent final easement which has still not been issued, was not subject to a public process, and therefore, requires further administrative action.

As the City wishes to manage the area in accord with the VMC for the Mineral Creek Trail usage containing the easement adjudicated under ADL 224602 it was determined that a new authorization encompassing the full project area would be the best management tool to address the request. As a result, the City submitted a new application requesting a CRMA to authorize their existing management practices and SCRO rescinded the 2002 letter on July 13, 2022, concurrent with distribution of public notice of the new application for the actions considered under this decision.

The project area is bisected by Mineral Creek Road, a route utilized by miners near the turn of the 20th century for access to nearby mineral deposits. Early construction of the road was facilitated by funding from the Alaska Road Commission (ARC) in 1914, and the route was later classified as a local road on September 1, 1950, per ARC Order No. 34. The Mineral Creek Road right-of-way was subsequently transferred to the State of Alaska by the U.S. Department of Commerce on

June 30, 1959, pursuant to Section 21(a) of the 1959 Alaska Omnibus Act and serialized as Federal Aid Secondary (FAS) Class B Route #8151. Since that time, the Mineral Creek Road right-of-way has remained under the jurisdiction of the Department of Transportation and Public Facilities (DOT&PF) and its predecessors and is therefore outside the scope of this decision.

At the time of this decision, DOT&PF does not actively maintain the roadway during the winter months and the route is often used by local snowmachiners for recreation and to access lands north of the project area. Any authorization granted herein by DMLW will be made subject to the existing right-of-way and any request to close the road to motorized traffic, including the two locations in which the road intersects trails located on DMLW lands, may only be granted by DOT&PF. Permitting or removal of existing gates or signage which may be located in the right-of-way is within the purview of DOT&PF.

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's interest to enter into a CRMA for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

STATUTORY AUTHORITY

This CRMA application is being adjudicated pursuant to AS 38.05.027 and the Alaska Land Act as amended.

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 1988 Prince William Sound Area Plan and other classification references described herein, and the casefile for the applications serialized by DNR as ADL 224602 and ADL 234033.

LOCATION INFORMATION

Geographic Location

The City of Valdez has requested that DMLW enter into a CRMA for lands located within Valdez, Alaska.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed uplands within Section 30, Township 8 South, Range 6 West, Copper River Meridian. Additionally, staff review of the application materials indicates that a portion of the Mineral Creek Trail system known as the East Dike Trail falls within Section 31, Township 8 South, Range 6 West, Copper River Meridian. These additional lands are therefore included in this decision and the authorized area.

TITLE

The State of Alaska holds title to applicable portions of lands within Section 8 of Township 8 South, Range 6 West, Copper River Meridian, Alaska per Patent Number 50-80-0135 recorded as Document Number 2013-000820-0 in the Valdez Recording District. The associated DNR land acquisition casefile is GS 1162.

THIRD PARTY INTERESTS

Known third-party interests within the proposed project area include:

- FAS #8151 – Valdez-Mineral Creek: 100-foot-wide right-of-way associated with Mineral Creek Road, managed by DOT&PF

PLANNING & CLASSIFICATION

The proposed CRMA is located within the boundaries of DNR's 1988 Prince William Sound Area Plan (the Plan), Unit 21 (City of Valdez), Subunit 21C (Mineral Creek Canyon). This subunit is designated as Public Recreation and Minerals, which convert to classifications of Public Recreation Land and Mineral Land respectively.

The management intent for Subunit 21C is to “allow for continued mineral extraction, protect salmon spawning and rearing habitat, and public use of recreation resources including public access, hiking and skiing trails, and scenic values”. The Plan notes the city-groomed ski trails associated with this CRMA request and ADL 224602 as a popular recreation feature, and further notes that snowmachines make use of the area and that the near proximity to Valdez makes the area a tourism and wilderness resource. The CRMA as requested by the City would allow management of the underlying lands as a winter ski area, including closing approximately 80 acres of land to motorized use year round to alleviate public safety concerns related to motorized and non-motorized user conflicts on the ski trails pursuant to applicable City Code of Ordinances. Per Chapter 2 – Public and Private Access, “access to public lands may be curtailed at certain times to protect public safety”. However, lands outside of the project area would remain open to motorized use and snowmachines could bisect the area via Mineral Creek Road to access unrestricted state lands to the north.

Management guidelines noted within Chapter 2 – Subsurface Resources provides that “all state lands open to mineral entry are multiple use areas where mineral development will be accommodated and encouraged”. The only land in the vicinity of the project area closed to mineral entry encompasses the portion of the Mineral Creek Trails located on lands owned by the City, subject to the Mineral Order serialized by the Department as Mineral Closing Order (MCO) 629. As mining claims may be staked on all lands open to mineral entry regardless of surface use authorizations, SCRO is specifically withholding the right to manage the surface estate for mining purposes. Additional analysis of this topic may be found in the “Discussion” section of this decision.

As the Plan expressly recognizes the ski trails associated with ADL 224602 and this request as an important recreational resource, mineral entry will not be impacted by the proposed motorized restrictions, and snowmachines will have access through and beyond the proposed project area, the proposed CRMA is consistent with the management intent and goals of the Plan.

ACCESS

Constructed legal access to the project area exists via Mineral Creek Road. In addition to the requested CRMA with DMLW, the City of Valdez has noted the intent to pursue an authorization with DOT&PF to infrequently close Mineral Creek Road to motorized use to ensure safety during ski events. Management of the right-of-way associated with Mineral Creek Road is outside the scope of this decision, and the applicant has been directed to work with DOT&PF regarding any authorization within the DOT&PF managed right-of-way.

Pursuant to 11 AAC 51.035(b), Mineral Creek is navigable as it is greater than 50' wide. However, the requested CRMA will not impair public access along Mineral Creek; therefore, an easement pursuant to AS 38.05.127 is not necessary.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from July 13, 2022, to August 15, 2022. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Valdez Library, Civic Center, and Post Office for display on their notice boards. The notice was also sent to the Chugach Alaska Corporation.

Public Notice Comment & Response

A total of 29 comments were received during the public notice period. Many of the comments received contained overlapping topics of interest, therefore concerns noted by commenters have been sorted by topic and summarized below. Individual comments are housed within the casefile associated with ADL 234033.

Motorized/Non-Motorized use conflicts:

Issue: Several comments raised potential safety concerns associated with multi-use trails. They noted these are relatively narrow and winding trails, with limited visibility and tight corners. Motorized users on the trails present a danger to others including skiers, hikers, young children, and those with pets. During the winter, these are groomed trails; users range from beginners just learning to ski to advanced skiers preparing for races. Local ski teams heavily use the trails after school in the winter when light conditions are poor, increasing the risk of collision and injury. Additionally, these trails are used for actual races. Given the conditions and users, it would be challenging to avoid collisions with other users on this system. It was further noted that most trails in the Valdez area are multi-use, and this has been the only area set aside for non-motorized recreation.

Response: SCRO acknowledges these concerns. These trails were designed and constructed as Nordic Ski trails for non-motorized uses with widths and curve radii appropriate for that purpose and may not be appropriate for a multi-use trail with higher speed motorized uses. SCRO acknowledges that this is the only non-motorized trail in the Valdez area. SCRO further notes that Mineral Creek Road remains open to motorized users, and there are substantial areas less than half a mile further up the road that are open to all users. Further, the City of Valdez reports grooming approximately 33 miles of trail in within the vicinity of the community, of which motorized use is restricted only on 11.6 miles.

Unique Character of the Area:

Issue: Comments noted that the Mineral Creek area provides a haven from snow machines and other motorized vehicle traffic which detracts from non-motorized recreational uses of the land. The area is the only public land historically managed as non-motorized within hundreds of miles and is a community asset.

Response: SCRO acknowledges the comment.

Damage to the Landscape:

Issue: Comments noted that summertime use of motorized vehicles in the area would destroy the ski trails by creating ruts and erosion due to the wet terrain. Year-round restrictions to motorized use would protect the marshier portions of the trail from damage.

Response: SCRO acknowledges the comment.

Term of the authorization:

Issue: One comment noted that the proposed term is excessive and would prevent generations of motorized users from enjoying the area.

Response: The City has requested a CRMA to effectively manage ski trails which were originally envisioned as early as 1988 with the original easement application serialized as ADL 224602. A term of 50 years will provide operational assurance to the City which will allow for long term local management of community resources. Motorized use along Mineral Creek Road will remain unrestricted allowing access to lands north of the project area for motorized recreation.

Potential Changes to Existing Use Patterns:

Issue: One comment noted that grant of this CRMA may increase motorized traffic and speeding in the vicinity of residential areas near the start of Mineral Creek Road.

Response: All DMLW-managed lands within the project area are currently open to motorized use following SCRO rescinding the previous concurrence on July 13, 2022. The proposed CRMA is intended to explicitly authorize existing management practices by the City. An increase of motorized traffic may occur with or without the proposed restrictions, as the right-of-way associated with Mineral Creek Road is outside the scope of DMLW's authority. Likewise, violating set speed limits is a law enforcement issue and outside the scope of the proposed CRMA between the City of Valdez and DMLW.

Competing Uses of the Project Area:

Issue: Comments noted that the Mineral Creek area should be opened to multiple uses with limited access to snowmachines and ATVs as the Mineral creek area has a history of both motorized and non-motorizes uses. The City of Valdez has been managing the Mineral Creek Areas area as a private ski area and other uses are prohibited. It appears that the City of Valdez may have a long-term plan to close or severely limit the Mineral Creek drainage to vehicular traffic.

Response: SCRO appreciates the comment. The City has not applied to close or restrict any area outside of the 80 acres requested by this application, which does not include the right-of-way for Mineral Creek Road. Any request to close or restrict access along Mineral Creek Road should be directed to DOT&PF.

Issue: Comments noted that the Mineral Creek area is the only motorized use area in town and issuance of the CRMA would push motorized use out of town. Immobile or disabled members of the community rely on motorized access to recreate. Restricting the only motorized trail left for easy access in town takes away from those who physically cannot walk or hike in the snow, snowshoe, or ski.

Response: Pursuant to 11 AAC 96.020, general state land is open to off-road vehicles with a curb weight of up to 1,500 lbs. unless otherwise prohibited. General state lands in the vicinity of the City of Valdez are open to motorized use. As proposed, motorized vehicles would be able to travel approximately 2,600 feet north of the project area via Mineral Creek Road to access general state land. Additionally, there are multiple motorized trails nearby the project area including the West Dike Trail and snowmachine loop, Lower Mineral Creek, Glacier Dike Trail, Glacier Loop Trail, Alpetco Road Trail, and the Robe Lake Access Trail.

Issue: One comment noted that the project area contains the only land in the area that is flat and semi usable. This would be the only land suitable for a year-round base camp for any large-scale mineral operation or short-term land use.

Response: Mineral entry is specifically excluded from the motorized use restrictions considered by this decision.

Administrative Process:

Issue: One comment noted that restricting motorized use requires a new land classification pursuant to AS 38.05.300. Additionally, they assert that the City of Valdez wishes to restrict more than 640 acres of state land which would require legislative approval per AS 38.05.300.

Response: Restricting motorized use does not require a new land classification. The lands in question are already classified by the 1988 Prince William Sound Area Plan. Public access to state lands may be impacted by a variety of surface use authorizations or disposals, including but not limited to, private exclusive easements, leases, land sales, etc. The City of Valdez has not requested the ability to restrict 640 acres of land, nor does this decision address or authorize a restriction of that size. The City has applied to have management, including the authority to restrict motorized uses, of approximately 80 acres of state land.

Issue: One comment noted that neither the State Constitution, Alaska Statutes Chapter 38, nor 11 AAC 96 include language allowing public land to be restricted more specifically than motorized or non-motorized for skier only use.

Response: Pursuant to AS 38.05.035(a)(2) the DMLW Director has the authority to “manage, inspect, and control state land and improvements on it belonging to the state and under the jurisdiction of the division”. Furthermore, the Commissioner has the authority, as delegated, to enter into cooperative resource management agreements with the federal government, a state agency, a village or municipality, or a person, pursuant to AS 38.05.027.

Issue: One comment noted that the City of Valdez was incorrect when they indicated that they were not in violation of any authorization issued by DMLW under 11 AAC. The application should be rejected on the grounds of making a false statement.

Response: SCRO aims to address existing uses of state land by working with applicants to identify uses which require land use authorizations. The City of Valdez has subsequently applied for a land

use authorization to manage the Mineral Creek Trails area as non-motorized ski area, subject to a public process to solicit input from agencies and the public.

Issue: One comment noted that the application requests management of the area pursuant to VMC 12.08.010 which includes a map exhibit which identifies the area as ski only. City employees have acted to enforce ski only restrictions by threatening to impound snowmachines pursuant to municipal code and skiers have physically attacked other users in areas described as ski only.

Response: SCRO acknowledges the comment. The City has applied for a CRMA to authorize management of approximately 80 acres of state land consistent with VMC 12.08.010. VMC 12.08.010 was originally enacted following SCRO's 2002 letter concurring with the request to close the area in anticipation of an easement which was never finalized. The City's current request serves to authorize management of the lands consistent with the previous two decades of management practices to ensure that there is no conflict between SCRO's authorization and Municipal Code

Existing Signs and Gates in the Area:

Issue: One comment noted that the City's application is incorrect in stating that there are three gates on state land when there are a total of six gates blocking access to the land on both sides of the road which remain locked in the summer and is managed as ski only area in the winter. The gates were installed without landowner permission, and some are located within the Mineral Creek Road right-of-way. The State of Alaska was notified that signs posted by the University of Alaska alongside Mineral Creek Road describe the area as private property for skiing only. These signs appear to have been placed or endorsed by the State of Alaska. These signs are misleading and may be considered fraudulent.

Response: The project area was inspected by SCRO staff on June 15, 2022. Three sets of gates were noted along Mineral Creek Road, which include four standalone gates along the two locations that the trails located on DMLW managed land cross the road. As with other restrictions requested by the application, the City has applied for a CRMA from DMLW to authorize activities which were previously understood to be allowable. DOT&PF was included in the agency review of this application and noted that gates or obstructions may not be placed within the right-of-way for Mineral Creek Road, and that any restriction of traffic along the road must be authorized by DOT&PF. The City has been directed to work with DOT&PF regarding management of the road. A survey will be required to identify the boundaries of the CRMA in relation to Mineral Creek Road and the surrounding lands. When the signs in question were installed, the underlying lands were owned by the University of Alaska, which has since conveyed U.S. Survey 697 and U.S. Survey 698 to the City of Valdez. The signs were not installed by DMLW and SCRO concurs that the City should update the signage to reflect changes in land statutes and current land use authorizations issued by DMLW on state lands.

Access and Support Facilities:

Issue: One comment noted that the CRMA application is vague and confusing as to how access is to be provided to the project area. The nearest parking area is 3/4 of a mile away and requires users to traverse Mineral Creek Road in violation of 13 AAC 02.175(b). Mineral Creek Road has no shoulder and includes hazards such as a one lane bridge and sharp cliff. The commenter further noted that any recreational facility 3/4 miles away from the nearest parking area needs sanitary facilities, which are not noted in the application. Lack of sanitary facilities may lead to trash and human waste along the road in this area.

Response: The City has not requested authorization to develop a new access route as part of this CRMA application. Access to the trails currently exists via Mineral Creek Road or over general state land. The right-of-way associated with Mineral Creek Road is managed by DOT&PF and is outside the scope of this decision. Concerns regarding potential violations of public safety regulations should be directed to local law enforcement. Trails on state land are not required to have nearby sanitary facilities and SCRO has not been presented with any evidence to suggest that trash and human waste is frequently accumulating in this area. Concerns regarding littering and/or illegal dumping should be directed to local law enforcement.

Use of Mineral Creek Road:

Issue: A comment asserted that Mineral Creek Road has 100-foot-wide right-of-way designed for vehicular traffic and that DNR is attempting to pass off management of the road to DOT&PF. This failure to accept legal responsibility has created a gray area of enforcement and allowed the City of Valdez to incorrectly manage the roadway.

Response: The right-of-way associated with Mineral Creek Road is managed by DOT&PF and is outside the scope of this decision. The City has been directed to work with DOT&PF regarding any management actions related to Mineral Creek Road.

Issue: A comment noted the City of Valdez has informed ski team members that skiers have the right of way when using the roadway of Mineral Creek Road which presents a conflict in violation of 13 AAC 02.175. Mineral Creek Road is a DOT&PF highway which becomes a snowmachine right-of-way per 13 AAC 02.455(a)(2) and should be managed as such.

Response: 13 AAC 02.175 outlines pedestrian use of highways with regard to public safety. Specific concerns regarding public safety or potential violations should be directed to local law enforcement. 13 AAC 02.455(a)(2) outlines that snowmachines may be operated on a roadway when use of other motor vehicles is impossible due to snow or ice accumulation, or if the highway is otherwise posted or designated as open for travel by off-highway vehicle. The regulation refers to scenarios in which snowmachines may use roadways. The presence of snow and ice do not change the character of the underlying right-of-way of Mineral Creek Road, nor its management by DOT&PF. The City has been directed to work with DOT&PF for any activities regarding Mineral Creek Road.

Issue: One comment noted that Mineral Creek Road is misrepresented on City maps and is depicted and operated as the Mighty Mite ski run in the winter. Pedestrians and snow machines must use the ditch or yield to crossing skiers as the skiers have the right-of-way. The state should grant a R.S. 2477 right-of-way over the road to restore general land use status.

Response: The right-of-way associated with Mineral Creek Road is managed by DOT&PF and is outside the scope of this decision. The City has been directed to work with DOT&PF for any management actions related to Mineral Creek Road. As Mineral Creek Road has a formal highway designation managed by DOT&PF, assertion of an additional interest pursuant to AS 19.30.400 would not result in an additional right of access to the public.

No other comments were received.

Agency Review Summary

Agency review of the application was conducted from July 13, 2022, to August 15, 2022. The notice was sent to the following recipients.

Local

- City of Valdez

State

- DNR Division of Parks and Outdoor Recreation; Permitting and the Office of History and Archeology
DNR DMLW; Survey Section, Land Conveyances Section, Contract Initiation and Revenue Recovery, Realty Services Section, Mining Section, and Water Section
- DNR Division. of Oil & Gas; State Pipeline Coordinator's Section, Permitting Section
- DNR Division of Forestry; Valdez/Copper River Office
- DNR Mental Health Trust Land Office (MHTLO)
- DNR Spatial Case Information Management System
- Department of Environmental Conservation (DEC) Division of Water; Wastewater, Alaska Pollutant Discharge Elimination System Program
- DEC Division of Environmental Health; Drinking Water Program, Solid Waste Program
- DEC Division of Spill Prevention; Contaminated Sites
- Department of Fish and Game; Habitat; Wildlife Conservation, Access Defense
- Department of Commerce, Community and Economic Development; Division of Community & Regional Affairs
- Department of Transportation and Public Facilities; Statewide ROW
- Copper River Soil and Water Conservation District

Federal

- United States Army Corps of Engineers

Agency Review Comment & Response

A total of five comments were received during the agency review and are summarized below.

Comment: On July 18, 2022, the DMLW Land Conveyance Section provided a statement of non-objection regarding the proposed authorization.

Response: SCRO acknowledges the comment.

Comment: On July 18, 2022, the DNR Division of Forestry Valdez/Copper River Office provided a statement of non-objection regarding the proposed authorization.

Response: SCRO acknowledges the comment.

Comment: On July 22, 2022, the DNR MHTLO commented to note that the proposed authorization does not impact MHTLO lands and that there were no objections.

Response: SCRO acknowledges the comment.

Comment: On August 9, 2022, DOT&PF Statewide Right-of-Way commented to note that Mineral Creek Road is a 100-foot-wide DOT&PF managed right-of-way listed in the Omnibus Quitclaim Deed as FAS Route #8151 Valdez-Mineral Creek. Mineral Creek Road must remain open to the public and unpermitted encroachments including signs and gates must not be placed within the right-of-way and must be removed. Any separation or restriction of traffic within the right-of-way can only be authorized by DOT&PF. Agreements made between DNR and other parties, including the City of Valdez, do not affect DOT&PF's management authority over Mineral Creek Road pursuant to AS 38.05.030(b).

Response: SCRO concurs that DOT&PF is the managing authority for the right-of-way associated with Mineral Creek Road, which is specifically excluded from this decision. The City has been directed to work with DOT&PF for any management actions related to Mineral Creek Road.

Comment: On August 12, 2022, the ADF&G Access Defense Program provided a statement of non-objection regarding the proposed authorization.

Response: SCRO acknowledges the comment.

No other comments were received.

ENVIRONMENTAL CONSIDERATIONS

It is recommended that fuel, lubricants, and other hazardous materials be restricted to those necessary and be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. Additionally, no fuel or other hazardous materials should be authorized to be stored on site.

DISCUSSION

Dimensions:

SCRO recommends that the boundaries of the CRMA be limited to approximately 80 acres, more or less, and as determined by the final as-built survey, of state land in the vicinity of the Mineral Creek Trails and the East Dike Trail as depicted on the attached location diagram. The boundaries of the CRMA apply only to DMLW-managed uplands within the project area and do not apply to DOT&PF managed interests, private property, or shorelands.

Term:

Recreational use of the Mineral Creek Trails began shortly after the establishment of the new Valdez Townsite in 1965, and formal requests for authorization and development of the trail on state land were first submitted in 1988. Given the longstanding importance of the trail system to the local community and continued investment by the City, SCRO does not anticipate that the recreational use patterns or the necessity for a DMLW authorization will fundamentally change in the coming years. SCRO therefore recommends that the CRMA be issued at a 50-year term as proposed by the City to allow for long term protection of public safety and to allow the City to more effectively manage a local community resource.

Limitations within project area:

This CRMA applies only to DMLW-managed lands within the project boundary depicted within Sections 30 and 31, Township 8 South, Range 6 West, Copper River Meridian. The City may not restrict motorized use of the lands underlying USS 411 or the DOT&PF-managed right-of-way associated with Mineral Creek Road (FAS #8151) by way of this agreement.

Signage and marking:

As the proposed CRMA would apply different restrictions limiting the scope of use in the project area, it is imperative that the public be well informed as to the location and boundaries of the CRMA. In addition to submitting a survey depicting the boundaries of the CRMA, the City should update existing signage to note the area governed by the agreement. The boundaries of the area should be marked to ensure public awareness and accuracy in any necessary enforcement actions pursuant to VMC 12.08.010

Relinquishment of ADL 224602:

ADL 224602 serializes an easement application which was intended to authorize the existing trail network and allow for continued operation and maintenance by the City. As the City had previously incorporated SCRO's 2002 concurrence to restrict motorized access into VMC 12.08.010, use restrictions were not included in the application and subsequent entry authorization to the City. Issuance of the easement associated with ADL 224602 would be partially duplicative of the proposed CRMA, require a superfluous survey in addition to the full survey of the CRMA boundaries, and would fail to meet the intent of the City to manage the lands as a non-motorized winter ski area. Therefore, to simplify management and public understanding of the community resource the City has agreed to relinquish the entry authorization associated with ADL 224602 upon final signature of the CRMA.

Infrastructure and development within the project area:

Three sets of gates and associated informational signs currently exist within the project area, and no additional infrastructure has been proposed by the City. However, SCRO recognizes that current placement of the signs and/or gates may encroach on the DOT&PF managed right-of-way associated with Mineral Creek Road which currently lack authorization. This CRMA therefore authorizes the relocation of existing infrastructure onto DMLW-managed lands within the project area as necessary to comply with DOT&PF requirements.

Trail grooming, maintenance, and construction activities by the City requiring use of motorized vehicles are authorized under this agreement, as such restriction do not correspond with the intent of VMC 12.08.010. Additional installation of infrastructure related to the ongoing management of the recreational ski area may be approved in writing by DMLW following submission of an updated development plan by the City.

Management of Surface Estate for the Purpose of Mining:

Mining claims may be staked on all lands open to mineral entry regardless of surface use authorizations or classification. While no mining claims currently exist within the bounds of the proposed project area, it is not inconceivable that future claims may be staked given the prevalence of mining in the Valdez area. In the event that authorized mineral entry does occur within the project area, the motorized use restrictions outlined by this decision shall not apply to mining activities and the City may not prohibit use of motorized vehicles by any mining operation.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and CRMA. It also provides a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, etc.), restoration (interim and final), and any associated costs after termination or expiration of the CRMA. In consideration of the low risk associated with the proposed authorization, a performance guaranty will not be required at this time. DMLW reserves the right to require a performance guaranty during the terms of the CRMA.

INSURANCE

In consideration of the low risk associated with the proposed authorization, insurance will not be required at this time. DMLW reserves the right to require insurance during the term of the CRMA.

SURVEY

A DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated area to be managed under the CRMA on State-owned, DMLW-managed lands. The CRMA will include, and be made subject to, Mineral Creek Road. The final as-built survey must display the centerline of Mineral Creek Road to ensure clear management boundaries between DMLW and DOT&PF.

The applicant is required to request survey instructions prior to issuance of any authorization by SCRO. The survey must be produced within 5 years of the issuance of this decision in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska.

FEES

There are no fees associated with the issuance of the CRMA.

ENTRY AUTHORIZATION

An entry authorization is not required as the City has no intent to construct additional trails or infrastructure within the project area, and SCRO has determined that an interim authorization may lead to additional public confusion as to access rights in the area. However, as exact boundaries of the CRMA must be established to ensure accurate enforcement of VMC 12.08.010, a survey will be required to delineate the CRMA project boundary from the surrounding lands and the DOT&PF-managed right-of-way. Therefore, the City will be required to provide a survey for the CRMA boundary or a written request for extension within five years.

No authorization shall be granted until the following deliverables have been provided to DMLW:

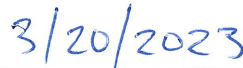
- Evidence of having made request for survey instructions to the DMLW Survey Section;
- Evidence of a signed survey contract for the project area.

RECOMMENDATION

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is my recommendation DMLW enter into a CRMA with the City of Valdez as described above, on the condition that all stipulations are followed as described in the attached authorization.



Evan Dodd, Natural Resource Specialist 3
DMLW Southcentral Regional Land Office



Date

REGIONAL MANAGER'S DECISION

When adjudicating an authorization pursuant to AS 38.05.027, DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with public interest. In consideration of all events and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DMLW's mission, that this project is consistent with the overall classification and management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements; however, this will not extend the total term of the authorizations issued under this decision. This decision goes into effect and becomes a final administrative order and decision of the department on the 31st calendar day after issuance.

A.J. Wait

A.J. Wait, Natural Resource Manager 2
DMLW Southcentral Regional Land Office

3/20/2023

Date

ATTACHMENTS

- Cooperative Resource Management Agreement
- Attachment A: Location Diagram

APPEAL

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>.

ADL 234033: Attachment A

