

State of Alaska
Department of Natural Resources
Division of Mining, Land, and Water

FINDING OF THE COMMISSIONER

AS 38.05.185(a) and 38.05.300(c)

MINERAL ORDER (Closing) 1121

Glacier-Winner Creek Drainages

The Southcentral Regional Manager of the State of Alaska, Department of Natural Resources, Division of Mining, Land, and Water recommends thru the Director's Office that the Commissioner close to new mineral entry approximately 5,580 acres of state and state selected lands within the Upper Girdwood Valley (see Attachment A) in accordance with AS 38.05.185(a) and 38.05.300(c). The purpose of this closure is to support and promote additional recreational development in the Glacier and Winner Creek drainages near Girdwood, Alaska.

Mineral Order (MO) 1121 compliments Mineral Closing Order 593, Amendments 1, 2, and 3.

Background:

The need for a Mineral Closing Order in this area became apparent some time ago when numerous federal mining claims were staked while the federal government was in the processes of conveying these lands to the State of Alaska. As the Municipality of Anchorage was interested in these lands for recreational development, they purchased the claims so that there would be no conflict between surface and sub-surface users. During the formulation of the Turnagain Arm Management Plan, the Anchorage Assembly requested that the State close the area to new mineral staking. In the early 1990's the Commissioner of the Department of Natural Resources closed this area to mineral entry on approximately 10,000 acres of state, state selected, and municipal lands in the Girdwood Valley under Mineral Closing Orders 593 (including amendments 1 and 2). This closure had a term limit of ten years. In 2002, the Commissioner extended the mineral closing order for another ten year term through MCO 593 Amendment 3 (MCO 593 A3). This extension will expire on April 2, 2012.

In accordance with AS 38.05.300(c), MCO 593 A3 was presented to the 2003 Alaska State Legislature for approval. That approval was granted through House Bill (HB) 139 which enacted as ch. 8, SLA 2003. Sec. 4 of that act provides that should the DNR Commissioner certify to the governor and the revisor of statutes on or before April 2, 2012, that development of a resort as described in sec. 1 of the act and as provided in

and Municipality of Anchorage land use plans has begun, the expiration of the closing order would not take effect.

Originally, DNR public noticed that all mineral closing actions for this area would be conducted under MO 1121. It was the intent of DNR to bundle all of the MCOs together and eliminate the confusion the various amendments have caused. However, after consulting with the Department of Law, it was determined that the best course of action was to certify that recreational development has occurred per legislative requirements outlined within ch. 8, SLA 2003. Therefore, a separate process of certifying development has already occurred will parallel this finding, thus eliminating the expiration date for those lands affected by the third amendment of MCO 593 and negating the need to include them within MO 1121.

Recommended Actions under this Finding:

1. Issue Mineral Order 1121 (closure) per AS 38.05.185(a) as mineral entry (mining) is incompatible with the significant surface use development activities occurring within the Glacier and Winner Creek drainages near Girdwood.
2. Transmit and introduce Mineral Order 1121 within the first 10 days of the 2012 legislative session for legislative approval per AS 38.05.300(c).

Rationale for Mineral Closures within the Glacier and Winner Creek Drainages:

Community interest in expanding recreational opportunities within the Girdwood Valley has increased significantly within the last decade. Local interest groups, private businesses, and governmental agencies have developed Nordic ski trails, expanded backcountry helicopter and snowcat skiing opportunities, upgraded local trails including the Winner Creek Trail system, and Alyeska Resort has commissioned the development of a Master Development Plan to promote skier based recreational facilities within the Glacier and Winner Creek drainages. Furthermore, in July 2011 a legislative appropriation of 3.5 million dollars to extend Arlberg Road was approved to fund the necessary road development project to secure access into the Winner Creek area. This extension project is designed to encourage additional recreational infrastructure including, a Nordic trail facility; expanding the existing Nordic trail systems; additional parking areas; and land necessary for additional lodging and real estate opportunities.

If the lands in the Girdwood area were to open to mineral entry and claims staked, it would interfere with the planned, orderly development of the area and could interfere with attempts of developers to obtain financing. Additionally mining activity in this area would be incompatible with the management intent for Management Units 3a and 3b described in the Turnagain Arm Management Plan, which recognizes that this area should be closed to mineral entry. By not taking action to close this area to mineral entry, the possibility exists that mineral staking could occur, in the same way that it did previously with the Municipality of Anchorage. This approach is inconsistent with the intent of AS 38.05.185 which provides for the closure of areas where an apparent incompatibility exists. Substantial recreational development has already occurred and a

development plan has been drafted that provides for recreational use and infrastructure development of this area. The reopening of this area to mineral entry would be incompatible with these existing and planned recreational activities.

Term Length:

The previous mineral orders in this area have been subject to a term limit, in large part based on the stipulation in the area plan that the closures be of ten year duration. However, in its entirety the area plan states “This closure is in effect until ten years from the date of conveyance of this land to the state, at which time the land may be re-opened to mineral entry *if resort development is not likely to occur.*” Until recently, it was not apparent when and how this type of development would occur, but this aspect has changed and development on a long-term basis is now much more probable.

One large factor in favor of vacating the “termed” MCO approach is a recent change in ownership of Alyeska Resort. When the first mineral closure was instituted over 20 years ago, the then owner of Alyeska Resort strongly indicated no desire to expand ski area facilities beyond its current boundary, stating that any such expansion of ski area facilities would have to be addressed by a third party. That situation alone made it very difficult for a third party to find it financially feasible to create new skier services in the area which would meet the requirement for a long-term mineral closure.

The current owner of Alyeska Resort is committed to extensive upgrades of equipment and facilities at the resort and to the development of increasingly diverse recreation opportunities within the area of closure. In fact, this change in ownership has resulted in millions of dollars being spent for recreational and infrastructure development to date. Additionally, continued upgrades are planned for the resort, including new lift systems. Forecasted lift upgrades at the Alyeska Resort within the next several years will cost millions of dollars for which public and private financing is available. However, if the Glacier and Winner Creek drainages are subjected to another Mineral Order with a term limit imposed, investment in new lift systems – as well as other important infrastructure improvements—are not likely to occur due to the absence of long term certainty. Alyeska Resort has stated that it is committed to investing capital dollars into infrastructure but not if the area is open to mineral entry.

There is significance to the condition of new ownership at the resort that goes beyond the financial realities. This owner is a highly skilled owner/operator in the ski resort business and is acutely aware of the importance and significance of the resource values in this area. Not just for the opportunity to expand recreational services beyond the current resort’s boundary, but for the values development in the surrounding area offer his existing operation at the resort. Increasing the diversity of recreational choices in the surrounding backcountry increases the value of Alyeska Resort as a destination. A diversity of attractions in the area as a whole will lead to increased demand for services, development of jobs, and opportunity for new entrepreneurs. Expansion of recreational based facilities into the Glacier Winner Creek Valley is shown to be feasible by a detailed analysis and technical feasibility study commissioned and paid for by Alyeska Resort. When such an expansion might occur is more closely related to economic conditions.

Agency Review:

An Interagency Review was initiated on January 6, 2011 and concluded on January 18, 2011. Included in the review were Alaska Department of Transportation and Public Facilities, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, Bureau of Land Management, U. S. Forest Service, Municipality of Anchorage, and Cook Inlet Region Incorporated. Within the Department of Natural Resources, the Divisions of Mining, Land, and Water; Parks and Outdoor Recreation; and the Geological & Geophysical Surveys were included in the review. In total, one "no objection" comment and three agency comments were received.

Agency Comments:**U.S. Forest Service/Glacier Ranger District**

Supports the mineral closure in favor of the recreational development in the Girdwood area. Closure is in accordance with current U.S. Forest Service management intents.

MOA Heritage Land Bank

Fully supportive of the mineral closure. MOA lands in the upper Girdwood Valley have a mix of commercial, residential, and recreational values which are inconsistent with mineral entry. They would prefer if the closure was permanent.

ADGGS

The Alaska Division of Geological & Geophysical Surveys reviewed the lands within MO 1121 for mineral resources. They have reported that the USGS and BLM reports are good and thorough summaries for the potential of locatable minerals in this area and that there are no known mineral prospects within the closure area.

Public Notice:

Pursuant to AS 38.05.945, a draft Commissioner's Finding was advertised for a 30 day public comment period, starting on January 20, 2011. This notice was run in both the Anchorage Daily News and the Turnagain Times. Courtesy notices were mailed to interested parties located in and around the mineral closure area on January 19, 2011. The deadline to submit comments was set for February 21, 2011. However, as that date turned out to be a state holiday, the deadline was extended to February 22 so as to accommodate those who tried to submit comments on the last day.

Public Comment Summary:

During the public notice period, DNR received ten public comments in favor of the mineral closure. Below is a summary of those submitted reasons:

- Important for the continued sustainability and viability of the Alyeska resort.
- Important for any possible expansion of the Alyeska Resort.
- Important to maintain the natural view shed for locals and tourist alike.

- Mining is inconsistent with recreation and tourism development and only benefits a few while recreation is available for everyone's enjoyment.
- Several residents did not want to live next to "full blown mining" but also felt that recreational gold panning was acceptable.
- Important to protect current and future recreational development including;
 - Alyeska Resort
 - Expanding Nordic ski trails
 - The upgraded Winner Creek trail system
 - Commercial snowcat and helicopter skiing activities
- A mineral closure in this area would be consistent with the Turnagain Arm Management Plan, Alaska Statehood Act, Alaska state law, and various natural resource court decisions.

Furthermore, nine of the commenters stated that they wanted the mineral closure to either be indefinite or permanent. One comment was submitted by Crow Creek Mine which stated that they supported the intent of the mineral closure, but they recommended instituting a term limit of 10 to 15 years on lands not under a recreational lease so as to prevent a "permanent" closure.

- **DNR Response:** The State of Alaska has the ability to open or close land to new mineral entry through mineral orders. Typically these mineral orders do not have an expiration date. The State of Alaska does not have the ability to make a mineral order permanent. This was purposely set up this way so that future generations can address changes in land use. The Girdwood mineral orders which were established in 1991 were unusual in that the orders had a termination date. This was purposely done so as to trigger a review of land use patterns in the upper Girdwood Valley every ten years. At this time, DNR has determined that sufficient recreational development has begun in the Girdwood area and in order to protect current recreational activities and promote further development, DNR will not place an expiration date on this mineral closure order.

Crow Creek Mine recommended including land within Township 11 North Range 2 East, Seward Meridian: Section 33: SE1/4 SW1/4 All lands lying SE of Crow Creek Road, and Section 34: SE1/4SW1/4 all lands lying East of Crow Creek Road within MO 1121. According to Crow Creek Mine, this would exclude and not impact the U.S. Survey 11872 and federal mining claim recordations AA 56277, AA 56278, AA 56282 and AA 56283.

- **DNR Response:** Mineral Order 1121 (MO 1121) does not include the area described above. Instead, this area is already covered under Mineral Closing Order 593, Amendment 3 (MCO 593A3). It is important to recognize, neither mineral closing order has any effect on U.S. Survey 11872 and federal mining claim recordations AA 56277, AA 56278, AA 56282 and AA 56283 as they are not state owned lands. So long as Crow Creek Mine's federal mining claims are active, these lands are not eligible to be conveyed to the state. If at some point in

time this area is conveyed to the state, MCO 593A3 will then affect the area described.

During the adjudication of MO 1121, an error in the Tentative Approval (TA) for this area was discovered in which two federal mining claims (AA 56277 and AA 56278) were inadvertently excluded from the TA. For this reason, DNR will pursue an amendment to the legal description for MCO 593A3 to read as follows: Township 11 North, Range 2 East, Section 34: SW1/4 all land lying east of Crow Creek Road, SE1/4; excluding mining claim recordations AA 56277, AA 56278, AA 56282 and AA 56283 and U.S. Survey 11872.

Signature page follows:

Commissioner's Decision:

In accordance with of AS 38.05.185(a) and AS 38.05.300(c), I find that the best interest of the State of Alaska and its residents are served by issuing Mineral Order 1121 for closure to mineral entry the described lands within Attachment A. The closure is necessary and proper in order to protect current recreational activities and to promote further development in the Girdwood area. This Administrative Finding determines that mining would be incompatible with the significant surface uses on state land, including potential land disposals such as a recreational development lease (AS 38.05.073), and does not place any term limit on the closure.

The effective date of this closure is to be 30 days after the approval of Mineral Order 1121 by the Commissioner of the Department of Natural Resources. Mineral Order 1121 closes all state land described in Attachment A until such time that the Department determines that they are no longer required for this function. The described state selected lands within Mineral Order 1121 will automatically take effect upon conveyance to the state.

Recommended By: Richard B. Thompson 9/16/2011
Richard B. Thompson
Southcentral Regional Land Manager Date

Concurrence: Brent Goodrum 9/16/2011
Brent Goodrum, Director
Division of Mining, Land & Water Date

Approved: Daniel S. Sullivan 10/11/2011
Daniel S. Sullivan, Commissioner
Alaska Department of Natural Resources Date



Request for Reconsideration:

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received by 5:00 pm on November 1, 2011 and may be mailed or delivered to Daniel S. Sullivan, 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. If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on November 14, 2011. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of 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.



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

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MINERAL ORDER 1121
Closing Lands to Mineral Entry

I. Legal Description/Geographic Location: Glacier and Winner Creek Drainages, Girdwood, AK

II. This mineral order is based upon the attached Commissioner's Finding and the written documentation contained in: MO 1121

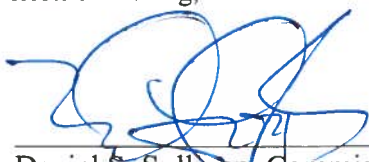
III. File Number Legal Description Acreage

Please see Attachment A

IV. This order is subject to valid existing rights and issued under the authority granted by AS 38.05.185 - 38.05.275 to the Department of Natural Resources. The above described lands are hereby **CLOSED** to entry under the locatable mineral and mining laws of the State of Alaska.

Concur: 
Brent Goodrum, Director
Division of Mining, Land and Water

9/16/2011
Date

Approved: 
Daniel S. Sullivan, Commissioner
Department of Natural Resources

10/11/2011
Date

**ATTACHMENT A
MINERAL ORDER NO. 1121**

Containing approximately 5,580 acres
within the Glacier and Winner Creek Drainages near Girdwood, AK

LEGAL DESCRIPTION

State owned lands affected by this MO are further described as follows:

Township 10 North 2 East, Seward Meridian

Section 9: E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ within the Chugach National Forest

E $\frac{1}{2}$ SE $\frac{1}{4}$ within the Chugach National Forest

Section 10: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$ except for the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$ SE $\frac{1}{4}$ except for the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 14: W $\frac{1}{2}$

Section 15: All

Section 16: E $\frac{1}{2}$ E $\frac{1}{2}$ within the Chugach National Forest

Section 21: E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ within the Chugach National Forest

Section 22: N $\frac{1}{2}$ N $\frac{1}{2}$

Totaling approximately 1,540 acres

State selected lands included within this MO:

Township 11 North Range 3 East, Seward Meridian

Section 20: SE $\frac{1}{4}$

Section 21: W $\frac{1}{2}$ SW $\frac{1}{4}$

Section 28: W $\frac{1}{2}$ W $\frac{1}{2}$

Section 29: All

Section 30: S $\frac{1}{2}$

Section 32: NE $\frac{1}{4}$

Section 33: NW $\frac{1}{4}$ NW $\frac{1}{4}$

Township 11 North Range 2 East, Seward Meridian

Section 25: S $\frac{1}{2}$ SE $\frac{1}{4}$

Township 10 North Range 3 East, Seward Meridian

Section 5: NW $\frac{1}{4}$, S $\frac{1}{2}$

Section 6: SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$

Section 7: SW $\frac{1}{4}$, N $\frac{1}{2}$

Section 8: NW $\frac{1}{4}$

Section 18: N $\frac{1}{2}$ NW $\frac{1}{4}$

Township 10 North 2 East, Seward Meridian

Section 12: All

Section 13: N $\frac{1}{2}$

Glacier-Winner Creek Mineral Order (MO) 1121

