

Preliminary Decision & Proposed Concession Contract
Arctic Valley Ski Area
Chugach State Park
Division of Parks & Outdoor Recreation
Department of Natural Resources
State of Alaska

Introduction

Arctic Valley Ski Area is located northeast of Anchorage on Rendezvous Peak. The ski area is leased and operated by the Anchorage Ski Club (ASC), a registered non-profit. The Arctic Valley area was conveyed to the State of Alaska in 1967 and the ASC leased this land from the State for the continued operation of the existing ski area. In 1970, Chugach State Park was created.

The ASC lease will expire on November 19, 2022. The Anchorage Ski Club would like to continue operating Arctic Valley Ski Area, and they have approached the Alaska Department of Natural Resources (DNR), Division of Parks and Outdoor Recreation (DPOR) about a lease extension or other options for the continued operation of the ski area.

The Alaska Constitution and the statutes that created Chugach State Park prevent DPOR from issuing a lease renewal or new lease to ASC for Arctic Valley. DPOR is considering authorizing the continued operation of Arctic Valley Ski Area by Anchorage Ski Club through a concession contract, under AS 36.30 and AS 41.21.027. This proposed commissioner's finding describes the background, history, and relevant facts, along with findings which are required by those statutes and related regulations. A map of the area, public notice flyer, and a proposed concession contract are attached.

DPOR is seeking public comments on this proposed finding and concession contract as described below. Following the public comment period, DPOR will decide whether to proceed with the proposed concession contract.

Public Notice, Public Hearings, and Public Comment

Consistent with the requirement of AS 41.21.027(c)(3)(B), public notice of this preliminary decision and proposed concession contract are being published on the State of Alaska's Public Notice website, on the DNR and DPOR websites, on DPOR social media accounts, being distributed to the Chugach State Park Advisory Board, and the Municipality of Anchorage. The public notices will be distributed on November 21, 2018.

Public meetings, at which representatives of DPOR and Anchorage Ski Club will be available to answer questions, will be held:

Tuesday, November 27 from 6:00 PM to 7:30 PM
Eagle River Town Center (same building as Chugiak-Eagle River Library)
Community Room 170
12001 Business Blvd
Eagle River, AK 99577

Thursday, December 6 from 6:00 PM to 7:30 PM
Atwood Building, Room 106

550 W 7th Ave
Anchorage, AK 99577

The public may submit written comments regarding the proposed decision and proposed concession contract. **Comments must be received by 5:00 PM on Friday, December 28, 2018 to be considered timely.** Send all comments to:

Arctic Valley Ski Area Comments

Attn: Dan Beutel

Email: dan.beutel@alaska.gov

Mail: 550 W 7th Ave, Suite 1380, Anchorage, AK, 99501

DPOR will consider all timely written comments received. If analysis of the comments indicates the need for significant changes to this Preliminary Decision, additional public notice will be given. If this Preliminary Decision and proposed contract are approved without significant changes, a Final Finding & Decision will be issued without further public notice.

Upon issuance of the Final Finding & Decision, a copy of the final decision will be posted on the DPOR website and sent to anyone who comments along with an explanation of the appeal process.

History and Background

Arctic Valley Ski Area is located northeast of Anchorage on Rendezvous Peak. The ski area is owned and operated by the Anchorage Ski Club (ASC), a registered non-profit. ASC was organized in 1937, Arctic Valley Road and the first rope tows at Arctic Valley Ski Area were built by the U.S. Army and ASC in 1944-45. ASC has constructed and maintains two chairlifts and a T-Bar as well as a lodge, parking area, toilets, and hiking trails at Arctic Valley.

The State of Alaska received title to the area of Arctic Valley in July 1967. The Alaska Department of Natural Resources (DNR) issued a lease, ADL 32018, to the ski club on November 20, 1967. The lease was for 55 years and will expire on November 19, 2022. Please see Attachment 1: Map for a depiction of the lease boundaries.

In 1970, Chugach State Park was created by Alaska Statutes (AS) 41.21.120-125. The park boundaries described in AS 41.21.121 include the area which was leased to Anchorage Ski Club, but AS 41.21.121 excluded valid entries from the park. DNR lacks the authority to renew the lease when it expires.

The Anchorage Ski Club also holds a water right, ADL 65944, in the area. This water right allows ASC to use up to 3,000 gallons of water per day from a well drilled near the lodge. ASC has applied for a Temporary Water Use Authorization (TWUA) A2017-53 for additional water for snowmaking.

The Anchorage Ski Club also holds a special land use permit issued by Chugach State Park for the use of land north and south of their lease for ski area operations. This permit allows temporary signage, avalanche control work, and snow grooming in the area; it does not allow

construction of permanent facilities. Please see Attachment 1: Map for a depiction of the permit boundaries.

Arctic Valley Ski Area is open for skiing and snowboarding during the winter and early spring. The ski area primarily operates on weekends and holidays and is currently closed most weekdays. The area is used for hiking, berry picking, and other recreational activities year-round. The public has free access to the area when ski operations are not taking place. Day-use tickets and annual memberships for ASC are available to the public.

Access to this area is by the Arctic Valley Road, which runs from the Glenn Highway to the ski area. The road is a steep, winding gravel road. Most of the road is on Joint Base Elmendorf Richardson land. The Anchorage Ski Club has a well-established relationship with the U.S. Army, which has been a significant factor in keeping this road open and maintained.

Current Lease, ADL 32018

DNR issued a lease, serialized as file ADL 32018, effective November 20, 1967. The land included in the lease is:

Township 13 North, Range 1 West, Seward Meridian

Section 5: SW1/4NW1/4

Section 6: S1/2N1/2, N1/2SW1/4, NW1/4SE1/4

The lease boundary is depicted on Attachment A: Map. The ASC is in good standing and has maintained the land in good condition as required by the lease. ASC currently pays an annual rent of \$761.10; the rent was calculated based on an earlier appraisal of the fair market value, the ASC's non-profit status, and the rent increases allowed under the terms of the lease.

Title, Park Designation, and Management Plans

The State of Alaska, Department of Natural Resources received Tentative Approval (title) to this area on July 14, 1967. The DNR title file is MH 154.

In 1970, the state legislature created Chugach State Park, codified at Alaska Statute (AS) 41.21.120-125. Arctic Valley is part of the recreational area described in AS 41.21.121. The park designation was subject to valid existing entries, including the lease.

The Chugach State Park Management Plan (CSPMP) was adopted on February 29, 2016 after an extensive public comment and review process. The CSPMP designates the Arctic Valley Ski area as recreation development within the Ship Creek Unit, with the purpose of providing "easy and well-defined access points into the park, and by developing appropriate facilities." Regarding commercial lodges or resorts in the recreation development zone, the plan says they are:

Allowed only under concession contract and when compatible with park purposes, when consistent with a management plan, when enhancing public use and enjoyment of the park, and when a similar experience cannot be provided outside the park.

The CSPMP specifically addresses Arctic Valley Ski Area in the Ship Creek Planning Unit section on pages 97-100 of the plan. In the management intent section for the Ship Creek Unit,

the plan calls for DPOR to “work with the Anchorage Ski Club, Inc. to enhance recreational opportunities.” The CSPMP refers to the eventual expiration of the ASC lease:

The lease, once it expires, must be converted to another form of authorization such as a concessions contract that allows for services and facilities of this nature within a park unit.

The plan further recommends that DPOR, “upgrade the area to enhance recreational opportunities” and that “any facility enhancements or upgrades shall be made in keeping with park standards and in consultation with park staff.”

Anchorage Ski Club

The Anchorage Ski Club, Inc. is an IRS registered 501(c)(3) Tax Exempt Organization, EIN 92-6003384. The mission of ASC, according to the club bylaws, is “to provide recreational and educational opportunities in Arctic Valley.”

Existing Infrastructure

There are currently two chairlifts, a T-bar lift, and a tubing lift in operation at Arctic Valley. The Alpenglow Lodge, Rendezvous Café, and maintenance buildings associated with the lifts. The lifts, buildings, and related improvements are owned by the ASC.

Access to Arctic Valley is by the Arctic Valley Road, which is primarily located on military land, and is owned and maintained by the U.S. Army.

Future plans

Anchorage Ski Club would like to continue operating the Arctic Valley Ski Area. As part of their continued operations, they would like to invest in maintenance and possible upgrades to their infrastructure. Prior to making long term investments, the ASC has expressed the desire for a long-term agreement with the State regarding Arctic Valley Ski Area.

Lease renewal

Because the existing lease pre-dates creation of the park, it is a valid entry under AS 41.21.121. However, lease renewal is not an option because the legislature withdrew all state land within the boundaries of Chugach State Park from the public domain when it created the park. Interests in land reserved by the legislature from the public domain under Article VIII, section 7 of the Alaska Constitution may not be conveyed out of state ownership.¹

Proposed Concession Contract

AS 41.21.027 (a) provides, “subject to the restrictions in this section, the state may enter into concession contracts under AS 36 to provide services or construct facilities in a park unit.” Consistent with AS 41.21.027 and AS 36.30, DNR is considering entering into a 20-year concession contract with the Anchorage Ski Club for the continued operation of Arctic Valley Ski Area. The concession contract would include renewal options with the mutual agreement of DNR and ASC. This contract would allow for continued operation of the ski area after the expiration of the existing lease, which as discussed above, cannot be renewed.

¹ Alaska Const. Art. VIII, sec. 7; AS 41.21.120; *SOP v. State*, 310 P.3d 962 (Alaska 2013).

This document is a preliminary decision, which is required under AS 41.21.027(c)(2), prior to entering into a concession contract under AS 41.21.027. The specific findings required by AS 41.21.027(b) and (c) are described in detail below.

Consistent with AS 41.21.027(c)(1), DPOR has made a preliminary inquiry with the Chugach State Park Advisory Board, at the board meeting on April 9, 2018. Representatives of the Anchorage Ski Club and the DPOR presented the proposal to issue a concession contract. Meeting attendees and board members were asked to comment at the meeting or to send in written comments later. The comments were generally supportive of the proposal to continue ski area operations by Anchorage Ski Club, as long as the public retains the right to use and access the area. Several commenters also stressed the importance of the concession contract allowing for future changes in recreational activity, for example as the popularity of various activities changes and new activities are developed. One commenter suggested providing for the development of new trail connections, specifically a trail to Ship Creek Valley which stays within the park and avoids military lands.

The findings required by 41.21.027(c)(2) are as follows.

- (A) an assessment of existing visitor uses that may be affected by the activities of the contractor;

The existing visitor uses are primarily skiing, snowboarding, and tubing using ASC's facilities. Off-season uses include hiking, berry picking, and sightseeing. The parking area is used to access the ridge that includes Mt. Gordon Lyon and Rendezvous Peak. The contract will allow these uses to continue and provide for the continued maintenance of the road, parking area, trails, and toilets which are required for these uses.

- (B) an assessment of the potential conflicts or significant effects on park wildlife, water, scenic values, or other resources;

The ski area has been operating for many years with little or no effect on wildlife, water quality, scenic values, or other resources. No conflicts have been reported, and the potential for conflicts is limited. The ASC will be required to maintain or obtain water rights or temporary water use authorizations for all water use. The proposed concession contract will require that the operator continue to minimize impacts on wildlife, water, scenic values and other park resources.

- (C) an identification of the types of services or goods that the contractor is to provide;

As described in the proposed contract, which is attached, the contractor would operate and maintain the ski area, consisting of two chair lifts, one T-bar, a tubing park, and the day-use lodge during the ski season. ASC would sell lift tickets for skiing and snowboarding, tubing lift tickets, and may sell ski and snowboard accessories, food, and beverages in the lodge.

The contractor would also maintain the parking area, outhouses, and hiking trails for year-round use. The contractor would collaborate with the U.S. Army on road maintenance.

With the approval of the Division of Parks & Outdoor Recreation (DPOR), the contractor may upgrade or replace the existing facilities. New facilities close to the existing facilities may also be constructed by the contractor with the approval of DPOR. All facilities will be required to be constructed in a manner that is consistent with DPOR standards.

The contractor may rent the lodge for private events or open the lodge to the public during the non-skiing season. The contractor could introduce new activities with the approval of DPOR.

(D) the terms and conditions of the contract;

A proposed contract is attached.

(E) a determination of whether the contract activity would be more appropriately located on land outside of the park or on private land within the park; and

The ski area, including the lifts and buildings, currently exists on park land. No comparable private land inside the park or land outside of the park is available. Construction of a new ski area or a relocated ski area would be considerably more expensive than the continued operation of the existing ski area and may not be economically viable.

(F) the views and comments of the park advisory board, when one exists, for the park unit in which the activity is being considered;

DPOR and ASC representatives informed the Chugach State Park Advisory Board at the April 9, 2018 meeting of the proposed concession contract. The board members were encouraged to submit comments at the meeting or in writing after the meeting. The comments were supportive of the continued operation of the ski area. Board member comments encouraged DPOR to provide for public access to and around the ski area, to provide for possible future trail connections, and to allow for the development of new activities. The proposed contract will require ASC to allow public access. The proposed contract also provides for the creation of new trails and for the introduction of new activities with the approval of DPOR.

Under AS 41.21.027(b), "The state may not enter into a concession contract under (a) of this section if the proposed contract involves estimated annual gross receipts of more than \$100,000, construction of facilities, a term longer than four years, or the provision of services other than those normally provided at similar facilities managed by the state, unless the commissioner finds that the proposed concession contract" meets several criteria, as described below. This proposed concession contract would be for a term longer than four years, will provide services other than those normally provided by the state, and may involve the construction of facilities. Therefore, the commissioner must find that the proposed concession contract meets the following criteria.

- (1) will implement the purposes of the park unit and is authorized by the park management plan, if any, that applies to the park unit;

Alaska Statute 41.21.121 and the Chugach State Park Management Plan designate this area of Chugach State Park as a recreational area. The ski area is consistent with the recreational area designation and is authorized by the park management plan. The plan is addressed in more detail above.

- (2) will enhance public use and enjoyment of the park unit while maintaining a high quality environment and the opportunity for high quality recreational experiences;

The proposed concession contract will facilitate high quality recreational experiences by allowing for the operation and maintenance of the ski area, road and parking area, and hiking trails. The proposed concession contract will also facilitate the ongoing maintenance of Arctic Valley Road, ensuring continued public access to this portion of the park.

- (3) will provide services or facilities that are not feasible or affordable for the state to provide directly;

The ski area provides a high quality recreational experience that would not be economical or prudent for DPOR to provide directly, due to staffing and budget constraints.

- (4) will not create unacceptable adverse environmental effects;

The proposed concession contract would allow the continued operation of a ski area within an area it has been operating for over 70 years, and would not create any unacceptable adverse environmental effects. The proposed concession contract will require that the operator continue to minimize impacts on wildlife, water, scenic values and other park resources.

- (5) is based on a need and desire of the public;

The public, as represented by the Chugach State Park Advisory Board, has expressed interest in the continued operation of Arctic Valley Ski Area.

Membership in the Anchorage Ski Club is open to the public, and ASC has over 450 members. The ASC has existed for over 70 years, operating Arctic Valley Ski area, largely by volunteers. ASC members volunteer over 3,000 hours each year to keep the ski area operating. The public has demonstrated an interest in the continued operation of the ski area by volunteering time to keep the ski area operating. The public had also demonstrated an interest in the area by buying lift tickets to ski; ski area had over 2,700 skier days and 6,500 tubing days in 2018.

This decision will go to the public for review and comment before a contract is signed.

- (6) recognizes and accommodates, at no cost, ordinary uses in a park unit;

The proposed concession contract will require that the public be allowed continued use the area without charge when ski operations are not occurring. During ski operations, the public will be allowed access around the ski area.

The Anchorage Ski Club will be allowed to charge a parking fee for use of the parking area which they maintain. The fee for parking cannot be higher than the equivalent parking fee at similar park locations, such as South Fork Eagle River and Glen Alps. State Parks parking decals are not valid for the Arctic Valley parking lot.

- (7) requires the contractor to hire residents of the state, to the extent available and qualified, when hiring persons to work in the park under the contract;

The proposed concession contract requires the contractor to hire residents of the state, consistent with this section. The Anchorage Ski Club has largely depended on member volunteers, who are generally local residents, for the daily operation of the ski area, and intends to continue to do so.

- (8) provides the state with a fair and equitable portion, in money or services, of the contractor's receipts from the provision of the service or the operation of the facility;

The proposed concession contract will provide the state with 2.5% of the Arctic Valley revenues. In recent years, total revenues were approximately \$400,000 per year, so the payment would have been \$10,000 per year.

This represents a significant increase over the rent paid under the current lease of \$761.10 per year. This rent is consistent with leases of federal land to other ski areas. Because the rent will be a percentage of the revenues, the rent remains low enough to avoid constraining ASC's operations while providing a fair return to the state.

The proposed concession contract would allow for the payment of up to half of the annual fee in kind through maintenance of the parking area, road, toilets, and hiking trails.

- (9) provides that the department retains control over the level of fees and the design and appearance of any facility to be constructed;

The proposed concession contract requires DPOR approval of fees and the design and appearance of any facilities to be constructed.

- (10) encourages the contractor to accommodate visitors with special circumstances, including persons with disabilities, senior citizens, and school children; and

The contractor will be encouraged to maintain facilities which are accessible to all, and the identify ways to accommodate visitors who are not served by the existing facilities. ASC currently seeks to improve access to the area for everyone in several ways.

The main floor of the Alpenglow Lodge and the trailhead toilet facilities are ADA accessible.

ASC has made trail improvements and will continue to make trail improvements which to improve access for hikers of all ages and abilities.

ASC is repairing the existing rope tow south of the lodge, which will provide a facility for beginner skiers.

For 2019 ASC has restarted a ski racing team to introduce a new generation to ski racing and promote youth development.

- (11) provides that the contract may be terminated if the contractor fails to fulfill the requirements of this section or the contract.

The proposed concession contract includes provisions required by state law for the termination of the contract for non-compliance with material contract provisions as required by AS 41.21.027, AS 36.30, or the requirements of the contract.

As described above, the proposed concession contract would be consistent with the requirements of AS 41.21.027.

The proposed concession contract would be negotiated with Anchorage Ski Club as a single source procurement under AS 36.30.300. If this preliminary decision is approved after public notice and comment, DNR will proceed with the sole source findings required by AS 36.30.300 and 2 AAC 12.410-420. This contract would qualify for a sole source procurement under 2 AAC 12.410(d)(6) "...for operation of a concession contract on state property by a nonprofit organization whose sole purpose is to operate the concession and provide other public services on the property."

Alternatives and Recommendations

DNR DPOR is considering the following alternatives:

Alternative 1 (preferred): Issue a concession contract, consistent with this preliminary decision, for the operation of the Arctic Valley Ski Area to Anchorage Ski Club through a non-competitive procurement process, as authorized by AS 41.21.027 and AS 36.30.300.

Alternative 2: Issue a concession contract to operate the Arctic Valley Ski Area through competitive bidding.

Alternative 3: Do not issue a concession contract and allow the Anchorage Ski Club lease to expire on November 19, 2022.

The continued operation of Arctic Valley Ski Area will provide the public with high quality recreational opportunities in Chugach State Park, consistent AS 41.21.121 and the Chugach State Park Management Plan. In addition to skiing and snowboarding, the ski area concessionaire will, as part of the contract, coordinate with the U.S. Army to maintain public access to the park on the road across military land, provide parking with restrooms year-round, and maintain and improve hiking trails in the area. ASC has owned and operated Arctic Valley Ski area for over 70 years, and has the knowledge, personnel, and equipment to successfully continue operating the ski area. Therefore, alternative 1, a concession contract with ASC through the sole-source procurement process is the preferred alternative. The ASC is an appropriate candidate for sole-source procurement under 2 AAC 12.410(d)(6) as a "nonprofit organization whose sole purpose is to operate the concession and provide other public services" on the state property.

Alternative 2, issuing a concession contract through competitive bidding may provide the public recreational benefits described above. However, the existing infrastructure at Arctic Valley is owned by Anchorage Ski Club, and they could choose to remove it in accordance with the existing lease requirements. DPOR is not aware of other entities which are interested in operating the Arctic Valley Ski Area. The ASC has over 70 years of experience and expertise in area and is interested in and capable of continuing to operate the ski area. If DPOR receives interest from another qualified party during the public comment period, DPOR may consider competitive bidding for the operation of Arctic Valley Ski Area. If DPOR decides to accept competitive bids based on interest expressed during the public comment period, a revised version of this preliminary decision and public notice will be distributed.

Alternative 3 is to allow the lease to expire in 2022 without an arrangement for the continued operation of the Arctic Valley Ski Area. In this scenario, the ski area would cease operation, and the public would lose the recreational opportunities described above. Furthermore, DPOR would be expected by the public to take over maintenance of the parking area, road, and trails to retain public access to the area. This would represent a significant expense to DPOR, and there is no additional state funding expected to pay for these costs. Under this alternative, the ASC would be required under to remove their property within 60 days of lease expiration. The removal and restoration work would be expensive, time consuming, and creates the possibility of ASC abandoning property which DPOR would then need to clean up at state expense. Due to the loss of recreational opportunities and loss of maintenance of facilities for public access, allowing the lease to expire without any provision for the ongoing operation of the ski area is not recommended.

As described above, alternative 1, issuance of a concession contract for the operation of Arctic Valley Ski Area to the Anchorage Ski Club through the single source procurement process is the recommended course of action. The contract should contain conditions required by AS 41.21.027 and other conditions necessary to protect the public interest.

Dan Beutel Date
Natural Resource Specialist III
Division of Parks & Outdoor Recreation
Department of Natural Resources
State of Alaska

I concur with the recommendation.

Ethan Tyler Date
Director
Division of Parks & Outdoor Recreation
Department of Natural Resources
State of Alaska