

**Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**Notice under 11 AAC 99.050 of**  
**Decision to Sell a Parcel of Trust Land**  
**MHT #9100966**

Notice is hereby given that, pursuant to the provisions of AS 38.05.801 and 11 AAC 99, the Executive Director of the Alaska Mental Health Trust Land Office (TLO) has determined that it is in the best interest of the Alaska Mental Health Trust and its beneficiaries to complete a negotiated land sale of certain Trust land to the Ketchikan Gateway Borough. The basis for this determination is explained in a written best interest decision prepared by the Executive Director pursuant to 11 AAC 99.040.

The Trust land affected by the decision is adjacent or near to Ketchikan, and is more particularly described as: Lot 3D2 of Alaska State Land Survey No. 89-102, located within Section 11, Township 76 South, Range 91 East, Copper River Meridian, containing approximately 3.39 acres more or less (MH Parcel CRM-3392-02).

Persons who believe that the written decision should be altered because it is not in the best interests of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, March 20, 2019**. Comments should be submitted to the TLO at **2600 Cordova Street, Suite 100, Anchorage, AK 99503**, or by fax **(907) 269-8905** or email [mhtlo@alaska.gov](mailto:mhtlo@alaska.gov). Following the comment deadline, the Executive Director will consider timely comments that question the decision on the basis of the best interest of the Alaska Mental Health Trust and its beneficiaries or inconsistency with 11 AAC 99, and the best interest decision may be changed in response to such written comments or other information. Commenting parties will be provided a copy of the final best interest decision after the end of the notice period.

To be eligible to file for reconsideration of the best interest decision, or to file a subsequent appeal to the Superior Court, a person must have submitted written comments during the notice period. Eligible persons will have twenty (20) calendar days after published notice of or receipt of the final written decision to request that the Executive Director reconsider the decision under 11 AAC 99.060(b).

Copies of the written decision are available at the Trust Land Office, or at <https://alaskamentalhealthtrust.org/trust-land-office/>. If you have any questions concerning this action, please contact the Trust Land Office at (907) 269-8658.

In compliance with the Americans with Disabilities Act, the Alaska Mental Health Trust is prepared to accommodate individuals with disabilities. Please contact the Trust Land Office at (907) 269-8658 for assistance. Requests for assistance must be received at least 96 hours prior to the comment deadline in order to ensure that any necessary accommodations can be provided.

The Executive Director of the TLO reserves the right to waive technical defects in this notice or to amend, postpone, or vacate the best interest decision.

  
Wyn Menefee  
Executive Director

2/15/19  
Date  
Published Ketchikan Daily News: 02/19/2019

**The Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**BEST INTEREST DECISION**  
**Negotiated Land Sale of a Trust Parcel – Mt. Point Waterfront**

MHT: 9100966  
MH Parcel: CRM-3392-02

In accordance with AS 38.05.801 et seq. and the implementing regulations governing Alaska Mental Health Trust (“Trust”) land management (11 AAC 99), Trust land shall be managed consistently with the responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)). This means that management shall be conducted solely in the best interest of the Trust and its beneficiaries.

In determining the best interest of the Trust and its beneficiaries, and in determining consistency between state law and the Alaska Mental Health Enabling Act, the Executive Director of the Alaska Mental Health Trust Land Office (“TLO”) shall, at a minimum, consider the following interactive Trust management principles in accordance with 11 AAC 99.020:

- Maximization of long-term revenue from Trust land;
- Protection of the corpus;
- Protection and enhancement of the long-term productivity of Trust land;
- Encouragement of a diversity of revenue-producing uses of Trust land; and
- Management of Trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries.

**I. Proposed Use of Trust Land.** Negotiated Land Sale.

**II. Applicant/File #.** Ketchikan Gateway Borough/MHT 9100966.

**III. Subject Property.**

**A. Legal Description.** Section 11, T. 076 S., R. 091 E., Copper River Meridian; Lot 3D2 of Alaska State Land Survey No. 89-102; containing 3.39 acres more or less; according to the survey plat in the Ketchikan Recording District June 15, 1992 as Plat 92-24.

**B. Settlement Parcel Number.** CRM-3392-02.

**C. Site Characteristics/Primary Resource Values.** The property is a waterfront parcel located five miles south of the town of Ketchikan, and adjacent to the Mt. Point Boat Harbor. The parcel is forested with large temperate rainforest trees typical of the area, and the shoreline consists of rocky outcroppings and tide pools. The ground on this parcel is predominately wet. There are no utilities on the parcel, such as electricity and water/waste water. The primary resource value of the parcel is disposal through a land sale.

**D. Historical and Existing Uses of the Property.** The property is vacant and undeveloped. The primary historical and existing use of the parcel has been as an

undeveloped green space where members of the public and tourists take walks, admire the shoreline tide pools, and view wildlife.

- E. Adjacent Land Use Trends.** The overall area is residential. The parcel is adjacent to a small boat harbor that's used by local residents. The boat harbor parking lot receives significant traffic during the summer months, and several commercial tour operators utilize the parking lot to bring clients onto the subject parcel to walk out onto the rocky shoreline.
- F. Previous State Plans/Classifications.** Central/Southern Southeast Area Plan – Region 5. Ketchikan; adopted November 2000.
- G. Existing Plans Affecting the Subject Parcel.** Ketchikan Gateway Borough Comprehensive Plan 2020.
- H. Apparent Highest and Best Use.** The highest and best use of this parcel is disposal through a negotiated sale. Since the area is used extensively by local residents and summer tourists, any effort by the TLO to subdivide the parcel for low density residential or commercial development would likely meet opposition from the public and local government.

**IV. Proposal Background.** In the fall of 2017, the TLO began the process of having the parcel rezoned from its current classification of “Public/Institution”, to “Low Density Residential”. The request to rezone caused the Ketchikan Gateway Borough Assembly to express interest in purchasing the property for use as a public park. The assembly directed borough planning staff to work with the TLO on a potential purchase or land trade. On June 21, 2018 the TLO received a written offer from the borough to purchase the parcel in the amount of \$500,000.00. The parcel has a history of being used by the public for outdoor recreation, and by local tour operators for sightseeing and wildlife viewing of which the Trust has not generated any revenues. In addition to the routine use by the public, the area has recently been occupied by long-term campers which has involved coordination with local law enforcement to remove the unauthorized camping.

**V. Terms and Conditions.** On January 8, 2019 the TLO and the Ketchikan Gateway Borough entered into a purchase and sale agreement outlining the process for the borough to purchase the property through a negotiated sale. The borough has the option to enter into a land sale contract or pay the entire sale price in one lump sum. When the purchase price is paid in full a Quit Claim Deed will be executed.

**VI. Resource Management Considerations.** The proposal is consistent with the “Resource Management Strategy for Trust Land” (RMS), which was adopted March 2016 in consultation with the Trust and provides for the TLO to maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets. Experience has demonstrated that it is unlikely that this parcel will appreciate at a rate that would justify holding for a later sale. It is also not cost effective for the TLO to hold this parcel for a long period of time and incur the associated management costs and liabilities.

**VII. Alternatives.**

- A.** Do nothing or offer for sale sometime in the future.
- B.** Retain the parcel for residential or commercial leasing. There is currently no interest.
- C.** Retain the parcel for potential future conservation or environmental mitigation purposes. There is currently no interest.

Alternatives A, B, and C would delay receipt of potential revenues and could result in additional costs and risks to the Trust without significant increases in value.

**VIII. Risk Management Considerations.**

- A. Performance Risks.** In present condition, the parcel is not generating any revenue for the Trust. The parcel is considered a non-performing asset.
- B. Environmental Risks.** There are no known environmental risks associated with the proposed sale. There's no history of the Trust authorizing any use on the parcel.
- C. Public Concerns.** Considering that the primary reason the borough seeks to purchase the property is for a park, the public likely supports the sale. The Trust has previously sold land to the borough for park purposes in the South Point Higgins area, and is not aware of any public concerns related to that sale. Subject to comments resulting from public notice, there are no known public concerns.
- D. Other.** The Ketchikan Gateway Borough Assembly is in support of the purchase and has allocated funds for the purchase.

**IX. Due Diligence.**

- A. Site Inspection.** TLO staff, the contract appraiser, and borough officials have inspected the parcel on numerous occasions during 2017 and 2018.
- B. Valuation.** An appraisal was performed using a sales comparison approach and the market value of parcel CRM-3392-02, as of May 22, 2018 was \$360,000.00. To compensate for not selling the land competitively the TLO seeks a premium, in this case the borough offered the Trust \$500,000.00 for the property, which is a premium of approximately 40%.
- C. Terms and Conditions Review.** An agreement for the purchase and sale of the property was completed on January 8, 2019. The agreement outlines the terms and conditions of the sale.

**X. Authorities.**

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99 (key statutes and regulations applicable to Trust land management and disposal).
- B. Inconsistency Determination.** As the proposed negotiated sale is specifically authorized under 11 AAC 99, any relevant provision of law applicable to other state lands is inapplicable to this action if it is inconsistent with Trust responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)) as clarified by AS 38.05.801 and Alaska Mental Health Trust land regulations (11 AAC 99). 11 AAC 99 includes

determinations that certain State statutes applicable to other State land do not apply to Trust land unless determined by the Executive Director, on a case-by-case basis, to be consistent with 11 AAC 99.020. The State Statutes deemed inconsistent with Trust management principles and inapplicable to Trust land by these regulations have not been applied to this decision or this action, including, but not limited to, AS 38.04 (Policy for Use and Classification of State Land Surface), AS 38.05.035 (Powers and Duties of the Director), AS 38.05.300 (Classification of Land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals). Other provisions of law the TLO deems inconsistent with Trust responsibilities include:

1. AS 38.05.055, Alaska Residency required for purchase of State land and AS 38.05.940, Veteran's discounts allowed on purchase price of State land. Preferences or discounts provided to Alaska residents or veterans would be granted at a cost to the Trust, hereby violating key Trust management principles.
2. AS 38.05.127, Access to navigable or public water and requiring "to and along" easements on Trust properties diminishes the sale value of Trust lands and therefore is inconsistent with Trust management principles.

**XI. Trust Authority Consultation.** The Alaska Mental Health Trust Resource Management Committee was consulted on October 17, 2018. The Committee recommended that the proposed transaction be forwarded to the Alaska Mental Health Trust board of trustees. The board of trustees was consulted on November 14, 2018, and the board of trustees concurred with the negotiated sale of CRM-3392-02 to the Ketchikan Gateway Borough.

**XII. Best Interest Decision.**

- A. Given the information above and the information contained in the complete record, the Executive Director finds that the proposed transaction is in the best interest of the Trust, subject to the terms and conditions addressed in this decision. The decision is based upon the consideration of the five Trust management principles set out in 11 AAC 99.020 and is in full compliance with 11 AAC 99. This decision does not preclude the TLO from determining that an alternative proposal will serve the best interest of the Trust. A future determination of that nature will require a best interest decision specific to the proposal.
- B. **Non-competitive Disposal Determination.** 11 AAC 99.020 (d) allows for the disposal of Trust land through a competitive basis, unless the Executive Director in consultation with the Trust Authority, determines in a written decision required by 11 AAC 99.040 that a non-competitive disposal is in the best interest of the Trust and its beneficiaries. If another party submits a qualified offer as explained in Section XIII, the Executive Director may consider a competitive sale under the authority of this decision. MH Parcel CRM-3392-02 is approximately 3.39 acres, more or less. Given the price offered, the current real estate market, and the costs associated with subdividing a non-competitive disposal is in the best interest of the Trust and its beneficiaries.

**XIII. Opportunity for Comment.** Notice of this Best Interest Decision will take place as provided under 11 AAC 99.050. Persons who believe that the decision should be altered because it is not in the best interest of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020 or any other provision of 11 AAC 99, must provide written comments to the TLO during the notice period. Other persons who may be interested in purchasing the Property must submit their proposals during the 30-day public notice period. Instructions to apply can be found online at <https://alaskamentalhealthtrust.org/trust-land-office/land-sales/land-use-application/>. To be considered a qualified competing interest, applications must include the application fee, a formal Letter of Intent to include an offer price that matches or exceeds the current offer of \$500,000.00 for the parcel, a deposit of 10% of the offered price in certified funds. In the event that there is competing interest, all qualified interested parties will be notified by phone, fax, or e-mail how they may participate in the alternative sale process. Following the comment deadline, the Executive Director will consider timely written comments that question the decision on the basis of the best interest of the Trust and its beneficiaries or inconsistency with 11 AAC 99. The Executive Director may then, in his or her discretion, modify the decision in whole or in part in response to such comments or other pertinent information, or affirm the Best Interest Decision without changes. The Best Interest Decision as modified or affirmed will become the final agency action, subject to reconsideration procedures under 11 AAC 99.060. Additional notice will be provided for a substantially modified decision. If no comments are received by the end of the notice period, this Best Interest Decision will be affirmed, and the proposed action taken. (See notice for specific dates.)

**XIV. Reconsideration.** To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

Persons who submit timely written comments will be provided with a copy of the final written decision and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the request for reconsideration. If the Executive Director takes no action during the 20-day period following the request for reconsideration, the request is considered denied. Denial of a request for reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560.

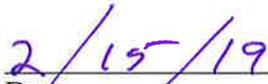
**XV. Available Documents.** Background documents and information cited herein is on file and available for review at the TLO, located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503. Phone: (907) 269-8658. Email: [mhtlo@alaska.gov](mailto:mhtlo@alaska.gov).

The disposal action proposed by this decision will occur no less than 30 days after the first publication date of this decision, and after the conclusion of the TLO administrative process. For specific dates or further information about the disposal, interested parties

should contact the TLO at the above address, or visit the website at:  
<https://alaskamentalhealthtrust.org/trust-land-office/>.

**XVI. APPROVED:**

  
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Wyn Menefee  
Executive Director  
Alaska Mental Health Trust Land Office

  
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Date