

**Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**Notice under 11 AAC 99.050 of**  
**Decision to issue a Non-Exclusive Perpetual Easement in the Big Delta area**  
**MHT #9400696**

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 Perpetual Easement of certain Trust land to the Andrew Dougherty. 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 Big Delta, and is more particularly described as: A strip of land 60 ft wide and 330 feet long located in the south 60 ft of the SW1/4SW1/4SW1/4NW1/4 of Section 5 in Township 9 South, Range 10 East, Fairbanks Meridian, Alaska, containing 19,800 sq. ft. or 0.45 acres more or less. (MH Parcel **F20608**).


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, April 8, 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.

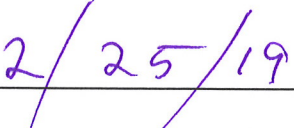
To be eligible to file for reconsideration of the best interest decision, or to file a subsequent appeal to the Superior Court, a person must have submitted written comments during the notice period. Eligible persons will have twenty (20) calendar days after published notice of or receipt of the final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

  
Date  
Published Delta Wind: 3/7/2019

**The Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**BEST INTEREST DECISION**  
**Non-Exclusive Perpetual Easement – Big Delta area**

MHT: #9400696  
MH Parcel(s): F20608

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.** To issue a 60-foot-wide by 330-foot-long non-exclusive, perpetual easement.

**II. Applicant/File #.** Andrew and Jennifer Dougherty/MHT 9400696.

**III. Subject Property.**

**A. Legal Description.** A strip of land 60 ft wide and 330 feet long located in the south 60 ft of the SW1/4SW1/4SW1/4NW1/4 of Section 5 in Township 9 South, Range 10 East, Fairbanks Meridian, Alaska, containing 19,800 sq. ft. or 0.45 acres more or less.

**B. Settlement Parcel Number(s).** F20608.

**C. Site Characteristics/Primary Resource Values.** The Tanana River is an important public and navigable waterway and is managed for wildlife habitat, forest, and recreation values. Certain portions of the Tanana are of key importance to the salmon fishery. Of major concern is the maintenance of water quality and quantity necessary for successful spawning and egg development and of streambank integrity at the immediate spawning sites. This parcel provides a buffer to protect water quality and prevent accelerated bank erosion that may affect adjacent landowners.

- D. Historical and Existing Uses of the Property.** Public recreation and wildlife habitat.
  - E. Adjacent Land Use Trends.** Public recreation, settlement, forestry, public recreation, and wildlife habitat.
  - F. Previous State Plans/Classifications.** DNR issued the Tanana Basin Area Plan (TBAP) for State Lands, adopted in 1985 and updated in 1990 and 1999. Under TBAP the subject property was designated as forestry, public recreation, and wildlife habitat. The Subsurface estate is open to mineral entry. Land disposals and remote cabins are prohibited surface use.
  - G. Existing Plans Affecting the Subject Parcel.** The parcel is located outside of a borough or municipality with zoning authority.
  - H. Apparent Highest and Best Use.** The highest and best use for this portion of parcel F20608 is to provide access to adjacent land owners and Trust land.
  
- IV. Proposal Background.** Andrew Dougherty submitted a request to purchase a 2.5-acre portion of Trust parcel F20608 in the Big Delta area. The applicant indicated that a slough of the Tanana River was threatening to erode the access road to their property and is seeking alternative access. Upon review of the proposal, TLO determined that sale this portion of the parcel would inhibit future development activities and that a perpetual easement would be in the best interest of the Trust by providing reliable access to trust land.
  
- V. Terms and Conditions.** The standard TLO non-exclusive Perpetual Easement Agreement will be used for the disposal.
  
- VI. Resource Management Considerations.** The proposal is consistent with the “Resource Management Strategy for Trust Land,” 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. Past experience has demonstrated that it is unlikely that this parcel will appreciate at a rate that would justify holding it for a later sale. It is also not cost effective for the TLO to hold this parcel and incur the associated management costs and liabilities.
  
- VII. Alternatives.**
  - A.** Do nothing or offer sometime in the future. This alternative would delay receipt of revenues from sales and could result in additional costs and risks to the Trust without significant increases in value.
  - B.** Negotiated Land Sale for a portion of the parcel approximately 2.5 acres in size. MH Parcel F20608 is approximately 315.6 acres in size and is bisected by several sloughs of the Tanana River. The parcel contains a steep bluff in the vicinity of the proposed easement. This bluff would make road construction to the remainder of the parcel more expensive to develop within the north-south section line easement. A non-exclusive easement preserves the Trusts ability to develop an access road to the rest of the parcel.

- C. **Alternate development.** The lack of road and utility infrastructure and small size of this portion of the parcel makes development of subdivision or commercial development cost prohibitive. The material is mostly glacial silt and there has been no interest expressed for material or mineral development.

**VIII. Risk Management Considerations.**

- A. **Performance Risks.** Performance risks will be mitigated through the TLO's Perpetual Easement Agreement. This document includes contemporary language to limit risks to the TLO and the Trust, ensure performance by the buyer, and allow for termination in the case of default.
- B. **Environmental Risks.** The parcel is located within the Tanana River floodplain, comprised primarily of glacial silt, and may be subject to erosion.
- C. **Public Concerns.** Subject to comments resulting from the public notice, there are no known concerns that suggest the proposed transaction is inconsistent with Trust principles. Copies of the public notice will be distributed to the Trust Authority, Tanana Chiefs Conference, and other interested parties that expressed interest in receiving the notice.

**IX. Due Diligence.**

- A. **Site Inspection.** Site inspection was conducted on September 20, 2018.
- B. **Valuation.** The December 2016 Guidelines for Land Use Fees was used to determine the one-time fee of \$1,000 for the sale of the non-exclusive, perpetual easement. There is no competing interest for the portion of the Trust parcel. Disposal of a non-exclusive perpetual easement to the adjacent landowner will facilitate reliable access to the rest of the parcel, which may reduce costs to the future development on Trust land.
- C. **Terms and Conditions Review.** Contract documents were reviewed by the Attorney General's Office and an independent law firm.
- D. **Other.** A final As-built Survey will be required.

**X. Authorities.**

- A. **Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99.
- B. **Inconsistency Determination.** As the proposed non-exclusive perpetual easement 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).

**XI. Trust Authority Consultation.** TLO consultation is defined in statute and regulation under AS 37.14.009(a)(2)(C) and 11 AAC 99.050 and clarified under 11 AAC 99.030(d) which requires the executive director to consult before issuing a public notice of a written decision of best interest.

**XII. Best Interest Decision.** 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.

**A. 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 disposal under the authority of this decision.

**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 that may be interested in submitting an alternative offer must submit a complete application, including non-refundable fee describing their proposal during the 30-day public notice period. Instructions to apply can be found at <https://alaskamentalhealthtrust.org/trust-land-office/land-sales/land-use-application/>. 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. 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

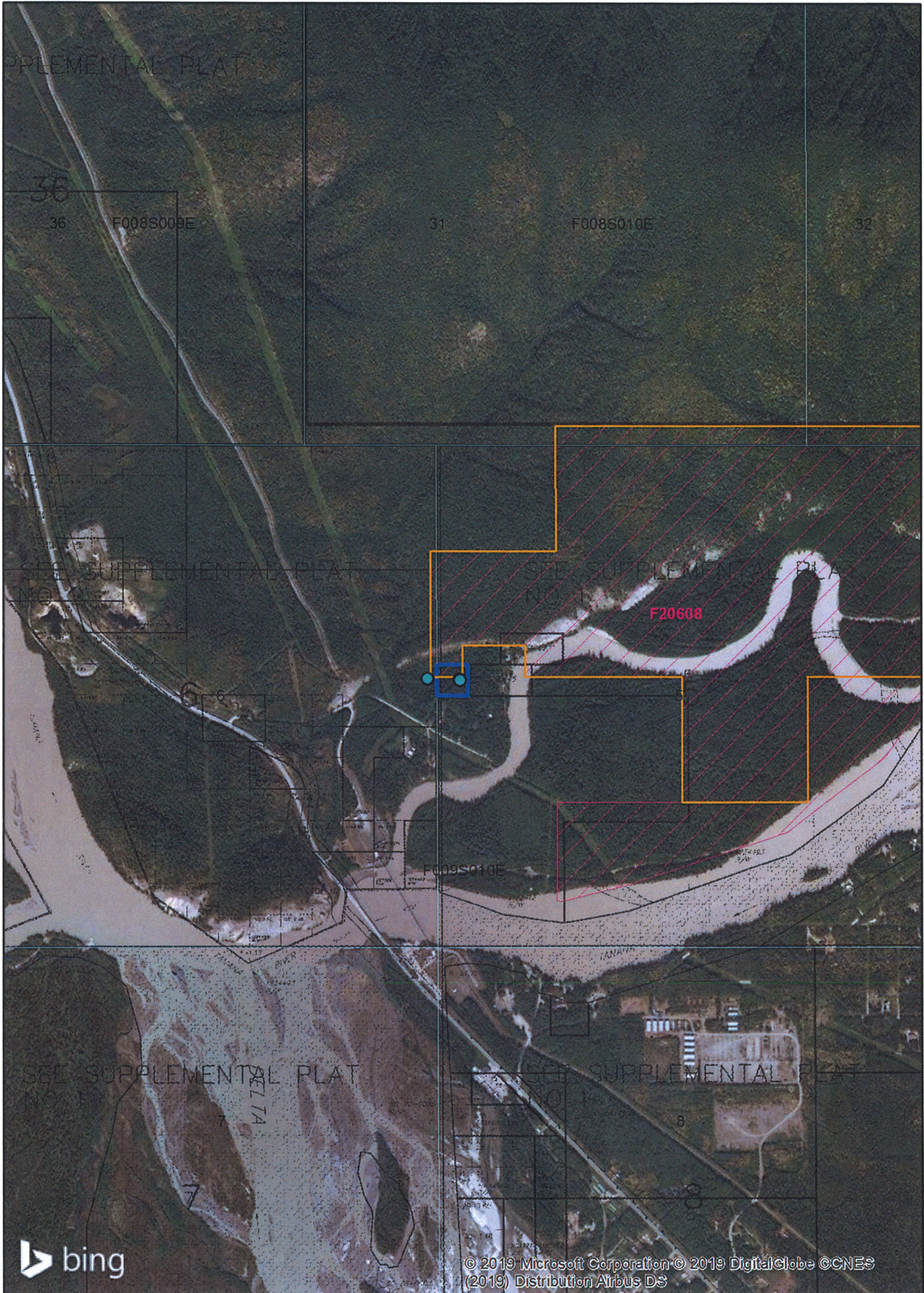
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Date

**XVII. CONSULTATION CONCURRENCE:**

  
\_\_\_\_\_  
Michael K. Abbott  
Chief Executive Officer (CEO)  
Alaska Mental Health Trust Authority

2/25/19  
\_\_\_\_\_  
Date





SUPPLEMENTAL PLAT

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SEE SUPPLEMENTAL PLAT NO. 1

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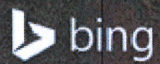
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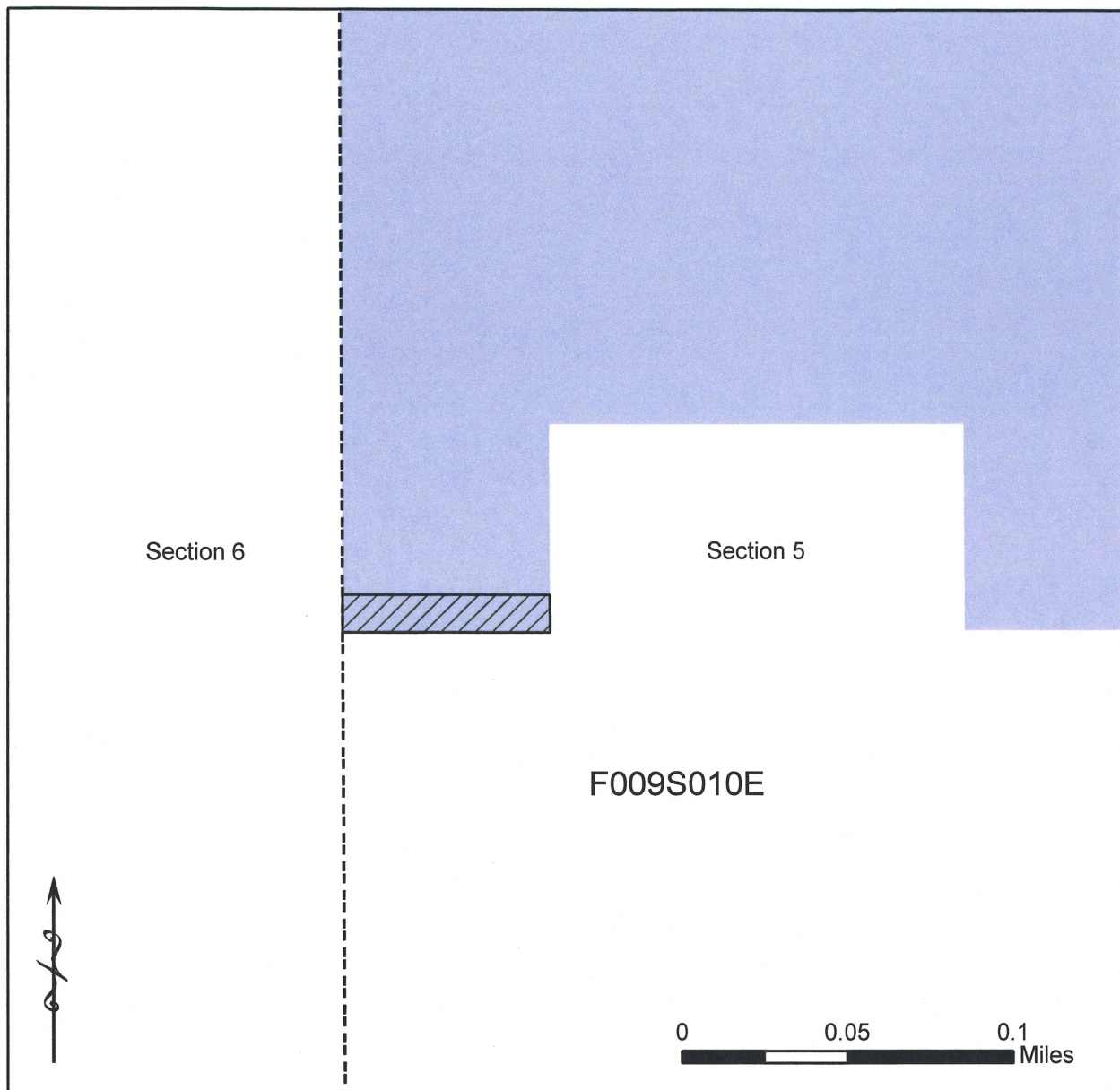
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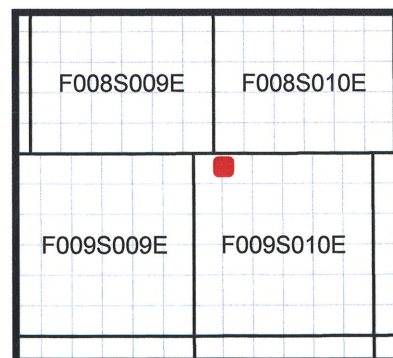
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### MHT 9400696 Easement

-  MHT 9400696
-  Section Line
-  Mental Health Trust Land



A strip of land 60 ft wide and 330 feet long located in the South 60 feet of the SW1/4SW1/4SW1/4NW1/4 of Section 5 in Protracted Township 9 South, Range 10 East, Fairbanks Meridian, containing 19,800 sq. ft. or 0.45 acres more or less.