

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Proceed with Negotiated Land Sale – Flat Lake
MHT #9200645

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 Curtis Amundson. 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 Flat Lake in the Matanuska-Susitna Valley and is more particularly described as: Lot 4 & SW1/4NW1/4SE1/4NE1/4, located within Section 28, Township 017 N, Range 004 W, Seward Meridian, containing approximately 2.45 & 2.50 acres (MH Parcel(s) **SM-2228;SM-2234**), according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C on January 19, 1959.

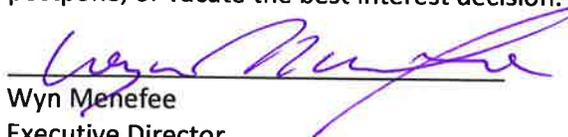
Persons who believe that the written decision should be altered because it is not in the best interests of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, November 30, 2018. 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.** 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

10/29/18
Date

Published Anchorage Daily News: 10/31/2018

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Negotiated Land Sale – Flat Lake

MHT: #9200645
MH Parcel(s): SM-2228;SM-2234

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. A negotiated land sale of two Trust parcels on Flat Lake at a price of \$71,500.00, 30% above the appraised fair market value of \$55,000.00.

II. Applicant/File #. Curtis Amundson / MHT 9200645.

III. Subject Property.

A. Legal Description.

- i. SM-2228:** T. 017 N, R. 004 W., SEWARD MERIDIAN, ALASKA, SECTION 28: LOT 4, CONTAINING 2.45 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON JANUARY 19, 1959.
- ii. SM-2234:** T. 017 N, R. 004 W., SEWARD MERIDIAN, ALASKA, SECTION 28: SW1/4NW1/4SE1/4NE1/4, CONTAINING 2.50 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON JANUARY 19, 1959.

B. Settlement Parcel Number(s). SM-2228;SM-2234.

C. Site Characteristics/Primary Resource Values.

- i. SM-2228 is forested, has water frontage on the lake, and access is gained from Flat Lake. The parcel is classified as 100% Lakebed Ecosystem Wetlands and is approximately 2.45 acres in size
- ii. SM-2234 is forested, inland from the lake and access is gained from Flat Lake through SM-2228. The parcel is classified as 100% Lakebed Ecosystem Wetlands and is approximately 2.50 acres in size.

D. Historical and Existing Uses of the Property. The parcels are currently under a 55-year lease issued by the Alaska Department of Natural Resources (ADNR) in May 1973 and will expire on April 30, 2028. The Alaska Mental Health Trust was conveyed the land and took over management of the lease in the 1994. The lease currently generates \$1,527.44 in annual rent. A cabin was built on the lease site by the original lessee, Surge Amundson, but was destroyed by fire at some point in the past. The debris of the cabin fire remains on the parcels along with miscellaneous other materials and possessions. In December 2004, Surge Amundson assigned the lease to Curtis Amundson, who is the current lessee. Under the terms of the current lease the lessee, Curtis Amundson, has a preference right to re-lease the parcels upon expiration of the lease, subject to AS 38.05, as amended, and the rules and regulations promulgated thereunder. There is no preference right given to purchase the parcels upon expiration of the current lease.

E. Adjacent Land Use Trends. The immediate area is mostly vacant with some residential (full-time and seasonal) and recreational use.

F. Previous State Plans/Classifications. None.

G. Existing Plans Affecting the Subject Parcel. Flat Lake lies within the Mat-Su Borough but is not specifically zoned. The area is subject to MSB 17.01 *Acknowledgement of Existing Land Use Regulations.*

H. Apparent Highest and Best Use. Disposal through negotiated sale.

IV. Proposal Background. The current lessee, Curtis Amundson, requested to convert the lease into a negotiated sale and agreed to pay a premium of 30% above the appraised fair market value.

V. Terms and Conditions. The parcels will be sold via a cash sale paid in full at the time of closing. The terms and conditions include the following:

- A. Parcels will be sold “as is” and “where is” with no guarantees as to the suitability for any intended use.
- B. Purchaser agrees to pay for all escrow, title, and other closing costs including title insurance if title insurance is desired by the Purchaser.
- C. Purchaser agrees to relinquish the current lease on the parcels, ADL 60443, held by Purchaser, Curtis Amundson, at the time of closing.

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 these parcels will appreciate at a rate that would justify holding them for a later sale. It is also not cost effective for the TLO to hold these parcels for a long period of time and incur the associated management costs and liabilities, especially given the low annual rent these parcels are subject to under the current 55-year lease contract. These 55-year lease contracts that Trust land is subject to in some instances, such as this, do not maximize returns at prudent levels of risk or prevent liabilities and are underperforming.

VII. Alternatives.

- A.** Do nothing and re-lease upon expiration of current lease. This scenario would allow the current lease authorization to continue until April 2028, which is generating \$1,527.44 per year or 2.77% of the appraised fair market value per year. After the current lease expires the TLO would allow the current lessee to exercise their preference right to re-lease or issue a new lease to another party with present-day lease terms. This option would likely cause additional management costs and risks to the Trust without significant increases in value. The Trust could further experience a potential loss of revenue by not capitalizing on the opportunity to sell at a premium. This alternative is also contingent upon the current lessee desiring to re-lease the parcels, or in the case the current lessee does not wish to re-lease, that another party will be interested in a lease of the parcels, both of which are highly unlikely.
- B.** Do nothing and offer sometime in the future. This alternative would allow the current lease authorization to continue until April 2028, which is generating \$1,527.44 per year or 2.77% of the appraised fair market value per year. After the current lease expires the TLO could offer the parcels competitively; however, this delay would likely cause additional management costs, risks to the Trust without significant increases in value. The Trust could further experience a potential loss of revenue by not capitalizing on the opportunity to sell at a premium.
- C.** Proceed as Proposed. The proposed sale will alleviate the Trust from managing an under-performing asset in a 55-year lease, issued by the ADNR and transferred to the Trust, which contains unfavorable and outdated rental payment terms that are below values which would be required in the present day. The sale at \$71,500.00 or 30% premium above the fair market value would likely allow the Trust to gain returns exceeding the current returns of 2.77% of the appraised fair market value per year.

VIII. Risk Management Considerations.

- A. Performance Risks.** Performance risks will be mitigated through the TLO's Purchase and Sale Agreement and Quitclaim Deed.
- B. Environmental Risks.** There are no known environmental risks associated with the proposed sale.
- C. Public Concerns.** Subject to comments resulting from public notice, there are no known public concerns.

IX. Due Diligence.

- A. Site Inspection.** This parcel has not been inspected in person by the TLO or a contractor. There was a detailed examination done by the appraiser of all available data pertaining to the parcels when the valuation was completed in December of 2015.
- B. Valuation.** An appraisal for SM-2228 and SM-2234 was completed in December of 2015 and the determined valuation of fair market value was \$55,000.
- C. Terms and Conditions Review.** An agreement for the purchase and sale of the property was completed on August 29, 2018. The standard TLO land sale contract documents have been reviewed by the Department of Law.

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 the 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), AS 38.05.127 (Access to Navigable or Public Water), 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. Currently, the parcels being considered for negotiated sale are an under-performing asset with multiple encumbrances, including the remains of a structure fire, and are bound by lease rental payment terms which are unfavorable to the Trust and outdated. Due to the lease authorization, a competitive sale would not be possible until the lease expires in April of 2028. It is unlikely that over the next 10 years the parcels will appreciate at a rate that would make sense to maintain them in Trust ownership until a competitive sale is possible. During this 10-year time frame the Trust will have to expend resources to manage the authorization and activities taking place. The sale of the parcels now through a negotiated sale at a 30% premium above the fair market value to the current lessee would allow the Trust to sell encumbered and underperforming assets for a premium return.

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. 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.

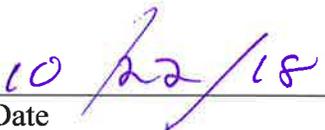
XV. Available Documents. Background documents and information cited herein is on file and available for review at the TLO, located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503. Phone: (907) 269-8658. Email: mhtlo@alaska.gov.

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:



Wyn Menefee
Executive Director
Alaska Mental Health Trust Land Office



Date

XVII. CONSULTATION CONCURRENCE:



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



Date