

**The Alaska Mental Health Trust Authority
Trust Land Office**

**BEST INTEREST DECISION
Cross Trail Easement**

MHT 9100740
MH Parcel CRM-7003

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 (P.L. 84-830, 70 Stat. 709 (1956)), 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 non-motorized multi-use recreational trail will be constructed across parcel CRM-7003. A strip of land, 18 feet maximum width, and approximately 1,700 feet in length is proposed for this trail easement. The trail project is an upgrade to an existing, unauthorized hiking trail which has fallen into disrepair. An as-built survey will be performed to document the affected area at the Grantee’s expense.

II. Applicant/File #. City and Borough of Sitka (Borough) through its contractor, Sitka Trail Works / MHT 9100740.

III. Subject Property.

A. Legal Description. CRM-7003: Section 36, Township 55 South, Range 63 East, Copper River Meridian. A portion of USS 3850, located in the City and Borough of Sitka, Alaska, consisting of a tract of land 18 feet wide by approximately 1,700 feet long and containing approximately .70 acres, more or less.

- B. Settlement Parcel Number(s).** CRM-7003; 108.28 acres.
- C. Site Characteristics/Primary Resource Values.** The general topography of the parcel is sloped coastal uplands which are populated with old growth hemlock and spruce forest¹. The soils in the forested areas of Sitka are typically comprised of mostly volcanic ash and vegetative material. Soil porosity may contribute to drainage problems. A small portion of the trail traverses an area identified and classified as water regime is “saturated to surface for extended periods during the growing season, but surface water are seldom present.”² The applicant inspected the existing trail and determined that an Alaska Corp of Engineers (ACOE) permit is required. The Easement Construction License states that it is the responsibility of the applicant to obtain all necessary permits prior to trail construction. Upon receipt of the permit, the applicant will submit a copy of the permit to the TLO.

The primary resource value are real estate and timber.

- D. Historical and Existing Uses of the Property.** The Tlingit people settled Sitka over 10,000 years ago. The Russians settled the area in 1799 as a colonial trade company. The subject property is original Trust land conveyed through QCD 8000102 on July 17, 2008.

TLO has not issued any authorizations on the subject parcel. The community has and continues to use the parcel for walking trails to access both Mt. Gavin to the north and the Cross Trail to connect with residential neighborhoods and Sitka High School. The Cross Trail is in disrepair. No other use of the parcel exists.

- E. Adjacent Land Use Trends.** Land use in the area is a combination of residential and undeveloped land used for recreational trails. The Cross Trail access point to the southwest of the subject parcel is at Sitka High School located at the end of Lake Street. The subject parcel is flanked to the north by original Trust land, parcel CRM-1835 of 1,293 acres which was a disposal to the USDA Forest Service (USFS) Juneau Ranger District (MHT 9100215) conveyed in 2003. Bureau of Land Management owns the land to the south of the subject parcel and leases it to U.S. Geological Survey.
- F. Previous State Plans/Classifications.** On October 15, 2002, the Commissioner of DNR adopted the Northern Southeast Area Plan, Baranof Island Area Unit B-29 Indian River. A 1,427 acre State parcel abuts Trust land and is designated Public Facilities Returned (Pr), Public Recreation and Tourism Undeveloped (Ru) and to be managed to protect and maintain public recreation and watershed values.
- G. Existing Plans Affecting Area.** City and Borough of Sitka Comprehensive Plan Update of 2007. The subject parcel is zoned as a Public lands district which “contains government-owned lands or lands owned by nonprofit institutions serving the public interest for use as public recreation, education or institutional uses” (Title 22.16.020).

¹ *Alaska Vegetation Classification* handbook (Viereck et al., 1997).

² U.S. Fish and Wildlife Service National Wetlands Inventory online database.

H. Apparent Highest and Best Use. The subject parcel is included in the Administrative Land Exchange between the USFS and the Alaska Mental Health Trust Authority in the hope to acquire timber production land. A timber harvest on a similar type of a 100 acre parcel located in Southeast would bring an estimated value of \$437,500.

A development of a residential subdivision for a mixture of single family homes, duplexes, and zero lot line to allow affordable housing to the community is another best use. The Borough developed a residential subdivision and the average lot minimum price was \$134,000.³ If the TLO developed a similar type of subdivision on the subject parcel, it may generate \$2,233,333 net Principal revenue.⁴

- IV. Proposal Background.** This easement is part of an overall multi-use project called the Cross Trail, which is up to seven miles in length and “skirts the mountainous edge of Sitka’s neighborhoods and will eventually link the ferry terminal to Sawmill Cove.” (www.sitkatrailworks.org/cross_trail.html). The project was initiated in 1998 and this is the last portion on Trust land. The Cross Trail easement is a critical component of the trail system.
- V. Terms and Conditions.** The Cross Trail easement provides market value to the Trust for the .70 acre easement. The area is zoned Public lands district by the Borough for use as recreation. The opportunity to receive market rate compensation is highly favorable to the Trust and does not preclude future residential development plans.
- VI. Asset Management Considerations.** The proposed action is consistent with the asset management strategy of the Trust, which is to enhance asset value and maximize return to the Trust for the benefit of its beneficiaries. Full value would be obtained for this lot in its current state. The multi-use trail will be an asset that adds value to a potential residential development and is compatible with the USFS mission of “Caring for the Land and Serving People” (USFS website).
- VII. Alternatives.**
- Alternative 1: Doing nothing would preclude an opportunity to receive full Public land district market value for the less than an acre trail easement which will enhance future property value. The Cross Trail was identified as a goal and a priority in the applicant’s Park and Recreation Plan of 1981.
- Alternative 2: Proceed as proposed in order to capture full Public land district value up front for Cross Trail. The trail market value is consistent with prior other trail easements on Trust land in Sitka: Indian River (9100320) and Cascade Creek (9100668). A CPI price escalation adjustment was calculated from 2011 to 2013.

³ Online bid documents at www.cityofsitka.com/government/departments/parks/WhitcombHeightsIIISubdivisionAuction.html

⁴ The subject parcel of 108 acres may net 50 lots valued at approximately \$134,000 per lot totaling \$6,700,000 in revenue minus subdivision development costs estimated at 2/3 of the revenue.

VIII. Risk Management Considerations.

- A. Performance Risks.** The Grantee and its contractors must post a performance bond and insurance as specified by the standard TLO Easement Construction License. Given that the Grantee is the Borough, it is reasonable to assume they are working the best interests of the community. Other trails by Sitka Trail Works, Inc. are constructed with a high degree of quality and standard of excellence. Prior to issuing the Easement, a TLO representative will inspect Cross Trail.
- B. Environmental Risks.** Excessive cutting of old growth trees or failure to adequately provide drainage relief would be likely environmental risks. The applicant applied and will receive the necessary ACOE Section 404 permit prior to construction and will submit a copy of the permit to TLO.
- C. Public Concerns.** The City and Borough of Sitka and Sitka Trail Works, Inc. enjoy an outstanding reputation within the community and no adverse reactions are anticipated.

IX. Due Diligence.

- A. Site Inspections.** Inspection of Cross Trail and Cascade Creek Trail took place in June 2013 by Cindi Bettin, Senior Lands Manager and Katy McKerney, Southeast Lands Manager. Paul Slenkamp, Trust Resource Manager was contacted for a determination for potential incompatible use with the Land Exchange. Research did not uncover any cause against this proposed action.
- B. Valuation.** An appraisal was not conducted for this specific leg of the Cross Trail project. A prior appraisal was performed by Horan and Associates dated November 29, 2010 for the Cascade Creek portion of the Cross Trail. The property value of the subject parcel is consistent with the Cascade Creek area. The value was increased to reflect today's value based on CPI tables.
- C. Terms and Conditions Review.** This easement used the standard TLO easement document which is periodically reviewed by General Counsel. Insurance and bonding requirement have been imposed per the standard conditions of the Easement Construction License. This is a perpetual easement and the thorough vetting of the standard easement document suggests the Trust and TLO are adequately protected and will benefit to the full extent possible from this routine action.

X. Authorities.

- A. Applicable Authority.** Alaska Statutes 37.14.009(a) and 38.05.801, and 11 AAC 99 (key statutes and regulations applicable to Trust Land management and disposal).
- B. Inconsistency Determination.** As the proposed disposal of a 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).

C. The Borough zoned the subject parcel as a Public lands district. This designation holds government-owned lands or lands owned by nonprofit institutions servicing the public interest for use as public recreation, education or institutional uses (Title 22.16.020 of City and Borough of Sitka Zoning Code). This referenced zoning code is inconsistent with Trust principal under 11 AAC 99.020(b) "Trust land shall be managed consistently with trust responsibilities accepted by the state under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956), which means that management shall be conducted **solely in the best interest of the Alaska Mental Health Trust and its beneficiaries.**" (Bolding added for emphasis.) Future land development actions may require actions remedying the inconsistency.

XI. Trust Authority Consultation. The Trust Resource Management Committee was not consulted on this matter, as it is considered within the general scope of day to day activities, which the board has delegated to the Executive Director.

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.

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 Alaska Mental Health Trust and its beneficiaries or inconsistency with 11 AAC 99. The Executive Director will 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 public 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, 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 Trust Land Office, located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503. Phone (907) 269-8658. Email: mhtlo@alaska.gov.

The Cross Trail 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 Trust Land Office administrative process. For specific dates or further information about the disposal, interested parties should contact the Trust Land Office at the above address, or visit the TLO website at: www.mhtrustland.org.

XVI. APPROVED:


By: Gregory L. Jones
Executive Director

6/24/2013
Date

In accordance with 11 AAC 99.030(d) and the policies of the Alaska Mental Health Trust Authority, the Trust Land Office has consulted with me, and received concurrence to proceed with the above transaction pursuant to Alaska Mental Health Trust Authority Resolution 02-01.


Jeffrey L. Jesse, Chief Executive Officer
Alaska Mental Health Trust Authority

6/27/13
Date