

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Easements for Development Parcel D-2

MHT 9200572
MH Parcel SM-1526

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. The granting of easements for power & storm water drainage.

II. Applicant/File #. Prospect Glacier, LLC/MHT 9200572.

III. Subject Property.

A. Legal Description. Tract D-2 of the Providence-Chester Creek Subdivision, according to Plat 2004-169 filed December 24, 2009 at the Anchorage Recorders Office, containing 1.888 acres more or less.

B. Settlement Parcel Number(s). MH Parcel SM-1526.

C. Site Characteristics/Primary Resource Values. A well positioned commercial parcel located within UMED, on which development is occurring of a 2-tenant, commercial office building to include a bank drive-through .

D. Historical and Existing Uses of the Property. The parcel was vacant and had no apparent previous use prior to execution of a ground lease (MHT 9200572) dated May 1, 2013 for the development currently under construction.

- E. Adjacent Land Use Trends.** The area consists primarily of institutional grade commercial, medical and educational buildings known as the UMED. Other major owners and tenants include University of Alaska - Anchorage, Providence Hospital, Alaska Pacific University, and Alaska Native Medical Center .
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** UMED Comprehensive Plan - the building under construction is consistent with the desired development in the area.
- H. Apparent Highest and Best Use.** The building under construction is consistent with the highest and best use of the parcel.

- IV. Proposal Background.** Proposed are easements necessary under the ground lease that facilitate the development of the building now under construction, which is consistent with the original intent of that ground lease. The easements are (1) a storm water drainage easement for the Municipality of Anchorage ("MOA"), which allows for drainage water collection for water that previously flowed onto the parcel from surrounding parcels and Piper Street, provides for a connection to existing MOA drainage facilities located along the north property line, and provides for ongoing maintenance of the system by MOA; (2) an electrical easement for Municipal Light & Power ("ML&P") allowing for placement of the building's transformer adjacent to the building and an existing ML&P easement located along the east property line; and (3) an encroachment agreement allowing the building's footings to encroach into the existing ML&P easement along the east property line.
- V. Terms and Conditions.** The proposed easements, as is customary for commercial development, will be set aside without additional compensation. Compensation to The Trust comes in the form of the ground lease rent it receives for the parcel upon which the building is developed, and acquisition of the improvements at the end of the ground lease. These easements and associated agreements fall under the ground lease as necessary for the development of the said parcel. The proposed easements are dedicated by the developer who often constructs facilities within the easement and donates both the easement and the necessary facilities. In this case the ML&P easement provides a location adjacent to the building for the electrical transformer and equipment. For the MOA drainage easement the developer, Prospect Glacier, LLC, is constructing the drainage system and donating that facility to MOA. MOA then requires ongoing access for maintenance and repair of that drainage facility thus requiring the proposed easement.
- VI. Asset Management Considerations.** Given the long-term rent payments under the ground lease and the previous approval and execution of the ground lease, TLO's evaluation is that the proposed easements do align with the long-term strategic asset management considerations of The Trust. Specifically, development of the UMED parcels owned by The Trust has long been a goal and the building under development is an asset that will benefit The Trust for many years to come, both through the ground lease rent payments over the life of the ground lease and through value appreciation to the parcels The Trust holds in and around the UMED area.

VII. Alternatives. The proposed easements have been evaluated as to their impact on the long-term value and revenue potential of the parcel. Combining the on-site storm water with the off-site storm water could potentially create a simpler system, however, as the easement is proposed and as is typically required, Prospect Glacier, LLC will maintain its separate on-site system and MOA will maintain the off-site drainage system through the parcel. Due to the site constraints Prospect Glacier, LLC designed an acceptable system taking off-site water through its parking field out to existing MOA drainage facilities to the north. In conclusion TLO feels the easements are necessary and viable alternatives do not exist at this time.

VIII. Risk Management Considerations.

A. Performance Risks. As Lessor under the ground lease, The Trust is obligated to execute agreements necessary to facilitate development of the parcel. This requirement places a duty on The Trust to execute documents such as the proposed easements.

B. Environmental Risks. No environmental impacts have been identified.

C. Public Concerns. The proposed building should be an asset to the surrounding parcels and provide services that are currently unavailable and in demand. No public opposition has been received by TLO for the proposed easements or development. If the off-site drainage system were not constructed as proposed there would likely be opposition from adjacent property owners and MOA.

IX. Due Diligence.

A. Site Inspection. TLO staff has visited the site several times to inspect the proposed easement areas, witnessed the construction occurring on the site, and have met with project managers for both the developer and general contractor for the project.

B. Valuation. The granting of easements necessary to develop a parcel for commercial purposes is a commercially reasonable requirement and in most cases compensation for such easements is not received by the parcel owner and/or developer of the parcel.

C. Terms and Conditions Review. The TLO, Assistant Attorney General, for the State of Alaska reviewed the proposed easement documents and has been involved in the negotiations associated with finalizing those documents.

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 granting of easements 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. 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.
- XII. 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 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 notice for specific dates.)
- XIII. 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.

XIV. 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: www.mhtrustland.org.

XV. APPROVED:

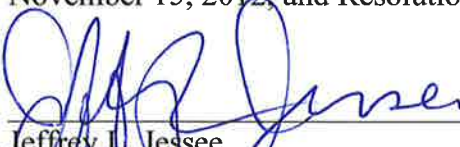


Marcie Menefee
Executive Director
Alaska Mental Health Trust Land Office



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 the Alaska Mental Health Trust Authority Bylaws, revised November 15, 2012, and Resolution 02-01.



Jeffrey L. Jessee
Chief Executive Officer
Alaska Mental Health Trust Authority



Date