

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Decision to Dispose of Lots in the Seaduck Subdivision through the Annual Land Sale Program

TLO 2014-64
MH Parcel CRM-2319

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 proposed action is to offer seven lots in the Seaduck Subdivision near Petersburg in the TLO 2014 Winter Land Sale. The lots may be re-offered in future competitive or over-the-counter sales if not sold in the 2014 Land Sale.

II. Applicant/File #. TLO Project 2014-64: Annual Statewide Land Disposal Program.

III. Subject Property.

A. Legal Description. Lots 1 through 7 of Trust Land Survey 2014-02, Seaduck Subdivision, within Section 14, T. 60 S., R. 79 E., Copper River Meridian. Each lot contains 0.5 acres more or less.

B. Settlement Parcel Number(s). CRM-2319.

C. Site Characteristics/Primary Resource Values. Site characteristics are typical of residential and recreational properties with the primary resource value being real estate.

D. Historical and Existing Uses of the Property. In 2011, a 1.9 acre portion of the 5.44 acre parcel was surveyed and conveyed back to DNR under the Replacement

Land Process. The TLO determined the 1.9 acre portion had been used as a parking area and primary public access point to the Wrangell Narrows since as early as the 1930's. The remaining 3.54 upland acres of the parcel has been vacant and was recently subdivided into seven lots.

- E. Adjacent Land Use Trends.** Land use for the adjacent lands are for real estate to facilitate residential or recreation developments. The adjacent property to the west is used for parking for the Papke's Landing public boat launch and dock.
- F. Previous State Plans/Classifications.** The lots are within the Department of Natural Resource's Central /Southern Southeast Area Plan adopted in 2000 but the plan does not apply to Mental Health Trust lands.
- G. Existing Plans Affecting the Subject Parcel.** The lots are within the Borough of Petersburg but are not zoned.
- H. Apparent Highest and Best Use.** These lots are in their "best markets" as individual subdivision lots to be sold for residential/ recreational use. The highest and best use of these lots at this time is to offer as real estate lots to maximize long-term revenues to The Trust.

IV. Proposal Background. Offer seven lots in the Seaduck Subdivision through the Trust Land Office's competitive land sale program. The lots may be re-offered in future competitive or over-the-counter sales if not sold in the 2014 Land Sale.

V. Terms and Conditions. The parcels will be offered to the highest qualified bidder over the set minimum bid. Unless paid for fully in cash, the parcels will be sold via a land sale contract administered by the TLO. The principle terms and conditions include the following:

- A.** Minimum bid is based on an appraisal or other acceptable valuation approach. At least 5% of the bid amount is to be submitted with the bid. The TLO's financing term is a maximum of twenty (20) years based on the amount financed with a likely interest rate of approximately 6.25% based on the Wall Street Journal published prime rate plus 3%.
- B.** Payments may be made monthly, quarterly, or annually.
- C.** Parcels will be sold "as is" with no guarantees as to suitability for any intended use.
- D.** The sale agreement allows for minimal clearing and use of materials within the parcel for development of a residential site. No commercial use of resources (timber or materials) may be made until after payoff and recording of the quitclaim deed.

VI. Resource Management Considerations.

A. Marketplace Considerations. The Trust Asset Management Policy Statement states the TLO focus first on land at the high end of their market values ("Best Markets") and then on land or resources with Best Market potential within the next two to ten years. The competitive disposals proposed for the 2014 Land Sale are recreational or residential in nature and appear to be in the "Best Market" category as individual subdivision lots to be sold for residential/recreational use.

B. Disposal Considerations. Past experience has demonstrated that it is unlikely that these lots will appreciate at a rate that would justify holding them for a later sale.

Most residential land is purchased, rather than leased; therefore, it is not likely that there would not be much interest in leasing the properties. Management costs to the Trust will generally decrease on the properties through a sale.

C. Revenue Diversity Considerations. Long-term economic benefits to the Trust include returns on the investment of the purchase price (corpus). For those parcels purchased with TLO financing, interest income will be produced from the sale contract for the term of the contract.

VII. Alternatives. The primary alternative is to hold the parcels for sale sometime in the future. This alternative would delay receipt of revenues from sales and income from interest payments and may result in additional costs and risks to the Trust without significant increases in value.

VIII. Risk Management Considerations.

A. Performance Risks. Performance risks will be mitigated through the TLO's bid forms, land sale contract, and quitclaim deed. These documents include 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. There are no known environmental risks associated with this action.

C. Public Concerns. The City and Borough of Petersburg (Petersburg) submitted a letter dated August 25, 2014 to postpone the sale of Lots 5, 6, and 7 from the 2014 Fall Land Sale based on the possibilities of Petersburg acquiring lands for public purposes. Individuals and Petersburg may participate in the Competitive Land Sale process and submit bids. Subject to comments resulting from the public notice, there are no known concerns that suggest the proposed transaction is inconsistent with Trust principles.

IX. Due Diligence.

A. Site Inspection. TLO staff, contract appraiser and surveyor have inspected the lots within the last year.

B. Valuation. Minimum bids values will be established via appraisals that meet the most current Uniform Standards of Professional Appraisal Practice (USPAP) standards.

C. Terms and Conditions Review. Contract documents were reviewed by the Attorney General's Office and an independent law firm.

D. Other. Title report will be completed prior to issuing a sale contract or quitclaim deed.

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 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:

- i. 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.
- ii. 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.
- iii. AS 38.05.065(g), Appeal of director's decision to commissioner is in direct conflict with 11 AAC 99.060 and there for does not apply to the transaction pursuant to 11 AAC 99.060(d).

XI. Trust Authority Consultation. The Alaska Mental Health Trust Resource Management Committee was consulted on October 22, 2014, and concurred with the disposal of seven lots in the Seaduck Subdivision through the TLO's Annual Land Sale Program subject to the outcome of the notice process.

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 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.)

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: www.mhtrustland.org.

XVI. APPROVED:



Marcie Menefee
Executive Director
Alaska Mental Health Trust Land Office

10.31.14

Date