

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Non-Development Easement

MHT #**9100800**
MH Parcel(s) **C81118**

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. Issuance of a perpetual, non-development easement (Easement) for the purpose to promote natural vegetation that may include potential reforestation and forest preservation actions within the Easement.

II. Applicant/File #. Robert Lee Rusaw, MHT 9100800.

III. Subject Property.

A. Legal Description. A portion of MH Parcel C81118 as shown by Wrangell Record of Survey 2015-10, situated in Lot 1, Block 3 of Alaska State Land Survey (A.S.L.S.) No. 83-7, Wrangell Plat 83-11, Section 17, Township 64 South, Range 84 East of the Copper River Meridian more particularly described as follows:

Beginning at the northwest corner of Lot 1, Block 3, A.S.L.S. 83-7, said corner also being the southwest corner of Lot 2, Block 3, A.S.L.S. 83-7; thence along the northerly boundary line of said Lot 1, S85°00'00"E 358.53 feet; thence leaving said line S31°37'51"W 55.93; thence N85°00'00"W 109.00 feet; thence S50°49'39"W 158.02 feet; thence N85°00'00"W 222.87 feet to the easterly right-of-way line of Log Street;

thence along said right-of-way line on a curve to the left having a central angle of 31°54'48", a radius of 355.12 feet, an arc length of 197.80 feet and whose chord bears N39°54'49"E, a distance of 195.25 feet to the point of beginning and terminus of this description. Containing in all 42,934 square feet more or less designated as the Easement, to be held for the limited uses and purposes as described in Paragraph 3 of this Easement.

- B. Settlement Parcel Number(s).** C81118 (substitute land).
- C. Site Characteristics/Primary Resource Values.** The subject parcel is approximately 14 miles south of the City of Wrangell on the Zimovia Highway. The ecoregion is northern coastal foothill forests of Southeast Alaska comprised of a mix of hemlock and spruce. The proposed Easement contains approximately 90% forest. A small, panhandle shape in the eastern part of the area was disturbed for storage of logging equipment and wood waste. Real estate and timber are the primary resources value of the subject parcel.
- D. Historical and Existing Uses of the Property.** Parcel C81118 is located in the Wrangell West Subdivision which was developed as a previous state subdivision (ASLS 89-7). The lots are currently classified as Settlement by DNR. The Trust Land Office previously authorized a portion of the parcel external to the proposed Easement as a log sort yard under a Revocable Land Use License (License, MHT# 9100524). The License is active today.
- E. Adjacent Land Use Trends.** Land use to the west continues to expand development for residential and recreational uses. The State also holds title to lands east of the subject parcel. State management objectives support the development of industrial uses such as rock and forest product extraction. The Tongass National Forest is also located east of the subject parcel and is managed by the USDA Forest Service.
- F. Previous State Plans/Classifications.** The Central/Southern Southeast Area Plan (Area Plan) was adopted in November 2000. The Area Plan designated multiple uses to encourage a balance between development, conservation, and recreation on State lands. It specifically excluded Alaska Mental Health Trust lands. However, the creation of easements is consistent with the Area Plan.
- G. Existing Plans Affecting the Subject Parcel.** The City and Borough of Wrangell (Borough) adopted a Comprehensive Plan in 2010. The proposed Easement is located within an area of Future Growth and designated as Residential that allows larger-lots and a rural lifestyle. Title 20 of the Wrangell Municipal Code also affects the subject parcel.
- H. Apparent Highest and Best Use.** The optimal use of the .99 acres is as a non-development easement.

- IV. Proposal Background.** The applicant requests acquisition of a non-development easement to promote natural vegetation and restoration of forest between the applicant's lot boundary to the south and the log sort yard authorized under the License that was issued in 2010. The proposed Easement will provide a buffer zone between the applicant's home and the log sort yard.

The overall parcel has a long history of use for industrial purposes associated with developing forest products. These uses have occurred under both federal and state

ownership. The proposed Easement will mitigate a cycle of land management issues stemming from unauthorized uses on the parcel, such as dumping of trash, placement of unwanted debris, open pit garbage burning, and abandonment of vehicles and heavy equipment.

- V. **Terms and Conditions.** The proposed Easement is a perpetual easement for the purpose of promoting natural vegetation and preserving a buffer zone between the applicants property and the log sort yard (parcel C81118). The applicant, at his own expense is responsible for obtaining all necessary authorizations and permits to conduct any activity for the compliance with restrictions and requirements regarding operations that are contained in the Easement. If the applicant is unable to fulfill the obligations under the agreement, the Easement reverts back to the Alaska Mental Health Trust Authority.
- VI. **Resource Management Considerations.** A perpetual Easement is considered a disposal of property interest. The Easement meets AS 38.05.801(2) (4) expectations of producing multiple uses and revenue streams on one parcel of the trust land. The total negotiated value of the Easement is \$10,500.
- VII. **Alternatives.** A portion of parcel C81118 that's external to the proposed Easement is under investigation by the Alaska Department of Environmental Conservation (DEC) for contamination related to unauthorized uses of Trust land. DEC is monitoring ongoing clean-up activities. The remainder of the parcel will be subject to the Easement. This action reduces the risk for potential contamination to spread to the applicant's home. It also reduces the liability risk to the Trust. There is not another effective course of action.
- VIII. **Risk Management Considerations.**
- A. **Performance Risks.** The proposed Easement will not require any further action except to allow regrowth of the natural vegetation. The Licensee for parcel C81118 has removed equipment and wood debris from within the area of the proposed Easement.
 - B. **Environmental Risks.** None.
 - C. **Public Concerns.** Subject to additional comments received through the public notice process, there are no known public concerns.
- IX. **Due Diligence.**
- A. **Site Inspection.** TLO employees accompanied the survey team in August 2015 and made a determination of the best site for the Easement. Prior site inspections have been conducted regularly since the Trust was conveyed ownership in 1996 under Quit Claim Deed 8000015, Document Number 1996-014906-0, Wrangell Recording District.
 - B. **Valuation.** An appraisal was done by Horan and Associates in 2006 of the entire parcel. The TLO has recent sales data from its sales of multiple parcels in the Land Sale Program. A price was established at \$8,400 for a .99 acre easement. The negotiated sale price of \$10,500 includes a 25 percent surcharge to compensate for not selling the parcel through a competitive process.
 - C. **Terms and Conditions Review.** A standard easement agreement was used that is periodically reviewed by the Department of Law. Indemnification is imposed per

the standard conditions of the Easement and bonding requirements have been waived due to the low risk of the Easement.

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 perpetual Easement is a disposal of property interest and 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), 11 AAC 02 (Appeals), and 11 AAC 96.065 (Insurance).

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.

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:




John Morrison
Executive Director
Alaska Mental Health Trust Land Office

Date

10-26-15

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.



Russ Webb
Chair, Board of Trustees
Alaska Mental Health Trust Authority

Date

10/27/2015