

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Grant a Perpetual Easement
MHT #9100810

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 Perpetual Easement of certain Trust land to the State of Alaska on behalf of the Division of Forestry. 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 to Edna Bay on Koscisuko Island, and is more particularly described as: T. 068 S., R. 076 E., Copper River Meridian, Alaska, Section 22: Lot 1, containing 26.15 acres more or less. (MH Parcel C20809).

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, April 4, 2016**. 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 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 www.mhtrustland.org. 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.



John Morrison
Executive Director

3/3/16

Date

Published Daily Sitka Sentinel: 3/4/2016

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

**BEST INTEREST DECISION
EDNA BAY ROAD PERPETUAL EASEMENT**

MHT #9100810
MH Parcel C20809

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 perpetual easement (Easement) for a segment of road approximately 450’ long, and 100’ wide (or 1.03 acre), that will connect to the United States Forest Service (USFS) road identified as number NFSR 1520000.

II. Applicant/File #. State of Alaska, Division of Forestry/MHT 9100810.

III. Subject Property.

A. Legal Description. T. 068 S., R. 076 E., Copper River Meridian, Alaska, Section 22: Lot 1, containing 26.15 acres more or less.

B. Settlement Parcel Number(s). C20809, Replacement Land.

C. Site Characteristics/Primary Resource Values. The road is situated in the forested uplands at the head of Edna Bay. The primary resource value is the road itself, linking the small boat harbor and floatplane dock on the east side of the bay, to the community situated on the west side of the bay.

D. Historical and Existing Uses of the Property. The road was developed to provide access to state lands classified for settlement. It also provides access to commercial activities associated with timber harvest, residential development,

and subsistence hunting and fishing activities. The road was developed prior to the Trust receiving conveyance as replacement lands from the 1994 Settlement Agreement and was not an authorized encumbrance by either the State or TLO. The road may also serve as future access for a Trust subdivision development on the parcel, which is approximately 26 acres in size.

- E. Adjacent Land Use Trends.** The community of Edna Bay will likely continue to grow and develop, and plans currently exist to develop nearby timber resources on Trust, Division of Forestry (DOF), University of Alaska, and USFS lands.
- F. Previous State Plans/Classifications.** Prince of Wales Island Area Plan (Original: June 1985).
- G. Existing Plans Affecting the Subject Parcel.** Prince of Wales Island Area Plan (Revised: October 1998); Unit 8 – Edna Bay; Subunit 8b – Edna Bay. This Easement is consistent with the plan.
- H. Apparent Highest and Best Use.** A perpetual easement is the highest and best use for this portion of the parcel because the road already exists. At present, the road is constructed and is well-used by the public without legal access. A disposal of an Easement to DOF will relieve the Trust of liabilities and responsibilities of unauthorized road use and management. DOF plans to make the road a dedicated right of way for public use. In time, maintenance and management of the road will be transferred to the Community of Edna Bay. The benefit of the Easement will allow the Trust access to its remaining parcels for future development.

IV. Proposal Background. The USFS contacted TLO in June of 2015 regarding their receipt of maintenance funding for the road. The USFS submitted an application to procure the road through a negotiated sale; however, the USFS regulations were unable to meet the Trust's administrative process and disposal requirements outlined in the TLO *Resource Management Strategy*. The DOF has the ability to procure the Easement, meet the TLO administrative process, and convey the Easement to the community of Edna Bay who recently became a second-class city. If issued, the DOF is interested in working with the USFS to utilize the above described maintenance funds to make repairs within the road corridor. The Easement will be completed following an as-built survey.

V. Terms and Conditions. A standard easement agreement will be used for the Easement document. The Easement will provide market value to the Trust based on an approximate area equivalent to 1 acre. The opportunity to receive market rate compensation is highly favorable to the Trust and does not preclude future development of Trust lands adjacent to the disposal or the road interest.

- A. Term.** Perpetual
- B. Consideration.** The Grantee will pay a one time fee for the Easement, in the amount of \$13,625.00. The value of the Easement was determined by an appraisal of the entire parcel, which is 26.15 acres, and includes an additional 25% of appraised value to compensate for not selling the parcel through a competitive process.
- C. Conditions.** The easement will be granted solely for the use of the road as a transportation corridor to the public.

D. Third Party Use. The Grantee may not grant third party authorizations within the Easement, i.e. telecommunications, electrical, fuel lines, etc. The Trust will retain the right to issue third party authorizations within a portion of the Easement footprint.

VI. Resource Management Considerations. The proposed action is consistent with the Guiding Goals of the TLO *Resource Management Strategy*, which are to: protect and enhance the value and productivity of Trust property and resource assets; maximize revenues from Trust property and resource assets over time; encourage a diversity of revenue-producing uses on Trust property and resource assets; and, manage Trust land prudently, efficiently and with accountability to the Trust and its beneficiaries.

The proposed easement will not negatively affect the Trust's opportunity to maximize revenues on adjacent Trust lands over time, or deny the Trust the ability to issue additional third party authorizations within the easement, such as utility easements.

VII. Alternatives.

Alternative 1: Do Nothing. No action results in the continuance of unauthorized use by members of the public and commercial interests, and excludes the USFS the ability to expend funds for the repair of a public road corridor that benefits all parties including the community.

Alternative 2: Other Resource Development. At present the parcel does not have any other probable use that would not benefit from using the existing road.

Alternative 3: Proceed as Proposed. The issuance of a perpetual easement to the DOF provides additional revenue to the TLO, and reduces the liability risk and associated management issues of an unauthorized road. It also generates revenue to principal.

VIII. Risk Management Considerations.

A. Performance Risks. The road is currently constructed but unauthorized. The Easement issued to DOF for perpetuity will mitigate liability risk from continued public and government unauthorized use.

B. Environmental Risks. The proposed Easement will be issued "as-is". There are no known environmental risks associated with the road in its present state. Any improvements where the road crosses an anadromous stream would require a permit from the Alaska Department of Fish and Game for in-water work. The DOF and USFS are required to meet all federal and state laws.

C. Public Concerns. Issuance of the proposed Easement to the DOF will create an additional public right of way through the Trust parcel, linking the east side of Edna Bay to the west side. The Easement also provides a corridor for the placement of utilities if this becomes a need in the future.

IX. Due Diligence.

A. Site Inspection. TLO has not conducted a recent site inspection of the area; however both DOF and the University of Alaska have been recently on the ground inspecting the Easement area.

- B. Valuation.** An appraisal for parcel C20809 was performed on October 29, 2015, and places the fair market value at \$285,000 for the 26.15 acres. The per acre value is approximately \$10,900 based on the length (450') and width (100') of the proposed Easement for approximately 1.03 acres. The sale price will include the negotiated sale markup up of 25%, the total sale value of the Easement is \$13,625.
- C. Terms and Conditions Review.** The proposed Easement will use the standard TLO easement document which is periodically reviewed by General Counsel to mitigate exposure to risk.

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 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. 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:

for Wyn Morrison 3/2/16
John Morrison Date
Executive Director
Alaska Mental Health Trust Land Office

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 3/2/2016
Russ Webb Date
Chair, Board of Trustees
Alaska Mental Health Trust Authority