

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to dispose of 5 parcels near Daniels Lake
MHT #9200669

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 Land Sale of certain Trust land to Louis F. Oliva and Stacy Ann Oliva. 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 Daniels Lake, and is more particularly described as:
Mental Health Trust Parcel SM-1434: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 17, CONTAINING 5.16 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

Mental Health Trust Parcel SM-1436: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 22, CONTAINING 3.28 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

Mental Health Trust Parcel SM-1438: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 35, CONTAINING 5.00 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

Mental Health Trust Parcel SM-1439: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 36, CONTAINING 5.00 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

Mental Health Trust Parcel SM-1440: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 37, CONTAINING 5.00 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

Containing 23.44 acres, more or less.

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, December 7th, 2017. 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 published notice of or 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.

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Wyn Menefee	Date
Executive Director (Acting)	Published Peninsula Clarion: 11/06/2017

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Daniels Lake Negotiated Land Sale

MHT #9200669

MH Parcels SM-1434;SM-1436;SM-1438;SM-1439;SM-1440

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 negotiated land sale of Trust parcels at a price:

- SM-1434: 30% above the appraised value of \$93,000;
- SM-1438: 30% above the appraised value of \$80,000;
- SM-1436, SM-1439, & SM-1440: 25% above the appraised value of \$145,000.

II. Applicant/File #. Louis F. Oliva, Jr. and Stacy Ann Oliva / MHT 9200669.

III. Subject Property.

A. Legal Description.

SM-1434: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 17, CONTAINING 5.16 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

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SM-1440: T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA SECTION 34: LOT 37, CONTAINING 5.00 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

Containing 23.44 acres, more or less.

- B. Settlement Parcel Number(s).** SM-1434;SM-1436;SM-1438;SM-1439;SM-1440.
- C. Site Characteristics/Primary Resource Values.**

SM-1434 is forested, has water frontage on the lake, and access is gained by a constructed dedicated access easement that crosses near the center of the parcel; it's approximately 5.16 acres in size.

SM-1436 is forested, has water frontage on the lake, and can be accessed by road along a dedicated access easement; it's approximately 3.17 acres in size.

SM-1438 is inland, forested, and access is gained by a constructed dedicated access easement that crosses near the center of the parcel; it's approximately 5 acres in size.

SM-1439 is inland, forested, a third of the parcel contains wetlands, and access is gained by a road at its' northeastern property corner; it's approximately 5 acres in size.

SM-1440 is inland and forested, a fifth of the parcel contains wetlands, and there is no constructed or dedicated access; it's approximately 5 acres in size.

- D. Historical and Existing Uses of the Property.** The applicant owns an adjacent property and has been using a portion of Trust land to house horses, a horse corral, and a horse barn.
- E. Adjacent Land Use Trends.** The immediate neighborhood is mostly vacant with residential (full-time and seasonal) and hobby-farm uses. Daniels Lake provides a recreational fishing, boating, and float plane access.
- F. Previous State Plans/Classifications.** None.

G. Existing Plans Affecting the Subject Parcel. Daniels Lake lies within the Kenai Peninsula Borough and is subject to the Kenai Peninsula Borough Code of Ordinances.

H. Apparent Highest and Best Use. Disposal through negotiated sale.

IV. Proposal Background. The applicant had been using a portion of SM-1438 to house farm animals and a corral. Currently they house horses, a horse corral, and horse barn on a portion of SM-1438 and turns the horses out to graze on portions of Trust land. At the request of the Trust Land Office before purchase, the applicant has remitted \$21,000 to pay in full the past unauthorized land uses.

V. Terms and Conditions. The parcels will be sold via a land sale contract administered by the TLO. The principle terms and conditions include the following:

- A.** Financing term is a maximum of twenty (20) years based on the amount financed with an interest rate based on the Wall Street Journal published prime rate plus 3%.
- B.** Installment payments may be made monthly, quarterly, or annually. No early pay off penalty will be assessed.
- C.** Parcels will be sold “as is” with no guarantees as to the suitability for any intended use.
- D.** The sale agreement allows for minimal clearing and use of materials within the parcels for development of a residential site. No commercial use of resources (timber or materials) may be made until the parcel is paid in full and recording of the quitclaim deed.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust Land” (RMS), which was adopted March 2016 in consultation with the Trust and provides for the TLO to maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets. Past experience has demonstrated that it is unlikely that these parcels will appreciate at a rate that would justify holding them for a later sale. It is also not cost effective for the TLO to hold these parcels for a long period of time and incur the associated management costs and liabilities.

VII. Alternatives.

- A.** Do nothing or offer sometime in the future. This alternative would delay receipt from sales and income from interest payments and could result in additional costs and risks to the Trust without significant increases in the value.
- B.** Other sale option. An application is pending to purchase SM-1438 and SM-1434 by another party at 30% above the appraised fair market value. The TLO would need to resolve unauthorized use, which would include removal and reclamation of the impacted area. Furthermore, the TLO would be left managing the only three remaining Trust parcels in the area as a non-performing asset. This alternative would increase TLO costs and prevent the TLO from divesting management and

administrative obligations. It would also prevent the sale of all five parcels at a higher value.

- C. Proceed as proposed. The proposed sale will alleviate the Trust from managing a non-performing asset and resolve an unauthorized use, while generating maximum revenue for five (5) parcels.

VIII. Risk Management Considerations.

- A. **Performance Risks.** In the parcel's present condition, it is not generating any revenue for the Trust and is encumbered by a horse barn and horse corral. The parcel is considered a non-performing asset.
- B. **Environmental Risks.** There are no known environmental risks associated with the proposed sale. There is no history of the Trust authorizing any land uses on the parcel.
- C. **Public Concerns.** There are no known public concerns.

IX. Due Diligence.

- A. **Site Inspection.** Jusdi Doucet - Southcentral Area Manager for the Trust Land Office and Cliff Baker – Land Surveyor for the Department of Natural Resources conducted a site inspection on September 5, 2017. The inspection concluded the horse barn and corral were located on Trust land (SM-1434).
- B. **Valuation.** Past land use fees were assessed at \$21,000 based on aerial imagery and land title due diligence. The sale price for the parcels is 30% above appraised fair market value for SM-1434 and SM-138. The sale price for SM-1436, SM-1439, and SM-1439 is 25% above appraised fair market value. The appraisals for all subject parcels were completed in May 2017.
- C. **Terms and Conditions Review.** TLO land sale contract documents were reviewed by the Attorney General's office. A separate independent review is not necessary.

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 negotiated 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).

XI. Trust Authority Consultation. The Alaska Mental Health Trust Resource Management Committee was consulted on August 3, 2017. The Committee concurred with the disposal of five Trust parcels located on Daniels Lake in Nikiski (SM-1434, SM-1436, SM-1438, SM-1439, and SM-1440) through a negotiated sale or subsequent disposal.

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:



Wyn Menefee
Executive Director (Acting)
Alaska Mental Health Trust Land Office



Date