

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue a Negotiated Placer Lease
MHT 9400592

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 grant a negotiated placer mineral lease of certain Trust land to Randal Powelson, d/b/a Fox Creek Mining LLC. 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 located near M.P. 4 of the Elliott Highway, approximately 25 miles northeast of Fairbanks on Fox Creek and is more particularly described as: a portion of Section 19 in Township 2 North, Range 1 East Fairbanks Meridian, containing approximately 23 acres, more or less (MH Parcel(s) **F20289**).

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, June 6, 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

5-6-16

Date
Publish in Fairbanks Daily News-Miner: 5/7/2016

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Randal Powelson Negotiated Placer Lease

MHT 9400592
MH Parcel F20289

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.** To lease approximately 23 acres of unencumbered Alaska Mental Health Trust mineral estate located on Fox Creek in the Fairbanks Mining District for placer mining.
- II. Applicant/File #.** The applicant is Randal Powelson, doing business as Fox Mining, LLC No. 1034112; MHT 9400592.
- III. Subject Property.**
- A. Legal Description.** A portion of Trust Parcel F20289 located in NW1/4 of Section 19 in Township 2 North, Range 1 East, Fairbanks Meridian, consisting of 23.2 acres, more or less as depicted on Exhibit A.
 - B. Settlement Parcel Number(s).** F20289.

- C. Site Characteristics/Primary Resource Values.** The topography of the area to be leased is stream bottom with hill side elevations ranging from approximately 300 feet to 500 feet. Bedrock exposures are limited. Slopes vary from gentle to moderately steep. Based on publicly available information, there are no known physical or ecological features associated with the parcel that would prevent planned mineral development and production activities.
- D. Historical and Existing Uses of the Property.** The Property is located on Fox Creek, within Trust Parcel F20289. Historical placer mining in the area was conducted using underground drift mining and conventional gravity gold recovery methods. Placer tailings may be present on the surface. The applicant proposes to explore for and develop the placer resources on the property. The property is located near Milepost 4 of the Elliot Highway. Trust Parcel F20289 was selected for the Trust because of the potential mineral values associated with the area. It occurs within a mineralized belt (Tintina Gold Belt) which extends across Alaska from beyond the Canadian border on the east, arcs northwest through the Fairbanks Mining District, and then trends southwest toward the Alaska Peninsula. Located within this belt are mineral occurrences such as the Pogo Gold Mine, the Fort Knox Gold Mine, the Livengood prospect, and the Donlin Creek prospect. The area has a long history of placer mining operations. Placer mining operations continue on a steady basis to this day.
- E. Adjacent Land Use Trends.** Active placer mining continues to occur on valid state and federal claims around the property. Besides mineral exploration and development, other uses such as hunting, hiking, and snowmobiling may occur in the area.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** There are no federal, state or local management plans that prevent the proposed action. The property is within Unit 1J of the Tanana Basin Area Plan, which directs that state land in the vicinity is to be managed primarily for mineral exploration and development. Note that Trust land is not subject to state management plans.
- H. Apparent Highest and Best Use.** Parties to the Mental Health Trust Settlement assumed mineral development to be the highest and best use of lands in the area when they agreed to include acreage in this area in the reconstituted trust. The proposed use corresponds with this assumption of land use, and therefore appears to be the highest and best use of the subject lands from The Trust's perspective.

- IV. Proposal Background.** The TLO proposes to negotiate a lease of the Property for the exclusive right to explore for placer minerals and the right to mine, extract, remove, and sell placer minerals subject to 11 AAC 99.100. Consistent with the TLO's fiduciary obligation to maximize revenues from Trust Land over time, the proposed lease is a necessary first step in generating revenues from Trust mineral resources. The applicant is an experienced placer miner who has operated in various locations around Alaska. The applicant is well equipped to conduct the proposed mining activities, and has a good working relationship with the various state agencies that regulate placer mining.
- V. Terms and Conditions.**
- A. Lease Term.** Three years; then held by production, but will not extend beyond five years unless agreed to in writing by Lessor.
 - B. Annual Rental:** \$5,000. The rental payment for each year will be credited against production royalty as it accrues for that year.
 - C. Production Royalty.** 10% net royalty on production.
 - D. Work Commitment.** The Lessee will be required to commence operations on the Property within 60 days from the effective date of the lease, and diligently develop the lease during the lease term.
 - E. Data.** The TLO will receive copies of all data and information obtained as a result of the lease operations.
 - F. Allowable Deductions.** Lessee will offset rental payments by production royalties due the Trust in the year those payments are due.
 - G. Environmental Laws and Considerations.** Lessee will be required to enter into a placer mining lease with the TLO, with the lease requiring full compliance with all applicable environmental laws.
 - H. Other.** In the event that significant changes occur in the marketplace or knowledge of the subject lands is significantly improved, the TLO, after consultation with the Trust and public notice, may alter the terms and conditions of subsequent offerings in this area.
- VI. Asset Management Considerations.** The proposal is consistent with the "Resource Management Strategy for Trust Lands" ("Strategy"), which was developed in consultation with The Trust and provides for the TLO to "focus first on land or resources at the high end of their market values ("best markets")." Given the currently increasing values of base and precious metals, the mineral resources affected by this decision are "best market" resources that should be offered now rather than later. Additionally, as noted above, the action is a required "first step" towards generating potentially significant revenues from Trust mineral resources, consistent with a key trust land management principle of encouraging a diversity of revenue generating uses of Trust land.

VII. Alternatives.

- A. Offer The Trust Land for lease as proposed.
- B. Do not lease the land and discourage further development of mineral resources on Trust land in this area.
- C. Conduct a competitive offering for the subject portion of Parcel F20289 owned by The Trust.

VIII. Risk Management Considerations.

- A. **Performance Risks.** Performance risks will be minimized through aggressive enforcement of the terms and conditions of the mineral lease, including, but not limited to those provisions that address royalty payments, work commitments, development plan approval, and diligent resource development over time.
- B. **Environmental Risks.** The exploration, development, and mining activities performed under the lease will be done within the parameters of local, state and federal environmental protection laws that generally apply to private lands. Lease stipulations require compliance with applicable federal statutes as well as state reclamation requirements. The successful lessee will be adequately bonded and insured.
- C. **Public Concerns.** Historically, significant concern has been expressed about the impact of the leasing activities on public resources, such as fish and wildlife resources. Environmental laws and regulations have been promulgated over time to address these concerns. As noted above, the TLO lease will require full compliance with those laws and regulations and, additionally, will contain some operating stipulations that exceed the requirements of those laws and regulations.

IX. Due Diligence.

- A. **Site Inspection.** TLO personnel have visited the area on numerous occasions.
- B. **Valuation.** The subject lands will be leased pursuant to the terms and conditions of a Negotiated Placer Mining Lease. It will be a standard form lease substantially the same as has been used in previous TLO mineral lease transactions, and includes the terms and conditions outlined above.
- C. **Terms and Conditions Review.** The TLO contracted with a private law firm and collaborated with other public and private land managers to develop terms and a lease form that best serves the interests of the Trust.

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 mineral lease 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).

In addition to those provisions of law deemed inconsistent by 11 AAC 99, the following relevant provisions of law are deemed inconsistent with Trust management principles and will not apply to this action:

AS 27.30.010- .070, Exploration Incentive Credits, and associated regulations. This statute was developed in order to attract the mineral industry to state and private land and provide general benefits statewide. Trust lands are managed solely for the benefit of the mental health beneficiaries. Exploration credits for mineral exploration may apply to Trust Land rents and royalties if this provision is negotiated in consultation with The Trust under 11 AAC 99.100(d). Terms and conditions applicable to this transaction do not provide for application of exploration credits to Trust Land rents and royalties. Therefore, to the extent that AS 27.30.010 - .070 requires otherwise is inconsistent and not applicable to Trust lands. Further, numerous provisions of law require levels of performance that are less than those required by terms and conditions negotiated in consultation with The Trust under 11 AAC 99.100(d). To allow application of those provisions of law would result in a transaction that does not comply with trust management principles provided for in 11AAC 99.020. Therefore, provisions of law applicable to other state lands that are inconsistent with the negotiated terms of this proposed transaction are hereby deemed inconsistent with 11 AAC 99.020 and do not apply to this transaction. These provisions and their associated regulations include, but are not limited to, the following: AS 38.05.210, 211, 215, 225, 230, 235, 240 (Annual Rent and Labor); AS 38.05.245, 255, 265, 270, 275 (Surface Use of Land and Water); AS 38.05.135, 137, 140, 145 (Leasing of Mineral Land); and AS 38.05.285 (Multiple Use).


- XI. Trust Consultation.** The Alaska Mental Health Trust Resource Management Committee was consulted on April 14, 2016. The Committee recommended that the proposed transaction be forwarded to the Alaska Mental Health Trust Board of Trustees. The Board of Trustees was consulted on May 4, 2016, and the Board of Trustees concurred with the negotiated lease 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 pursuant to 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 are 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:

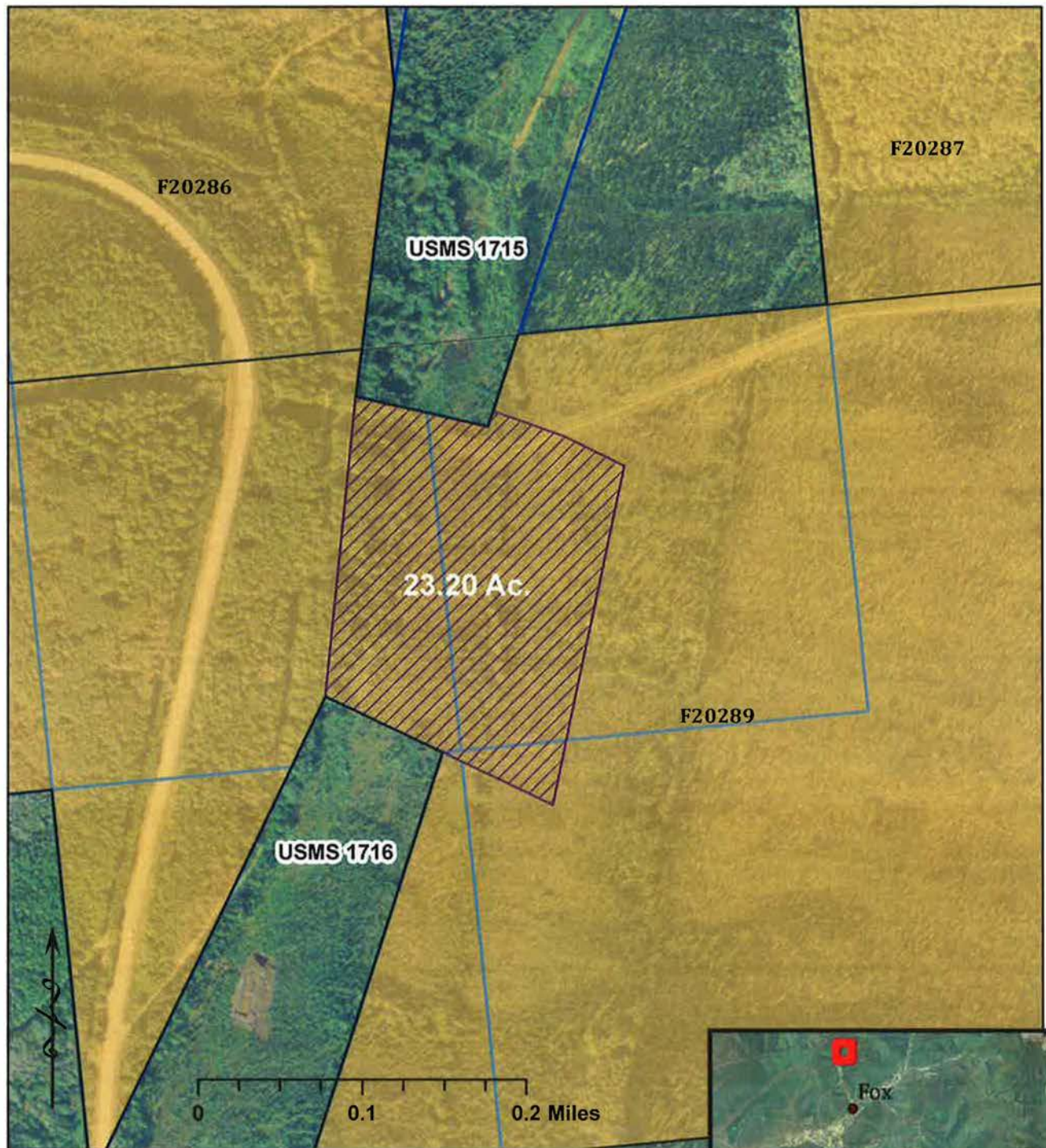
By: _____
John Morrison
Executive Director
Alaska Mental Health Trust Land Office

_____
Date



Attachments:

Exhibit A - Map of proposed lease area

Exhibit A



Placer Lease - Randal Powelson
MHT 9400592

-  MHT 9400592 Lease Boundary
-  Mental Health Trust Land

