

**Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**Notice under 11 AAC 99.050 of**  
**Decision to 200 Egan Drive Utility Easement**  
**MHT #9100808**

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 an Easement of certain Trust land to Alaska Electric Light & Power. 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 Juneau, Alaska, and is more particularly described as: a portion of MH Parcel C20499, located within Section 23, Township 41 South, Range 67 East, Copper River Meridian, containing approximately 0.09 acres.

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, May 23, 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](mailto: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](http://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

4-18-16

Date

Published Alaska Dispatch News: 04/21/2016

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

## **BEST INTEREST DECISION 200 Egan Drive Utility Easement**

MHT #9100808  
MH Parcel C20499

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 issue a non-exclusive easement agreement (Easement) to maintain, operate and improve an existing, 584 foot, buried three-phase electrical power line service. This easement had been previously authorized by DNR under ADL 105245.
- II. **Applicant/File #.** Alaska Electric Light & Power ("AEL&P")/ MHT 9100808.
- III. **Subject Property.**
- A. **Legal Description.** Copper River Meridian, Township 41 South, Range 67 East, Section 23, containing 0.09 acres more or less.
  - B. **Settlement Parcel Number(s).** C20499.
  - C. **Site Characteristics/Primary Resource Values.** The subject property is located on the south side of Egan Drive at the intersection with Whittier Street. The site is well located, with a good potential for commercial development.
  - D. **Historical and Existing Uses of the Property.** The property is vacant uplands with some waterfront improvements, and is currently used for contractor staging

and state parking. Historic uses on the property include office space, parking, and transportation and utility infrastructure.

- E. Adjacent Land Use Trends.** Commercial development and marine transportation.
- F. Previous State Plans/Classifications.** DNR issued the Juneau State Land Plan (JSLP) for State Lands, adopted in 1993. Under JSLP, the area was designated as commercial development and mixed uses. Utility easements and electrical infrastructure are compatible with JSLP.
- G. Existing Plans Affecting the Subject Parcel.** The subject property is affected by the City and Borough of Juneau (CBJ) Title 49, Land Use and is Zoned Mixed Use (MU-2) and Waterfront Commercial (WC).
- H. Apparent Highest and Best Use.** Commercial development and utility infrastructure.

**IV. Proposal Background.** AEL&P was granted a right-of-way (ROW) permit (ADL 105245) on state land along Egan Drive in Juneau in 1990 for a 25 year term. The land in the vicinity, including the ROW was conveyed to the Trust in 1994. An application to renew the easement was submitted to TLO on September 14, 2015. AEL&P requested a 50 year term.

- V. Terms and Conditions.** A modified easement agreement will be used for the disposal.
- A. Term.** An initial term of 30 years with the option to extend.
  - B. Considerations.** The Grantee shall pay an annual payment to the Grantor in the amount of \$3,796 and will include a CPI adjustment every five (5) years.
  - C. Co-location.** The Grantee may not co-locate third party equipment without TLO approval.

**VI. Resource Management Considerations.** The proposed action is consistent with the key provisions of the Resource Management Strategy guidelines. Protection of the corpus and long-term productivity will be enhanced by terms and conditions in the Easement. Secondary and cumulative impacts are reduced by the terms and conditions, which require insurance, and indemnification. The Easement will not negatively affect the Trust's opportunity to maximize revenues from this site or adjacent Trust lands over time. The proposed three-phase power line supports other TLO authorizations on this parcel and creates diversity of revenue-producing uses on Trust property.

**VII. Alternatives.**

Proceed as Proposed. The three-phase power line provides needed power to CBJ's Outer Drive Pump Station (ADL 55385) located on the subject parcel within Lot D. The lease for the pump station will expire on May 31, 2027. Failure to issue the Easement would negatively affect CBJ's ability to operate the sewer pump station, adversely affecting TLO revenue stream from the lease. Issuance of this Easement would provide additional revenue to the Trust without increasing the TLO's stewardship obligation.

## **VIII. Risk Management Considerations.**

- A. Performance Risks.** The buried power line minimizes additional impacts. The indemnification and insurance coverage naming the TLO as second should mitigate unknown liabilities. AEL&P has a proven track record and the bond guarantee is waived.
- B. Environmental Risks.** The buried power line will have no additional land disturbance aside from normal maintenance.
- C. Public Concerns.** Subject to comments resulting from the public notice, there are no known concerns that suggest the proposed transaction is inconsistent with Trust principles.
- D. Other Concerns.** The power line provides an alternative loop feed to the Whitter Street area, for reliability in the event of a cable failure.

## **IX. Due Diligence.**

- A. Site Inspection.** A site inspection was conducted by TLO on May 28, 2015.
- B. Valuation.**
  - i. The Trust will receive approximately \$113,880 over the 30 year term of the Agreement.
  - ii. Co-location of third party equipment will require TLO approval under a separate agreement and will create an additional revenue stream.
- C. Terms and Conditions Review.** This Utility uses a modified TLO Easement document to incorporate terms and conditions. Insurance and indemnification requirements have been imposed per the standard conditions of the Agreement. The bonding requirements have been waived due to the low risk of additional adverse impacts.

## **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 Utility 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.

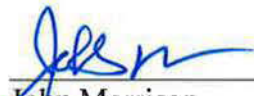
Persons who submit timely written comments will be provided with a copy of the final written decision, and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director 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](mailto: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](http://www.mhtrustland.org).

**XVI. APPROVED:**



John Morrison  
Executive Director  
Alaska Mental Health Trust Land Office

4-12-16

Date

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

4/14/2016

Date