

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue a Lease with Assets, Inc.
MHT #9200608

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 lease of certain Trust land to Assets, Inc. 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 the Municipality of Anchorage, and is more particularly described as: Tract 5A according to the plat for Tracts 4B and 5A, Community Park Alaska Subdivision, recorded as plat 73-41 in the Anchorage Recording Office, 3rd Judicial District, State of Alaska, located within Section 21, Township 13N, Range 3W, Seward Meridian, containing approximately 3.0 acres, more or less (MH Parcel(s) **SM-1522**).

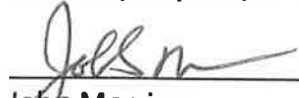
Persons who believe that the written decision should be altered because it is not in the best interests of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, May 20, 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

4-18-16

Date
Published Alaska Dispatch News: 04/20/2016

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION ASSETS BUILDING LEASE

MHT #9200608
MH Parcel(s) SM-1522

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 lease for the building and property located at 2330 Nichols Street in Anchorage, Alaska, with Assets, Inc. ("Assets") for a term of ten (10) years, at \$60,000 per year on a triple net (NNN) basis, with annual rent escalations, allowing Assets to continue providing services benefitting Trust beneficiaries from the location. This beneficiary-related use of Trust lands is proposed at rents that are below fair market value, the increment between the established rent and fair market rent of \$345,444 is \$285,444 in year one. Over the 10 year lease it is estimated that the uncompensated use of Trust land will be approximately \$3,197,900.
- II. Applicant/File #.** MHT 9200608.
- III. Subject Property.**
- A. Legal Description.** Tract 5A according to the plat for Tracts 4B and 5A, Community Park Alaska Subdivision, recorded as plat 73-41 in the Anchorage Recording Office, 3rd Judicial District, State of Alaska, containing 3.0 acres, more or less.
 - B. Settlement Parcel Number(s).** SM-1522.

- C. Site Characteristics/Primary Resource Values.** The parcel contains an existing warehouse/office building consisting of approximately 25,566 square feet (10,736 sq. ft. office + 14,830 sq. ft. warehouse/production) and associated parking and drive isles. The primary value of this parcel is in the continued use of the existing building and parking improvements for either rental income purposes or Trust beneficiary program purposes.
- D. Historical and Existing Uses of the Property.** On August 21, 1975, the parcel became subject to an Interagency Land Management Assignment ("ILMA") granted by the State of Alaska Division of Land and Water Management to the State of Alaska Department of Health and Social Services ("DHSS"), who subsequently built the existing building on the parcel. On March 21, 1997, the State of Alaska deeded its interest in the parcel to the Trust, at which time the Trust became the owner of the land and improvements thereon. On June 12, 2013, DHSS executed a Lease Agreement with Assets. On October 16, 2014, DHSS relinquished any rights it may have had, if any, to manage or otherwise control the parcel or the Lease under the terms of the ILMA acknowledging the Trust as having complete jurisdiction and management of the parcel and all improvements, as well as the Lease. On June 11, 2015, the TLO Executive Director at that time extended the Lease term for a period of one (1) year to facilitate the formal review and potential approval of a long-term lease to Assets. The property has been used since approximately 1980 for the existing purpose, housing Assets, Inc., or previous iterations of the organization.
- E. Adjacent Land Use Trends.** Other parcels in the area house similar non-profit institutions including Anchorage School District, The Arc of Anchorage, the Trust's administrative offices, The Salvation Army, and Catholic Social Services. The subject parcel and adjacent lands are predominately owned by the Trust and are located on the edge of the U-Med District, home to multiple universities, hospitals, and institutional uses.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** None.
- H. Apparent Highest and Best Use.** Continued use of the existing building as-is for commercial rental or Trust beneficiary program purposes.

- IV. Proposal Background.** On October 16, 2014, the Trust accepted, from DHSS, complete jurisdiction and management of the parcel, all improvements, and the Lease, with the intent of exploring and potentially granting the lease extension proposed herein. In following the steps outlined in 20 AAC 40.710, the board's Resource Management Committee reviewed and approved the proposed lease extension on October 21, 2015. Public notice was given on December 20, 2015 and no comments were received during the 30-day public notice period. The full board of trustees approved the lease extension on January 27, 2016. On February 5, 2016 the Trust requested TLO finalize the lease and work toward execution of final documents with Assets.
- V. Terms and Conditions.** See Section I above for the business terms of the lease extension. TLO intends to execute a lease document with Assets on or before June 30, 2016.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust land” (RMS), which was adopted January 2016 in consultation with the Trust and assures the real estate needs of mental health programs sponsored by the Alaska Mental Health Trust Authority are met as appropriate; Trust land is managed for the long-term preservation of the Trust’s land base while supporting and enhancing the Trust’s mission to promote a comprehensive integrated mental health program; and developing Trust land inventory and long-term management plans related to beneficiary programs. Where beneficiary-related uses of Trust lands are proposed at rents that are below fair market values, the increment between proposed rents and fair market rent will be considered an allocation of Trust revenue and must be approved by the board.

VII. Alternatives. Alternatives to this proposal include:

- A. Leasing the facility at full market rent to a non-program related organization for the sole purpose of generating revenue; or
- B. Leasing the facility to another program related organization for the purpose of providing beneficiary programs; or
- C. Selling the facility to a non-program related organization for the sole purpose of generating revenue; or
- D. Selling the facility to a program related organization for the purpose of providing beneficiary programs.

Although alternatives to this proposal may make sense in the future, the proposed action contained herein fulfills the immediate and long-term program needs of Trust beneficiaries, extends the benefitting organization’s ability to provide ongoing and proven programs to a broad spectrum of Trust beneficiaries, and utilizes a Trust owned facility for the purpose of providing beneficiary programs. Leasing the facility to an organization other than Assets would jeopardize the delivery of beneficiary programs that have been provided at and through the facility for decades. The outright sale of the facility to either a program related or non-program related organization would not make strategic sense given the Trust’s footprint of developable land surrounding the facility.

VIII. Risk Management Considerations.

- A. **Performance Risks.** Assets’ obligations will be clearly defined under the lease document and Assets’ track record indicates few performance risks exist related to it performing its obligations during the lease term.
- B. **Environmental Risks.** Very little environmental risks exist associated with this proposed use of the property.
- C. **Public Concerns.** There may be concerns from other non-profit organizations over the amount of subsidy received by Assets for the use of this facility. These concerns should be alleviated by the fact that DHSS relinquished its rights, if any, in the facility for the benefit of Assets to continue its long-term occupancy at reduced occupancy costs to further Assets’ efforts to provide crucial programs to Trust beneficiary groups.

IX. Due Diligence.

- A. Site Inspection.** The property is currently managed by TLO under a third-party management agreement and is inspected regularly as a matter of course under that management agreement and typical TLO asset management practices.
- B. Valuation.** The rent amount was determined based on review of Assets' operating budget and evaluated against a broker opinion of value performed by a competent broker located within the Municipality of Anchorage.
- C. Terms and Conditions Review.** TLO's attorney has been and continues to be involved in preparing lease documentation related to this transaction.

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 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).

- XI. Trust Authority Consultation.** The Alaska Mental Health Trust Resource Management Committee was consulted on October 21, 2015. 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 January 27, 2016, and the board of trustees concurred with the lease extension 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 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

4-12-16

Date