

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue a Negotiated Land Sale to the Department of Transportation and Public Facilities
MHT #9400589

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 Negotiated Land Sale of certain Trust land to the Alaska Department of Transportation and Public Facilities. 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 near Ester Dome, Alaska, and is more particularly described as: Township 1 South, Range 3 West, Fairbanks Meridian, Alaska, Section 27: Tract B, and Section 28: Tract A, containing 234.39 acres, more or less, according to the Supplemental Alaska State Cadastral Survey Plat filed in the Fairbanks Recording District on January 9, 1975 as Plat 75-2. (MH Parcel(s) **FM-0962**;FM-0995).

Persons who believe that the written 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 on or before **4:30 PM, July 31, 2018**. 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).

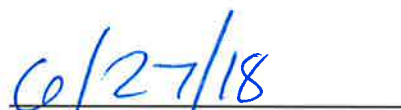
Copies of the written decision are available at the Trust Land Office, or at www.mhtrustland.org. If you have any questions concerning this action, please contact the Trust Land Office at (907) 269-8658.

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.



Wyn Menefee
Executive Director



Date
Published Anchorage Daily News: July 1, 2018

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Veterans Cemetery

MHT: **9400589**
MH Parcel(s): **FM-0962;FM-0995**

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. The proposed action is to dispose of two large parcels through a negotiated sale to the Department of Transportation and Public Facilities (DOT&PF), to construct a Veterans Cemetery on behalf of the Department of Military and Veterans Affairs (DMVA). In the event the parcels are not sold to the applicant, the parcels may be reoffered in a future land sale, negotiated lease, or another disposal method.

II. Applicant/File #. Alaska Department of Transportation and Public Facilities (DOT&PF)/MHT 9400589.

III. Subject Property.

A. Legal Description. Township 1 South, Range 3 West, Fairbanks Meridian, Alaska, Section 27: Tract B, and Section 28: Tract A, containing 234.39 acres, more or less, according to the Supplemental Alaska State Cadastral Survey Plat filed in the Fairbanks Recording District on January 9, 1975 as Plat 75-2.

B. Settlement Parcel Number(s). **FM-0962;FM-0995.**

C. Site Characteristics/Primary Resource Values. These two lots are located along the Parks Highway near milepost 344, approximately 3 miles west of Ester and about 11 miles west of Fairbanks. Access is by the Parks Highway and Tract

A is also improved with a driveway that accesses a former gravel pit that straddles both Tracts. The immediate area consists of vacant land and Tract A is located across the highway from a popular scenic pull out that provides good views of the Tanana Valley and the Alaska Range. The properties are irregular in shape and their southern boundaries have frontage along the Parks Highway. Tract A has sufficient access to the road from the Parks Highway, however Tract B is considered having less favorable access as standalone parcel as the topography along the immediate highway frontage is steep. The parcels are on a north facing slope and comprised of approximately 53.5% wetlands.

- D. Historical and Existing Uses of the Property.** The historic and existing use of Trust parcels includes material extraction from the monument pit and recreation.
 - E. Adjacent Land Use Trends.** Adjacent land uses include residential, public recreation, road and utility easements, and wildlife habitat.
 - F. Previous State Plans/Classifications.** DNR issued the Tanana Basin Area Plan (TBAP) for State Lands, adopted in 1985 and updated in 1990 and 1999. The primary use for general state land in the Alder Creek subunit is for settlement and forestry.
 - G. Existing Plans Affecting the Subject Parcel.** The subject property is affected by the Fairbanks North Star Borough (FNSB) Title 18, Zoning Ordinance and is zoned General Use 1 (GU-1). The GU-1 is intended for rural areas and would be compatible with a cemetery.
 - H. Apparent Highest and Best Use.** The two parcels are located in an area surrounded by vacant land about a mile from the nearest residence and utilities including electricity are not readily available. Tract B's southern portion is appealing for residential use as it has large trees and southern exposure with appealing views, however, the parcels are not suitable for subdivision development at this time. Disposing of these two parcels for a Veteran's Cemetery is the apparent highest and best use.
- IV. Proposal Background.** In late August 2015, TLO was contacted by DOT&PF to evaluate Trust land for purchase on behalf of DMVA to construct a Veterans Cemetery. The cemetery will include 500 pre-placed crypts, 500 columbarium niches, administrative quarters, maintenance facility, committal shelter, and utilities.
- V. Terms and Conditions.** The standard TLO Purchase and Sale Agreement and Quitclaim Deed will be used for the disposal.
- VI. Resource Management Considerations.** The proposal is consistent with the "Resource Management Strategy for Trust Land" (RMS), which was adopted in March 2016 in consultation with the Trust and provides for the TLO to identify and enhance lands for economic development and mitigate risk liabilities of the land estate held by the Trust.
- VII. Alternatives.**
- A.** Do nothing or offer sometime in the future. This alternative would delay receipt of revenues from sales and could result in additional costs and risks to the Trust without significant increases in value.

- B. Leasing the parcel. Land management costs to the Trust will generally decrease on the properties through a sale verses a lease. There has been no interest and there is no foreseeable interest in leasing the subject parcels.
- C. Competitive Land Sale. The parcels are not suitable for subdivision development and utilities are not readably available. Parcels of this size are generally not desirable for direct competitive sale to most parties.
- D. Alternate development. Gravel has been extracted from the site and is largely depleted, the remaining material is not suitable for road construction but may be used as non-structural fill.

VIII. Risk Management Considerations.

- A. **Performance Risks.** Performance risks will be mitigated through the TLO's purchase and sale agreement and quitclaim deed. These documents include contemporary language to limit risks to the TLO and the Trust, ensure performance by the buyer, and allow for termination in the case of default.
- B. **Environmental Risks.** No known environmental risks, however, the site has been used for gravel extraction for many years.
- 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.** The Property will be subject to a 60-foot wide easement to provide adequate access to MH Parcel FM-0920, which is located to the north of the subject properties. This easement will be granted to the Trust Authority and TLO. The sale would generate revenue for the Trust on land that would otherwise not be developed, and will exceed the fair market value.

IX. Due Diligence.

- A. **Site Inspection.** TLO Staff last inspected the parcels on May 23, 2018.
- B. **Valuation.** The Purchase Price of the above described Property is \$396,110. The Purchase Price was determined by an appraisal (ASP 10-16-922) completed by Hans Axelsson, Axelsson & Associates, Inc., on June 26, 2016. The appraisal determined the estimated market value of the property to be \$304,700. The premium for the Property will be 30% above the appraised value to compensate for not selling the land through a competitive process.
- C. **Terms and Conditions Review.** Contract documents were reviewed by the Attorney General's Office and an independent law firm.

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 Land 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). The additional statutes are deemed inconsistent for Negotiated Land Sales:

- i. AS 38.05.055, Alaska Residency required for purchase of State land and AS 38.05.940, Veteran's discounts allowed on purchase price of State land. Preferences or discounts provided to Alaska residents or veterans would be granted at a cost to the Trust, hereby violating key Trust management principles.
 - ii. AS 38.05.127, Access to navigable or public water and requiring "to and along" easements on Trust properties diminishes the sale value of Trust lands and therefore is inconsistent with Trust management principles.
 - iii. AS 38.05.065(g), Appeal of director's decision to commissioner is in direct conflict with 11 AAC 99.060 and therefore does not apply to the transaction pursuant to 11 AAC 99.060(d).
- C. Provisions of law applicable to other state land that are determined to apply to Trust land by the Executive Director, on a case-by-case basis include:
- i. AS 38.05.035(i), persons eligible to file a request for reconsiderations.
 - ii. 11 AAC 02.030 (a) and (e), filing request for reconsideration.
 - iii. 11 AAC 02.040, timely filing.

XI. Trust Authority Consultation. The Alaska Mental Health Trust board of trustees was consulted on May 24, 2018, and the board of trustees concurred with the Negotiated Land Sale or subsequent disposal subject to the outcome of the notice process.

XII. Best Interest Decision.

- A.** 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 may serve the best interest of the Trust. A future determination of that nature may require a Best Interest Decision specific to the proposal.
- B. Non-competitive Disposal Determination.** 11 AAC 99.020 (d) allows for the disposal of Trust land through a competitive basis, unless the Executive Director in consultation with the Trust Authority, determines in a written decision required by 11 AAC 99.040 that a non-competitive disposal is in the best interest of the Trust and its beneficiaries. If another party submits a qualified offer as explained in Section XIII, the Executive Director may consider a competitive sale under the authority of this decision. MH Parcels FM-0962 and FM-0995 are approximately 234.39 acres,

combined. Given the price offered, percentage of wetlands present, and limited commercial interest, a non-competitive disposal is in the best interest of the Trust and its beneficiaries.

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. Other persons who may be interested in purchasing the entire Property must submit their proposals during the 30-day public notice period. Instructions to apply can be found online at <http://mhtrustland.org/index.php/land/land-use-application>. To be considered a qualified competing interest, applications must include the application fee, a development plan detailing the use of the Property, a formal Letter of Intent to include an offer price that matches or exceeds the current offer of \$396,110 for the parcels, and a deposit of 10% of the offered price in certified funds. If there is competing interest, all qualified interested parties will be notified by phone, fax, or e-mail how they may participate in the alternative sale process. 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 may 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
Alaska Mental Health Trust Land Office

6/27/18

Date