

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
PERMANENT EASEMENT LOT D, JUNEAU SUBPORT

MHT: #9100957
MH Parcel(s): 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. Permanent easement, 10' wide on Egan Drive for road and pedestrian access expansion.

II. Applicant/File #. MHT 9100957.

III. Subject Property.

- A. Legal Description.** Lot D of Juneau Subport Subdivision, Plat 2007-29, Juneau Recording District, containing 3,217 square feet more or less (See Attachment A for diagram of permanent easement).
- B. Settlement Parcel Number(s).** C20499.
- C. Site Characteristics/Primary Resource Values.** Urban setting. The balance of the parcel is leased to the City and Borough of Juneau for a sewage lifting pump. Lot D's small size and existing use make it unsuitable for purposes apart from that which it is currently deployed.
- D. Historical and Existing Uses of the Property.** Lot D was acquired by the Trust as settlement land and has been subject to the aforementioned lease since 1972. The lease expires in 2027.
- E. Adjacent Land Use Trends.** Adjacent lands are institutional – U.S. Coast Guard and National Marine Fisheries Service. Egan Drive frontage to the South is primarily tourist-oriented restaurant and retail. To the North lie several vacant parcels – C2, slated to be developed into a central facility for a proposed downtown heating district, and C1, which is currently owned by the AMHTA and undergoing planning.
- F. Previous State Plans/Classifications.** None.

G. Existing Plans Affecting the Subject Parcel. Parcel is in the Juneau Willoughby District.

H. Apparent Highest and Best Use. TLO staff has determined that the parcel's current use as a utility site is its likely highest and best use until it were to be sold to be combined with an adjacent parcel of sufficient size for commercial development.

- IV. Proposal Background.** TLO staff was approached by DOTPF to purchase the permanent easement and a temporary construction easement on this and other parcels owned by AMHTA in the subport. TLO staff negotiated an agreement with much more explicit and comprehensive provisions than that which was initially offered. TLO negotiated a settlement price of \$14,732 for the easement. This settled price was 18% higher than that which was initially offered by DOTPF.
- V. Terms and Conditions.** The easement shall be permanent, so long as utilized for highway and pedestrian purposes. The AMHTA will receive compensation of \$14,732 for the permanent easement or approximately \$35.50 per square foot, which is in line with recent sales of property in the neighborhood.
- VI. Resource Management Considerations.** This proposal is consistent with the Trust's Resource Management Strategy, which permits perpetual easements as a source of principal generation. The proponent of the project has the ability to exercise eminent domain and compensation in these instances is generally limited to the fair market value of the parcel. The TLO negotiated a sale that was 18% above the just compensation determination made by DOTPF. While this premium is not the 25-35% premium generally preferred for noncompetitive sales, the TLO has determined that this disposal is in the best interest of the Trust due to the risk of receiving a lesser premium imposed by condemnation proceedings. Additionally, TLO was able to negotiate a curb cut to more efficiently access the parcel and leverage all of its holding to ensure access to other parcels purchased by DOTPF in the neighborhood are afforded access to what is otherwise a limited access roadway, Egan Drive.
- VII. Alternatives.** As the proponent of this project has the power of eminent domain, the TLO's only viable alternative would be to proceed to condemnation proceedings, the result of which are unpredictable. By proceeding with the proposed option, the TLO believe it has maximized the sales revenue possible for this parcel.
- VIII. Risk Management Considerations.**
- A. Performance Risks.** Little performance risk as the owner of the easement, a government entity, is liable for all ongoing maintenance of the purchased easement.
- IX. Due Diligence.**
- A. Site Inspection.** TLO personnel visited the site multiple times in Summer of 2018 and made recommendation to include curb cut (which is currently absent) for access to site by current lessee.
- B. Valuation.** Appraisal was completed by DOTPF contract appraiser. TLO was able to negotiate significant higher value by pointing to more recent sale of TLO lands in the area at the settlement price.
- C. Terms and Conditions Review.** Easement documents were reviewed and negotiated with the assistance of the Department of Law.

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 permanent 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. 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.

XII. 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.)

XIII. 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.

- XIV. 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.


XV. APPROVED:


Wyn Monette
Executive Director
Alaska Mental Health Trust Land Office

8/13/18
Date

XVI. CONSULTATION CONCURRENCE:

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.


Michael K. Abbott
Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

8-13-18
Date

