

Trust

Alaska Mental Health
Trust Authority

Resource Management Committee
Quarterly Meeting
April 19th, 2018

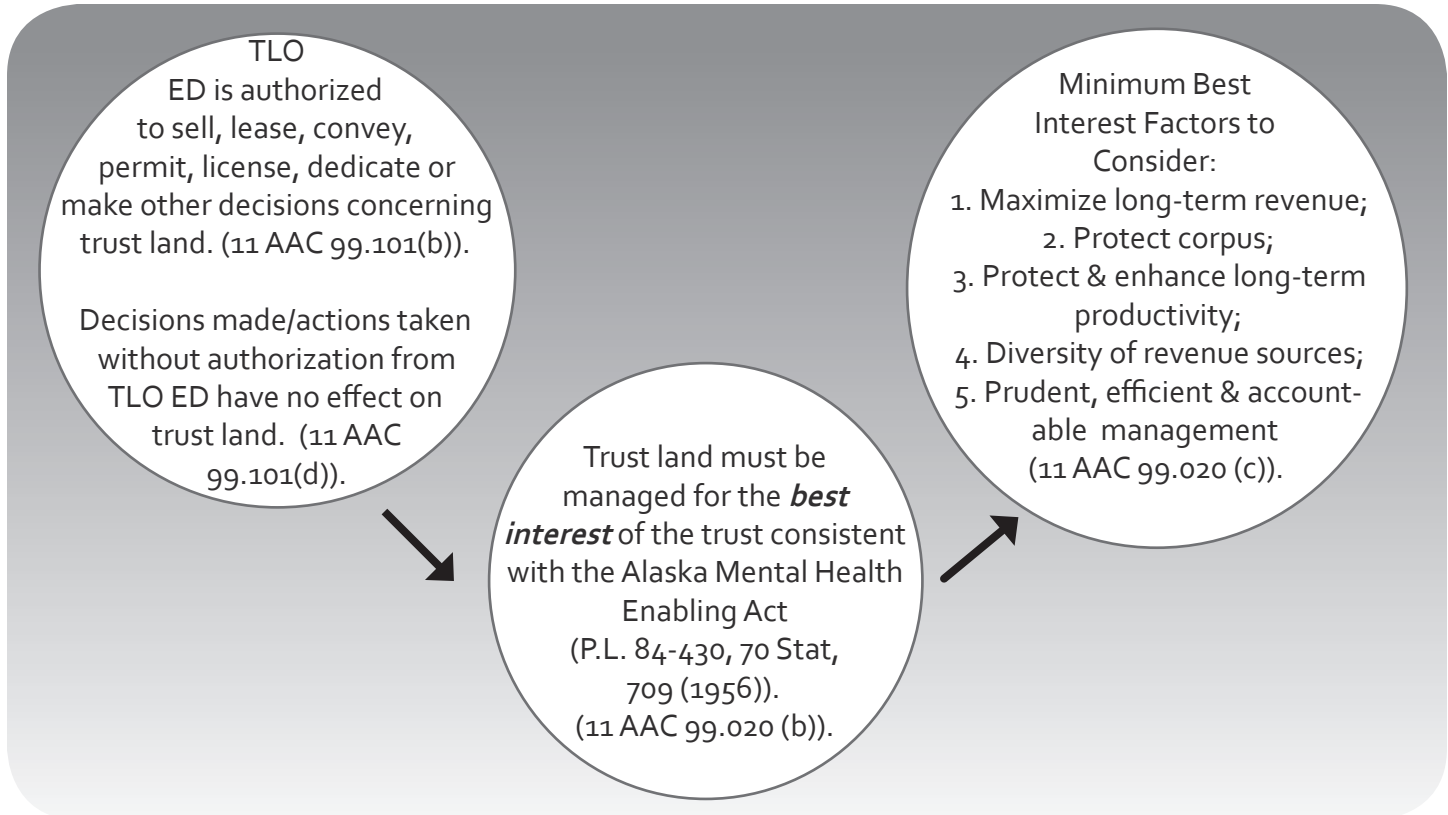
HANDOUT PACKAGE

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LAND MANAGEMENT & DISPOSAL PROCESS FOR ALASKA MENTAL HEALTH TRUST LAND

General Authority of Trust Land Office (TLO) Executive Director (ED)



Evaluation of an Application for Disposal¹ or Use of Trust Land

Initial Considerations:

Expression of interest [land use application] of application to use or dispose of trust land vest no rights in third parties.
(11 AAC 99.030)

Value of land must be established before any disposal.
(11 AAC 99.030 (b))

IS THIS ACTION IN THE BEST INTEREST OF THE TRUST WHEN CONSIDERING THE ABOVE

NO

No property rights have vested and TLO ED may determine not to proceed with the request to dispose or use trust land.

YES

Best Interest Decision (BID)

required for disposals of trust land and must contain:

1. Description of action;
2. Why action is in best interest of trust
3. Authority for the action.
(11 AAC 99.040 (b)).

Consultation:

Before notice of any BID, the TLO must provide consultation to the Board of Trustees (11 AAC 99.030 (d) & 11 AAC 99.990 (6)).
This is the only review, by the Trustees, of the proposal disposal.

¹Disposal is defined in 11 AAC 99.990(8)

Required Administrative Process for Best Interest Decision (BID)

1. Notice & Opportunity to Comment

Subsequent to reaching a BID, the TLO must file notice of the BID, at least 30 days prior to the action, in general circulation periodical and must provide notice to:

- Alaska Mental Health Trust Authority (AMHTA);
- Municipality (if applicable);
- Alaska Native Corporation (ANC) if outside of municipality;
- Other reasonable means.

(11AAC 99.050)

2. BID Affirmed

BID may be affirmed, modified, or rescinded. If a BID Affirmed is reached with consideration of comments the BID Affirmed is sent to commenters.

3. Administrative Reconsideration of BID

Request for Reconsideration of BID

Only those parties who commented during the 30 day comment period are eligible to ask for reconsideration of the BID within 20 days of notice of BID Affirmed.

(11 AAC 99.060(b); 38.05.035(i))

TLO Executive Director (ED) Action on Request for Reconsideration of BID

TLO ED orders or denies reconsideration within 20 days of receipt of request for reconsideration. The BID may be upheld, modified, or rescinded during reconsideration period.

(11 AAC 99.060 (b))

Request is considered denied if no action is taken by the Executive Director in the 20 day period.

4. Judicial Review of TLO Executive Director

Review of TLO BID under AS 44.62.560 is available to those parties who:

- Commented; and
- Requested reconsideration; and
- That request was denied.

(11 AAC 99.060 (c))



Land Office

2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.mhtrustland.org

August 30, 2017

Doug Wade, Chairman
Chickaloon Village Traditional Council
(Nay'dini'aa Na')
P.O. Box 1105
Chickaloon, AK 99674

Re: Request for cultural study on AMHT Lands and future permitting action by Chickaloon

Dear Mr. Wade,

The Trust Land Office (TLO) and the board of trustees of the Alaska Mental Health Trust Authority received your August 17, 2017 letter. You continued to express objection to the denial of a permit from the TLO to conduct certain historical and archaeological survey and exploration work on Trust lands. You also stated that you intend to issue a permit for Trust owned lands that would override the TLO permit denial.

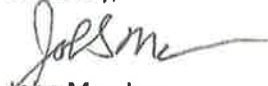
The TLO and the AMHTA recognize your desire to enrich the understanding of the cultural resources and the history in the area. We will take all necessary steps to comply with the Alaska Historic Preservation Act as part of any proposed or future development project. However, the Trust is not supportive of gathering data to seek listing of sites or landscapes on the National Historic Register of Historic Places in advance of development plans for Trust lands, recognizing that the goal of managing Trust lands is to develop revenue for the Trust to improve the lives of its beneficiaries. Listings on the National Historic Register of Historic Places can substantially encumber permitting processes for development projects and inhibit the ability to develop Trust lands. Therefore, the TLO action of denial of the cultural survey with the stated objectives in the application was appropriate.

We have reviewed your assertion that Chickaloon Native Village has the right to authorize use of Trust owned land, effectively overruling the management decisions by the TLO. We have found no legal support for this position. AS 37.14.009 and AS 38.05.801 clearly set out in state law that Alaska Mental Health Trust Authority owned lands will be managed by the TLO within the Department of Natural Resources, consistent with the requirements of the Alaska Mental Health Enabling Act. If you believe we are incorrect, please provide us with the legal authority granting Chickaloon Native Village such co-management rights.

If no such legal authority exists, please be aware that authorization of a survey on Trust land, without TLO approval, may constitute trespass.

We certainly want to establish and maintain a good working relationship with the Chickaloon Native Village and as such, welcome further discussions regarding this issue. As such, if you have further questions regarding this response, or wish to further discuss this issue, please contact the land manager for the Alaska Mental Health Trust Authority, the executive director of the Trust Land Office.

Sincerely,



John Morrison
Executive Director

Cc: Russ Webb, Chair, AMHTA Board of Trustees
Mary Jane Michael, Vice-Chair, AMHTA Board of Trustees
Chris Cooke, Trustee, AMHTA Board of Trustees
Laraine Derr, Trustee, AMHTA Board of Trustees
Paula Easley, Trustee, AMHTA Board of Trustees
Jerome Selby, Trustee, AMHTA Board of Trustees
Carlton Smith, Trustee, AMHTA Board of Trustees
Richard VanderHoek, State Archaeologist, SHPO
Brian Wygal, Adelphi University



Chickaloon Village Traditional Council (Nay'dini'aa Na')

March 26, 2018

Gary Harrison
*Traditional Chief/
Co-Chairman*

Rick Harrison
Co-Chairman

Shawna Larson
Vice-Chairman

Penny Westing
Secretary/Elder

Albert Harrison
Treasurer/Elder

Doug Wade
Member/Elder

Kari Shaginoff
Member

Lisa Wade
Member

Gary Hay
Executive Director

Alaska Mental Health Trust Authority
Board of Trustees
3745 Community Park Loop, Suite 200
Anchorage, AK 99508

Re: Access to Chickaloon Cultural Sites

Dear Board of Trustees,

Chickaloon Native Village is a federally recognized Ahtna Athabascan Tribe in southcentral Alaska governed by the Chickaloon Village Traditional Council. Our mission is to perpetuate our ancestors' beliefs, customs, traditions, and values and steward our environment to help our citizens thrive. On August 30, 2017, the Alaska Mental Health Trust Authority and the Trust Land Office declined, for a second time, to allow us access to our region of customary and traditional use in order to conduct archaeological studies and learn more about our ancestors. As summer approaches, we ask that the Board and the Land Office work with us to find a way to conduct this important research in a manner that protects the interests of all parties.

The research we wish to conduct poses no threat to the Trust's mission, but denial of access to our ancestral homeland poses an imminent and ongoing risk to priceless cultural properties. The base of Castle Mountain is not subject to any mineral leases or other development proposals that would provide revenue to the Trust. It is, however, open to off-road vehicle use on trails that go to, through, and near our cultural sites. That unregulated use is causing irreparable damage to the artifacts and sites left by our ancestors.

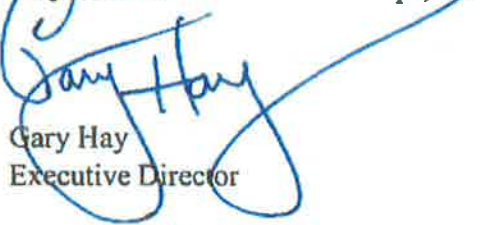
The Trust Authority previously denied our request on the ground that archeological research might result in the listing of a property on the National Register of Historic Places, which in turn might hinder some unspecified, hypothetical future development. This speculation should not be used to justify the actual, ongoing damage to cultural properties from off-road vehicle use on Trust land. The Trust Authority has the responsibility to manage and protect resources on Trust land in a fiduciary manner, which includes protecting valuable cultural properties from destruction. The Trust Authority's fiduciary responsibility for mental health programs should also take into account the important role these cultural and historical properties play in the mental health of Tribal citizens.

Our objective in conducting archaeological research is to learn about our culture and ancestors while it is still possible, not to hinder development for mental health programs. The Castle Mountain area has long been a place of Tribal ceremony and spiritual renewal. Cultural studies would contribute to our understanding of how to live and steward the land, wisdom that we have received from our Elders. The sites of interest are at least three-quarters of a mile from mineral leases and are at significantly greater elevation. There is no conflict.

State and international law recognize our right—indeed, our responsibility—to study and protect our cultural heritage and archeological sites. The Alaska Historic Preservation Act recognizes “the cultural rights and responsibilities of persons of aboriginal descent” and “their right of possession and use of those resources that may be considered of historic, prehistoric, or archeological value.” Archaeological investigations are among the cultural rights and responsibilities of our people. The United Nations Declaration on the Rights of Indigenous Peoples affirms the right of indigenous peoples to “maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, [and] artifacts.”

We appreciate the Trust Authority’s stated intention to establish and maintain a good working relationship with Chickaloon Native Village. Our Council believes that there need be no conflict between the goals of conducting archeological research and advancing the Trust’s mission. Your letter of August 30, 2017, states that you would welcome discussions on this issue. If you are prepared to take measures to secure our right of access to our cultural properties and to protect our cultural resources, we would like to accept your offer to have such discussions. Please contact Gary Hay, Executive Director, to schedule a meeting at 907.745.0749 or ghay@chickaloon.org.

May Creator Guide Our Footsteps,



Gary Hay
Executive Director

cc: John Morrison, Executive Director, Trust Land Office
Barbara Blake, Senior Advisor, Lt. Governor’s Office
CVTC Council Members



2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.trustlandoffice.com

April 2, 2018

Judith E. Bittner, State Historic Preservation Office
Office of History and Archaeology
Alaska Division of Parks and Outdoor Recreation
550 W. 7th Avenue, Suite 1310
Anchorage, Alaska 99501-3565

Re: Alaska Historical Commission Meeting, April 4, 2018
3330-1-1 Ch'u'itnu Historic District, Traditional Cultural Property

Dear Ms. Bittner:

The Trust Land Office (TLO) serves as the land manager for land owned by the Alaska Mental Health Trust Authority, which owns over half of the land (approximately 59,000 acres) nominated for inclusion in the Ch'u'itnu Historic District, Traditional Cultural Property (TCP). The TLO has previously commented on this proposal at the Alaska Historical Commission meetings held in July and December of 2017, and hereby incorporates those comments by reference now.¹ Included in those comments was a notarized letter, in accordance with 36 CFR 60.6, certifying the ownership of the Trust land and formally objecting to the proposed TCL, now TCP; out of an abundance of caution, a second formal objection is attached (Attachment A).

In addition to its previous comments, the TLO would also like to point out that this nomination, in its original form as a nomination for a Traditional Cultural Landscape (TCL) (Attachment B), was previously considered by the U.S. Army Corps of Engineers during the Section 106 review that was conducted in conjunction with the NEPA process for the Chuitna Coal Project. Based on the same information that has been submitted in support of the current application, as well as additional information applicable to the NEPA process, the Corps forwarded a letter to the State Historic Preservation Officer in July of 2016 requesting concurrence with the Corps determination of eligibility for a TCL of much smaller acreage and with boundaries that are vastly different than what was then and is now being proposed. A map of the reduced area proposed by the Corps to be included in the then proposed TCL is attached (Attachment C). The Corps recommendation is based on a comprehensive review of available information on subsistence and traditional knowledge studies, subsistence use areas, and cultural resource studies. The TLO believes the boundaries established in the Corps determination more accurately reflect actual traditional use of the area and would be a more appropriate TCP recommendation from the Alaska Historical Commission.

Furthermore, the land status map that accompanies the TCP application is a misrepresentation of the actual land ownership within the boundaries of the application. The extensive blue area on

¹ OHA's November 6, 2017 notice to property owners also specifically stated that comments on the prior Ch'u'itnu applications are included in the record for the current application.

the map that is described as state land is, for the most part, Trust land. As previously mentioned, the Trust owns over half of the land within the proposed boundaries of the TCP. Trust land is significantly different than general state land. It is not open to activities that are generally allowed on general state land; access is limited to pedestrian day use. Any other uses require authorization from the TLO. There are no currently authorized uses of Trust land in the Chuitna River Watershed.

The TLO would also like to reiterate its previous comment regarding the ownership of the proposed district and ensure the Commission understands the impact of listing all of the nominated lands on the National Register. As the TLO pointed out on July 14, 2017, the applicants and their attorneys have drawn a proposed area where 108 owners hold only 4% of the affected property and 4 owners own 96% of the property. This allows owners of a very small area to exercise disproportionate control over neighboring properties by essentially barring majority property owners from objecting to National Register listing and avoiding the resulting burdens.

Here, those burdens go beyond the typical, but still significant, requirements of Section 106 review. Listing these Trust lands on the National Register subjects them to a state statute that gives the Keeper of the National Register potential veto over the use of any Trust land for coal mining.² The Trust's lands were selected for the purpose of being used productively to generate revenues to support the care of Alaska citizens in need of mental health services. Listing of the Trust's lands on the National Register over the Trust's objections therefore allows the federal government to control (and possibly bar) use of State Trust lands, frustrating the purposes of the Alaska Mental Health Enabling Act grant.

For the reasons stated here and in past correspondence, the TLO requests that this nomination be denied further consideration, but if it is further considered, that the area be significantly reduced to that which the Corps evaluation recommended.

Sincerely,



Wyn Menefee
Executive Director

cc: Andy Mack, DNR Commissioner
Mike Abbott, CEO Alaska Mental Health Trust Authority

Attachments: Attachment A: March 29th, 2018 Notarized Formal Objection Letter
Attachment B: Original Ch'u'itnu Traditional Cultural Landscape Map
Attachment C: Reduced Ch'u'itnu Traditional Cultural Landscape Map

² AS 27.21.260. *See also* 30 U.S.C. 1272 (e)(3) (requiring State coal permitting programs to include this provision); 11 AAC 90.167.
2600 Cordova Street, Suite 100 | Anchorage, AK 99503 | Tel 907.269.8658 | www.trustlandoffice.com



2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.trustlandoffice.com

March 29, 2018

Judith Bittner
State Historic Preservation Officer
Office of History and Archeology
Alaska Division of Parks and Outdoor Recreation
550 West 7th Avenue, Suite 1310
Anchorage, AK 99501-3565

RE : 3330-1-1 Ch'u'itnu Historic District, Traditional Cultural Property

Dear Ms. Bittner,

The Trust Land Office (TLO) who manages lands owned by the Alaska Mental Health Trust Authority objects to listing any of its Trust-owned lands on the National Register of Historic Places within the proposed Ch'u'itnu Historic District, Traditional Cultural Property (TCP) boundary. The Trust received notice of the proposed listing on March 2, 2018.

The Trust-owned lands are to be managed for revenue generation for the Trust to improve the lives of its beneficiaries. Listing this proposed TCP does not appear to be supported by federal regulation nor by factual context, and runs contrary to the mission of the Trust to fully utilize its lands for revenue generation. Also, Alaska historic preservation laws provide sufficient protection for historic and archaeological resources in this area.

I certify that the Alaska Mental Health Trust Authority is the sole owner of the following property, which constitutes more than half of the acreage proposed to be included in this TCP listing. The map (Exhibit A) of this area is also attached.

<u>FILE NUMBER</u>	<u>LEGAL ACRES</u>		<u>QCD FN</u>	<u>ESTATE OWNED</u>
S1001	215	QCD	1306	QCD-LAND
S70437	3823.32	QCD	8000074	QCD-LAND/MINERAL
SM-1505-A01	3720	QCD	8000075	QCD-LAND/MINERAL
SM-1506-01	5538	QCD	8000075	QCD-LAND/MINERAL
SM-1506-A01	14443	QCD	8000075	QCD-LAND/MINERAL
SM-1507	159.91	QCD	8000075	QCD-LAND/MINERAL
SM-1508	120.52	QCD	8000075	QCD-LAND/MINERAL
SM-1509	121.51	QCD	8000075	QCD-LAND/MINERAL
SM-1510	134.01	QCD	8000075	QCD-LAND/MINERAL
SM-1530-A01	10609.49	QCD	8000075	QCD-LAND/MINERAL

SM-1530-B01	15067	QCD	8000075	QCD-LAND/MINERAL
SM-1530-B02	2004	QCD	8000075	QCD-LAND/MINERAL
SM-1530-C01	10216	QCD	8000075	QCD-LAND/MINERAL
SM-1530-D01	15328	QCD	8000075	QCD-LAND/MINERAL
SM-1770	22627.56	QCD	8000075	QCD-LAND/MINERAL
SM-1771	11404.72	QCD	8000075	QCD-LAND/MINERAL
SM-7012	3833	QCD	8100006	QCD-LAND/MINERAL
SM-7013	5120	QCD	8100007	QCD-LAND/MINERAL
SM-7014	3520	QCD	8100008	QCD-LAND/MINERAL
SM-7015	5058	QCD	8100009	QCD-LAND/MINERAL
SM-7016	3040	QCD	8100010	QCD-LAND/MINERAL
SM-7017	2286	QCD	8100011	QCD-LAND/MINERAL
SM-7018	2120	QCD	8100012	QCD-FEE EX COAL

Please consider this letter as the Trust's official objection to the listing of this proposed TCP.

Sincerely,



Wyn Menefee
Executive Director
Trust Land Office

Attachment(s): Exhibit A – Map with Alaska Mental Health Trust Land Ownership


ALASKA MENTAL HEALTH TRUST AUTHORITY

By its agent: Trust Land Office

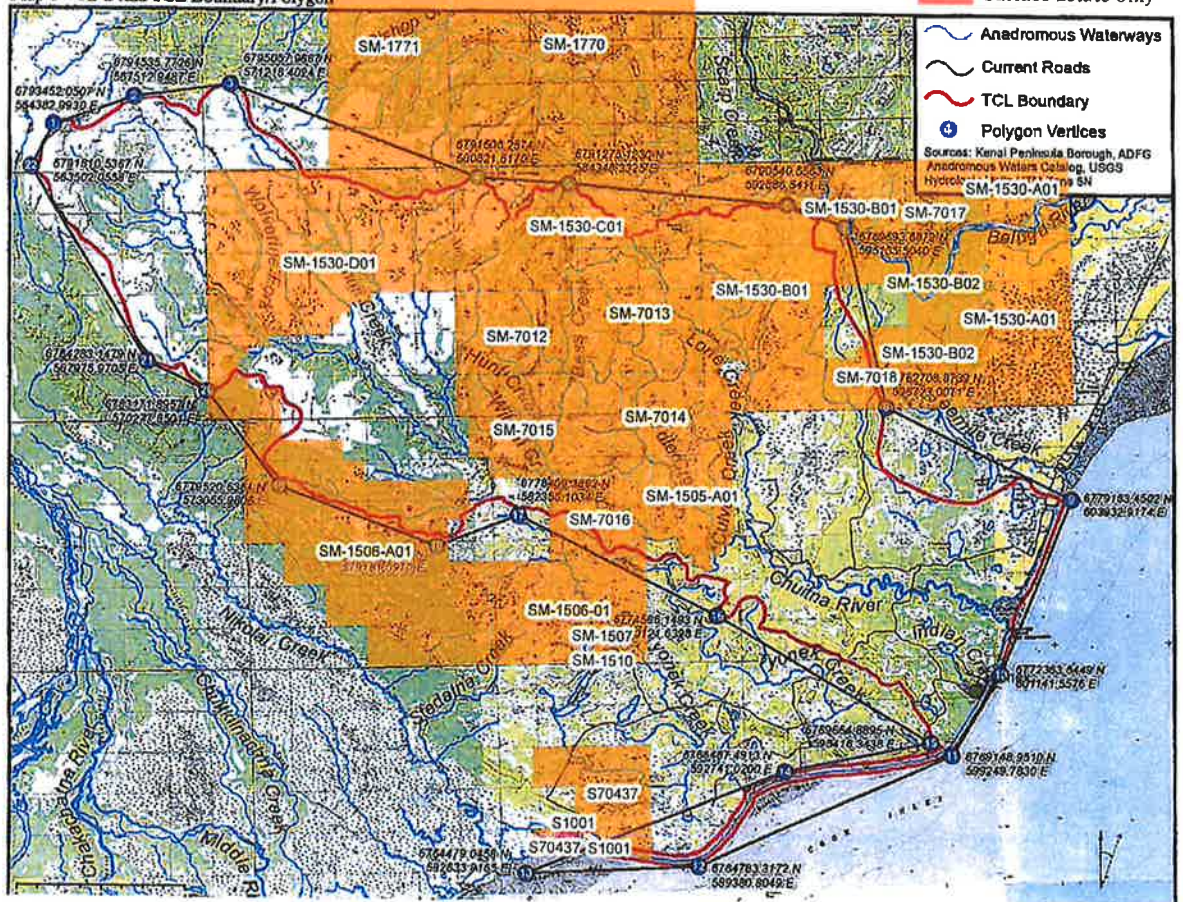
STATE OF ALASKA)
) ss:
Third Judicial District)

This is to certify that on this 30TH day of MARCH, 2018, personally appeared *Wyn Menefee*, Executive Director of the Trust Land Office, and who acknowledged to me that he executed the foregoing instrument, on behalf of the Trust Land Office, as agent for the Alaska Mental Health Trust Authority, freely and voluntarily and for the purposes therein stated.



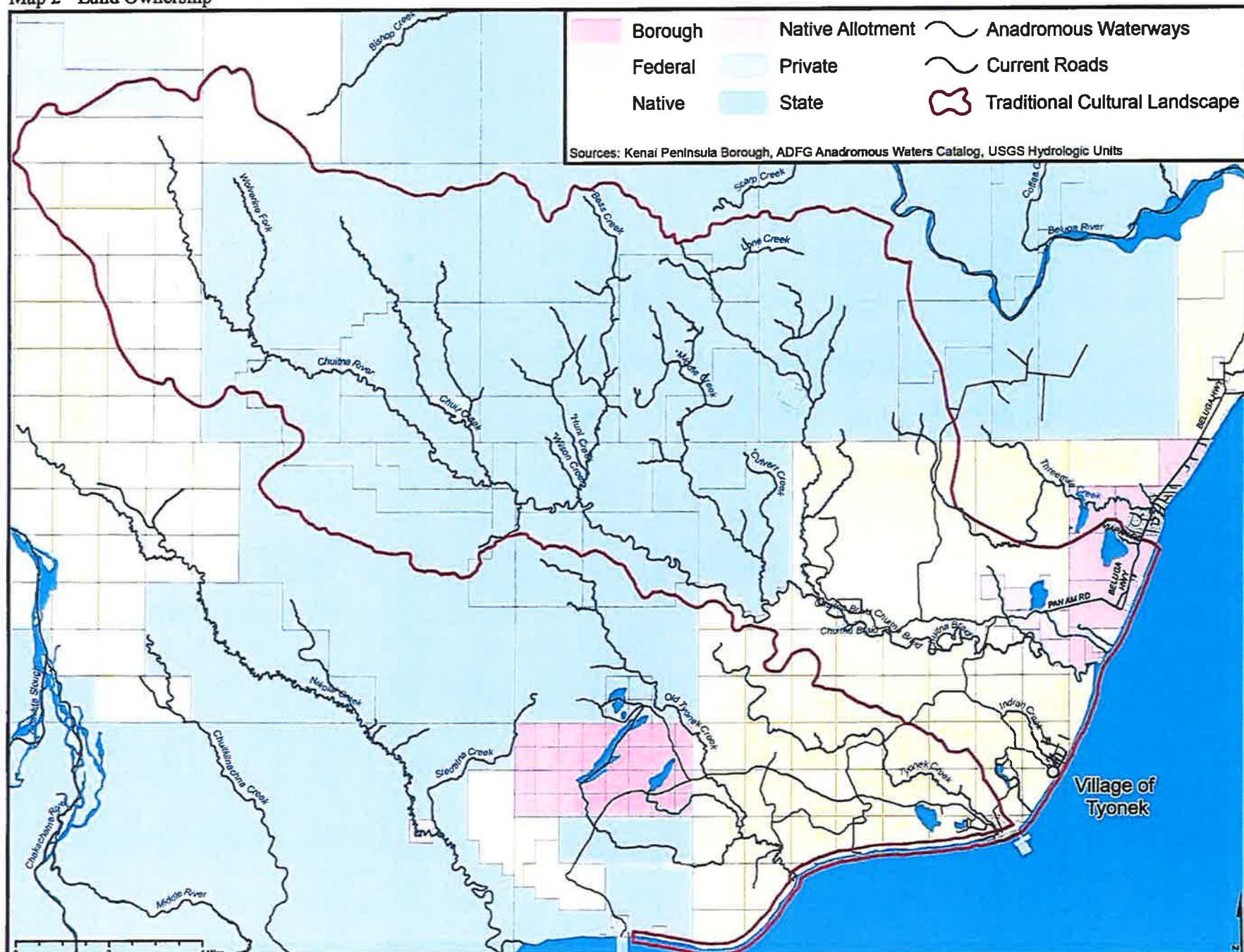

NOTARY PUBLIC in and for Alaska
My Commission Expires : With Office

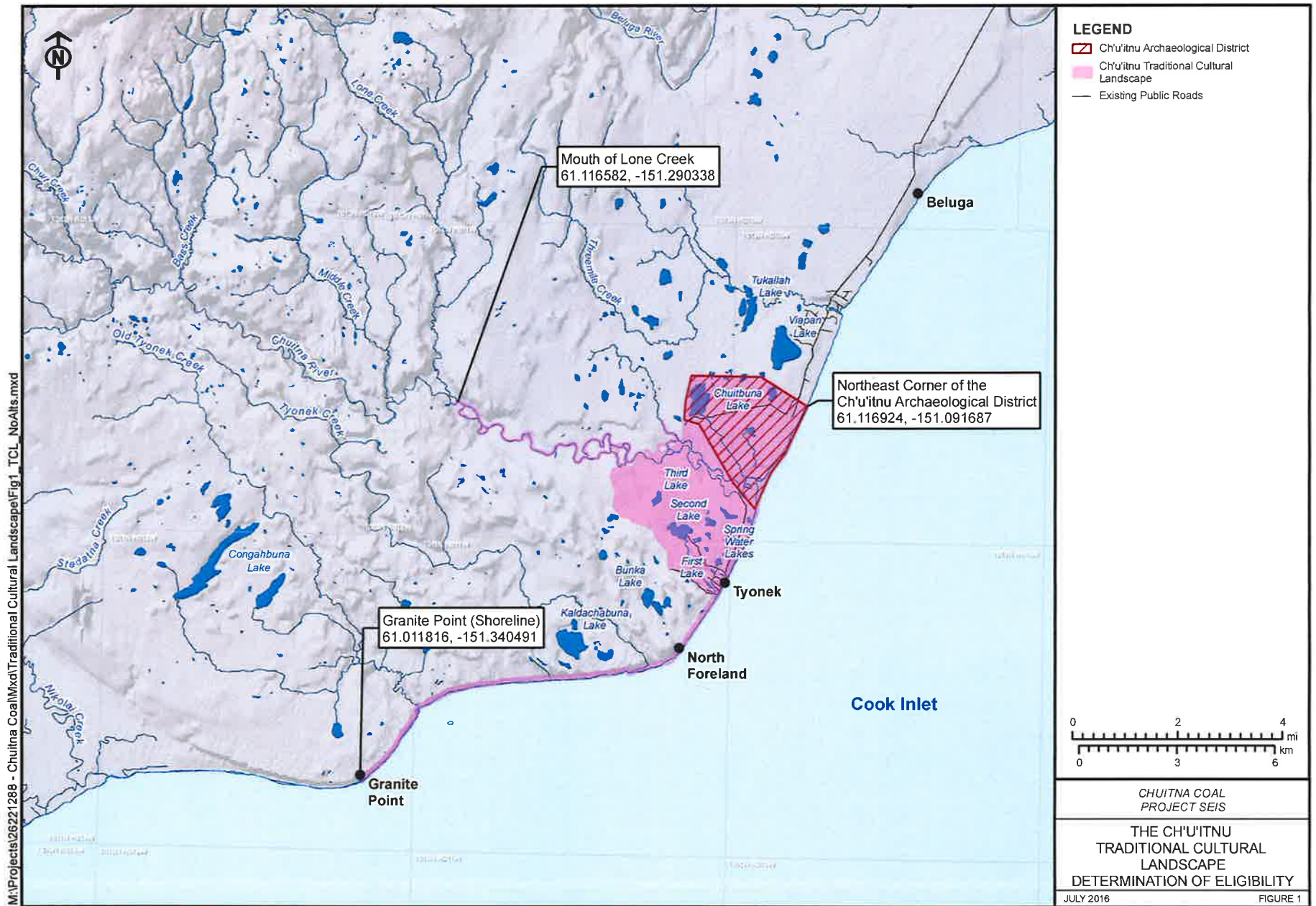
Ch'u'itna Traditional Cultural Landscape
Native Village of Tyonek/Tyonek, Kenai Peninsula Borough, Alaska
Map 1 - Ch'u'itna TCL Boundary/Polygon



Native Village of Tyonek/Tyonek, Kenai Peninsula Borough, Alaska

1997-1998







April 20, 2018

Gary Hay, Executive Director
Chickaloon Village Traditional Council
PO Box 1105
Chickaloon, AK 99674

2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.trustlandoffice.com

Re: Access to Chickaloon Cultural Sites

Dear Mr. Hay,

The Trust Land Office (TLO) and the board of trustees of the Alaska Mental Health Trust Authority (AMHTA) received your March 26, 2018 letter. The TLO and the AMHTA recognize your desire to enrich the understanding of the cultural resources and history of the area. The TLO is the contracted land manager of Trust owned lands, and as the Executive Director of the TLO, I make decisions of what to authorize on Trust lands consistent with the best interest of the Trust. Consistent with the two previous letters provided by this office, my decision still remains to deny the authorization to study and inventory specific Trust owned lands for cultural artifacts for the same reasons as stated before.

The TLO must protect against actions that may devalue the potential revenue from Trust lands. The AMHTA was established as a land trust mandated to use revenues from those lands to ensure that the state has a comprehensive integrated mental health program. The revenues are used to improve the lives of the beneficiaries. It is critical for the Trust, and in fact a statutory obligation, to ensure that its options are maintained to maximize long-term revenue from Trust land.

Although we appreciate your statement that the objective of the proposed study is not to hinder development or the Trust's mission, the original application states that "[t]he need for this inventory is urgent as numerous development projects threaten the landscape in our watershed" and "[t]his project will also provide Chickaloon Native Village with an inventory of cultural resources the Tribe can utilize to prioritize future survey and investigations including evaluation of properties that may be eligible for listing on a tribal register or the National Register of Historic Places." The Trust is currently experiencing efforts from a tribal entity to create a landscape level and watershed wide historical district on Trust owned lands against our objections. This type of listing with the National Register of Historic Places has the potential for

real detrimental impacts to future potential development projects on Trust land which may deprive the Trust of future revenues, harming the beneficiaries.

As stated in previous letters, the TLO will take all necessary steps to comply with the Alaska Historic Preservation Act as part of any proposed or future development project. In accordance with that Act, TLO would be required to inventory, and if determined that the development project would adversely affect historic, prehistoric, or archaeological sites, locations, or remains, there would be necessary mitigation before commencing a development project. We will work in good faith with the Chickaloon Village Traditional Council during such a proposed development project in the future. The development could not occur without first addressing the cultural inventory.

Also to clarify your misperception about the unregulated motorized use, as you can read on our website <https://mhtrustland.org/index.php/land/public-recreation-use-page/>, the Trust owned land is closed to motorized use and open to pedestrian day use only without a license. Trust land is not governed by the Generally Allowed Uses that guide uses of general state land. That is not to say that some unauthorized motorized use may occur on Trust land. Nonetheless, the Trust does not have the staffing or budget to actively control all of the unauthorized use of Trust owned land.

Although I can not commit to providing access as requested in the original application, I am willing to discuss the project with you. I can be reached at (907) 269-8753.

Sincerely,

Wyn Menefee
Executive Director