

**The Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**BEST INTEREST DECISION AFFIRMED AS MODIFIED**  
**Generally Allowed uses on Trust Land**  
**Inconsistency Determination**

Project No.: 2019-171  
MH Parcel(s): Statewide

**Action:** Adopt the Best Interest Decision dated Monday, May 20, 2019 regarding applicability of certain generally allowed uses on Trust land as final, with modification. This decision document, combined with the Best Interest Decision dated May 20, 2019, constitutes the final decision on this matter, in accordance with 11 AAC 99.040.

**Notice under 11 AAC 99.050.** The Trust Land Office published the public notice that it is in the best interest of the Alaska Mental Health Trust and its beneficiaries to deem the application of Generally Allowed Uses under 11 AAC 96.020(a)(1)(D) - (G); 11 AAC 96.020(a)(2); 11 AAC 96.020(a)(3)(D)-(G); 11 AAC 96.020(a)(4)(A), (C), & (D); and 11 AAC 96.020(a)(5)(E) inconsistent with Trust management principles in the Fairbanks Daily News (5/23/2019), Anchorage Daily News (5/23/2019), Juneau Empire (5/23/2019), Peninsula Clarion (5/23/2019), and Wrangell Sentinel (5/30/2019), and distributed the notice to other interested public and private parties, pursuant to 11 AAC 99.050, including the State of Alaska website, Trust Land Office Website, distributed to the Trustees, Alaska Department of Transportation and Public Facilities, and Native Corporations - Doyon, CIRI, Chugach, and Sealaska on June 3, 2019.

**Summary of Comments:** Seventy-four (74) timely written comments were received from the general public, state agencies, and public interest groups. Many of the comments, including 23 form letters, contained multiple parts and are summarized below. One comment was received after the public comment deadline closed but was similar to concerns raised in other comments that were submitted timely. Late comments do not give the commenter any right to request reconsideration, as provided at the end of this decision. Many of the comments offered recommendations or suggested alternatives to the proposal. When making a final decision, the Executive Director shall consider only the best interest of the Alaska Mental Health Trust and its beneficiaries. Few comments addressed the best interest of the beneficiaries or consistency with Trust management principles. The comments below are representative of the comments received.

**Comment:** A number of comments objected to the proposed general permit to use Trust land on the grounds that as a state agency the TLO must manage public domain land as a common resource for the general public.

**Response:** Trust land is different than general state land and is managed in line with Trust principles and the Alaska Mental Health Enabling Act solely in the interests of the Trust and its beneficiaries.

During Alaska's transition to a state, Congress passed the Alaska Mental Health Enabling Act of 1956. This act transferred the responsibility for providing mental health services from the federal government to the territory of Alaska and ultimately the State by granting approximately one million acres of land, to be held in trust for the purpose of supporting the State's mental health program.

In the late 1970s, the legislature re-designated Trust land as general state land, asserting that the state was supporting the mental health program generally. However, a lawsuit in 1982 determined the law was invalid and the state had not met its fiduciary obligation to the trust and its beneficiary groups by managing Trust land in the same manner as general state land. In 1994, the resulting settlement agreement and subsequent legislative actions reconstituted the land trust, created the Alaska Mental Health Trust Authority, and provided for the trust land base to be managed separately from general state land, to ensure the state's compliance with the trust obligations imposed on it under the Alaska Mental Health Enabling Act to generate revenue for and act solely in the interests of the Trust and its beneficiaries.

The TLO was established at that time as the unit attached to the Department of Natural Resources that is specifically responsible for managing Trust land separately from general state land. The TLO manages Trust land in order to generate revenue, which is used to improve the lives of Trust beneficiaries. Beneficiaries of the Trust include groups of Alaskans with mental illness, developmental disabilities, chronic alcoholism and other substance related disorders, Alzheimer's disease and related dementia, and traumatic brain injuries.

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 (P.L. 84-830, 70 Stat. 709 (1956)), the Trust Land Office (TLO) shall, at a minimum, consider the maximization of long-term revenue; protection of the corpus; protection and enhancement of the long-term productivity of Trust land; diversity of revenue-producing uses; and manage Trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries. 11 AAC 99.020.

**Comment:** A number of comments expressed concern that the proposal does not have the public's best interest in mind, and that as a state agency, the Trust must manage Trust land as public land.

**Response:** Any TLO decision pertaining to the use of Trust land that is based upon general public interests likely would violate Trust management responsibilities as accepted by the Territory of Alaska under the 1956 Alaska Mental Health Enabling Act, as further clarified by the 1994 Alaska Mental Health Trust litigation settlement and the associated State of Alaska legislation. Regulation 11 AAC 99.020(b) requires Trust land to be managed "solely in the best interest of the Alaska Mental Health Trust and its beneficiaries." *See the previous Response.*

**Comment:** A number of comments suggested establishing a citizen's advisory board or steering committee to study the issues and provide alternative management solutions to address concerns regarding recreational access, stewardship, and preservation of the values of state Mental Health Trust lands.

**Response:** As a result of the 1994 Alaska Mental Health Trust litigation settlement and subsequent legislation, the TLO was created within the Department of Natural Resources to manage Trust lands separately from general state lands, and solely in the best interest of the Alaska Mental Health Trust and its beneficiaries. There is no need for an advisory board. The TLO considers reasonable alternatives within its decision process. The TLO consults with the Alaska Mental Health Trust Authority's board of trustees on many of its decisions. The Trust is overseen by a seven-member board of trustees. Trustees are appointed by the governor and must be confirmed by the Legislature. The public may provide feedback to the board of

trustees at board meetings. Regularly scheduled board meetings, open to the public can be found at: <https://alaskamentalhealthtrust.org/about/governance/board-meetings/>.

**Comment:** A number of comments expressed concerns that the TLO would be unable to enforce the collection of fees for a general permit or prevent trespass on Trust land, and that it is unfair to law-abiding Alaskans if other people simply ignore the permit requirements and continue to use Trust land without a permit.

**Response:** Currently, public use of Trust land for hunting, fishing, and other recreational activities is allowed, provided the activities are day use only, non-commercial, non-motorized, and in compliance with all applicable state, federal, and local laws. All other activities require written permission. The TLO acknowledges that unauthorized use of Trust land occurs currently, and that it might occur under the general permit process. However, the regulatory process must assume that people will comply with the law. Assuming that people will break the law cannot be the basis for not enacting the law. Further, allowing unauthorized use to prevent revenue generation from authorized use likely violates trust principles. Provisions for revenue from authorizing use of Trust land is important, regardless if there is 100% compliance.

TLO has no direct police powers under statute or regulation. It acts, on behalf of the Trust, as any landowner does to protect its property, up to and including use of Alaska's civil and criminal trespass laws.

**Comment:** A number of comments expressed concern that the proposed fees for the general permit are too expensive for most Alaskans to afford, and many suggested the fees be reduced. Alternatives were suggested to consider day use fees, multiple year permits, and reduced costs ranging from \$5 to \$250.

**Response:** Based on comments and recommendations submitted during the comment period, TLO has re-evaluated the proposed fee structure and modified it as described below. Fees are subject to periodic review to be comparable with other public and private landowners. An adjustment in fees will also encourage compliance and increase revenue to the Trust.

**Comment:** A number of comments suggested that instead of collecting fees through a general permit use fee, the Trust should get more funding through other state sources such as the general fund, Alaska Permanent Fund, vehicle registration fees, or other methods.

**Response:** The Trust is self-funded and receives no General Fund money. Instead, all funding comes from fees, rental payments, and investments. Changes would have to be made by the legislature. For more information of Trust revenues and financial activity please review the 2018 Annual report at: <https://alaskamentalhealthtrust.org/alaska-mental-health-trust-authority/resources/annual-report/>.

**Comment:** A number of comments stated that there is a growing body of research which points to the positive mental health outcomes achieved by connecting people with various developmental disabilities, brain injuries, and illnesses to outdoor recreation. Therefore, the activities covered under the Generally Allowed uses are compatible with the purpose of the Trust and its beneficiaries and therefore a general permit structure is not needed.

**Response:** The TLO is mandated by law to abide by trust principles and in accordance with the Mental Health Enabling Act of 1956 to maximize the long-term revenue from trust land;

protect the corpus; protect and enhance the long-term productivity of trust land; encourage diversity of revenue-producing uses of trust land; and manage trust land prudently, efficiently, and with accountability to the trust and its beneficiaries. The general permit is intended to provide an easy legal option to expand motorized recreation and camping opportunities on Trust land to anyone wanting to use the land in a responsible manner, including Trust beneficiaries.

**Comment:** One comment wants the Trust to focus more on the mental health situation in Alaska.

**Response:** The TLO is contracted exclusively by the Alaska Mental Health Trust Authority ("Trust") to manage its approximately one million acres of land and other non-cash assets to generate revenue to support the Trust. Decisions approving the use of Trust lands and resources are made solely in the interest of the Trust and its beneficiaries in line with trust principles and the Alaska Mental Health Enabling Act. Revenue collected from Trust land, including from a general permit, is used according to law, to support the Trust and its beneficiaries and the mental health program in Alaska. The board of trustees determines how to spend those funds to, among other things, provide leadership in the advocacy, planning, implementing and funding of services and programs for Trust beneficiaries.

For more information on Trust programs and beneficiary groups the Trust has released Alaska's Comprehensive Integrated Mental Health Program Plan 2020-2024 which can be found at: <http://dhss.alaska.gov/Commissioner/Pages/MentalHealth/default.aspx>.

**Comment:** A number of comments had concerns that the general permit would reduce access or charge a fee to use subsistence resources.

**Response:** As stated in the Best Interest Decision, the current Trust land recreation use policy allows the public to use Trust land without a permit for hunting, fishing, and other recreational activities, provided the activities are day use only, non-commercial, non-motorized, and in compliance with applicable state, federal, and local laws. All other uses require written permission.

As proposed, the general permit would provide greater access to subsistence users on Trust land by allowing motorized access and overnight camping through a general permit rather than a single use or individual permit. A fee is a necessity to meet trust principles when authorizing more than an insignificant use of Trust land.

**Comment:** A number of comments requested clarification of what constituted a "household" for purposes of who can be covered under a single general permit.

**Response:** It is a requirement that the permit holder be present while on Trust land and have a physical copy of the permit with them while recreating on Trust land. Any member of the permit holder's immediate family may accompany the permit holder while on Trust land.

**Comment:** A number of comments expressed concern that the Trust is closing valid existing rights-of-ways including public easements.

**Response:** As stated in the Best Interest Decision the general permit will not restrict access across valid existing rights-of-ways such as RS2477s or other legally established public easements that cross Trust land.

**Comment:** A number of comments suggested that motorized uses across Trust land causes damage to vegetation and sensitive wetlands and that management principles that ensure Trust lands are maintained, assets inventoried, and value is retained is in the best interest of the Trust and its beneficiaries. They suggest that the proposed fees are insufficient to cover the costs of the damage caused by motorized uses.

**Response:** Stipulations in the general permit will require activities be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Particular attention must be paid to prevent pollution and siltation of streams, lakes, ponds, seeps and marshes, and to prevent disturbances to fish and wildlife populations and habitats. If it is determined that general permit uses are causing unreasonable or excess damage, limitations and fees are some of the aspects of general permits that can be reviewed and modified if necessary.

**Comment:** A number of comments support TLO implementing a personal use or general permit on Trust land.

**Response:** Comments noted.

**Comment:** A number of comments were concerned that commercial activities, such as commercial firewood harvest or commercial recreation, would be allowed under the general permit.

**Response:** The general permit only applies for personal recreational use and does not authorize commercial use. The TLO may authorize commercial activities by individual permit, and applicants are encouraged to use the TLO's online land use application, which can be found at: <https://alaskamentalhealthtrust.org/trust-land-office/land-sales/land-use-application/>. The TLO considers all commercial activities conducted on Trust land without written authorization to be in trespass.

**Comment:** A number of comments recommended that non-motorized users also be required to obtain a general permit and pay a fee to use Trust land.

**Response:** The TLO does not intend to require a general permit for day use, non-motorized, noncommercial activities. However, a general permit would be required if a non-motorized user wanted to camp on Trust land in excess of day-use.

**Comment:** A number of comments stated that ATV clubs promote safe riding and respect for the environment by grooming trails and hosting cleanup rides, and that requiring an annual fee is a disservice to club members.

**Response:** Any TLO decision pertaining to the use of Trust land that is based upon general public interests likely would violate Trust management responsibilities as accepted by the Territory of Alaska under the 1956 Alaska Mental Health Enabling Act, as further clarified by the 1994 Alaska Mental Health Trust litigation settlement and the associated State of Alaska legislation. Regulation 11 AAC 99.020(b) requires Trust land to be managed "solely in the best interest of the Alaska Mental Health Trust and its beneficiaries."

The TLO is appreciative of the efforts of ATV clubs to encourage respectful stewardship of lands. Clubs wishing to groom, maintain, or improve trails located on Trust land should contact TLO directly to determine if those activities require a written authorization.

**Comment:** A number of comments were against a weight limit of 1,500 pounds curb weight for off road vehicles as described by the general permit, asserting that "damage to the land stems more from wanton abuse and disrespect, than the size of the vehicle."

**Response:** The weight limit restriction is at a threshold where a prudent rider is unlikely to adversely impact Trust land. Users who wish to use vehicles with a curb weight greater than 1,500 pounds may apply for individual authorizations.

**Comment:** One comment expressed concern that the general permit would be required to "walk across Trust land to access State or Federal land".

**Response:** As stated in the Best Interest Decision, the current Trust land recreation use policy allows the public to use Trust land without a permit for hunting, fishing, and other recreational activities, provided the activities are day use only, non-commercial, non-motorized, and in compliance with applicable state, federal, and local laws. All other uses require written permission.

Implementation of a non-commercial recreational use general permit would provide additional options for the public to cross Trust land to access other state, federal, and private land.

**Comment:** A number of comments expressed concern that it would not be fair to charge people to cross land owned by the Trust to access their private property in an established subdivision.

**Response:** Physical trails and roads will not always be located in legal easements or rights-of-ways. Each platted subdivision generally has legal ingress and egress points that allow the landowners to access their property without trespassing on an adjacent landowner's property. In some instances, the physical location of the existing road or trail may not be located within these legal rights-of-ways and are in trespass. The roads should be relocated so that they are in legal easements or a separate easement may be authorized for motorized uses where the road is physically located. Other forms of non-motorized access continue to be allowed under TLO's recreation use policy.

**Comment:** Six comments stated that they did not believe TLO followed the public process or was in compliance with the Trust Authority's By-Laws or the open meetings act.

**Response:** TLO followed the decision making and public processes under 11 AAC 99, including consultation with the Trust Authority, 30-day public notice, and direct notification to municipalities and Alaska Native regional nonprofit corporations. The board meetings were consistent with the Trust Authority's by-laws and the open meetings act.

**Comment:** One comment stated that "disallowing or limiting the use of mooring buoys, floats, docks, boat haul outs, floating breakwaters, or boathouses under certain conditions, and disallowing or limiting the placement of riprap or other suitable bank stabilization material to prevent erosion of a contiguous upland parcel is problematic".

**Response:** Crossing or using Trust owned uplands to access waters for any purpose other than personal recreation would not be allowed under the general permit but may be authorized through a revocable license or lease. Placement of riprap or other bank stabilization materials to prevent erosion on uplands owned by the Trust, although not allowed under a general permit, could be allowed under separate written authorization.

**Comment:** Due to various infrastructure projects including acquisitions, disposals, studies, maintenance, and similar activities DOT&PF requests that TLO contact the appropriate Regional Right-of-Way or Maintenance & Operations office for more information or route review requests before issuing general permits.

**Response:** TLO has complied with the public process under 11 AAC 99.050 when issuing general permits. The intention of the general permit is to create an online efficiency for the public and the TLO and the issuance of the general permits to individuals will be done without additional administrative process. General permits only apply to Trust land and not land managed by other public or private entities.

**Comment:** A number of comments expressed concern that obtaining a general permit would be overly cumbersome or inconvenient for the public.

**Response:** This process is intended to be less cumbersome and easier for the public than obtaining an individual permit. The TLO will provide a convenient online process where individuals may select the desired general permit, provide a minimal amount of information specific to the use, and make a payment, with immediate issuance of a receipt recognizing the scope of the intended use for the general permit they selected. This does not require a visit to the office or direct contact with TLO staff. Once implemented the general permit will be found on the Trust Land Office web site at <https://alaskamentalhealthtrust.org/trust-land-office/>.

**Comment:** One comment expressed concern that there is plenty of funding for mental health programs, however, the programs may not be adequate.

**Response:** It is the purpose of the Alaska Mental Health Trust Authority to provide leadership in the advocacy, planning, implementing and funding of services and programs for Trust beneficiaries. Although it only provides a portion of the funding for mental health services in Alaska. Per Alaska law, the purpose of the Trust Authority is to ensure an integrated comprehensive mental health program. As such, the Trust Authority coordinates with and administers funds to partners and programs that work to ensure community-based services are available to Trust beneficiaries: Alaskans who experience mental illness, developmental disabilities, chronic alcohol or drug addiction, Alzheimer's disease and related dementia, and/or traumatic brain injuries. The Trust Authority as well as the state has a fiduciary obligation to use trust land to generate income for those purposes. There are programmatic demands that exceed the existing budget constraints. For more information about mental health programs contact the Trust Authority or the Alaska Department of Health and Social Services.

**Comment:** One comment stated that Trust land "is already costing the taxpayers of the state by removing the million acres controlled by the Trust from the tax rolls".

**Response:** Trust land, like general state land, is exempt from taxation under Article 9, Section 4 of the Alaska Constitution, which states in part "The real and personal property of

the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law." In turn, revenue from trust land is used to support the mental health programs of the state.

**Comment:** A number of comments were seeking clarification if the fees would be used for beneficiary programs or used to maintain trails.

**Response:** Revenue generated by the TLO is allocated by the Alaska Mental Health Trust Authority to either the principal Trust fund or the trust settlement income account, to be used as required by law. Reoccurring revenue from TLO lease or rent payments, a portion of timber sales, certain real estate proceeds, interest payments, and fees (including the proposed general permit) are considered spendable income. These sources of revenue are used to fund part of the Trust's annual budget including the Alaska Mental Health Trust Authority and the TLO operations, beneficiary programs and advocacy, and for the protection and enhancement of the long-term productivity of Trust land. The decision of how Trust funds will be used is made by the board of trustees.

**Comment:** A number of comments requested that the public process be extended, or the final decision delayed until more public input could be solicited.

**Response:** The public notice and Best Interest Decision (BID) requested commenters address whether they 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. The majority of the comments did not address these concerns and were instead directed towards the interests of the general public. The TLO believes that the comments received adequately reflect the public concerns. TLO does take all comments seriously and has modified the final decision in response to some comments, while still addressing the best interest of the Trust and its beneficiaries.

**Comment:** A number of comments stated that there were no maps of Trust land or that the boundaries of Trust land were not posted.

**Response:** The Best Interest Decision and public notice directed people to the TLO website where ownership information is readily accessible. A map of Trust land may be found at: <https://alaskamentalthrust.org/trust-land-office/land-sales/lands-and-maps/>. More information on Trust land can be located at TLO's office located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503; or at Department of Natural Resources, Public Information Centers in Fairbanks, Anchorage, or Juneau.

**Comment:** One comment stated that "motorized recreation is the most popular and valuable purpose for these land areas. Restricting off-road motorized recreation on these trails as proposed would restrict a potential revenue-producing use of TLO [Trust] land."

**Response:** These types of uses currently require an individual, separate permit from the TLO. Implementation of a general permit would allow these uses to occur more easily and provide additional access to Trust land that does not currently exist, while still generating revenue for the Trust and its beneficiaries. Motorized recreation is not the most valuable use of all Trust lands as the TLO has generated much more revenue from other uses.

**Comment:** One comment stated "the Trust is to prioritize funding requests to increase beneficiary employment & engagement. There is no mention of the number of State



beneficiaries who are provided employment and engagement in the outdoor motorized recreation industry. The snowmachine/ATV retail businesses in Alaska are increasing, as are recreational motorized tourist adventures. Many of these jobs provide year around as well as seasonal employment opportunity that may go to beneficiaries of the Trust. This information should be considered when determining what is in the best interest of the Trust”.

**Response:** The TLO is responsible for revenue generation while the Alaska Mental Health Trust Authority and board of trustees determine how to distribute and use funds to most effectively fulfill the goals of the comprehensive integrated mental health plan.

**Comment:** A number of comments were concerned that the general permit as proposed was discriminating against "suspect class groups" including the elderly and disabled Alaskans.

**Response:** The proposed general permit provides opportunity for most users to recreate on Trust land by authorizing certain noncommercial uses.

**Comment:** One comment expressed concern that the Trust was acquiring commercial real estate property is not what the Trust was intended for and should be more cautious with funding.

**Response:** Additional information about the Trust budget and expenditures can be found in the 2018 Annual report at <https://alaskamentalhealthtrust.org/alaska-mental-health-trust-authority/resources/annual-report/> or by contacting the Trust Authority.

**Trust Authority Consultation:** The Alaska Mental Health Trust Authority was consulted on this matter on May 20, 2019.

**Modifications:** The TLO consider all timely comments, but none demonstrated why the Best Interest Decision dated May 20, 2019, should be substantively modified in any way to better serve the best interest of the Trust and its beneficiaries. In response to comments, however, the Executive Director has determined that the following change to the Terms and Conditions shall be made to that document for added clarity, to adjust the fees and fee structure, and to provide greater flexibility to the public.

**Terms and Conditions:**

The modified, initial general permit fee schedule will not exceed the following amounts:

- Non-Commercial Recreation – Daily, \$10/day
- Non-Commercial Recreation – Weekly, \$20/week
- Non-Commercial Recreation – Monthly, \$40/month
- Non-Commercial Recreation – Annually, \$300
- Non-Commercial Personal Firewood Harvest, \$30/cord or \$250 for ten cords

Recreational trapping activities are considered non-commercial recreation. The Executive Director reserves the right to modify fees in the future.

**Final Decision of the Executive Director:** Considering all of the above, the Executive Director of the Trust Land Office hereby adopts the Best Interest Decision dated May 20, 2019, as modified above, as final.

**Reconsideration:** Persons who submitted timely written comments during the notice period that ended Monday, June 24, 2019 at 4:30 PM, are eligible to request reconsideration of this final best interest

decision under 11 AAC 99.060(b) within 20 calendar days after publication of the notice or receipt of the final decision, whichever is earlier. A request for reconsideration must be submitted in writing to the Executive Director. Before filing an appeal to the Superior Court under AS 44.62.560, a person must be eligible to request and must actually request reconsideration within the time specified above.

The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the written request for reconsideration. If the Executive Director takes no action during the 20-day period following the request, 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.

**APPROVED:**

  
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Wyn Menefee  
Executive Director

  
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Date