

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Term Utility Easement – Sterling
MHT #9200762

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 issue a thirty year term utility easement on certain Trust land to the Alaska Energy Authority. 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 Sterling, Alaska, and is more particularly described as: Southern 100' of SW1/4SW1/4SW1/4, located within Section 1, Township 5 North, Range 8 West, Seward Meridian, containing approximately 1.6 acres (MH Parcel(s) SM-0494-A).

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, September 16, 2020**. Comments should be submitted to the TLO at **2600 Cordova Street, Suite 201, 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 <https://alaskamentalhealthtrust.org/trust-land-office/>. 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.

DocuSigned by:

Jusdi Doucet

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Jusdi Doucet

Acting Executive Director

8/13/2020

Date

Published Kenai Peninsula Clarion: 08/16/2020

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Alaska Energy Authority Term Utility Easement – Sterling

MHT: **9200762**
MH Parcel: **SM-0494-A**

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. Thirty-year (30) term utility easement authorizing existing 115kv transmission line near Sterling (See Exhibit A – Map) to facilitate the transfer of ownership from Homer Electric Association (authorized under ADL 38269) to Alaska Energy Authority.

II. Applicant/File #. Alaska Energy Authority / MHT 9200762.

III. Subject Property.

A. Legal Description. T. 005 N., R. 008 W., Seward Meridian, Alaska
Section 1: SW1/4SW1/4SW1/4;

Containing 10.00 acres, more or less.

According to the survey plat accepted by the United States Department of Interior, General Land Office in Washington, D.C. on June 24, 1943.

Easement will occupy an area along the length of the southern boundary extending 100’ to the North from the southern boundary, containing 1.6 acres, more or less.

B. Settlement Parcel Number(s). SM-0494-A

C. Site Characteristics/Primary Resource Values. SM-0494-A is a heavily forested parcel with rolling topography. Both ADL 206934, an interagency land

management agreement with the Department of Administration for a microwave repeater tower, and ADL 38269, a ROW permit to Homer Electric Association for the existing powerline and the one which this term easement is meant to replace, were encumbrances on the parcel when it was conveyed and together occupy all usable land within the parcel.

D. Historical and Existing Uses of the Property. This parcel was conveyed to the Trust in 1996 with the existing, mentioned above, uses in place.

E. Adjacent Land Use Trends. The surrounding area is mostly vacant, raw land with rural residential or recreational housing interspersed.

F. Previous State Plans/Classifications. None.

G. Existing Plans Affecting the Subject Parcel. These parcels are located in the Rural Zoning District of the Kenai Peninsula Borough and land use is unrestricted.

H. Apparent Highest and Best Use. Existing high voltage transmission line.

IV. Proposal Background. The applicant, Alaska Energy Authority, applied to purchase a utility easement to authorize an existing high voltage transmission line being purchased from Homer Electric Association.

V. Terms and Conditions. A modified easement agreement will be used for the disposal.

A. Term. An initial term of 30 years with the option to extend.

B. Considerations. The Grantee shall pay an annual fee to the Grantor in the amount of \$1,250/year for 30 years.

C. Co-location. The Grantee may not co-locate third party equipment without TLO approval.

VI. Resource Management Considerations. The proposed action is consistent with the key provisions of the Resource Management Strategy guidelines. Protection of the corpus and long-term productivity will be enhanced by terms and conditions in the Easement. Secondary and cumulative impacts are reduced by the terms and conditions. The Easement will not negatively affect the Trust's opportunity to maximize revenues from this site or adjacent Trust lands over time.

VII. Alternatives.

A. Do Nothing. Doing nothing would result in a loss of income-generating revenue within an existing, previously constructed, utility transmission line that is currently being used under ADL 38269 by Homer Electric Association.

B. Alternate Development. This parcel is heavily encumbered by the existing transmission line being adjudicated in this decision and an interagency land management agreement to Department of Administration for a microwave repeater (ADL 206934) that occupies the remaining usable land on the parcel. Alternate development is unfeasible due to existing uses. No interest has been expressed for material or mineral development.

- C. **Offer parcel for competitive sale as-is.** Due to existing encumbrances this parcel is not developable in an alternative manner and therefore not a suitable candidate for competitive sale.

VIII. Risk Management Considerations.

- A. **Performance Risks.** No additional land disturbance, aside from normal maintenance, is anticipated. The standard easement indemnification language should mitigate unknown liabilities.
- B. **Environmental Risks.** Alaska Energy Authority, as a state agency, is self-insured and shall be responsible for environmental risks associated with use of this access easement.
- 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.

IX. Due Diligence.

- A. **Site Inspection.** TLO staff inspected the parcel on June 3, 2019.
- B. **Valuation.** The Trust will receive \$1,250.00/year as an annual fee for the 30-year term. Fee based on TLO fee structure.
- C. **Terms and Conditions Review.** The proposed Easement will be a standard TLO easement document which is periodically reviewed by the Department of Law or TLO General Counsel to mitigate exposure to risk.

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 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. **Trust Authority Consultation.** TLO consultation is defined in statute and regulation under AS 37.14.009(a)(2)(C) and 11 AAC 99.050 and clarified under 11 AAC 99.030(d)

which requires the executive director to consult before issuing a public notice of a written decision of best interest.

- 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 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). This request must be accompanied by the fee established by the Executive Director under 11 AAC 99.130, which has been set at \$500, to be eligible for reconsideration. 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 201, 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: <https://alaskamentalhealthtrust.org/trust-land-office/>.

XVI. APPROVED:

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Jusdi Doucet
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Jusdi Doucet
Acting Executive Director
Alaska Mental Health Trust Land Office

8/10/2020

Date

XVII. 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.

DocuSigned by:

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

8/11/2020

Date

**Exhibit A – Map
MHT 9200762**



-  MHT 9200762
-  Mental Health Trust Parcels

