

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Sale of Material Resources - Haines
MHT #9101006

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 sale of Trust gravel material resources to Colaska Inc. for the Haines Highway Reconstruction MP 12.2 to MP 20 Project. 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 to the community of Haines and Klukwan, at Mile Post 17 of the Haines Highway, and is more particularly described as: Lot 8 and Lot 9, located within Section 15, Township 029 South, Range 057 East, Copper River Meridian, containing approximately 66.67 acres (MH Parcel(s) CRM-0386 and CRM-0387).


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, October 26, 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).

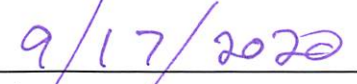
Copies of the written decision are available at the Trust Land Office, or at <https://alaskamentalhealthtrust.org/trust-land-office/>. If you have any questions concerning this action, please contact the Trust Land Office at (907) 269-8658.

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.



Wyn Menefee
Executive Director



Date
Published Chilkat Valley News: 09/24/2020

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Negotiated Sale of Material Resources - Haines

MHT: #9101006

MH Parcel(s): CRM-0386 & CRM-0387

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 a negotiated sale of gravel material - gravel extraction and reclamation.

II. Applicant/File #. Colas dba Colaska, Inc. / MHT 9101006

III. Subject Property.

A. Legal Description. Lots 8 and 9 within Township 029S, Range 057E, Section 15 of the Copper River Meridian, containing 66.67 acres more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on August 6, 1953.

B. Settlement Parcel Number(s). CRM-0386 and CRM-0387

C. Site Characteristics/Primary Resource Values. The site is located approximately 17 miles north of the community of Haines, around Milepost 17 of the Haines Highway. The site lies at the base of Mount Kashagnak within the Takshanak Mountain Range, east of the Haines Highway and Chilkat River. The elevation rises abruptly from approximately 200 feet above sea level to over 1,500 feet above sea level at the site's northeastern corner. The topography is mountainous, and the vegetated slopes are comprised primarily of scrub brush at

higher elevation and mixed coniferous and deciduous vegetation representative of the region at lower elevation.

The primary resource value for the two parcels lies within the subsurface estate in primarily gravel material, which may contain incident gold and other mineral constituents. Gravel material remains the primary resource value as the topography does not lend to alternative uses such as mineral development, commercial development, or recreation. Secondary resource value is by disposal through a land sale.

D. Historical and Existing Uses of the Property. The subject property is vacant and undeveloped. A portion of parcel CRM-0386 was conveyed to the Alaska Dept. of Transportation (ADOT) to be included in the Haines Highway Right of Way. A perpetual easement also exists along the highway margin skirting both parcels. A revocable land use license (MHT 9100986) was issued to ADOT in February of 2020 for purposes of providing a temporary worksite associated with the improvements of the Haines Highway Reconstruction MP 12.2-23, Phase 2 project. The temporary license will expire naturally at the close of the project.

E. Adjacent Land Use Trends. Adjacent lands are undeveloped to the north, northeast and northwest of parcel CRM-0387. A small adjacent parcel (CRM-0392) to the south of CRM-0387 was sold to a private party. The parcel is in a remote and undeveloped area that is sparsely populated. The nearest residential subdivision is to the north at Milepost 18.

F. Previous State Plans/Classifications. None.

G. Existing Plans Affecting the Subject Parcel. The parcels are excluded from the Haines State Forest Plan which manages adjacent State lands.

H. Apparent Highest and Best Use. In consideration of current market values and potential future demand of gravel material in the region, facilitating the sale of gravel material at this time supports the Trusts management principles for “best market” resources.

IV. Proposal Background. Colaska would like to purchase approximately 400,000 cubic yards of gravel material in support of the Haines Highway Improvement MP 12.2-23, Phase 2 Project (Project No. Z686060000). The Project is a federally funded Alaska Department of Transportation (ADOT) construction project beginning in late Fall 2020 and continuing through the 2023 construction season. The goal of the project is to bring the segment of road up to a 55 MPH design, which requires realigning, widening and straightening portions of the roadway. The improvement also includes consideration for places of cultural and historic significance, tourism opportunity, and wildlife viewing pull-outs.

The sale will encompass road construction grade gravel material located centrally to the project and will be supplementary to the material available to the contractor via the ADOT right-of-way.

V. Terms and Conditions. The sale will be for a period of three years which may be extended to accommodate for potential construction delays. Gravel material will be held

at a royalty rate of \$1.75/yd³. Payments are to be made monthly by accounting for truck loads, with a final quantity to be determined based on a cross section survey of the excavated area. Standard sale and reclamation conditions will apply.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust Land” (RMS), which was adopted March 2016 in consultation with the Trust and provides for the TLO to focus first on resources at the high end of market values (“best markets”). Given the current market values of material, and in consideration of the future potential demand for gravel material in this quantity, facilitating this sale supports the Trusts’ objectives of diversifying revenues of resources.

VII. Alternatives.

1. **Do Nothing:** This alternative assumes that the sale of material will not be maximized by extraction at this time. Material values are consistent, however, demand for material especially in this quantity, is inconsistent. There is no perceived near-term demand beyond the road construction project.
2. **Alternative Development:** Due to the topography and location, the parcels do not lend themselves to other development opportunities that would produce a return to the Trust comparable to a material sale of this size.
3. **Proposed Alternative:** This preferred alternative will provide the Trust with revenue. The material sale should not adversely impact other future development or uses of the parcels post reclamation. Facilitating the material use now will ensure the Trust capitalizes on the material demand for this project. Future demand for material quantities of this size, at this location, is unlikely to occur in the near term.

VIII. Risk Management Considerations.

- A. **Performance Risks.** Performance risk will be mitigated by appropriate bonding and insurance. Performance of duties under the sale contract, including reclamation, will be monitored by the Trust Land Office and the Alaska Department of Transportation and Public Facilities as it may pertain to the Haines Highway Reconstruction MP 12.2 to 23, Phase 2 project.
- B. **Environmental Risks.** There are minimal anticipated environmental risks to this activity due to proactive mitigation. A Storm Water Pollution Prevention Plan (SWPPP) has been developed to mitigate potential storm and surface water pollution for the project area. The contractor will develop and maintain a Hazardous Materials Control Plan to mitigate potential fuel and hydraulic spills from impacting soils and waterways. Erosion control measures and rigorous inspection will be utilized to mitigate potential erosional features. The Project, which encompasses the location of CRM-0386 and CRM-0387 was scoped in an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).
- C. **Public Concerns.** The Project has been rigorously scoped by the ADOT and the U.S. Army Corps of Engineers. The Trust Land Office will offer a 30-day public comment period as outlined below.

IX. Due Diligence.

- A. Site Inspection.** The contractor has inspected the site for the proposed use. The contractor has relevant experience and is a qualified person to conduct such evaluation. Trust Land Office staff have observed the site location and are familiar with its characteristics. Staff have reviewed cross-sectional plans for the site.
- B. Valuation.** The royalty rate was established in consideration of competitive market values for the material and quantity required for the project.
- C. Terms and Conditions Review.** Terms and conditions of the sale are standard to material sale contract facilitated by the Trust Land Office. Any special Terms or Conditions deemed necessary to protect the Seller may require review by the Department of Law.

X. Authorities.

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99.
- B. Inconsistency Determination.** As the proposed negotiated 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). 11 AAC 71 does not apply to Trust land as it does not consider the best interest of the Trust or its management principals.

XI. Trust Authority Consultation. The Alaska Mental Health Trust Board of Trustees was consulted on August 28, 2020, and the board of trustees concurred with the negotiated sale of gravel materials subject to the outcome of the notice process.

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.

- A. 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. This sale will be conducted on a non-competitive basis. A competitive disposal is not in the best interest of the Trust and its beneficiaries due to the ADOT project bidding process. Should the Trust have conducted a competitive sale, the apparent high bidder for the Trust material would unlikely be the lowest bidder for ADOT and therefore the TLO would miss the opportunity for a large scale material sale related to the ADOT project.

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 Property must submit their proposals during the 30-day public notice period. Instructions to apply can be found online at <https://alaskamentalhealthtrust.org/trust-land-office/land-sales/land-use-application/>. To be considered a qualified competing interest, applications must include the application fee, a formal Letter of Intent to include an offer price that matches or exceeds the current offer of \$700,000 for the gravel material, a deposit of 10% of the offered price in certified funds. In the event that 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). 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:



Wyn Menefee
Executive Director
Alaska Mental Health Trust Land Office

9/17/2020

Date