

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Negotiated Land Sale – Nikiski
MHT #9200763

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 land sale of certain Trust land to David Schilling. 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 Nikiski, Alaska, and is more particularly described as: Lot 10, located within Section 9, Township 11 North, Range 11 West, Seward Meridian, containing approximately 11.55 acres (MH Parcel: SM-1119).

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, November 30, 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:



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Wyn Menefee
Executive Director

10/26/2020

Date

Published Kenai Peninsula Clarion: 10/29/2020

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Negotiated Land Sale – Nikiski

MHT: **9200763**
MH Parcel: **SM-1119**

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. Disposal of one Trust parcel through a negotiated sale in Nikiski (See Exhibit A – Map) at a price of \$169,650.00.

II. Applicant/File #. David Louis Schilling / MHT 9200763.

III. Subject Property.

A. Legal Description. T. 007 N., R. 011 W., Seward Meridian, Alaska Section 9: Lot 10; containing 11.55 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 May 12, 1966.

B. Settlement Parcel Number(s). SM-1119

C. Site Characteristics/Primary Resource Values. SM-1119 is heavily forested with rolling topography and waterfrontage on Two Fish Lake on the west boundary. The parcel is irregularly shaped and does not contain any classified upland wetlands. Legal access exists in the form of a Section Line Easement (SLE) along the southern boundary. No access has been constructed within the SLE and would likely be challenging to build from the east due to the wet topography of the adjacent parcel. The SLE would be impossible to construct from the West due to crossing Two Fish Lake.

- D. Historical and Existing Uses of the Property.** There has been no historical use of the parcel, and there are no existing uses. The Department of Natural Resources issued a Quitclaim Deed for this parcel to the Trust in 1996.
- E. Adjacent Land Use Trends.** The parcel is bounded by Two Fish Lake, a mostly private lake with no constructed public access, on its west and north boundaries. The parcel to the east is vacant, raw land owned by the Bureau of Indian Affairs with the only legal access being an undeveloped SLE, which runs along the southern boundary. The parcel to the south is privately owned by the applicant and remains vacant, raw land. Most of the surrounding area is vacant, raw land with rural residential or recreational housing interspersed.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** This parcel is in the Rural Zoning District of the Kenai Peninsula Borough and land use is unrestricted.
- H. Apparent Highest and Best Use.** Rural residential or recreation.
- IV. Proposal Background.** The applicant, David Schilling, requested to purchase the property through negotiated sale and agreed to pay a premium of 30% above the appraised fair market value based on the hypothetical assumption that the parcel was subdivided and had platted legal access.
- V. Terms and Conditions.** The parcel will be sold via a land sale contract at the time of closing. The terms and conditions include the following:
- A.** Parcel will be sold “as is” and “where is” with no guarantees as to the suitability for any intended use.
 - B.** Purchaser agrees to pay for all escrow, title, and other closing costs including title insurance if title insurance is desired by the Purchaser.
 - C.** Purchaser agrees to reimburse the TLO for the cost of the appraisal in the amount of \$4,500 at closing.
- VI. Resource Management Considerations.** The proposal is consistent with the “Resource Management Strategy for Trust Land,” which was adopted March 2016 in consultation with the Trust and provides for the TLO to maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets. Experience has demonstrated that it is unlikely that this parcel will appreciate at a rate that would justify holding it for a later sale. When this parcel would eventual be developed for sale in the future, it is likely that a subdivision, though an expensive enterprise due to surveying, engineering, platting, and other related costs, would be done to maximize revenues from the parcel. Typically, the cumulative total revenue of selling multiple subdivided lots is greater than the revenue earned from selling a larger parcel as-is. Waiting and subdividing in the future would be costly and would prevent the Trust from realizing the benefit of this proposed sale based on a hypothetical subdivision without the costs associated with completing it. It is also not cost effective for the TLO to hold this parcel and incur the associated management costs and liabilities.

VII. Alternatives.

- A. Do nothing or offer sometime in the future.** This alternative would delay receipt of revenues from sales, income from land sale contract interest, income from Trust principle interest, and could result in additional costs and risks to the Trust without significant increases in value.
- B. Leasing the parcel.** Management costs to the Trust will generally decrease on the properties through a sale.
- C. Alternate development.** Kenai Peninsula Borough ordinances to subdivide, plat, and construct road and utility infrastructure makes development of subdivision cost nearly prohibitive. No interest has been expressed for material or mineral development.

VIII. Risk Management Considerations.

- A. Performance Risks.** Performance risks will be mitigated through the TLO's Purchase and Sale Agreement, Land Sale Contract, and Quitclaim Deed.
- B. Environmental Risks.** There are no known environmental risks associated with the proposed sale.
- C. Public Concerns.** Subject to comments resulting from the public notice, there are no known public concerns.

IX. Due Diligence.

- A. Site Inspection.** TLO staff inspected the parcel in August 2020. In addition, a detailed examination was done by the appraiser of all available data pertaining to the parcel when the valuation was completed in October 2020.
- B. Valuation.** An appraisal for SM-1119 was completed in October 2020 and the determined valuation of fair market value, based on the hypothetical assumption that the parcel was subdivided and had platted legal access, was \$130,500.00.
- C. Terms and Conditions Review.** An agreement for the purchase and sale of the property was completed on October 8, 2020. The standard TLO land sale contract documents have been reviewed by 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 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).

- i. Provisions of law applicable to other state land that are determined to apply to trust land by the executive director, on a case-by-case basis include:
 1. AS 38.05.035(i). persons eligible to file a request for reconsiderations
 2. 11 AAC 02.030 (a) and (e), filing request for reconsideration
 3. 11 AAC 02.040 timely filing

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.

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. This property is being sold at a premium of 30% above the appraised value, based on the hypothetical assumption that the parcel has been subdivided and has platted access, to compensate for not selling the land through a competitive process after subdividing. The cost of subdividing the parcel, given the constructible access issues and platting requirements, is likely to be greater than the benefit to the value of the parcel if subdivided, and the value increase if the parcel were subdivided is being captured due to the hypothetical assumptions of the appraisal. Given the price offered based on hypothetical assumptions, along with the challenging topography, and development cost considerations, a non-competitive disposal is in the best interests 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.

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 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.)


- 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: www.mhtrustland.org

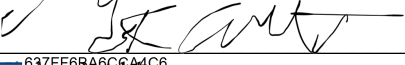
XVI. APPROVED:

DocuSigned by:

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Wyn Menefee
Executive Director
Alaska Mental Health Trust Land Office

10/26/2020

Date

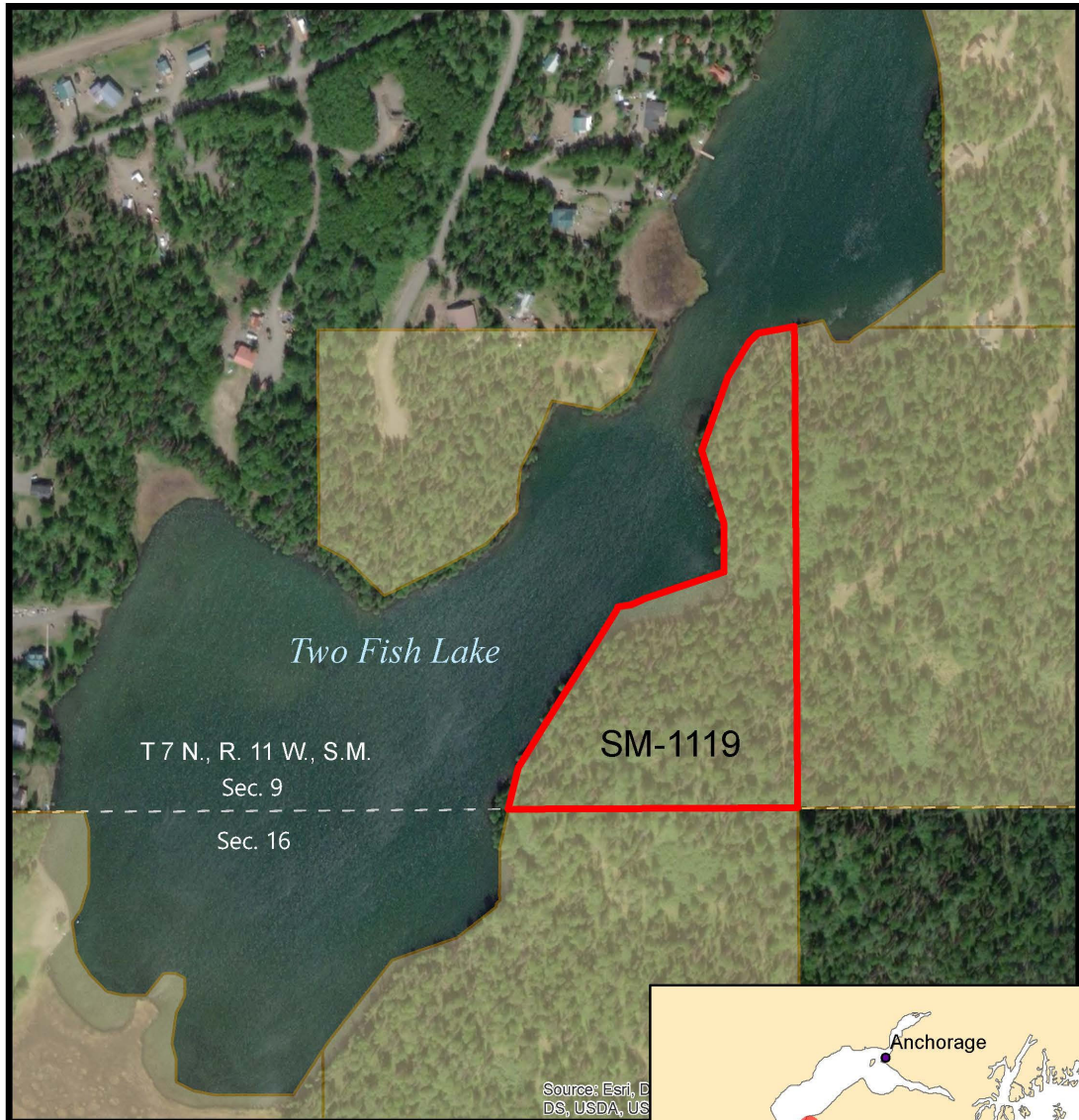
In accordance with 11 AAC 99.030(d) and the policies of the Alaska Mental Health Trust Authority, the Trust Land Office has consulted with me, and received concurrence to proceed with the above transaction.

DocuSigned by:

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



10/26/2020

Date

Exhibit A – Map



MHT 9200763
MH Parcel Number: SM-1119

-  MHT 9200763
-  Mental Health Trust Parcels



Date Printed: 10/16/2020

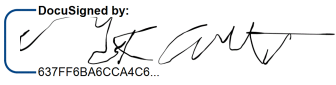
Certificate Of Completion

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Document Pages: 7	Signatures: 2
Certificate Pages: 4	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Disabled	Becky Carpenter
Time Zone: (UTC-09:00) Alaska	PO Box 110206
	Juneau, AK 99811
	becky.carpenter@alaska.gov
	IP Address: 158.145.14.26

Record Tracking

Status: Original	Holder: Becky Carpenter	Location: DocuSign
10/26/2020 8:24:16 AM	becky.carpenter@alaska.gov	
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Storage Appliance Status: Connected	Pool: State of Alaska	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Mike Abbott mike.abbott@alaska.gov CEO Security Level: Email, Account Authentication (None)	 <small>DocuSigned by:</small> <small>637FF6BA6CCA4C6...</small> Signature Adoption: Drawn on Device Using IP Address: 69.178.100.59	Sent: 10/26/2020 8:26:08 AM Viewed: 10/26/2020 8:42:56 AM Signed: 10/26/2020 8:43:27 AM

Electronic Record and Signature Disclosure:

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 Company Name: State of Alaska

Wyn Menefee wyn.menefee@alaska.gov State of Alaska Security Level: Email, Account Authentication (None)	 <small>DocuSigned by:</small> <small>6D5A4CD87542416...</small> Signature Adoption: Pre-selected Style Using IP Address: 158.145.14.25	Sent: 10/26/2020 8:26:08 AM Viewed: 10/26/2020 8:54:52 AM Signed: 10/26/2020 8:55:53 AM
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 Company Name: State of Alaska

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	10/26/2020 8:55:53 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

Please read this Electronic Records and Signature Disclosure (ERSD). It concerns your rights regarding electronically undertaking, and the conditions under which you and the State of Alaska agree to electronically undertake, the transaction to which it relates (the “TRANSACTION”).

Consent to Electronically Undertake the TRANSACTION

You can electronically undertake the TRANSACTION only if you confirm that you meet the following requirements by selecting the box next to “I agree to use electronic records and signature” (the “AGREE BOX”):

1. you can fully access and have read this ERSD;
2. you can fully access all of the information in the other TRANSACTION records;
3. you can retain all of the TRANSACTION records in a form that you will be able to fully access for later reference;
4. you consent to undertake the TRANSACTION electronically; and
5. you are authorized to undertake the TRANSACTION. (Please note that falsely undertaking the TRANSACTION may subject you to civil liabilities and penalties and/or to criminal penalties.)

If you cannot or are not willing to confirm each of these five things, do not select the AGREE BOX.

Withdrawing Consent

If you select the AGREE BOX, you can withdraw your consent to electronically undertake the TRANSACTION at any time before you complete the TRANSACTION: simply do not finalize it. The only consequence of withdrawing your consent is that you will not finalize the TRANSACTION.

If you select the AGREE BOX, your consent will apply only to this TRANSACTION. You must separately consent to electronically undertake any other transaction with the State of Alaska.

Paper Option for Undertaking the TRANSACTION

You may undertake the TRANSACTION with the State of Alaska using paper records. (State of Alaska employees who want to undertake the TRANSACTION in paper should contact the agency responsible for the TRANSACTION.) Print the paper records on the website of the State of Alaska agency responsible for the TRANSACTION, or request them from the agency. The State of Alaska homepage is at <http://alaska.gov/>.

Copies of TRANSACTION Records

After completing the TRANSACTION but before closing your web browser, you should download the TRANSACTION records. Or you can download the records within 30 days after

completing the TRANSACTION using the link in the DocuSign email sent to the email address you used to complete the TRANSACTION. The State of Alaska will not provide a paper copy of the TRANSACTION records as part of the TRANSACTION. Under the Alaska Public Records Act (APRA), AS 40.25.100–.295, you can request a copy from the agency responsible for the TRANSACTION, but if too much time has passed, the agency may no longer have the records when you make your request. If required under the APRA, the agency will charge a fee.

Required Hardware and Software

For the minimum system requirements to electronically undertake the TRANSACTION, including accessing and thereby retaining the TRANSACTION records, visit <https://support.docusign.com/guides/signer-guide-signing-system-requirements>. These requirements may change. In addition, you need access to an email account.

How to Contact the State of Alaska

To ask a question on this ERSD or the DocuSign document generated after you complete the TRANSACTION or on using DocuSign to electronically undertake the TRANSACTION, contact the Alaska Department of Administration at either of the following addresses:

State of Alaska
Department of Administration
550 West 7th Avenue
Suite 1970
Anchorage, AK 99501
Reference: DocuSign

doa.commissioner@alaska.gov
Subject: DocuSign

To ask any other question on the TRANSACTION records or to update the information for contacting you electronically, contact the State of Alaska agency responsible for the TRANSACTION using the contact information in the TRANSACTION records or, if those records contain no contact information, using the contact information on the agency's website. Again, the State of Alaska homepage is at <http://alaska.gov/>.