

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Negotiated Land Sale of Trust Parcels – Mt. Point Subdivision – Ketchikan
MHT 9100894

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 Harlan Heaton. 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 in the Ketchikan Gateway Borough, approximately 5 miles south of Ketchikan, and is more particularly described as:

T. 076 S., R. 091 E., COPPER RIVER MERIDIAN, ALASKA SECTIONS 2, 3, & 11 CONTAINING A TOTAL OF 7.238 ACRES, MORE OR LESS. ACCORDING TO THE AMENDED PLAT FILED IN THE KETCHIKAN RECORDING DISTRICT ON APRIL 21, 1982 AS PLAT 82-29.

Trust Parcels:

CRM-3319 (Plat 82-29, Lot 1, Block 1) – 0.624 acres
CRM-3320 (Plat 82-29, Lot 2, Block 1) – 0.613 acres
CRM-3321 (Plat 82-29, Lot 3, Block 1) – 0.709 acres
CRM-3322 (Plat 82-29, Lot 4, Block 1) – 0.679 acres
CRM-3323 (Plat 82-29, Lot 5, Block 1) – 0.754 acres
CRM-3333 (Plat 82-29, Lot 15, Block 1) – 0.594 acres

CRM-3336 (Plat 82-29, Lot 1, Block 2) – 0.72 acres
CRM-3337 (Plat 82-29, Lot 2, Block 2) – 0.603 acres
CRM-3339 (Plat 82-29, Lot 4, Block 2) – 0.596 acres
CRM-3340 (Plat 82-29, Lot 5, Block 2) – 0.605 acres
CRM-3346 (Plat 82-29, Lot 4, Block 4) – 0.741 acres

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, August 23rd, 2021. 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

7/20/2021

Date

Ketchikan Daily News: 07/22/2021

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Negotiated Land Sale of Trust Parcels – Mt. Point Subdivision - Ketchikan

MHT: 9100894
MH Parcels: CRM-3319, CRM-3320,
CRM-3321, CRM-3322, CRM-3323,
CRM-3333, CRM-3336, CRM-3337,
CRM-3339, CRM-3340, CRM-3346

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. Negotiated Land Sale.

II. Applicant/File #. Harlan Heaton/MHT 9100894.

III. Subject Property

A. Legal Description.

T. 076 S., R. 091 E., COPPER RIVER MERIDIAN, ALASKA SECTIONS 2, 3, & 11 CONTAINING A TOTAL OF 7.238 ACRES, MORE OR LESS.
ACCORDING TO THE AMENDED PLAT FILED IN THE KETCHIKAN RECORDING DISTRICT ON APRIL 21, 1982 AS PLAT 82-29.

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B. Settlement Parcel Numbers. CRM-3319, CRM-3320, CRM-3321, CRM-3322, CRM-3323, CRM-3333, CRM-3336, CRM-3337, CRM-3339, CRM-3340, CRM-3346

C. Site Characteristics/Primary Resource Values. The eleven subject Trust parcels are located south of Ketchikan, in the Mountain Point Subdivision. The portion of the subdivision where the lots are located is undeveloped; the roads are platted but not developed. The Mountain Point Boat Harbor is a short distance downhill from the subdivision on the South Tongass Highway. The parcels are forested with timber that is typical for the area. There are no utilities on the parcels. The primary resource value of the parcels is disposal through a land sale.

D. Historical and Existing Uses of the Property. The surveyed parcels are vacant and undeveloped, including the platted road easements. The subdivision survey provides platted public access and utility easements to each parcel. The primary historical and existing use of the parcels remains as vacant and undeveloped residential lots as part of the Mountain Point Subdivision.

E. Adjacent Land Use Trends. The overall area is rural residential.

F. Previous State Plans/Classifications. Central/Southern Southeast Area Plan – Region 5. Ketchikan; adopted November 2000.

G. Existing Plans Affecting the Subject Parcel. Ketchikan Gateway Borough Comprehensive Plan 2020.

H. Apparent Highest and Best Use. The highest and best use of the parcels is for land sale. The size and layout of the surveyed lots are designed for residential use and located in an area of the subdivision that has not yet been developed.

IV. Proposal Background. In June of 2017, the TLO received an application from Harlan Heaton, seeking to purchase all Trust owned land assets in the Mountain Point Subdivision, which includes lots and tracts. Mr. Heaton wants to acquire the parcels to fulfill a major development scheme for the subdivision that includes road construction. An appraisal was ordered, and TLO staff performed title research. As a result of the appraisal and the title research, it was discovered that the tracts of land owned by the Trust could not be sold, as they were an inherent part of the subdivision, and according to the survey plat to remain “non-developable”. The TLO received the tracts from the State of Alaska, and under an agreement with the Division of Mining, Land and Water, were able to return the tracts back to the state because they could not be sold, and therefore had no financial value to the Trust. As a result of looking into the issue of the non-developable tracts, negotiations with Mr. Heaton were put on hold and did not pick back up until spring of 2021.

- V. **Terms and Conditions.** In the spring of 2021, Mr. Heaton contacted the TLO to restart negotiations for the purchase of the remaining eleven subdivision lots. On May 11, 2021, the TLO and Harlan Heaton entered into a purchase and sale agreement outlining the process for Mr. Heaton to purchase the property through a negotiated sale. The agreed upon negotiated sale price is \$60,000.00. If Mr. Heaton purchases the parcels, he will have the option to enter into a land sale contract or pay the entire sale price in one lump sum. Once paid in full, a Quit Claim Deed will be issued to him.
- 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 these parcels will appreciate at a rate that would justify holding it for later sale. When these parcels would eventually be developed for sale in the future, it is unlikely that a subdivision would be initiated due to the size and lack of developed access. It is also not cost effective for the TLO to hold these parcels 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 sale, income from land sale contract interest, income from Trust principal interest, and could result in additional costs and risks to the Trust without significant increase in value.
 - B. **Leasing the parcel.** No interest has been expressed for leasing the properties. Management costs to the Trust will generally decrease on the properties through a sale.
 - C. **Alternate development.** The small size of the lots and the lack of developed access do not make these parcels good candidates for any other development. No interest has been expressed for material or mineral development, or for timber extraction.
- VIII. **Risk Management Considerations.**
- A. **Performance Risks.** Performance risks will be mitigated through the TLO’s Purchase and Sale Agreement, Land Sale Contract, and Quit Claim 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 period, there are no known public concerns.
- IX. **Due Diligence.**
- A. **Site Inspection.** TLO staff, the contract appraiser, and the applicant have inspected the parcel on numerous occasions during 2017 and 2018.
 - B. **Valuation.** An appraisal was performed using a sales comparison approach and the market value of the subject parcels, as of May 18, 2018, was \$50,000.00. To compensate for not selling the land competitively the TLO seeks a premium, in this case the purchaser offered the Trust \$60,000.00 for the property, which is a premium of approximately 20%.

C. Terms and Conditions Review. An agreement for the purchase and sale of the property was completed on May 11, 2021. The agreement outlines the terms and conditions of the sale. 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). Other provisions of law the TLO deems inconsistent with Trust responsibilities include:

1. AS 38.05.055, Alaska Residency required for purchase of State land and AS 38.05.940, Veteran's discounts allowed on purchase price of State land. Preferences or discounts provided to Alaska residents or veterans would be granted at a cost to the Trust, hereby violating key Trust management principles.
2. AS 38.05.127, Access to navigable or public water and requiring "to and along" easements on Trust properties diminishes the sale value of Trust lands and therefore is inconsistent with Trust management principles.

XI. Trust Authority Consultation. The Alaska Mental Health Trust Resource Management Committee was consulted on August 3, 2017. The Committee recommended that the proposed transaction be forwarded to the Alaska Mental Health Trust board of trustees. The board of trustees was consulted on August 3, 2017, and the board of trustees concurred with the negotiated sale of the subject parcels to Harlan Heaton.

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. The subject parcels are being sold at premium of 20% above the appraised value. Given the price offered based on the appraisal, the lack of developed access to the parcels, lack of utilities, and unconstructed road access, 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 XII, 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. 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 \$60,000.00 for the parcel, 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 200, 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:

DocuSigned by:
Jusdi Doucet
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Jusdi Doucet
Acting Executive Director
Alaska Mental Health Trust Land Office

7/20/2021

Date

Exhibit A



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

MHT 9100894 - Negotiated Sale Mountain Point Subdivision

- MHT 9100894
- Mental Health Parcel
- Land Sales Conveyed
- TLO Agreements

