

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

MHT: 9200837
MH Parcels: SM-1435 & SM-1442

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 #. Wetlands & Waters Foundation, LLC / MHT 9200837.

III. Subject Property.

A. Legal Description. T. 008 N., R. 011 W., Seward Meridian, Alaska

Section 34: Lot 20; containing 2.29 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 8, 1959.

T. 008 N., R. 011 W., Seward Meridian, Alaska

Section 34: E1/2SW1/4SW1/4NE1/4, SE1/4SW1/4NE1/4, E1/2NW1/4SE1/4, NW1/4NE1/4SE1/4; containing 45.00 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 8, 1959.

B. Settlement Parcel Numbers. SM-1435 & SM-1442.

C. Site Characteristics/Primary Resource Values. The subject parcels are in a rural area southeast of milepost 30 of the Kenai Spur Highway, with one parcel having approximately 430’ of water frontage on Daniel’s Lake. The parcels are mostly moderately sloping or hilly, though steeply sloping in some areas, with declining

elevation down towards Daniel's Lake. They are accessed via Neighbors Road. There is a good lake view from several locations on the parcels. The primary resource value of the subject parcels is disposal through a land sale.

- D. Historical and Existing Uses of the Property.** Presently trust parcels SM-1435 & SM-1442 have no development and there are no known historical or authorized uses.
- E. Adjacent Land Use Trends.** The parcels' neighborhood consists of rural residential homes and seasonal recreation activities.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** The Kenai Peninsula Borough rural district includes the rest of the area of the borough outside of cities which have exercised zoning power. Land use is unrestricted. Applicable KPB land use regulations (e.g., minimum lot size, well-septic separations, building setbacks, etc.) are typical.
- H. Apparent Highest and Best Use.** The subject parcels are conducive to residential development; there are other similar sized parcels around Nikiski that have been developed for residences. The highest and best use of the subject parcels is for residential development, and disposal through a negotiated sale.

- IV. Proposal Background.** In April of 2022, the TLO received an application from Wetlands & Waters Foundation, LLC seeking to purchase the subject parcels. The applicant agreed to pay a premium of 30% above the appraised fair market value based on the hypothetical conditions in the appraisal that the parcels were subdivided, had constructed legal access, and installed utilities.
- V. Terms and Conditions.** On July 7, 2022, the TLO and the applicant entered into a purchase and sale agreement outlining the process for purchasing the property through a negotiated sale at a price of \$439,880.00. When the purchase price is paid in full a Quit Claim Deed will be executed.
- VI. Resource Management Considerations.** The proposal is consistent with the "Resource Management Strategy for Trust Land" (RMS), which was adopted October 2021 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 property will appreciate at a rate that would justify holding for a later sale. When these parcels would eventually be developed for sale in the future, it is likely that a subdivision, though an expensive undertaking 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 for a long period of time 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 principal 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 and there is currently no expressed interest for recreational or commercial lease.
- 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. In present condition, the parcel is not generating any revenue for the Trust. The parcel is considered a non-performing asset.
- B. Environmental Risks.** There are no known environmental risks associated with the proposed sale, and there is no history of the TLO authorizing any use on the parcel.
- C. Public Concerns.** Subject to comments resulting from the public notice, there are no known public concerns regarding the proposed action.

IX. Due Diligence.

- A. Site Inspection.** TLO staff inspected the parcel in June 2021. In addition, a detailed examination was done by the appraiser of all available data pertaining to the parcel when the valuation was completed in May 2022.
- B. Valuation.** An appraisal of the subject parcels "as is" and "where is" was completed in May of 2022, using a sales comparison approach of similar properties within the region that recently sold and determined the fair market value (based on the hypothetical conditions that the parcels were subdivided, had constructed legal access, and installed utilities) of the parcels to be \$332,600.00. To compensate for not selling the land competitively the TLO required a premium of 30% or \$99,780.00 above the appraised fair market value, for a final negotiated sale price of \$439,880.00 (including \$7,500 appraisal reimbursement) for the parcels.
- C. Terms and Conditions Review.** An agreement for the purchase and sale of the parcels was completed on July 7, 2022. The agreement outlines the terms and conditions of the sale. The standard TLO land sale 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).

C. 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:

- i. AS 38.05.035(i). persons eligible to file a request for reconsiderations
- ii. 11 AAC 02.030 (a) and (e), filing request for reconsideration
- iii. 11 AAC 02.040 timely filing

D. 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 July 26, 2022. The Committee concurred with the Executive Director's recommendation to dispose of Trust parcels SM-1435 & SM-1442 through a negotiated sale or subsequent disposal.

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 parcel is being sold at a premium of 30% above the appraised value which was based on a hypothetical subdivision to compensate for not disposing of the land through a competitive process. This 30% premium offer exceeds the historical average of competitive sales in the immediate area.

Given the 30% premium price offered based on hypothetical conditions, the development constraints, sloping topography, and historical sales comparisons, 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. 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 exceeds the current offer of \$439,880.00 for the parcel, and a deposit of 10% of the offered price in certified funds. If 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 based on 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: www.mhtrustland.org

XVI. APPROVED:



Jusdi Warner
Executive Director
Alaska Mental Health Trust Land Office



8/12/22

Date

Exhibit A



Negotiated Sale
MHT 9200837

-  MHT 9200837
-  Mental Health Parcels

