

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

MHT: **9200844, 9200874**
MH Parcel(s): **SM-1162-01, SM-1162-04**

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. Two negotiated term ground leases for a multi-phase solar farm project near Nikiski.

II. Applicant/File #. Renewable IPP, LLC. / MHT 9200844 & MHT 9200874.

III. Subject Property.

A. Legal Description.

SM-1162-01:

T. 007 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SECTION 27: SE1/4NE1/4, SE1/4SW1/4, SW1/4SE1/4, E1/2SE1/4

SECTION 33: E1/2NE1/4

SECTION 34: N1/2;

CONTAINING 600.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN DENVER, COLORADO ON DECEMBER 10, 1979.

SM-1162-04:

T. 007 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SECTION 33: W1/2NE1/4;
CONTAINING 80.00 ACRES, MORE OR LESS.
ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN DENVER, COLORADO ON DECEMBER 10, 1979.

AGGREGATING 680 ACRES.

- B. Settlement Parcel Number(s).** SM-1162-01, SM1162-04.
 - C. Site Characteristics/Primary Resource Values.** SM-1162-01 and SM-1162-04 are wooded, spruce-dominant, relatively flat parcels located in a rural area outside Nikiski, AK. Portions of the property are classified wetlands by the US Fish and Wildlife Service. The property has several off-road vehicle trails initially created from timber harvest operations. Currently, the primary resource value is recreational property.
 - D. Historical and Existing Uses of the Property.** Small scale timber harvest occurred on the property from 2001 through 2005. The timber sale contracts were compliantly completed and closed out. Currently, there are active easement agreements with Homer Electric Association (HEA) for a mainline transmission line running through the southwest corner of SM-1162-04 along the corridor of Escape Route Road. Alaska Pipeline Company holds a utility easement along the same southwest corner of SM-1162-04 along Escape Route Road. Both existing uses are compatible with the proposed ground leases.
 - E. Adjacent Land Use Trends.** The property is encompassed on all sides by undeveloped recreational land, except for one developed gravel corridor, Escape Route Road. Nearby are private recreational developments along lake fronts and closer to Nikiski is developed residential subdivisions along Holt Lamplight Road.
 - F. Previous State Plans/Classifications.** Previously a part of the Kenai National Moose Range Legislatively Designated Area, AS 16.20.030(a)(08).
 - G. Existing Plans Affecting the Subject Parcel.** There are no local plans or zoning affecting the subject parcel.
 - H. Apparent Highest and Best Use.** Given the site characteristics, history, and adjacent land use trends described above, the highest and best use of this property is a negotiated lease for utility scale solar power generation.
- IV. Proposal Background.** On December 19, 2022, Renewables Independent Power Producers (IPP) LLC applied for the subject 680 acres for their solar farm project. The acreage for the project has been split into two phases with two separate timelines. Phase one of the project, serialized as MHT 9200844, proposes to generate 28.5 megawatts of cost-competitive energy, interconnecting into the Homer Electric Association (HEA) utility grid on Escape Route Road (HEA transmission line authorized under MHT 9200777B). Phase one includes 48,000 solar panels (see solar array (set of panels) location in Exhibit A), encompassing 320 acres of land, and has a 30-year lease term with two additional years for construction. Phase one would supply 6.5% of HEA energy demand. Over the course of the lease term, the TLO anticipates a \$3.33MM return. This projection

is based on an increasing royalty percentage of gross revenue over 30 years with escalating royalty rates at 10 and 20 years with no allowable deductions and a minimum annual payment based on installed megawatts.

Phase two of the project, serialized as MHT 9200874, would generate cost-competitive, utility scale, solar energy on the remaining 360 acres of the property. It would use the same grid interconnection point along Escape Route Road (location in Exhibit A) and operate under the same escalating royalty rate structure based on a percentage of gross revenue. Phase two could be developed up to 10 years after phase one with its own 30-year lease term with two additional years for construction.

V. Terms and Conditions.

A. Option to Lease for Solar: Prior to execution of the lease(s), agreements for an Option to Lease for Solar will be executed. For phase one, this agreement will be in effect for up to three years and for Phase two, it will be in effect for up to ten years. The agreements for the Option to Lease for Solar will have a nominal \$1,000 annual fee. During these timeframes, the applicant must assess the feasibility of the project at the subject property, negotiate agreements with the utility company, and receive approval for the project from the Regulatory Commission of Alaska (RCA).

B. Lease Term: Upon project approval from the RCA, a lease agreement will be executed. Each lease will have a 30-year term for operations and an additional two-year construction phase. The lease agreements will include the option for up to three, five-year renewals as the current life of solar panels are 30-40 years.

C. Annual Rental: The two-year construction phase will have an annual fee based on acreage. The operations phase will have a minimum rental based on installed megawatts.

D. Production Royalty: During the operations phase, the monetary return to the Trust is determined by a cost-competitive royalty percentage of gross revenue. The royalty percentage will escalate at 10 and 20 years and during each of the three optional five-year renewal periods. The TLO anticipates a \$3.33MM royalty over the course of the initial 32 years of activity for phase one.

E. Data: The TLO will receive copies of all data and information obtained as a result of the Option to Lease for Solar and Lease agreements.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust land,” which was adopted in October 2021 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. The subject property is currently non-performing and has liabilities from unauthorized use. This project would be the third solar farm for the applicant. Therefore, this proposal is at prudent risk levels while maximizing returns to the Trust and its beneficiaries.

VII. Alternatives. Alternative development, such as residential development, would not meet or exceed the return from the current proposal. Choosing to “do nothing” results in a loss of revenue or delays receipts of revenues from a future development. It could also result in additional costs and risks for the Trust without significant increases in value. By

proceeding as proposed, the TLO is mitigating liabilities and associated costs with the parcel, maximizing returns, and retains the land as an asset of the Trust.

VIII. Risk Management Considerations.

- A. Performance Risks.** Performance risks are mitigated through the TLO Option to Lease for Solar and Negotiated Ground Lease terms which can include annual audits, bonding, insurance, inspections, and annual payment enforceable terms.
- B. Environmental Risks.** There are no known environmental risks associated with the proposed negotiated leases. Activities will be required to be in compliance with local, state, and federal environmental protection laws.
- 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.** In May of 2023 TLO staff inspected the subject property. User developed trails and litter were observed on the property.
- B. Valuation.** The fee structure for solar power generation is cost-competitive to solar farms in the lower 48 region of the United States. The determining factors for the royalty established were scale of the project, location, and access to transmission lines.

While the 320-acre, 48,000 panel, phase one portion of the project will be the largest solar farm in the State of Alaska, it is not considered a large project for developing utility scale power generation. Therefore, the up-front costs are spread over a smaller project with a higher per megawatt cost as compared to other utility scale solar projects.

The distribution of solar energy in Nikiski, AK is similar and not superior to many other areas in the State of Alaska. Therefore, it is considered a good but not superior site for solar power generation.

The subject property has direct access to HEA high voltage transmission lines providing the necessary access to transmit the power generated into the existing grid for the Kenai Peninsula.

Based on the criterion above, a cost-competitive royalty percentage of gross revenue with escalating rates at 10 and 20 years was negotiated. Rate escalations would also occur with each of the optional three, five-year renewal periods. There are no allowable deductions, and a minimum annual payment is required based on installed megawatts. The more megawatts of energy that the solar arrays generate, the increased return to the Trust. The TLO anticipates a \$3.33MM return during the initial 32 years of activities for phase one of the project.

- C. Terms and Conditions Review.** Terms and conditions of this agreement are consistent with the TLO's standard negotiated ground lease(s), which best serve the interest of the Trust. Additional solar farm specific terms or conditions may be applied to the agreement. Per standard practice, all agreements will be 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 leases are 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. The Alaska Mental Health Trust Resource Management Committee was consulted on April 19, 2023. 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 May 24, 2023, and the board of trustees concurred with the Executive Director of the Trust Land Office's (TLO) decision to lease Trust parcels SM-1162-01 and SM-1162-04 through two negotiated term leases.

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 proposed negotiated leases exceed the anticipated return if the property were subdivided and lots sold. Given the high return, relatively low property value, and net present value of money, the proposed negotiated leases are 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 disposal 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 leasing 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 expected return of \$3.33MM for a ground lease of the parcel. 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 a competitive disposal 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:

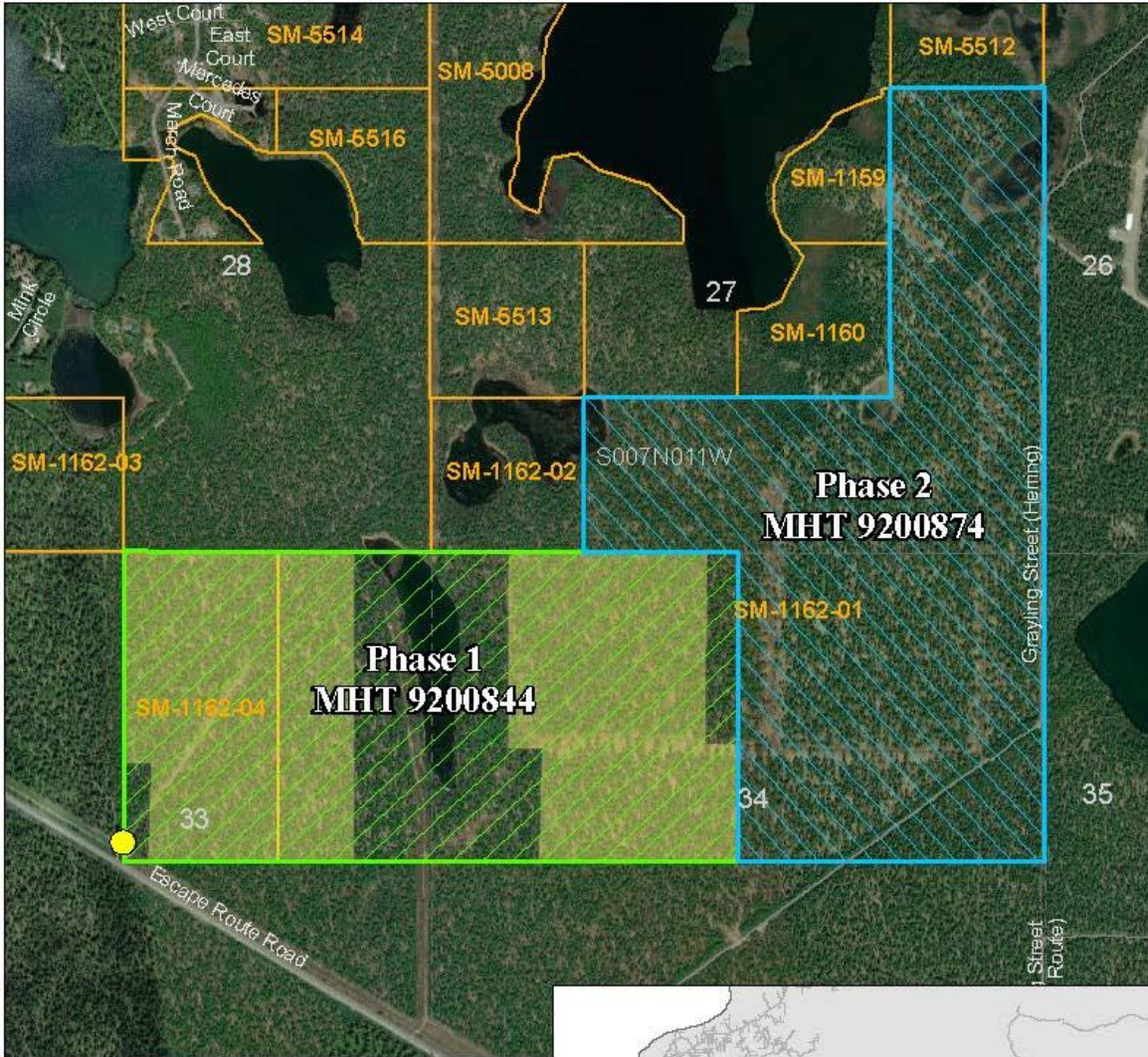
DocuSigned by:
Jusdi Warner
A4E9E1FC963B4D2...

7/11/2023

Jusdi Warner
Executive Director
Alaska Mental Health Trust Land Office

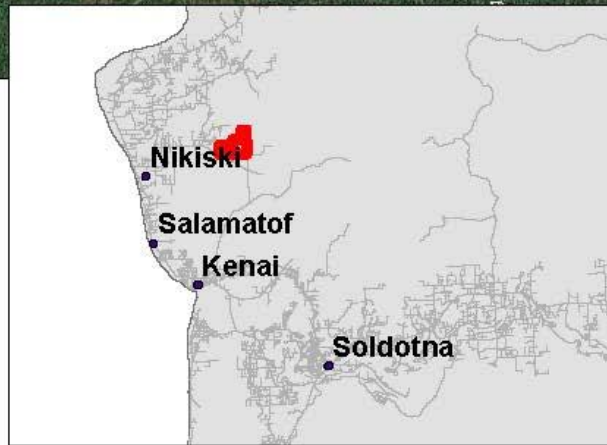
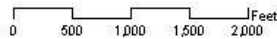
Date

Exhibit A



MHT 9200844 & 9200874

-  Grid Interconnection
-  Phase 1, MHT 9200844
-  Phase 2, MHT 9200874
-  Phase 1 Solar Array
-  Mental Health Parcels



Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to issue Negotiated Land Leases - Nikiski
MHT 9200844 & 9200874

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 negotiated ground leases of certain Trust lands to Renewable IPP, LLC. 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 outside Nikiski, AK and is more particularly described as: off Escape Route Road, located within Section 27, 33, and 34, Township 7 North, Range 11 West, Seward Meridian, containing approximately 680 acres (MH Parcel(s) SM-1162-01, SM-1162-04).

Persons who wish to submit a qualified competing offer as described in Section XIII of the best interest decision, 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 18, 2023. 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 Warner

Jusdi Warner
Executive Director

7/13/2023

Date

Peninsula Clarion: 07/19/2023