

Alaska Mental Health Trust Authority

Trust Land Office

Notice under 11 AAC 99.050 of

Decision to dispose of 4 parcels on the Homer Spit

MHT #9200607

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 certain Trust land to the City of Homer. 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 or near to Homer, and is more particularly described as:

SM-0335: T. 007 S., R. 013 W., SEWARD MERIDIAN, ALASKA, SECTION 1: LOT 4 IN BLOCK 2 OF ENGINEERING PLAT FILE NO. 28-96, COAL BAY ALASKA SUBDIVISION CONTAINING 0.595 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE HOMER RECORDING DISTRICT ON DECEMBER 3, 1963 AS SERIAL NO. 63-1097.

SM-0339: T. 007 S., R. 013 W., SEWARD MERIDIAN, ALASKA, SECTION 1: PARCEL 2 OF ENGINEERING PLAT FILE NO. 28-96, COAL BAY ALASKA SUBDIVISION CONTAINING 1.00 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE HOMER RECORDING DISTRICT ON DECEMBER 3, 1963 AS SERIAL NO. 63-1097.

SM-0442: T. 007 S., R. 013 W., SEWARD MERIDIAN, ALASKA, SECTION 1: LOT 1 OF ENGINEERING PLAT FILE NO. 34-27 CONTAINING 0.22 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE HOMER RECORDING DISTRICT ON DECEMBER 3, 1963 AS SERIAL NO. 63-1094.

SM-7025: THAT PORTION OF THE RIGHT-OF-WAY FOR HOMER SPIT ROAD AS DEPICTED ON COAL BAY ALASKA SUBDIVISION, ACCORDING TO THE SURVEY PLAT, FILED AS SERIAL NO. 63-1097, IN THE HOMER RECORDING DISTRICT, ON DECEMBER 3, 1963, WHICH IS LOCATED WITHIN THE BOUNDARIES OF WHAT IS DEPICTED AS LOT 42 ON THE DOCUMENT DESCRIBED AS HOMER SPIT AMENDED, A RESUBDIVISION, RECORDED AS PLAT 89-34, IN THE HOMER RECORDING DISTRICT, ON SEPTEMBER 21, 1989. THE DOCUMENT DESCRIBED AS AMENDED PLAT 89-34 IS BEING RELIED UPON BY GRANTOR SOLELY TO IDENTIFY THE PROPERTY TO BE CONVEYED.

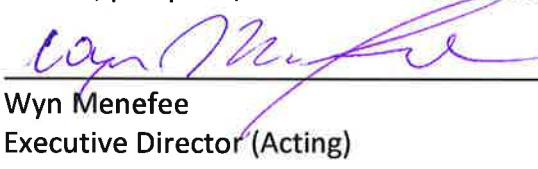
Persons who believe that the written decision should be altered because it is not in the best interests of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, December 22, 2017**. **Comments should be submitted to the TLO at 2600 Cordova Street, Suite 100, 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.

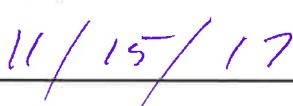
To be eligible to file for reconsideration of the best interest decision, or to file a subsequent appeal to the Superior Court, a person must have submitted written comments during the notice period. Eligible persons will have twenty (20) calendar days after published notice of or receipt of the final 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 www.mhtrustland.org. 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 (Acting)


Date
Published Homer Tribune: 11/22/2017
Published Homer News: 11/22/2017

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Negotiated Land Sale – City of Homer

MHT #9200607

MH Parcel(s) SM-0335;SM-0339;SM-0342;SM-7025

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. A negotiated land sale of four Trust parcels on the Homer Spit at a price of \$550,600.

II. Applicant/File #. City of Homer / MHT 9200607.

III. Subject Property.

A. Legal Description.

SM-0335: T. 007 S., R. 013 W., SEWARD MERIDIAN, ALASKA, SECTION 1: LOT 4 IN BLOCK 2 OF ENGINEERING PLAT FILE NO. 28-96, COAL BAY ALASKA SUBDIVISION CONTAINING 0.595 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE HOMER RECORDING DISTRICT ON DECEMBER 3, 1963 AS SERIAL NO. 63-1097.

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- B. Settlement Parcel Number(s).** SM-0335;SM-0339;SM-0342;SM-7025.
- C. Site Characteristics/Primary Resource Values.** Homer is the second-largest city on the Kenai Peninsula, with a population of over 5,500. The Homer Spit encompasses approximately 508 acres made up of mostly gravel and sand. Homer is primarily a fishing, fish processing, and trade and service center.
- D. Historical and Existing Uses of the Property.** A land use lease (ADL 18009) was issued by DNR, Division of Lands, in 1962 for commercial and industrial purposes on the Subject Property. Icicle Seafoods, Inc. was assigned the lease in 1982 which subsequently expired in April 2017.
- E. Adjacent Land Use Trends.** The City of Homer is the adjacent land owner and also leases land for commercial and industrial purposes on the Homer Spit.
- F. Previous State Plans/Classifications.** Kenai Area Plan, 2001, Region 7, Homer.
- G. Existing Plans Affecting the Subject Parcel.** The parcels are located within the City of Homer and are subject to the City's zoning code. The parcels are zoned Marine Industrial.
- H. Apparent Highest and Best Use.** Disposal through negotiated sale.

IV. Proposal Background. In 1961, under a Mental Health Grant, the Federal Government patented the Subject Property to the State. The Trust received title to the Subject Property in 1996 as part of the trust litigation settlement. However, a more in depth title review revealed multiple complex ownership and platting issues on all parcels of the Subject Property. Over the last 40 plus years, the City of Homer erroneously initiated multiple platting actions and approved land use authorizations on and/or affecting the Subject Property.

The City of Homer applied to purchase three Trust Parcels in 2014 and the Trust procured an appraisal in 2015. The Trust has negotiated with the City of Homer in good faith and clarified the legal description of the Subject Property to be conveyed through a negotiated land sale, which will allow the City of Homer to have title to property essential to their operations and management on the Homer Spit. Furthermore, throughout negotiations the City of Homer has objected to the TLO ownership assertions, however, they have found resolution in a negotiated purchase of the Subject Property.

V. Terms and Conditions. Terms and Conditions will be agreed upon in a Purchase and Sale Agreement.

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 maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets. Past experience has demonstrated that it is unlikely that these parcels will appreciate at a rate that would justify holding them for a later sale. It is also not cost effective for the TLO to hold these parcels 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 and could result in additional costs and risks to the Trust without significant increases in the value.
- B. Lease the land. This still leaves the Trust with potential costs for title challenges and possible legal fees.

VIII. Risk Management Considerations.

- A. **Performance Risks.** Performance risks will be mitigated through the TLO’s Purchase and Sale Agreement and Quitclaim Deed.
- B. **Environmental Risks.** Icicle Seafoods, Inc. continues to operate onsite for storage and maintenance activities related to commercial seafood operations.
- C. **Public Concerns.** Subject to comments resulting from the public notice, there are no known concerns that suggest the proposed transaction is inconsistent with Trust principles.

IX. Due Diligence.

- A. **Site Inspection.** A site inspection was conducted in April 2013.
- B. **Valuation.** Appraisal for SM-0335, SM-0339, and SM-0342 was completed in June 2015 and the determined valuation was \$550,600. The appraisal did not value SM-7025, as this parcel was later identified by the Trust as missed settlement land. However, this parcel is encumbered by a public right-of-way which significantly devalues the parcel as a standalone parcel, and furthermore the negotiated sale (MHT 9200607) with the City of Homer is contingent upon the inclusion of this parcel. Therefore, to divest the Trust from any further surface estate interests on the Homer Spit, as well as, any litigation liability with the City of Homer, the the remaining four parcels on the spit are valued at \$550,600.
- C. **Terms and Conditions Review.** Contract documents were 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 38.05.825 (Conveyance of Tide and Submerged Land to Municipalities), 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 20, 2017 for the disposal of all or a portion of SM-0335, SM-0339, and SM-0342 located on the Homer Spit. 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 4, 2017, and the board of trustees concurred with the disposal of all or a portion of SM-0335, SM-0339, and SM-0342 subject to the outcome of the notice process.

The Alaska Mental Health Trust Resource Management Committee was consulted and concurred on October 26, 2017 to offer and dispose of Missed Settlement Land (SM-7025) on the Homer Spit.

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.

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.

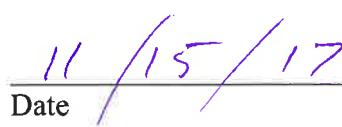
Persons who submit timely written comments will be provided with a copy of the final written decision, and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director 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 100, 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:


Wyn Menefee
Executive Director (Acting)
Alaska Mental Health Trust Land Office


Date

