

Alaska Mental Health Trust Authority

Trust Land Office

Notice under 11 AAC 99.050 of

Decision to Issue a Negotiated Land Sale to the Department of Transportation and Public Facilities
MHT #9400589-B

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 Sale of the mineral estate of certain Trust land to the Alaska Department of Transportation and Public Facilities or another state agency that has the authority to hold title to land. 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 near Ester Dome, Alaska, and is more particularly described as: Township 1 South, Range 3 West, Fairbanks Meridian, Alaska, Section 27: Tract B, and Section 28: Tract A, containing 234.39 acres, more or less, according to the Supplemental Alaska State Cadastral Survey Plat filed in the Fairbanks Recording District on January 9, 1975 as Plat 75-2. (MH Parcel(s): **FM-0962; FM-0995**).

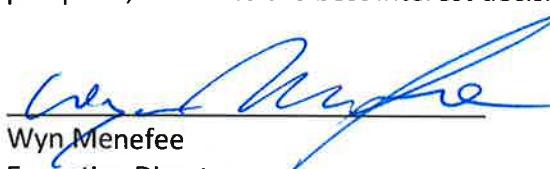
Persons who believe that the written decision should be altered because it is not in the best interest of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, September 11, 2018**. **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


Date
Published Anchorage Daily News: August 12, 2018

**The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Veterans Cemetery**

MHT: **9400589-B**
MH Parcel(s): **FM-0962; FM-0995**

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. The proposed action is to convey the mineral estate for two parcels through a negotiated sale to the Department of Transportation and Public Facilities (DOT&PF), to prevent mineral extraction below a Veterans Cemetery owned and managed by the Department of Military and Veterans Affairs (DMVA). TLO may convey the subject parcels to DOT&PF or another State agency that has the statutory authority to hold title to land.

II. Applicant/File #. Alaska Department of Transportation and Public Facilities (DOT&PF)/MHT 9400589-B.

III. Subject Property.

- A. Legal Description.** Township 1 South, Range 3 West, Fairbanks Meridian, Alaska, Section 27: Tract B, and Section 28: Tract A, containing 234.39 acres, more or less, according to the Supplemental Alaska State Cadastral Survey Plat filed in the Fairbanks Recording District on January 9, 1975 as Plat 75-2, collectively referred to as the Property.
- B. Settlement Parcel Number(s).** FM-0962 and FM-0995.
- C. Site Characteristics/Primary Resource Values.** These two lots are located along the Parks Highway near milepost 344, approximately 3 miles west of Ester

and about 11 miles west of Fairbanks. Access is by the Parks Highway, and Tract A is also improved with a driveway that accesses a former gravel pit that straddles both Tracts. The immediate area consists of vacant land and Tract A is located across the highway from a popular scenic pull out that provides good views of the Tanana Valley and the Alaska Range.

- D. Historical and Existing Uses of the Property.** The historic and existing use of these Trust parcels includes material extraction and recreation. No mineral extraction has taken place on the subject parcels.
- E. Adjacent Land Use Trends.** Adjacent land uses include residential, public recreation, road and utility easements, and wildlife habitat.
- F. Previous State Plans/Classifications.** DNR issued the Tanana Basin Area Plan (TBAP) for State Lands, adopted in 1985 and updated in 1990 and 1999. The primary use for general state land in the Alder Creek subunit is for settlement and forestry.
- G. Existing Plans Affecting the Subject Parcel.** The subject property is affected by the Fairbanks North Star Borough (FNSB) Title 18, Zoning Ordinance and is zoned General Use 1 (GU-1). The GU-1 is intended for rural areas and would be compatible with a cemetery.
- H. Apparent Highest and Best Use.** The two parcels are located in an area surrounded by vacant land about a mile from the nearest residence. Utilities, including electricity, are not readily available. It is necessary for DMVA to acquire the entire fee estate, including the mineral estate, of these two parcels to ensure the crypts, columbarium niches, and graves are not disturbed. This is a granting requirement of the U.S. Department of Veterans Affairs (USDVA) who will be the primary funding source for development of the cemetery. There is no known mineral deposit on site and no mineral exploration programs have been conducted on the property. The potential for an economically viable mineral development project on site is low. Conveying the mineral estate in conjunction of sale of the land estate (MHT 9400589-A) for a Veteran's Cemetery is the apparent highest and best use.

- IV. Proposal Background.** In late August 2015, TLO was contacted by DOT&PF to evaluate Trust land for purchase on behalf of DMVA to construct a Veterans Cemetery. The cemetery will include 500 pre-placed crypts, 500 columbarium niches, administrative quarters, maintenance facility, committal shelter, and utilities. For DMVA to secure federal funding for a National Veterans Cemetery the USDVA requires that the entire fee estate be acquired. The sale of the mineral estate was not considered as part of the Best Interest Decision, dated June 27, 2018, for the negotiated sale of the land estate (MHT 9400589-A). It is the responsibility of DOT&PF or another State agency that has the statutory authority to hold title to the mineral estate to control access and use to the mineral estate through a mineral closing order or similar mechanism.
- V. Terms and Conditions.** The standard TLO Purchase and Sale Agreement and modified Quitclaim Deed will be used for the conveyance.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust Land” (RMS), which was adopted in March 2016 in consultation with the Trust and provides for the TLO to identify and enhance lands for economic development and mitigate risk liabilities of Trust land. It is not typical for the Trust to convey the mineral estate; however, this is critical in conjunction with sale of the land estate though a negotiated sale MHT 9400589-A to capture the net present value of the sale for a non-performing asset.

VII. Alternatives.

- A. Do nothing or offer sometime in the future. This alternative would delay receipt of revenues from sales and could result in additional costs and risks to the Trust without significant increases in value.
- B. Mineral leasing of the parcels. The mineral potential of the parcel is low. There has been no interest to date and there is no foreseeable interest in mineral leasing for the subject parcels.

VIII. Risk Management Considerations.

- A. **Performance Risks.** Performance risks will be mitigated through the TLO’s purchase and sale agreement and quitclaim deed. These documents include contemporary language to limit risks to the TLO and the Trust, ensure performance by the buyer.
- B. **Environmental Risks.** No known environmental risks, however, the site has been used for gravel extraction for many years.
- 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.** TLO Staff last inspected the parcels on May 23, 2018.
- B. **Valuation.** The Purchase Price of the above described Property is \$60,940. There is no known mineral deposit on site and no mineral exploration programs have been conducted on the property. The potential for an economically viable mineral development project on site is low. The purchase value was determined through negotiations to be 20% of the fair market value of the surface estate, determined by an appraisal (ASP 10-16-922) completed by Hans Axelsson, Axelsson & Associates, Inc., on June 26, 2016. The appraisal determined the estimated market value of the property to be \$304,700.
- C. **Terms and Conditions Review.** Contract documents were reviewed by the Attorney General’s Office and an independent law firm.

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 Land 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). The additional statutes are deemed inconsistent for Negotiated Land Sales:

- i. 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.
- ii. 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.
- iii. AS 38.05.065(g), Appeal of director's decision to commissioner is in direct conflict with 11 AAC 99.060 and therefore does not apply to the transaction pursuant to 11 AAC 99.060(d).

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.

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.

- A. 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 may serve the best interest of the Trust. A future determination of that nature may require a Best Interest Decision specific to the proposal.
- B. **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 area has been open for mineral staking before 1994 and for mineral leasing post 1994. There has been no public interest expressed by applications to the TLO for mineral leasing. Therefore, there appears to be no value in offering these tracts competitively and they would only be offered to the state in conjunction with the sale of the land estate (MHT 9400589-B). A non-competitive negotiated sale of the mineral estate to the ADOT&PF is consistent with the Alaska Statehood Act, Sec. 6 (i) which requires the mineral estate to be reserved to the State Alaska. The Statehood Act Sec. 6(i) does not preclude the conveyance of the mineral estate of original Trust lands because Trust land is not considered public lands under Alaska Statehood Act, Sec. 6 (a) and (b), and the mineral estate shall be retained in state ownership. The mineral estate for MH Parcels FM-0962 and FM-0995 are approximately 234.39 acres, combined. Given the price offered and the limited mineral potential of the parcels, a non-competitive disposal is in the best interest of the Trust and its beneficiaries, and facilitates the disposal of the fee estate in these parcels.

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 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.

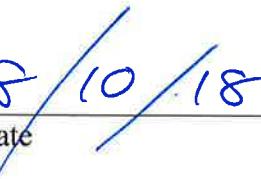
Persons who submit timely written comments will be provided with a copy of the final written decision and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director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

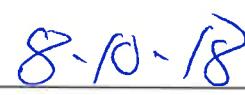
XVI. APPROVED:


Wyn Menefee
Executive Director
Alaska Mental Health Trust Land Office


Date 8/10/18

XVII. CONSULTATION CONCURRENCE:


Michael K. Abbott
CEO Alaska Mental Health Trust Authority


Date 8-10-18