

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Negotiated Land Sale of a Trust Parcel – Sitka
MHT 9101042

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 Lisa Busch and Davey Lubin. 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 located in Sitka, and is more particularly described as: Lot 166 of US Survey No. 3926, located within Section 8, Township 56 South, Range 64 East, Copper River Meridian, containing approximately 0.150-acres (MHT Parcel CRM-5018).

Persons who wish to submit a qualified competing offer as described in Section XIII of the best interest decision, or 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, February 07, 2022**. **Qualified competing offers and/or 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.



Jusdi Warner
Executive Director

1/4/22

Date
Published Sitka: 01/06/2022

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Negotiated Land Sale - Sitka

MHT: 9101042
MH Parcel: CRM-5018

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 #. Lisa Busch & Davey Lubin / MHT 9101042.

III. Subject Property.

A. Legal Description. The subject parcel is located within Section 8, Township 56 South, Range 64 East, Copper River Meridian; Lot 166 of US Survey No. 3926 (situated within US Survey No. 1763, Sitka Elimination); and contains 0.150 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 October 5, 1965.

B. Settlement Parcel Number. CRM-5018

C. Site Characteristics/Primary Resource Values. The small island parcel is located 3 miles east of the town of Sitka, in Thimbleberry Cove, near what’s locally known as the Shotgun Alley neighborhood. The parcel is an island, so there is no road or trail access directly to the parcel; however, it’s only a short boat trip to nearby road access. The parcel is undeveloped and forested, with a rocky shoreline, and a level area for building structures. There are no utilities on the property, but there is electric in the area with options for underwater transmission lines. The primary resource value of the 0.150-acre property is for disposal through a land sale.

- D. Historical and Existing Uses of the Property.** The property is vacant and undeveloped and is used by local residents as a quick destination for picnicking and exploring.
 - E. Adjacent Land Use Trends.** The economy of Sitka is primarily dependent on fishing, seafood processing, and tourism related activities. Land use trends in the area consist primarily of single-family residences, and outdoor recreation. The island is situated in a protective cove that is used for non-motorized outdoor recreation such as sea kayaking.
 - F. Previous State Plans/Classifications.** Northern Southeast Area Plan – Baranof Island Area. Sitka; adopted June 2002.
 - G. Existing Plans Affecting the Subject Parcel.** Sitka Comprehensive Plan 2030; adopted May 22, 2018.
 - H. Apparent Highest and Best Use.** The parcel is a small island that’s located in a protective cove surrounded by a residential neighborhood. The island is vacant, and ideal for a cabin or small residence. There are other similar islands around Sitka that have been developed for residences. The highest and best use of the subject property is for residence and disposal through a negotiated sale.
- IV. Proposal Background.** In August of 2021, Lisa Busch requested a meeting with the TLO to discuss options to purchase the subject parcel. She became aware that the Trust owned the property and was concerned that the parcel might be purchased and developed in a way that would change the character of the cove. As a result of her discussion with the TLO Ms. Busch discovered that the TLO was planning to place the subject parcel in the 2021 competitive land sale that occurs each fall. The TLO considered Ms. Busch’s interest and desire to purchase the parcel outside of the competitive process. TLO staff explained the option for a negotiated sale and how that process works. Ms. Busch decided that she would like to pursue a negotiated sale.
- V. Terms and Conditions.** On November 8, 2021, the TLO and the applicant (Lisa Busch and Davey Lubin) entered into a purchase and sale agreement outlining the process for purchasing the property through a negotiated sale at a price of \$115,000.00. 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 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 this property will appreciate at a rate that would justify holding for a later sale. 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.** The parcel is not well suited to subdivide due to the topographic characteristics and small size; in addition, local ordinances and zoning restrictions to plat, subdivide, and construct infrastructure makes development of subdivision cost prohibitive. No interest has been expressed for commercial development or material/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.** An appraiser hired by TLO visited the parcel in July of 2021.
- B. Valuation.** In July of 2021 an appraisal was performed using a sales comparison approach within the region of similar properties that recently sold. The appraisal of CRM-5018 determined the fair market value to be \$85,000.00. To compensate for not selling the land competitively the TLO required a premium of 35% or \$30,000.00 above the appraised fair market value. The 35% premium considers that the subject property would have generated significant interest if offered in a competitive sale.
- C. Terms and Conditions Review.** An agreement for the purchase and sale of the property was completed on November 8, 2021. 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. 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. 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 35% above the appraised value to compensate for not selling or leasing the land through a competitive process. This 35% premium offer exceeds the historical average of competitive sales in the immediate area. Given the 35% premium price offered, the remote nature, limited access, 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 \$115,000.00 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:



Judd Warner
Executive Director
Alaska Mental Health Trust Land Office

12/27/21

Date

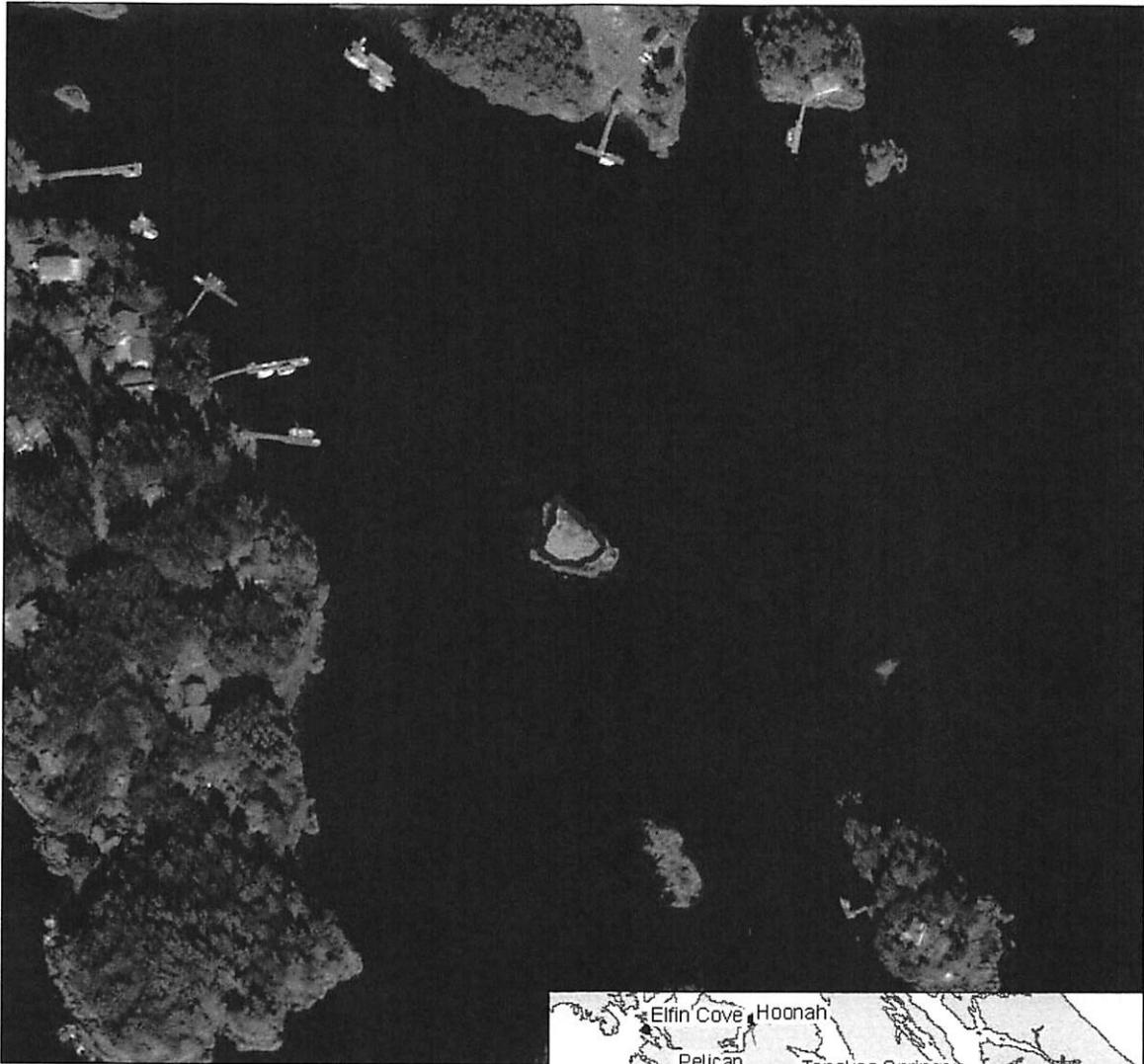
In accordance with 11 AAC 99.030(d) and the policies of the Alaska Mental Health Trust Authority, the Trust Land Office has consulted with me, and received concurrence to proceed with the above transaction.



Michael K. Abbott
Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

12/28/21

Date



Negotiated Sale
MHT 9101042

 MHT 9101042
 Mental Health Parcels

0 110 220 330 440 550 Feet

