

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision for the Negotiated Land Sale of Trust Land - Skagway
MHT 9101066

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 certain Trust land to Jay Burnham. 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 to Skagway, and is more particularly described as: Lot 5, of US Survey No. 5110, located within Section 12, Township 28 South, Range 59 East, Copper River Meridian, containing approximately 60-acres (MH Parcel C20462.002)

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, April 11, 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.

DocuSigned by:

Jusdi Warner

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Jusdi Warner

Executive Director

3/4/2022

Date

Published Skagway News: March 11,2022

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

MHT: 9101066
MH Parcel: C20462.002

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 #. Jay Burnham / MHT 9101066

III. Subject Property.

A. Legal Description. Section 12, Township 28 South, Range 59 East, Copper River Meridian. That portion of Lot 5, of U.S. Survey No. 5110 within the N ½ NE ¼; containing 60-acres, more or less; according to the survey plat accepted by the United State Department of the Interior, Bureau of Land Management in Anchorage, Alaska on March 12, 1990.

B. Settlement Parcel Number. C20462.002

C. Site Characteristics/Primary Resource Values. The subject 60-acre parcel, located in the city of Skagway, is a steep mountainous parcel with no developed access and only accessible by foot or helicopter. Approximately half of the parcel has functional value; the remainder consists of cliffs and is so steep that it would not be economically feasible to develop, providing no development opportunities. The parcel is located near town and is adjacent to the privately owned White Pass Railroad yard. The parcel is also adjacent to city and state-owned land. There is a small lake on the parcel, locally known as “Icy Lake”. The lake can be accessed by

using the Upper Reid Falls Trail; this trail appears to be the route to gain access to the parcel.

- D. Historical and Existing Uses of the Property.** The parcel is vacant and undeveloped with no sign of prior logging activity or road construction. A hiking trail to Icy Lake exists within the boundary of Federal Power Project No. 1051; the trail does not have an easement on it. The Department of Natural Resources issued a Quit Claim Deed to the Trust for this parcel in 1996.
- E. Adjacent Land Use Trends.** The subject parcel is accessed by foot from the Upper Reid Falls Trail about 1.5 miles north of the subject parcel. Land use trends in area are primarily associated with tourism and outdoor recreation. Most of the residents living in the area work in local government or the tourism industry.
- F. Previous State Plans/Classifications.** Northern Southeast Area Plan (2002); Northern Region, Skagway.
- G. Existing Plans Affecting the Subject Parcel.** The Skagway 2030 Comprehensive Plan and Action Plan (2020). The parcel is within the Municipality of Skagway Borough and is subject to borough zoning requirements.
- H. Apparent Highest and Best Use.** Based on a variety of factors including: the size of the parcel, shape, location, topographic features, and lack of access, the highest and best use of the parcel is disposal through a negotiated sale.

IV. Proposal Background. In July of 2021, the TLO received an application from Jay Burnham seeking to purchase the subject parcel. Prior to submitting his application, Mr. Burnham had reached out to the TLO seeking information about Trust owned land in Skagway. After several discussions regarding the negotiated land sale process, he decided to formally apply to the TLO for a negotiated sale of the subject parcel.

V. Terms and Conditions. On January 7, 2022, the TLO and Jay Burnham entered into a purchase and sale agreement outlining the terms and conditions for purchasing the parcel through a negotiated sale at a price of \$120,000.00. When the purchase price is paid in full a Quitclaim Deed will be executed.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust Land” 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 non-performing assets into performing assets. Experience has demonstrated that it is unlikely that this parcel will appreciate at a rate that would justify holding it for later sale. It is also not cost effective for the TLO to hold this parcel long term 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 sale, income from land sale contract interest, income from Trust principal interest, and could result in additional costs and risks to the Trust without significant increase in value.
- B. Leasing the parcel.** No interest has been expressed for leasing the property. Management costs to the Trust will generally decrease on the property through a sale.

C. Alternate development. The steep topography, combined with lack of platted or legal access to the parcel limit the development options and would require extensive negotiations with adjacent landowners, as well as require significant financial resources, to develop. No interest has been expressed for material, mineral, or timber extraction.

VIII. Risk Management Considerations.

- A. Performance Risks.** Performance risks will be mitigated through the TLO's Purchase and Sale Agreement, Land Sale Contract, and Quit Claim 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.
- C. Public Concerns.** Subject to comments resulting from the public notice period, there are no known public concerns.

IX. Due Diligence.

- A. Site Inspection.** TLO staff have not visited the parcel. A detailed evaluation of the parcel was performed by an appraiser, of all available data pertaining to the parcel when the valuation was completed in October of 2021.
- B. Valuation.** An appraisal of the subject parcel was completed on October 18, 2021, using a sales comparison approach of similar properties within the region that recently sold and determined the fair market value to be \$90,000.00. To compensate for not selling the land competitively the TLO required a premium of 33% or \$30,000.00 above the appraised fair market value, for a final negotiated sale price of \$120,000.00 for the subject parcel.
- C. Terms and Conditions Review.** An agreement for the purchase and sale of the parcel was completed on January 7, 2022. The agreement outlines the terms and conditions of the sale, includes a map depicting the location of the parcel, and contains a sample Quit Claim Deed. The standard TLO land sale contract 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 33% above the appraised value to compensate for not selling or leasing the land through a competitive process. This 33% premium offer is comparable to the historical average of competitive sales in the immediate area. Given the 33% premium price offered, site development constraints, and historical sales comparisons, a non-competitive disposal is 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 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 of \$500.00, a formal Letter of Intent to include an offer price that exceeds the current offer of \$120,000.00 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 \$500.00, 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:

DocuSigned by:

Jusdi Warner

Jusdi Warner
Executive Director

Alaska Mental Health Trust Land Office

2/17/2022

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.

DocuSigned by:



Steve Williams

Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

2/17/2022

Date

Exhibit A

Negotiated Sale
MHT 9101066

- MHT 9101066
- Mental Health Parcels
- Township
- Section

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