

**The Alaska Mental Health Trust Authority
Trust Land Office**

**BEST INTEREST DECISION
Bostwick Lake Road Perpetual Easement**

MHT 9100726
MH Parcel CRM-3129-03

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.** Authorization of a 13.76 acre perpetual road easement. The subsurface estate will be retained by the Trust.
- II. Applicant/File #.** Division of Forestry/Department of Natural Resources/MHT 9100726.
- III. Subject Property.**
- A. Legal Description.** Located within Lot 2C Alaska State Land Survey 84-54 and a portion of parcel CRM-3129-03, Sections 21 and 28, Township 75 South, Range 90 East, Copper River Meridian containing 13.76 acres more or less, Trust Land Survey 2013-02.
- B. Settlement Parcel Number(s).** CRM-3129-03.
- C. Site Characteristics/Primary Resource Values.** The subject easement area is a 13.76 acre portion of a larger parcel which contains 3,824 acres. The subject road

easement is 100 feet wide with the centerline alignment length of 5,994.15 feet. It is located on Gravina Island, west of the Ketchikan International Airport and accessed by driving on the Lewis Reef Road, a public dedicated right-of-way (See Attachment 1).

The primary resource value of the subject road easement area is as a road.

- D. Historical and Existing Uses of the Property.** The Trust holds fee estate to the subject property. The subject parcel is located within parcel CRM-3129-03 which is original Trust land. The state received Patent 1232873 on August 6, 1963 and the Alaska Mental Health Trust Authority received title under Quitclaim Deed 8000084 on September 20, 1996. During the time that the State held title, the subject property was not used but remained as vacant land.

The land remained unused until the Division of Forestry (DOF) within the Department of Natural Resources (DNR) submitted an application in 2006 to construct a 14 foot wide, 5,780 foot long linear graded road. DOF wanted access to state land for the purpose of commercial timber harvests. The TLO granted a Revocable License for Land Use (MHT 9100473) May 23, 2006. The Department of Transportation (DOT) funded the construction of the road across Trust land with Roads to Resources money (See Attachment 2). The new constructed road is of variable widths, with a center alignment length of 5,994.15 feet.

As an addendum to the land use Revocable License, MHT 9100473, the TLO also granted the DOF, a material sales license. A small quarry was developed to extract construction rock for the road project.

Completion of the road project allowed DOF to harvest timber and the TLO also conducted a small timber harvest. The building of the road generated revenues to the Trust through fees for land use based on transporting goods on the subject road from DOF timber sales and the sale of a small timber harvest on Trust land.

- E. Adjacent Land Use Trends.** Resource developments, airport activity, settlement and recreation all co-exist on Gravina Island. Ownership of Gravina Island is comprised of the United States Forest Service (USFS) holds title to 62% of Gravina Island, DNR 18%, the Trust 7%, Ketchikan Gateway Borough (KGB) 5%, University of Alaska and Bureau of Land Management each own 3% title, and the remainder 2% is privately owned.
- F. Previous State Plans/Classifications.** State of Alaska plans affecting Gravina Island are the Central/Southern Southeast Area Plan (CSSAP), 2000 and the Alaska Coastal Management Program. Although the Alaska Coastal Management Program is no longer in effect, it would also not apply since the subject parcel is uplands.

The CSSAP identifies the project area as being in Unit K28 designated as Public Facilities and Settlement-Commercial. The CSSAP does not specifically address

classifications for the project area. The applicant's proposal is compatible with the designation and classification within the greater project area.

- G. Existing Plans Affecting Area.** Gravina Island has been the subject of many planning studies and community comprehensive land use plans since 1973. One plan, the Gravina Access Project, is one of 17 high priority projects funded in the State of Alaska by the Transportation Equity Act for the 21st Century. The goal of the project is to improve access between Revillagigedo Island and Gravina Island. The Gravina Access Project issued a Final Environmental Impact Statement in 2004 that identified the preferred alternative for the construction of two bridges to cross the Tongass Narrows via Pennock Island. The purpose was to provide Ketchikan residents more reliable, efficient and cost-effective access to Gravina Island.

A Supplemental Environmental Impact Statement (SEIS) was conducted when the two bridge alternatives were rejected by prior Governor Palin due to negative national press that dubbed it the "bridge to nowhere." The SEIS was intended to determine fiscally conservative alternatives to bridge construction and is expected to be finalized in the Spring of 2014.

The KGB's 1986, 1996, and 2009 Comprehensive Plans discuss the benefits of expanding to Gravina Island. The 2020 KGB Comprehensive Plan includes a designation for the subject easement area and the remainder of the Trust parcel as "mixed use/commercial." This future land use category is intended to allow for the establishment of mixed use development patterns, such as various types of residential and non-residential uses (i.e., retail and residential in the same structure). However, heavy industrial uses and similarly incompatible uses will be prohibited.

- H. Apparent Highest and Best Use.** The apparent highest and best use is as a road. The larger parcel surrounding the subject road easement is set aside as part of the potential USFS Land Exchange. Residential, recreation, tourism and commercial developments are also best uses if the parcel remains in Trust inventory.

- IV. Proposal Background.** In order to sustain the long-term forest industry goals on State lands in 2010 and 2011, legislation was passed reclassifying State lands on Bostwick Lake Road from "General Use" to "Southeast State Forest" (SSF). Given the new designation of SSF, the applicant submitted an application to the TLO in 2012 for a perpetual 100 foot road easement. The applicant wants to ensure long-term access to State lands in the event that the parcel ownership changes as a result of the USFS Land Exchange. The applicant also wants the road easement to be available for public use due to DOT &PF funding sources requiring it.

In 2006, under MHT 9100473, a Revocable License was issued to upgrade the road for DOF to access its timber lands. Under this license a gate was required to contain access to only the DOF. Over the years, the gate remained unlocked and DOF opened state

lands for firewood harvesting to Ketchikan residents. The road has been used as a public right-of-way and the Revocable License is expired.

V. Terms and Conditions. The perpetual road easement is 100 feet wide and 5,994.15 feet long covering 13.76 acres. The purchase price for the perpetual, road easement is \$19,264 based on the appraisal which determined the fair market value at \$1,400 per acre. Other terms on the road easement agreement will include applicant reimbursement of all fees relating to the easement disposal such as survey and appraisal fees; and a stipulation requiring that the road use be open to access by the public including the Trust.

VI. Asset Management Considerations. The *Long Term Asset Management Strategy* emphasizes maximizing return at prudent levels of risk. If the USFS land exchange occurs, the TLO will not own land around the road easement and will not have a stake in future revenues in the area. If the proposed land exchange does not occur, then the perpetual easement does limit the TLO from future revenues generated from transportation of timber on the road as previously charged under the Revocable Land Use License, MHT 9100473.

VII. Alternatives.

- A. Do nothing.** The Trust can retain title to the road and assume all liability for road activity.
- B. Alternative Development.** Grant the applicant a new Revocable License for a ten year term and receive an annual land use fee and assess transporting timber fees for timber harvests on state land. The applicant may renegotiate a road easement agreement with the potential new land owner, the USFS, if the USFS Land Exchange is completed.
- C. Proceed as Proposed.** The applicant is willing to complete the road easement disposal process and return fair market value which is Principal revenue. If the USFS Land Exchange moves forward, the Trust will not have a revenue interest in the future economic development on Gravina Island.

VIII. Risk Management Considerations.

- A. Performance Risks.** The TLO requires the applicant to submit the sale value in full prior to executing the road easement agreement.
- B. Environmental Risks.** There are no known environmental risks regarding the subject road.
- C. Public Concerns.** The Tongass Conservation Society expressed concerns regarding permitting of the road construction on Gravina Island in 2007. It is unknown if there will be adverse public concerns regarding the subject road easement.

IX. Due Diligence.

- A. Site Inspection.** TLO staff inspected the road November 14, 2012 and the appraiser visited the site on September 10, 2013.
- B. Valuation.** Land value was based on an appraisal by Horan and Company, LLC using the sales comparison methodology. The purchase price for the perpetual road easement is \$19,264.
- C. Terms and Conditions Review.** The standard terms and conditions for a road easement will be used with one exception. The exception is the additional term of stipulating that the public will have access to the road.

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 perpetual easement 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). In addition, appeal of the Executive Director decision to commissioner under AS 38.05.065(g) is in direct conflict with 11 AAC 99.060 and therefore, does not apply to the transaction pursuant to 11 AAC 99.060(d).

- XI. Trust Authority Consultation.** The Trust Authority consultation for a disposal transaction of less than \$100,000 has been delegated by the September 7, 2011 Alaska Mental Health Trust Authority Bylaws, Article IX, Section 5 to the Chief Executive Officer, who has approved this decision as of the date listed in Section XVI of this Best Interest Decision.

- 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.)

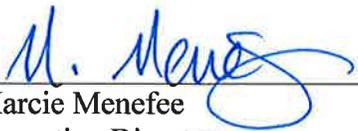
XIV. Reconsideration. To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

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:

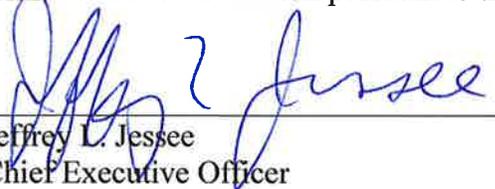


By: Marcie Menefee
Executive Director
Alaska Mental Health Trust Land Office

1.3.2014

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 pursuant to the Alaska Mental Health Trust Authority Bylaws.



Jeffrey L. Jessee
Chief Executive Officer
Alaska Mental Health Trust Authority

1/3/14

Date

Attachment 1. Proposed Bostwick Road Easement.

