

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION

Negotiated Sale of Trust Land for the Port MacKenzie Rail Extension Project

MHT 9200580
MH Parcels: Multiple Parcels

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. Issuance of a construction license and subsequent negotiated sale of Trust land to the Matanuska –Susitna Borough (Borough) for the purpose of constructing that portion of the easement within Segments 4 and 5 of the Port MacKenzie Rail Extension Project.

II. Applicant/File #. Matanuska-Susitna Borough/MHT 9200580.

III. Subject Property.

A. Legal Description. A corridor of Alaska Mental Health Trust lands within Sections 1, 2, 10, 11, 15, 16, 20, 21, and 30 in Township 17 North, Range 04 West, Seward Meridian, between 200 feet and 350 feet in width and approximately 5.5 mile in length., containing 165.5 acres more or less.

- B. Settlement Parcel Number(s).** A portion (approximately 165.5 acres) of Trust parcels SM-1919-A, SM-1963, SM-1941, SM-1942, SM-2054, SM-2064, SM-2069, SM-2070, SM-2110, and SM-2266 comprising of approximately 6,649.91 acres.
- C. Site Characteristics/Primary Resource Values.** Land in the area is relatively level or gently rolling and contains a mix of vegetated uplands and large areas of muskegs. Limited residential development surrounds most of this land, and adjoins the Little Susitna State Recreation River Management Unit. Most Trust land is either adjoined by either State or private land, land owned by Native and Village corporations, or land managed or owned by the Borough. With few exceptions, this non-state land is either vacant or contains limited residential uses.

Conservation easement, oil and gas development, residential, and recreation are the primary resource values in the area.

- D. Historical and Existing Uses of the Property.** The property was subject to a 2004 oil and gas lease which expired in 2010. In 2013, the property was included in a competitive oil and gas lease offering with no bids received. A non-exclusive trail easement was issued to the Borough for installation and maintenance for winter recreational uses of the Iron Dog, Houston Lake Loop, Flat Lake Connector, and Big Lake 2 and 3 trails. The majority of the property is vacant with no current use.
- E. Adjacent Land Use Trends.** The Big Lake – Houston Region occupies the more central, developed part of the Matanuska-Susitna Borough. Most land within this region is owned by the State of Alaska, the Borough, Mental Health Trust, Native and Village corporations, and the private sector.

The majority of development is located east and south of the subject property. Developed areas are typically characterized as low-density residential, and are predominantly near area lakes, ponds, and along area roadways. Recreational use of this land by Mat-Su and Anchorage residents is driven by its accessibility to lakes, rivers and a network of trails traveling from Port MacKenzie to Willow.

Lands to west of the property are owned by the State and are managed under the Department of Natural Resources Little Susitna River Management Plan. Under this plan, lands are to be managed to provide and enhance recreation opportunities and fish and wildlife habitat. The plan also focuses on maintaining levels of low development while maintaining public use sites.

- F. Previous State Plans/Classifications.** The property was included in the Willow Sub-Basin Area Plan (1982) and superseded by the current Southeast Sustina Area Plan (adopted in 2008 and revised by DNR in 2009).

Classifications of property included settlement, habitat, public facilities, and public recreation.

G. Existing Plans Affecting the Subject Property. The property is not located within the boundaries of any city and not zoned. Development restrictions are imposed by the Borough.

H. Apparent Highest and Best Use. The highest and best use of this property is as oil, gas, and subdivided residential development.

IV. Proposal Background. Since 2007, the Borough and the Alaska Railroad Corporation (ARRC) have jointly pursued a new rail line to connect Port MacKenzie to ARRC's mainline near Houston. The route of the proposed extension has been the subject of considerable study over the last several years. The final environmental impact statement (EIS) was completed in March 2011. The EIS was followed by the Federal Surface Transportation Board's Record of Decision which gave authorization to ARRC and Borough to construct and operate the 32 mile Port MacKenzie Rail Extension.

In September 2013, the Borough submitted a request to the TLO for a construction license with a purchase offer for approximately 165.5 acres of Trust land within Segments 4 and 5 of the Port Mackenzie Rail Extension Project.

V. Terms and Conditions. The Trust will receive the value established by the July 25, 2013 appraisal plus twenty percent for a total sale of \$198,600. The Borough will be required to meet all platting requirements and complete an as-built survey of the rail extension. Mineral and hydrocarbons rights are to be retained by The Trust.

VI. Asset Management Considerations. The proposal is consistent with the long term "Asset Management Strategy for Trust Land" (Strategy), which was adopted July 15, 2003 in consultation with The Trust. The sale will meet the Strategy's general value expectation of 120% of the appraisal value for negotiated sales.

VII. Alternatives. The Port MacKenzie Rail Extension Project is a state public works project. Under Alaska Statue 09.55.240, the Borough has the authority to exercise powers of eminent domain or file a declaration of taking. The Borough may acquire the 165.5 acres of Trust land under this Statue at "fair market value". Therefore, the only alternative is to challenge the condemnation through a legal action.

VIII. Risk Management Considerations.

A. Performance Risks. Performance risks will be minimized through a construction license, purchase and sales agreement, and a quitclaim deed.

B. Environmental Risks. Environmental risks have been identified in the March 2011 Port MacKenzie Rail Extension Final Environmental Impact Statement.

C. Public Concerns. Subject to additional comments received through the public notice process, there are no known public concerns.

IX. Due Diligence.

- A. Site Inspection.** TLO staff inspected portions of the project area with the appraiser.
- B. Valuation.** The sale value of \$198,600 for the 165.5 acres was based on 120% of the appraised value. The appraisal of \$165,500 was completed by Valley Appraisal & Analysis, Inc. on August 25, 2013 and verified by an independent review completed by Frank King, MAI in his Determination of Just Compensation report.
- C. Terms and Conditions Review.** Staff determined additional legal review of the standard documents used in this transaction is not necessary since the documents have been used frequently by the TLO for similar transactions.

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 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).

XI. Trust Authority Consultation. The Alaska Mental Health Trust Resource Management Committee was consulted on November 21, 2013. 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 November 21, 2013, and the Board of Trustees concurred with the issuance of a construction licenses and subsequent negotiated sale of approximately 165.5 acres to the Matanuska-Susitna Borough subject to the outcome of the notice process.

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.

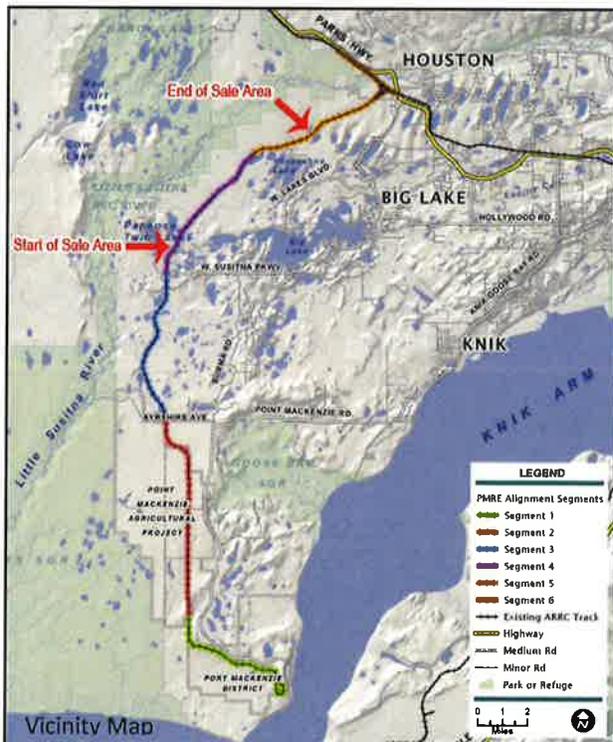
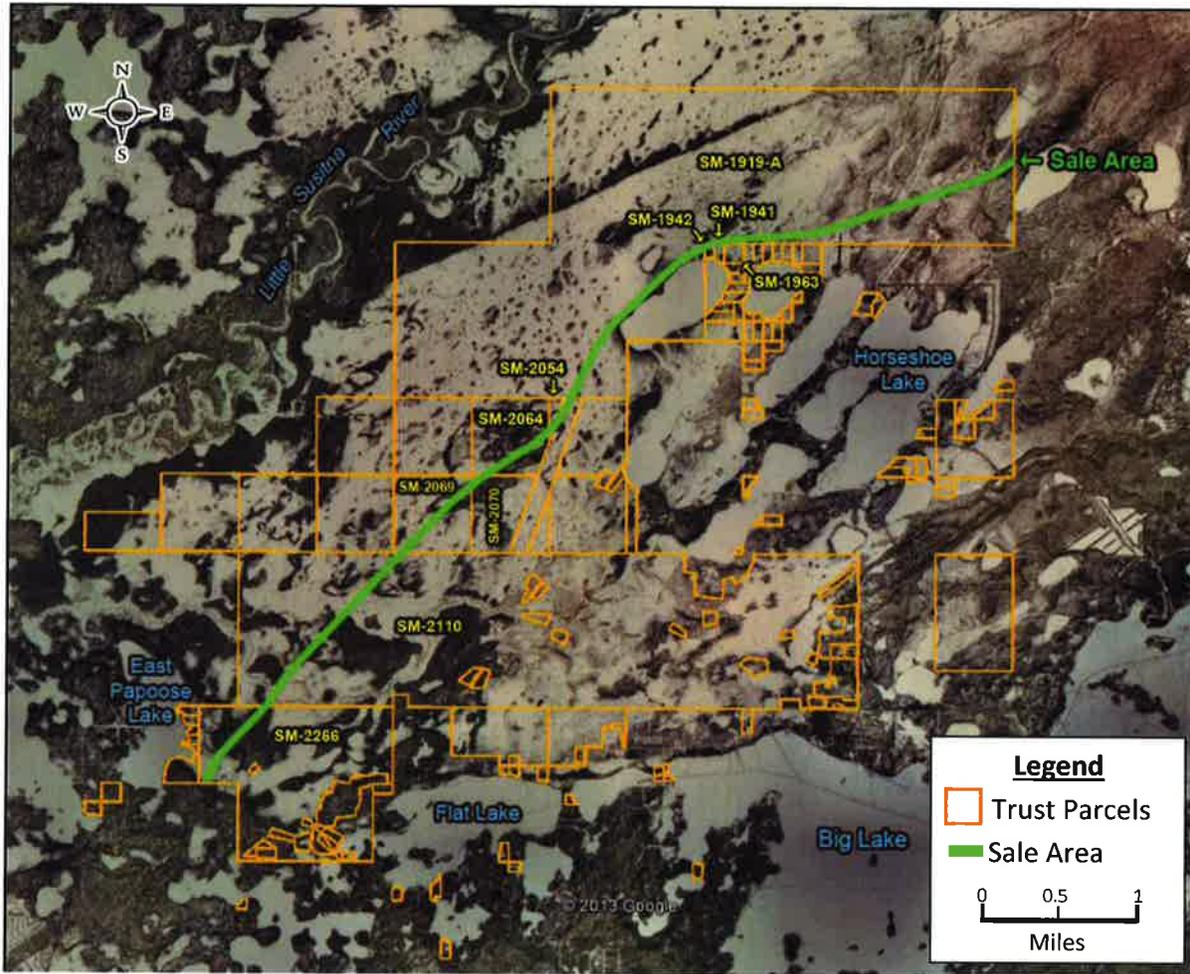
XVI. APPROVED:


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

11.26.2013
Date

Attachments: Attachment A – General Location Map

Attachment A - General Location Map
 Best Interest Decision MHT 9200580



Negotiated sale of Trust lands within Segment 4 and 5 of the Port MacKenzie Rail Extension Project.

A portion of Trust parcels SM-1919-A, SM-1963, SM-1941, SM-1942, SM-2054, SM-2064, SM-2069, SM-2070, SM-2110, and SM-2266 within T. 17 N., R. 04 W., Seward Meridian Sections 1, 2, 10, 11, 15, 16, 20, 21, and 30