

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision for Kenai Fuel Mitigation Project
MHT #9200641

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 timber sale on certain Trust lands. 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 to Nikiski, Alaska, and is more particularly described as: located within (portions of) Copper River Meridian, T6N, R11W, Sections 4, 5, 7, 8 & 9 containing approximately 900 acres.

MHT Parcels: SM-7004; SM-7005; SM-7006; SM-7007; SM-7008.

Persons who believe that the written decision should be altered because it is not in the best interests 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 5, 2016**. **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 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.


John Morrison
Executive Director

1/14/16
Date
Published Alaska Dispatch News: 1/15/2016

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Kenai Fuel Mitigation Project

MHT #9200641

MH Parcels- SM-7004; SM-7005; SM-7006; SM-7007; SM-7008

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.** Timber sale; to accomplish fuel reduction to reduce danger of catastrophic wildfire.
- II. Applicant/File #.** MHT 9200641
- III. Subject Property.**
- A. Legal Description.** Copper River Meridian T6N, R11W, SW ¼, Sec 4; T6N, R11W, SE ¼, Sec 5; T6N, R11W, S ½, Sec 7; T6N, R11W, N ½, Sec 8; T6N, R11W, W ½, Sec 9; containing 1280 acres more or less.
 - B. Settlement Parcel Number(s).** SM-7004; SM-7005; SM-7006; SM-7007; SM-7008 (a portion of).
 - C. Site Characteristics/Primary Resource Values.** The topography of area is gentle hills with gradients under 10% with low marshy areas. The region is experiencing a spruce bark beetle infestation. Long-term uses for the properties are timber production or real estate development.

- D. Historical and Existing Uses of the Property.** The historical uses of this and adjoining property is limited. The TLO parcels could be subdivided and sold in the future. Spruce seedlings are regenerating on these lands which will be merchantable in the future (70 to 80 years). The proposed activity will increase access and may enhance the value.
- E. Adjacent Land Use Trends.** All adjacent lands have received similar treatments.
- F. Previous State Plans/Classifications.** Parcels are within the Kenai Peninsula Borough and the State of Alaska, Kenai Area Plan, 2001.
- G. Existing Plans Affecting the Subject Parcel.** Parcel lies within the Kenai Peninsula Borough and are consistent with the Kenai Area Plan.
- H. Apparent Highest and Best Use.** Highest and Best current use is timberlands with future subdivisions.

IV. Proposal Background. The intensity of catastrophic wildfires has increased on the Kenai Peninsula over the past several decades due to Spruce bark beetle activity. The beetle will eat the cambium layer under the bark which results in tree mortality. The tree then dies, causing the familiar red appearance associated with beetle activity. The dead tree eventually falls causing a buildup in fuels which results in wildfires of intense heat. Wildland fires in these types of fuels are extremely difficult to contain. We saw this demonstrated last summer. Although the beetle activity on the Kenai is not as prevalent as in the 1990's, the beetle is still active. The fuel mitigation project is proposed to occur on about 920 acres of Trust Lands in the form of a timber sale. The Kenai Borough, DNR Lands, and other Trust Lands in the area have undergone similar mitigation measures. The proposal is to perform hazardous fuel reduction through timber harvest. The harvest will remove only dead and dying spruce, blown down trees, and mature trees over 10" in diameter. The proposed harvest will retain all aspen trees, about 75% of the birch trees, and all live spruce trees less than 10" in diameter. This is similar to the treatments of adjacent lands.

V. Terms and Conditions. The parcels will be contracted in blocks of about 100 acres. The sale size is limited to the quantity that a local contractor can treat in 1 year. The TLO has an agreement in place with the Division of Forestry, Kenai Area, to monitor these contracts.

VI. Resource Management Considerations. The proposed action is consistent with TLO's adopted Resource Management Strategy (RMS) (adopted January 2015). The action will reduce hazardous fuels and lessen the chances of catastrophic wildfire which could diminish future management options for the parcel. The action will receive fair market value of \$100 per acre based on the sale price of similar tracts. The alternative would be to do no action or pay for the fuel reduction services.

VII. Alternatives.

Do Nothing: This alternative would leave the area with current fuel buildup. Studies have shown that untreated lands in a wildfire burn hotter, have a faster rate of spread, and are more difficult to contain.

Alternative 1: Put entire parcel up for contract. This alternative would be desirable to the TLO for administrative purposes. It is unlikely that the current proposer would have financial backings for a contract of that proportion.

Preferred Alternative: This alternative will allow the work to go forward. The return to the Trust will be acceptable while the risk of catastrophic wildfire will be reduced. The timber sale will be marketed in 100 acre tracts and administered by the Division of Forestry.

VIII. Risk Management Considerations.

- A. Performance Risks.** The sale is dependent on the current local markets of firewood, lumber, and house logs. Changes in these markets could make the operation unprofitable.
- B. Environmental Risks.** The proposed timber sale will not result in significant environmental risks to the Trust. Timber sale operations are governed by State and Federal regulations, as well as contract provisions requiring strict compliance with the Forest Practices Act and Regulations to minimize the risk of environmental impacts to air, fish, and wildlife. The contract will be strictly enforced.
- C. Public Concerns.** This action is primarily for fuel reduction and these projects have been well supported in the past. Similar activities such as timber sales have been conducted on the adjoining lands. The area has also experienced several catastrophic wildfires this year.

IX. Due Diligence.

- A. Site Inspection.** A site inspection was conducted by TLO staff, Division of Forestry personnel, and potential operator. TLO staff has considerable experience in timber sales and fuel reduction projects throughout Alaska.
- B. Valuation.** Timber values have been estimated by the TLO as up to \$90,000 (\$100/acre). The price is set on negotiated prices based on stumpage returns of adjacent landowners.
- C. Terms and Conditions Review.** Timber purchase and sale agreement will be substantially the same as that used by the TLO for other large timber harvest operations, with revisions as outlined in the TLO Resource Management Plan.

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 timber 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). AS 38.05.112 (Forest Land Use), AS 38.05.113 (Five-Year Sale Schedule), to the extent that it does not apply to private land owners. In addition, AS 38.05.115 (limitations and conditions of sale) and its implementing regulations are hereby deemed inconsistent to the extent that they would limit volumes available for harvest by the Trust and to the extent that said limitations would benefit others at a cost to the Trust.

- XI. Trust Authority Consultation.** The Alaska Mental Health Trust Resource Management Committee was consulted on October 21, 2015. 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 18, 2015, and the board of trustees concurred with the proposed timber sale 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.)

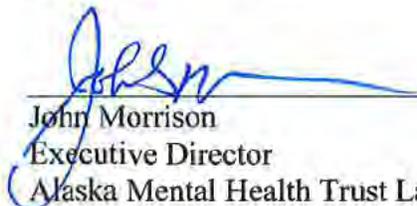
XIV. Reconsideration. To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

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:



John Morrison
Executive Director
Alaska Mental Health Trust Land Office

9-08-16
Date