

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

BEST INTEREST DECISION

Granting of an Easement at Tract 2B-1 for Eventual Development of Tract C-2

MHT #9200636
MH Parcel(s) SM-1526

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. Granting of a perpetual easement for sanitary sewer line installation.

II. Applicant/File #. Trust Land Office (TLO) with AWWU as Grantee /MHT 9200636

III. Subject Property.

A. Legal Description. SW1/4 of Section 28, T13N, R3W, Seward Meridian Alaska. Further described as Tract 2B-1 at U-MED Professional Park Subdivision, according to Plat 2013-103 filed Dec. 23, 2013, at the Anchorage Recorder's Office, containing 2.277 acres more or less.

B. Settlement Parcel Number(s). SM-1526.

C. Site Characteristics/Primary Resource Values. A well positioned commercial parcel located within UMED currently housing a renal care facility, and under a long term ground lease with Spur Development, LLC (ref. MHT 9200232).

D. Historical and Existing Uses of the Property. The parcel was vacant and had no apparent previous use prior to execution of a ground lease (ref. MHT 9200232) dated August 9, 2005, and expiring June 30, 2058.

- E. Adjacent Land Use Trends.** The area consists primarily of institutional grade commercial, medical, and educational buildings. This is a district within the Municipality of Anchorage (MOA) known as the UMED district. Other major owners and tenants include University of Alaska - Anchorage, Providence Hospital, Alaska Pacific University, and Alaska Native Medical Center.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** UMED Comprehensive Plan, which is unaffected by the decision as included herein.
- H. Apparent Highest and Best Use.** Zoned B-3/SL and suited for commercial development. Through the execution long term ground lease this parcel is already being used in accordance with the apparent highest and best use.

IV. Proposal Background. The proposed perpetual sanitary sewer easement is necessary to provide sanitary sewer service to Tract C-2, which is also owned by the Alaska Mental Health Trust Authority. Tract C-2 is located immediately to the east, and across the Laurel Street public use easement (PUE) from Tract 2B-1. Tract C-2 is currently unserved by sanitary sewer. The installation of the sanitary sewer line will promote future development of Tract C-2. Tract 2B-1 includes the closest existing sanitary sewer manhole serving as the point of connection to the Anchorage Water and Wastewater Utility (AWWU) sanitary sewer basin (ref. AWWU drawing depicting Grid Number SW1734).

V. Terms and Conditions. The proposed perpetual easement will be dedicated without additional compensation. Compensation to the Trust comes in the form of the eventual ground lease rents or sales proceeds, to be received by the Trust when the neighboring parcel (Tract C-2) is developed or sold. The terms of the existing (Tract 2B-1) ground lease are unaffected by the granting of this easement. The proposed perpetual easement is to be dedicated by the land owner to AWWU upon completion of constructing improvements within the easement. The Trust will donate both the perpetual easement and the improvements, which is in turn to the benefit of the Trust through the follow on ability to develop or sell Tract C-2.

VI. Resource Management Considerations. This proposal is consistent with the TLO's Resource Management Strategy (RMS) (adopted January 2015). More specifically, development of the UMED parcels owned by the Trust has long been a goal of the Trust. Through the establishment of the sanitary sewer service, Tract C-2 is an asset with increased value that will benefit the Trust in the long term through the realization of an eventual sale or ground lease. Parcels the Trust hold in and around the UMED district are valuable commercial real estate holdings in the Anchorage Municipality. Sizeable vacant commercially zoned lands within the UMED District are limited in number. To reiterate, the value and lease rate at Tract 2B-1 are both unaffected by this easement for reasons explained above.

VII. Alternatives. The alternatives to this perpetual easement would be to find a point of connection at a different location or to do nothing. These alternatives would not be to the greatest benefit of the Trust. The point of connection at Tract 2B-1 presents the closest

and most cost effective point of connection. The proposed perpetual easement has been evaluated as to the impact on the long-term value and revenue potential of Tract 2B-1, and as previously stated the terms of the existing (Tract 2B-1) ground lease are unaffected by the granting of this easement. Furthermore, the overall extent of this new perpetual easement overlays existing perpetual sanitary sewer and storm sewer easements (ref. Plat 2004-149 and 2013-103), so the majority of the footprint of the easement occupies land that is already encumbered through existing easements. The new perpetual easement is toward the northwest edge of the parcel, and is adjacent to an existing public use easement and driveway easements. The location is such that it is in an area of the site that would not be available for future development resultant to the existing sanitary sewer, storm sewer and public use easements mentioned above. In conclusion, the TLO deems the proposed easement necessary and viable alternatives do not exist at this time. The recommendation is to proceed as proposed.

VIII. Risk Management Considerations.

- A. Performance Risks.** As Lessor under the ground lease of Tract 2B-1, the Trust is able to execute agreements necessary to facilitate further development of the parcel, or in this case an adjacently owned parcel. The Trust is required to provide notice to the Lessee of Tract 2B-1, and will also coordinate and manage the installation of the new sanitary sewer line such that it is minimally disruptive to both the Lessee's operations and the general public. Upon completion of the sanitary sewer installation, the Trust Land Office's installing contractor will repair, replace, and restore areas disturbed during construction to original condition prior to construction.
- B. Environmental Risks.** No environmental impacts have been identified.
- C. Public Concerns.** The proposed easement/improvement will be an asset to the surrounding parcels and provide service that is not currently available but in demand. To date, no public opposition has been received by the TLO for the proposed easement.

IX. Due Diligence.

- A. Site Inspection.** TLO staff has visited the site several times to inspect the proposed easement area.
- B. Valuation.** The granting of an easement necessary to develop a parcel for commercial purposes is a commercially reasonable requirement and in most cases compensation for such easements is not received by the parcel owner and/or the future developer of the parcel it serves (in this case Tract C-2). The easement is being granted by the Trust for the direct benefit of the Trust and as such an appraisal is unnecessary.
- C. Terms and Conditions Review.** The TLO and the Assistant Attorney General for the State of Alaska will review the proposed easement document and will be involved in the negotiations associated with finalizing the document.

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 granting of the 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).

XI. Trust Authority Consultation. The Alaska Mental Health Trust Resource Management Committee was consulted on January 27th, 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 January 28th, 2015, and the board of trustees concurred with the installation of sanitary sewer from Tract 2B-1 to Tract C-2 and the associative granting of necessary easement agreements 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:



Marcie Menefee
Executive Director
Alaska Mental Health Trust Land Office

4-8-15

Date