

**Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**Notice under 11 AAC 99.050 of**  
**Decision to Grant a Conservation Agreement**  
**MHT # 9200688**

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 Conservation Agreement on certain Trust land with Donlin Gold, LLC for the purpose of establishing a conservation easement, lease, deed restriction, restrictive covenant, or other conveyance or instrument restricting certain surface use activities for purposes of retaining or protecting wetland values of Trust property. 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 or near to the village of Tyonek, and is more particularly described as: T. 013 N., R. 011 W., Seward Meridian, Sections: 19, 20, 29, 30, 31, & 32; and, T. 012 N., R. 012 W., Seward Meridian, Sections: 8, 9, 13, 14, 15, 16, 17, 22, 23, & 24; Trust Parcels: SM-7016, SM-7015, SM-1505-A01, SM-1506-01, and SM-1530-B01.

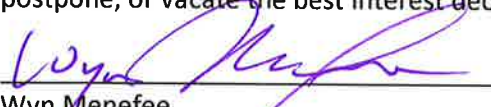
Persons who believe that the written decision should be altered because it is not in the best interests of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, April 12, 2018**. 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](mailto: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](http://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.

  
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Wyn Menefee  
Executive Director

  
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Date

Published Anchorage Daily News: 03/11/2018

# The Alaska Mental Health Trust Authority Trust Land Office

## BEST INTEREST DECISION Donlin Gold, LLC, Land Conservation Agreement

MHT# 9200688

MH Parcels: SM-7016, SM-7015, SM-1505-A01,  
SM-1530-B01, SM-1506-01

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.** Disposal of a Trust property through the selling of a long-term interest in the form of a conservation easement, lease, deed restriction, restrictive covenant, or other conveyance or instrument restricting certain surface use activities for purposes of retaining or protecting wetland values of the Trust property.

**II. Applicant/File #.** Donlin Gold, LLC (Donlin)/MHT 9200688.

**III. Subject Property (See Exhibit A).**

**A. Legal Description.** T. 013 N., R. 011 W., Seward Meridian, Sections: 19, 20, 29, 30, 31, & 32; and, T. 012 N., R. 012 W., Seward Meridian, Sections: 8, 9, 13, 14, 15, 16, 17, 22, 23, & 24.

**B. Settlement Parcel Number(s).** SM-7016, SM-7015, SM-1505-A01, SM-1506-01, and SM-1530-B01.

**C. Site Characteristics/Primary Resource Values.** The subject properties are located on the west side of Cook Inlet beginning along and near the Chuitna River, and Lone Creek wetlands, in an area approximately 10 miles northwest of

the village of Tyonek. The general characteristics of the area consists of land that is a mixture of lowland forests, wetlands, creeks, and small lakes. The total combined acreage of the proposed conservation area is approximately 2,000 acres in size.

- D. Historical and Existing Uses of the Property.** The project area consists of portions of riparian river and stream corridors, and a large swath of wetlands. At present the Trust does not have any competing interests in the area. The Trust owns the subsurface rights on the subject properties, but there are presently no current projects under review for any subsurface coal, oil, or gas development. A final agreement with the purchaser will require that the Trust maintain a reasonable level of access to the subsurface resources, as well as surface access to gain entry to those resources; examples of the type of access would include roads, drill pads, and/or similar improvements.
- E. Adjacent Land Use Trends.** The area is largely undeveloped, however there is some resource development activity south of the project area that's associated with mining, oil, and natural gas. Interest in developing the Chuitna coal deposit occurred in the general region but has since waned. The area also receives recreational use associated with hunting and fishing.
- F. Previous State Plans/Classifications.** None
- G. Existing Plans Affecting the Subject Parcel.** The subject parcel is included in the Kenai Area Plan (2000), Region 11: Cook Inlet – North of Redoubt Bay. Current management is to support the natural resource development industries.
- H. Apparent Highest and Best Use.** The Trust does not have any competing interests in the immediate vicinity of the project area, which is one of the reasons that the TLO negotiated a conservation agreement with Donlin. The agreement is unique in that the purpose is to retain and protect wetlands over a long period of time therefore the disposal isn't suitable for a competitive offering, especially considering that the high per acre premium generates a sizeable amount of income on land in an area where there's no developed access, and the surface estate consists of wetlands and riparian zones. Furthermore, it would be highly unlikely that any other entity would be willing to purchase restrictive rights to protect the value of the wetlands and riparian areas without going through the approval process required by the Army Corps of Engineers. Although the Trust owns the subsurface rights on the parcels, they are situated in areas that are either sensitive to disturbance, such as anadromous streams which have significant restrictions on development, or they're located in areas that locatable oil and gas resources are so deep below the surface that accessing them would be cost prohibitive. A conservation agreement between Donlin and the TLO would generate revenue for the Trust on land that would otherwise not be developed since the property consists of wetlands that has little surface value; furthermore, the project area is in a remote region far away from any developed access, and in an area, that would require significant development costs. The revenue generated from entering into a conservation agreement with Donlin will exceed the fair market value of the lands surface value, and the Trust will continue to own the property and have the option to develop the subsurface resources. The disposal of these Trust properties in the form of a conservation easement, lease, deed restriction, restrictive covenant, or

other conveyance or instrument restricting certain surface use activities for purposes of retaining or protecting wetland values of the Trust property is the apparent highest and best use of the property.

**IV. Proposal Background.** Donlin contacted the TLO seeking to purchase an interest in the properties as part of compensatory mitigation for impacts arising from certain permits or other authorizations issued by the Army Corps of Engineers (ACOE), pursuant to Section 404 of the Clean Water Act.

**V. Terms and Conditions.** A conservation easement, lease, deed restriction, restrictive covenant, or other conveyance or instrument restricting certain surface use activities for purposes of retaining or protecting wetland values of the Trust property will be drafted into an agreement and signed. The agreement will provide market value to the Trust based on an area equivalent to approximately 2,000 acres. The opportunity to receive market rate compensation is highly favorable to the Trust and does not preclude future development of Trust lands adjacent to the disposal, or the development of the subsurface resources under the project area if the associated surface activity is limited to those agreed to in the contract with Donlin.

**A. Term.** Any agreement will have minimum term of 99 years.

**B. Consideration.** The Grantee is offering to purchase 1,933 acres of Trust lands for \$1,500,000, which would be paid in three installments. The first installment, \$40,000, will be paid within 30 days after the execution of the binding agreement between Donlin and the Trust. The second installment, \$160,000, will be paid within 30 days after the ACOE issuance of the Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permit for the Donlin Gold Project. The third installment, \$1,300,000, will be paid within 90 days after the decision to construct the Donlin Gold Project is made by Donlin. In the interim between issuance of the ACOE permits and construction decision, Donlin will pay an annual option fee of \$20,000 per year on or about the anniversary date of the issuance of the ACOE permits.

**C. Conditions.** The conservation agreement will be granted for the purpose of restricting certain surface use activities for retaining and protecting the wetland values of the property.

**D. Third Party Use.** The Grantee may not grant third party authorizations within the project area, i.e. telecommunications, electrical, oil and gas lines, etc. The Trust will retain the right to issue third party authorizations within the boundaries of the project area that do not undermine or conflict with the purposes for the creation of the conservation agreement, i.e. commercial big game guiding, or other types of commercial outdoor recreation.

**VI. Resource Management Considerations.** The proposed action is consistent with the Guiding Goals of the TLO *Resource Management Strategy*, which are to: protect and enhance the value and productivity of Trust property and resource assets; maximize revenues from Trust property and resource assets over time; encourage a diversity of revenue-producing uses on Trust property and resource assets; and, manage Trust land prudently, efficiently and with accountability to the Trust and its beneficiaries.

The proposed conservation agreement will not negatively affect the Trust's opportunity to maximize revenues on adjacent Trust lands over time, or deny the Trust the ability to issue additional third-party authorizations within the project area, which do not conflict with the purposes of the conservation agreement.

## **VII. Alternatives.**

**Alternative 1: Do Nothing.** No action results in the loss of a source of revenue.

**Alternative 2: Resource Development.** At present the parcels do not have any other probable use other than exploration and development of oil, gas, and coal resources.

**Alternative 3: Proceed as Proposed.** The issuance of a conservation agreement to Donlin will provide revenue to the Trust while implementing long term management strategy that adheres to Trust principles.

## **VIII. Risk Management Considerations.**

- A. Performance Risks.** The proposed conservation agreement will be issued for compensatory mitigation, which requires retaining and protecting wetlands for a long-term period. Donlin will have sole responsibility for all work necessary to obtain a final conservation agreement; and other agency acceptance of the properties for their mitigation value; including the costs of mapping the areas by a contractor selected by Donlin, and assisting the TLO in generating an acceptable management plan for the area that meets the ACOE requirements. In the interim between issuance of the ACOE permit and Donlin's mine construction decision, Donlin will pay an annual option fee of \$20,000 per year on or about the anniversary date of the ACOE permit issuance. These option fees are in addition to the offer price in exchange for retaining the right to the areas for compensatory mitigation by Donlin. The term of the option and agreement as a whole will expire in 10 years or other mutually agreeable time period if a construction decision is not made.
- B. Environmental Risks.** The proposed conservation agreement will be issued "as-is". There are no known environmental issues in the project area, and due to the nature of the agreement being an instrument that retains and protects wetlands, thereby prohibiting surface impacts, there is no environmental risk. Any improvements to develop access roads or drill pads would be evaluated to determine impacts, and would need to meet all state, federal, and local environmental requirements as well as being consistent with the agreement.
- C. Public Concerns.** Due to the remote location of the parcels, and lack of developed access, the area receives very little activity. The establishment of a conservation area on these parcels will likely be viewed positively by the Alaska environmental community and the residents of Tyonek due to the conservation and preservation of the riparian corridor of the Chuitna River, as well as the wetlands that comprise a large swath of wetlands at the headwater of salmon bearing streams and rivers.

## **IX. Due Diligence.**

- A. **Site Inspection.** TLO staff have not visited the project area for this project, however, TLO staff have flown over the area with past projects.
- B. **Valuation.** Donlin's offer was calculated by multiplying the number of acres within the project area times \$750 per acre, which is 170% of a 2016 appraised land value in the area with similar or higher value features (located on the coast of Cook Inlet just north of the mouth of the Chuitna River).
- C. **Terms and Conditions Review.** The proposed conservation agreement will use standard terms and conditions found in other TLO land use authorizations, as well as special stipulations that are found in agreements specific to conservation easements and wetland mitigation documents, such as management considerations and annual inspections and reporting.

**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.** The proposed conservation agreement is 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 38.05.055 - .069 (Sale of Land), 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 Resource Management Committee was consulted on January 4, 2018. 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.

**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](mailto: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](http://www.mhtrustland.org).

**XVI. APPROVED:**

  
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Wyn Menefee  
Executive Director  
Alaska Mental Health Trust Land Office

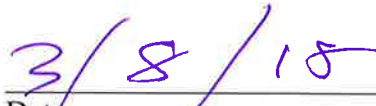
  
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Date



Exhibit A

