

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
General Permit and Inconsistency Determination of Generally Allowed Uses on Trust Land
TLO Project # 2019-171

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 deem the application of Generally Allowed Uses under 11 AAC 96.020(a)(1)(D) - (G); 11 AAC 96.020(a)(2); 11 AAC 96.020(a)(3)(D)-(G); 11 AAC 96.020(a)(4)(A), (C), &(D); and 11 AAC 96.020(a)(5)(E) inconsistent with Trust management principles. The basis for this determination is explained in a written best interest decision prepared by the Executive Director pursuant to 11 AAC 99.040.

This decision applies to all Trust land located in Alaska.

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, June 24, 2019**. 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 published notice of or 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 <https://alaskamentalhealthtrust.org/trust-land-office/>. 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.



Wyn Menefee
Executive Director



Date
Published Statewide: May 23, 2019

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
General Permit and Inconsistency Determination of
Generally Allowed uses on Trust Land

Project Number: **2019-171**
MH Parcel(s): **Statewide**

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 Action Affecting Trust Land.** Pursuant to the provisions of AS 38.05.801 and 11 AAC 99, the Executive Director of the TLO has determined that allowing the following uses of Trust land without authorization from the TLO and compensation to the Trust is inconsistent with Trust management principles and 11 AAC 99.020: Generally Allowed Uses described in Section IV below.. Accordingly, the TLO Executive Director, after consultation with the Trust, proposes to close all Trust land to the uses described above unless the user obtains a general permit on terms described herein.

The specific closure referenced above will continue to allow the public to use Trust land without a permit for hunting, fishing, and other recreational activities, provided the activities are day use only, non-commercial, non-motorized, and in compliance with applicable state, federal, and local laws. All other uses will require written permission.

- II. Applicant/File #.** Trust Land Office/ Project No. 2019-171.

- III. Subject Property.**

A. Legal Description. Applies to all Alaska Mental Health Trust land located in Alaska.

B. Settlement Parcel Number(s). Statewide.

- IV. Proposal Background.** TLO's public recreational use policy allows for hunting, fishing, and other recreational activities to occur, provided the activities are day use only, non-commercial, and non-motorized. All other uses, including gold panning, mineral exploration, and suction dredging are authorized through revocable land use authorizations, easements, leases, or other means.

Under the Mental Health Enabling Act and subsequent Alaska statutes, the TLO has a responsibility to maximize the long-term revenue from Trust land, protect the corpus, protect and enhance the long-term productivity of trust land, encourage a diversity of revenue-producing uses, and manage trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries. Allowing the general public to use Trust land for the following purposes, which are "generally allowed uses" on general state land, without authorization and without compensation to the Trust violates trust principles by allowing significant uses of Trust land and resources for free and without authorization or accountability that could potentially harm or devalue Trust property; in addition, these uses could otherwise be a source of income to the Trust:

11 AAC 96.020(a)(1) travel or travel-related activities, as follows:

- (D) using a highway vehicle with a curb weight of up to 10,000 pounds, including a pickup truck and four-wheel-drive vehicle, on or off an established road easement, if the use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion;
- (E) using a recreational-type off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on or off an established road easement if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion;
- (F) landing an aircraft [on land]. . . without damaging the land . . .;
- (G) driving livestock, including any number of reindeer or up to 100 horses, cattle, or other domesticated animals;

11 AAC 96.020(a)(2) access improvements;

11 AAC 96.020(a)(3) removing or using state resources, as follows:

- (D) grazing no more than five domesticated animals;
- (E) recreational gold panning;
- (F) hard-rock mineral prospecting or mining using light portable field equipment, including a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger;
- (G) suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day;

11 AAC 96.020(a)(4) other improvements and structures on state land, as follows:

- (A) setting up and using a camp for personal, noncommercial recreational purposes, or for any non-recreational purpose, including as a support camp during mineral

exploration, for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a float-house that can readily be moved; the entire camp must be moved at least two miles before the end of the 14-day period; a cabin or other permanent improvement is not allowed, even if on skids or another nonpermanent foundation; the camp must be removed immediately if the department determines that it interferes with public access or other public uses or interests;

(C) placing a residential sewer outfall into marine waters from a contiguous privately owned upland parcel, with the consent of the affected parcel owners, if the outfall is within the projected sidelines of the contiguous upland parcel and is buried to the extent possible or, where it crosses bedrock, secured and covered with rocks to prevent damage; nothing in this subparagraph relieves a person from complying with state and federal statutes and regulations applicable to residential sewer outfalls;

(D) placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately-owned upland parcel.

11 AAC 96.020(a)(5) uses not listed in (1) - (4) of this subsection that

(E) do not continue for more than 14 consecutive days at any site; moving the use to another site at least two miles away starts a new 14-day period.

V. Terms and Conditions. TLO has developed terms and conditions for general permits covering the use types covered under 11 AAC 96.020(a)(1)(D)- (G); 11 AAC 96.020(a)(2); 11 AAC 96.020(a)(3)(D)-(G); 11 AAC 96.020(a)(4)(A), (C), &(D); and 11 AAC 96.020(a)(5)(E); which include the following:

- A.** The 6 Month, Non-Commercial Recreation General Permit allows individual personal use of off-road motorized vehicles and individual overnight camps up to 14 days on Trust land, for no more than 6 months during the calendar year, which may be taken non-consecutively, as follows:
- i. use of recreational-type off-road or all-terrain vehicle (ATV) with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on established roads or ATV trails. Off trail use may only occur during the winter months when there is sufficient snow depth in place so as not to cause ground disturbance or thermal erosion;
 - ii. to set up and use a camp for personal, non-commercial purposes, for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed; the entire camp must be moved at least two miles before the end of the 14-day period; a cabin or other permanent improvement is not allowed, even if on skids or another nonpermanent foundation; the camp must be removed immediately if the Trust Land Office determines that it interferes with Trust access or other Trust uses or interests; and
 - iii. dead and down timber may be used for personal use at the camp site, unless the area has been closed to fires.

- B.** The 12 Month, Non-Commercial Recreation General Permit allows individual personal use of off-road motorized vehicles and individual overnight camps up to 14 days on Trust land, for 12 consecutive months during the calendar year, as follows:
- i. use of recreational-type off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on established roads or ATV trails. Off trail use may only occur during the winter months when there is sufficient snow depth in place so as not to cause ground disturbance or thermal erosion;
 - ii. to set up and use a camp for personal, noncommercial purposes, for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed; the entire camp must be moved at least two miles before the end of the 14-day period; a cabin or other permanent improvement is not allowed, even if on skids or another nonpermanent foundation; the camp must be removed immediately if the Trust Land Office determines that it interferes with Trust access or other Trust uses or interests; and
 - iii. dead and down timber may be used for personal use at the camp site, unless the area has been closed to fires.
- C.** The Trapping General Permit allows for the taking of furbearers with either traps (including foothold and killer-style or body-grip traps) or snares, on Trust land, and in accordance with all hunting and trapping laws and regulations of the State of Alaska, including the requirement of a trapping license issued by the Alaska Department of Fish and Game.

The Trapping General Permit allows use of recreational-type off-road or all-terrain vehicles with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on established roads or ATV trails. Off trail use may only occur during the winter months when there is sufficient snow depth in place so as not to cause ground disturbance or thermal erosion;

The Trapping General Permit requires that the trapline be posted with obvious signage at the beginning and end of the segment(s) located on Trust land. The signage must identify that a trapline is present and display the trapper's license number.

- D.** Non-Commercial / Personal Firewood Harvest General Permit allows the harvest from Trust land of up to 10 cords of dead trees or beetle kill spruce, which may be down or standing, for individual personal use only. This permit is not valid for the commercial harvest of firewood or any other commercial activity on Trust land.

Timber less than six (6) inches in diameter, brush, and slash shall be disposed of to minimize the risk of fire and disease in accordance with the laws, regulations

and guidelines established by the State of Alaska, Department of Natural Resources, Division of Forestry.

The Non-Commercial / Personal Firewood Harvest General Permit allows the use of recreational-type off-road or all-terrain vehicles with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on established roads or ATV trails. Off trail use may only occur during the winter months when there is sufficient snow depth in place so as not to cause ground disturbance or thermal erosion.

- E. Commercial Harvest of Non-Timber Forest Products (NTFP) General Permit allows the commercial harvesting of NTFP on Trust lands, including mushrooms, berries, bark, burls, conks, cones, boughs, diamond willow, landscaping transplants, and sap. NTFP, for purposes of this permit, does not include rocks, minerals, soil, water, animals, or animal parts. Commercial use is defined as harvesting NTFPs for the primary purpose of sale, resale, or use in a manufacturing process resulting in a product that will be sold or used for business activities. Many commercial publications are available to assist you in identifying plants and other products. The University of Alaska Fairbanks' Extension Service also supplies resources. DNR published the [Alaska Non-Timber Forest Products Harvest Manual \(PDF\)](#) to assist you with products that can be harvested, harvest protocols, quantity limits, seasonal restrictions, and selected references.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust Land,” which was adopted March 2016 in consultation with the Trust and provides for the TLO to maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets. Licenses and general permits allow for non-exclusive use of the surface lands, are revocable without cause, and infrastructure is temporary. The Lands Section manages Trust land prudently, efficiently, and with accountability to the Trust. Best management practices ensure Trust lands are maintained, assets inventoried, and value is retained for the present and future.

VII. Risk Management Considerations.

- A. **Performance Risks.** Implementation of a general permit covering typically low impact or recreational uses may create use conflicts with authorized contract holders. This risk will be mitigated through use of an annual questionnaire to track frequency of use and use patterns to determine actual or perceived use conflicts. General permit holders may be more likely to “self-police” other user groups, including non-permit holders, thereby increasing compliance on Trust land, providing awareness of Trust land, and supporting the Trust’s mission.
- B. **Environmental Risks.** Use of a general permit may reduce some impacts to Trust land, and allow the TLO to better manage such impacts. TLO will monitor the impacts by requesting questionnaires be filled out at the end of the calendar year to evaluate use patterns, frequency of use, and other considerations. In the event

- impacts become pronounced, the TLO will be better able to respond by limiting the number of general permits, revoking issued permits, or increasing restrictions or uses.
- C. Public Concerns.** Subject to comments resulting from the public notice, there are no known concerns that suggest the proposed transaction is inconsistent with Trust principles.

VIII. Due Diligence.

- A. Site Inspection.** TLO staff have documented recreational use patterns on Trust land outside the TLO's public recreation use policy that are causing negative impacts to Trust land. Due to the sporadic nature of the uses it is a rare occurrence that TLO staff are present during the activity. Signage identifying the parcels has reduced some of the impacts but is only partially successful in reducing impacts.
- B. Valuation.** Application and use fees gained through general permits for uses as described herein are expected to be between \$250 and \$500 per authorization.
- C. Terms and Conditions Review.** The General Permit contains standard stipulations that have been reviewed by the Attorney General's Office or independent law firm.

IX. Authorities.

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, 11 AAC 99, and the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)).
- B. Inconsistency Determination.** The proposed closure of Trust land to uses that are inconsistent with 11 AAC 99.020 and issuance of general use permits 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. For the reasons stated herein, the executive director of the TLO hereby deems Generally Allowed Uses under 11 AAC 96.020(a)(1)(D) - (G); 11 AAC 96.020(a)(2); 11 AAC 96.020(a)(3)(D)-(G); 11 AAC 96.020(a)(4)(A), (C), &(D); and 11 AAC 96.020(a)(5)(E) inconsistent with Trust responsibilities accepted by the state under the Alaska Mental Health Enabling Act. Among other things, the application of these regulations would result in the TLO being required to act in a manner that would adversely impact the long-term productivity of the Trust land with no corresponding benefit. The TLO is required to act in the best interest of the Trust and its beneficiaries under 11 AAC 99.020; therefore, these regulations are inconsistent with trust management practices.

- X. Trust Authority Consultation.** 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.

- XI. 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.
- XII. 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 may 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.)
- XIII. 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. A person who, under AS 38.035(i) and 11 AAC 99.060, is eligible to request reconsideration must do so within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier. *See* 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.

- XIV. Available Documents.** Background documents and information cited herein, including statutes and regulations, are 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 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 action, interested parties should contact the TLO at the above address, or visit the website at:

<https://alaskamentalhealthtrust.org/trust-land-office/>.

XV. APPROVED:



Wyn Menefee
Executive Director
Alaska Mental Health Trust Land Office



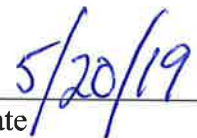
Date

XVI. CONSULTATION CONCURRENCE:

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.



Michael K. Abbott
Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority



Date