

**ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

**PRELIMINARY DECISION
MENTAL HEALTH TRUST REPLACEMENT LAND
PROPOSED CONVEYANCE
ADL 107859**

**RELATED ACTIONS
Area Plan Amendment
AS 38.04.065
Reclassification of Land
AS 38.05.300
Mineral Order 1046 Amendment
AS 38.05.185**

Proposed Action

The Division of Mining, Land and Water (DMLW) of the Department of Natural Resources (DNR) proposes to convey a parcel of state owned land located in Downtown Juneau, Alaska to the Mental Health Trust Authority (Trust Authority or the Trust). The parcel is 0.34 acres in size. This proposed conveyance is made in partial fulfillment of the state's obligation under the 1994 Settlement Agreement¹ in the Mental Health Lands litigation. The land here proposed for conveyance is currently occupied by the Department of Public Safety (DPS) office building on Whittier Street. It is intended that the state will convey the DPS building to the Trust Authority, and this decision deals only with the land. Under the Settlement Agreement, the state is required to compensate the Mental Health Trust for parcels of land that have been conveyed to the Trust in error.² In a previous decision, ADL 229606 (June 2006), it was determined that additional state land in an amount valued at more than \$5.272 million may need to be conveyed to the Trust to compensate for land returned by the Trust to DNR.

The parcel proposed for conveyance in this decision, once conveyed, will become Mental Health Trust Land (Trust Land) and will be used by the Trust Authority to generate revenue for the beneficiaries of the Mental Health Trust. When title is transferred to the Trust, the land becomes subject to the management requirements for Trust Land specified in AS 38.05.801, AS 37.14.009 and 11 AAC 99, and will be managed by the Trust Land Office (TLO) consistent with the Trust Authority's fiduciary responsibility.

This preliminary decision recommends conveyance of the parcel to the Trust. Several separate but related actions will be necessary to implement this recommendation.

¹ Settlement Agreement and Stipulations to Terms of Dismissal in Civil Case No. 4FA-82-2208 in the Superior Court, Fourth Judicial District. (June 10, 1994)

² The term *conveyed in error* refers to land conveyed to the Trust and subsequently determined to have had, when conveyed, a defect or encumbrance that would reduce the nominal value of the land. Characteristics that may qualify the land as conveyed in error are stipulated in the Letter of Concurrence between DMLW and TLO dated January 5, 2000. The Letter of Concurrence sets out the process to be used for identification, adjudication and conveyance of *replacement land* for land conveyed in error.

Amendment of the Juneau State Land Plan (1993) will be required; in the Juneau plan the subject land is designated for retention in state ownership. To provide for conveyance to the Trust, the designation, and the classification, must be changed. The land must also be closed to mineral entry. Public notice for these actions is given with this decision.

The public is invited to comment on the preliminary decision to convey this parcel to the Mental Health Trust and on any of the related actions. The deadline for comments is **5:00 p.m., August 24, 2009**; See p. 7 for details on how to submit comments.

Authority

DNR proposes to convey this land to the Mental Health Trust Authority in accordance with Section 40, Chapter 5, FSSLA 1994 as amended by Sections 4 and 5, Chapter 1, SSLA 1994; the Settlement Agreement between the state and the Settling Plaintiffs (Articles III and IV(4)); AS 38.05.801(b)2-3; AS 38.05.035(e); and AS 38.50. These documents are available for review at the address given in the *Public Notice, Decision, and Appeal Procedures* section of this decision (see p. 7).

Administrative Record

The administrative record includes case file ADL 107859, and, incorporated by reference, the Juneau State Land Plan, the 1994 Settlement Agreement, and Department Order 142 (Management of Mental Health Trust Land). Also incorporated by reference is the Letter of Concurrence dated January 5, 2000, between the DMLW and TLO*, which letter stipulates the “Replacement Land Process” to be used for identification, adjudication and conveyance of replacement land. (* The Trust Land Office is the unit within DNR responsible for management of Mental Health Trust land.)

Scope of Decision

The scope of this decision is limited to deciding whether or not it is in the best interest of the state to convey the subject parcel of state land to the Mental Health Trust Authority to satisfy, in part, the state’s obligation to compensate the Trust for parcels conveyed in error.

Background

Under the 1994 Settlement Agreement, the state is required to compensate the Mental Health Trust for state land that was conveyed to the Trust in error in 1994. In 2006 it was determined that state land valued at upwards of \$5.272 million may need to be conveyed to the Trust to compensate for Trust Land returned to DNR. The parcel of land addressed in this decision has been nominated by the TLO as *replacement land*.

In February 2009, the state Department of Administration and the TLO signed a Memorandum of Agreement (#8084) to “memorialize the desire and commitment” on behalf of both parties “to conduct good faith negotiations for entry into long term office and surface parking leases.” This Memorandum of Agreement anticipates both

construction by the Trust of a new office building, with associated parking, in the Juneau “Support” area, on land currently owned by the Trust, and relocation of certain state government offices from the departments of Administration, Labor, Public Safety, and Corrections, to the new office building.

The parcel here proposed for conveyance is currently occupied by the DPS building, which is owned by the state. If the TLO is successful in acquiring the land, the Department of Administration anticipates transferring title to the building to the Mental Health Trust. (Personal communication, Tanci Mintz, June 17, 2009) If acquired by the Trust, and developed as planned, the parcel will be used for a new parking garage after removal of the existing building. The parking garage is intended to provide for future parking space required for the tenants of the new office building.

Conveyance of this parcel will partially compensate the Trust for land conveyed in error and subsequently returned to the state.

Description

Parcel characteristics:

- a. Location and Geographic Features. The parcel is located on Whittier Street in downtown Juneau, Alaska. The parcel is currently occupied by the Department of Public Safety Office Building.
- b. Title. The State of Alaska, Department of Natural Resources holds fee title to the surface and subsurface estates of the land under a Statutory Warranty Deed issued by the City of Juneau, dated July 1, 1968. The state has serialized the property as OSL 404.
- c. Planning. This parcel is a portion of Subunit 6a29 (Downtown Juneau) in the Juneau State Land Plan. The land-use designation is *Public facilities reserved site – retain*. The plan will be amended to change the land-use designation to *Public facilities reserved site – transfer*.
- d. Classification. The parcel is classified *Reserved Use Land*. (Juneau State Land Plan; Land Classification Order SE-93-004) The parcel will be reclassified *Settlement land*.
- e. Coastal Zone Review. A coastal zone consistency determination is not required. Land conveyed to the Mental Health Trust, including replacement land, is categorically exempt from coastal zone consistency review. The actions proposed in this decision fall under the ‘A List’ which lists all actions that are exempt from coastal zone review.
- f. Mineral Orders. The land is not currently covered by a mineral order. Concurrent with a decision to convey the land to the Trust, the land will be closed to mineral entry (Mineral Order No. 1046 (Revised)). Upon transfer of title to the Trust, the state’s mineral order will no longer be effective. The Trust will then manage the mineral estate in accordance with AS 38.05.801 and 11 AAC 99.

- g. Traditional Use Finding. A traditional use finding is not required; the parcel is within an organized municipality, the City & Borough of Juneau. .
- h. Access. The parcel, located in downtown Juneau, may be accessed from Whittier Street which in turn may be accessed from nearby Eagan Drive or Willoughby Avenue.
- i. Reservation of Mineral Estate. In contrast to most land disposal actions by DNR, the mineral estate is included in a land conveyance to the Trust Authority. The mineral estate in the subject parcel will be conveyed to the Trust.
- j. Hazardous Materials and Potential Contaminants. This parcel is listed in the Dept. of Environmental Conservation's Contaminated Sites data base (File ID 1513.38.057). The status of the site is Clean-up Complete – Institutional controls and follow-up reporting are *not required*. A deminimis volume of residual contamination may exist near the building foundation. (Soil sampling done in 2008 determined there was minimal residual contamination present that required no follow-up action.) This conveyance is to hold the state harmless for any contamination that may be present.
- k. Survey. Survey is not required; conveyance will be by Quitclaim Deed.
- l. Compensation/Appraisal. The estimated value of this parcel is \$7,293; this value is derived from a per acre value associated from an adjacent 1994 Settlement parcel. The parties have agreed to use the value estimates associated with the 1994 Settlement Legislation for purposes of establishing parcel value.

Agency Review

Agency Review is being conducted concurrently with the public review of this preliminary decision. Agency comments will be incorporated in the Final Finding and Decision.

Discussion and Alternatives

The TLO has nominated this parcel as replacement land because of its location and suitability for use as an integral part of the Mental Health Trust's planned project to construct a new office building in downtown Juneau. This parcel is nearby the planned location of the new office building and would serve as the site of a future parking garage at a time to be determined by the Trust. Interim surface parking will be provided on the "Subport" parcel immediately west of the new office building. Acquisition of the DPS parcel is necessary to the overall feasibility of the Trust's project.

Essentially two options exist: approve or disapprove conveyance of this parcel.

- Disapprove. Disapproval of the proposed conveyance could have a substantial negative impact on the viability of the Trust's office-building project. Disapproval would adversely affect plans for downtown parking development and the state would lose the opportunity to benefit from consolidation of certain state government offices in one

central location in the State capital. The state would also lose the opportunity to reduce the state's debt to the Mental Health Trust for land returned to the state under the 1994 Settlement Agreement.

- Approve. Approval of the proposed conveyance will benefit both the Mental Health Trust and the State. Transfer of this parcel of land to the Mental Health Trust will enhance the viability of its project to construct a new office building in downtown Juneau, and, at the same time, partially compensate the Trust for land returned to the state under the 1994 Settlement Agreement. The state has an ongoing legal obligation to reimburse the Trust for land returned to the state under the Settlement Agreement; transfer of this parcel to the Trust will partially off set this obligation. Additionally, transfer of the parcel to the Trust, and successful completion of the planned office building, will facilitate the desired consolidation of certain state government offices in one central location, thereby achieving more efficiency and economy of operation for a portion of state government.

Recommendation

For the reasons presented above, I find that Approval of this proposed conveyance is the preferred alternative. Conveyance of the land to the Mental Health Trust may be in the state's best interest and therefore this preliminary decision is authorized to proceed to public review.

This is a preliminary decision and subsequent public review may result in changes to the preferred alternative or disapproval of the proposed conveyance altogether. A Final Finding and Decision will be prepared following public review. If the conveyance is approved, a plan amendment to the Juneau State Land Plan, a classification order and a mineral closing order amendment will accompany the Final Finding and Decision.

for Virginia Galles
Bruce Phelps
Chief, Resource Assessment and Development Section

7/20/09
Date

Public Notice, Decision, and Appeal Procedure

Public notice, required under AS 38.05.945, is now being conducted. Notice will be sent to newspapers (Juneau Empire), post offices, local governments, and native organizations. Public notice on the Internet will be posted on the State's web page under *Online Public Notice* and under DNR's public notice site at <http://www.dnr.state.ak.us/pic/pubnotfrm.htm>.

The public is invited to comment on this preliminary decision to convey a 0.34 acre parcel of state land to the Mental Health Trust Authority. The public is also invited to comment on the proposed plan amendment, land classification order, and mineral order required to enable the proposed conveyance. Comments must be received in writing or e-mail by the Division of Mining, Land and Water, Attention: Bruce Phelps, 550 West 7th Avenue, Suite 1050, Anchorage, AK 99501-3579 **on or before 5:00 p.m., August 24, 2009** in order to ensure consideration. If you have questions concerning this proposed action, contact Bruce Phelps at: 1-907-269-8592 or e-mail: bruce.phelps@alaska.gov.

Following the comment deadline, all timely written responses will be considered and this decision may be modified to incorporate public comments. A Final Finding and Decision will be issued; the final decision will evaluate the public and agency comments received and identify the final recommendation of the Department. Only persons who comment during the public comment period will be eligible to file an administrative appeal of the final decision. A copy of the final decision will be sent to any person who comments on the preliminary decision during the public notice period. The final decision will include appeal instructions.

The Department of Natural Resources is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested at least five days before the comment period deadline. Individuals with audio impairments who wish to respond to this proposed action by telephone may call the department's Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday-Friday, at TDD# 1-907-269-8411.

The right is reserved to waive technical defects in this document.

Attachments:

- A- Parcel Attributes.
- B- Juneau State Land Plan Map – Downtown Juneau.
- C- Aerial Photo.

**ATTACHMENT A
PARCEL ATTRIBUTES
ADL 107859**

Acres	0.34
General Location	Located in Downtown Juneau Alaska
Community	City of Juneau
MTRS	Copper River Meridian, Township 41 South, Range 67 East, Section 23
Legal Description	<p style="text-align: center;">STATUTORY WARRANTY DEED</p> <p><i>Note: The plat number cited in the Statutory Warranty Deed, Plat No. 348, Juneau Recording District, is incorrect; the correct plat number is 352 according to DNR Title Report No. 166 dated September 16, 2008.</i></p> <p>THE GRANTOR, City of Juneau, Alaska, whose address is 155 South Seward Street, Juneau, Alaska, for and in consideration of One Dollar (\$1.00) and other good and valuable considerations in hand paid, and pursuant to that certain agreement between Grantor and Grantee herein, dated September 1967, and signed by Grantor on 16 October 1967, and by Grantee on 3 January 1968 concerning certain land transfers in the Subport area of Juneau, Alaska, conveys and warrants to the STATE OF ALASKA the following described real estate:</p> <p style="text-align: center;">PARCEL H</p> <p>Commencing at the most southerly corner of Lot 14, Block 68, as the same appears on the official plat of the Tidelands Addition to the City of Juneau, Alaska, a plat of subdivision of Alaska Tidelands Survey No.3, filed in the office of the Recorder for the Juneau Recording District at Juneau, Alaska, as Plat No. 348, the True Point of Beginning; thence N. 25°20' W. 143.00 feet along the southwesterly boundary line of said Lot 14; thence N. 64°40' E. 102. 50 feet; thence S. 25° 20' E. 143.00 feet to a point on the southeasterly boundary line of said Lot 14; thence S. 64° 40' W. 102.50 feet along said southeasterly boundary line to the point of beginning, containing an area of 14,657.5 square feet, more or less, situated in the State of Alaska.</p> <p>Subject to the following reservations and exceptions:</p> <ol style="list-style-type: none"> 1. Terms, provisions and reservations under the Submerged Lands Act,(43 USCA 1301,67 Stat. 29) and the enabling act (Public Law 85-508,72 Stat. 339.) 2. Reservations, terms and conditions as set forth in that certain patent from the State of Alaska to the City of Juneau, for tidelands, recorded October 15, 1962, in Book 65, at Page 175.
General Geographic Description	Southeast Alaska.
Coastal District	Juneau #108
Village Corporation	n/a
Regional Corporation	Sealaska
USGS Topo. Map	Juneau B-2 SE (Scale 1:25,000)
Title	OSL 404 (Statutory Warranty Deed dated July 1, 1968)
Area Plan	Juneau State Land Plan (1993)(Portion of Subunit 6a29; p. 3-121)
Classification	Reserved Use Land.
Mineral Order	None
Access	Whittier Street via Egan Drive or Willoughby Avenue
Value	\$7,293

Attachment C: Aerial Photo ADL 107859

