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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Genevieve Wojtusik
Department of Revenue

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: November 25, 2020

RE: Filed Permanent Regulations: Alaska Mental Health Trust Authority

Alaska Mental Health Trust Authority Regulations re: Allocation of Revenue (20 AAC 40.610)

Attorney General File:	2020200456
Regulation Filed:	11/25/2020
Effective Date:	12/25/2020
Print:	236, January 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Valette Keller

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF ALASKA MENTAL HEALTH TRUST AUTHORITY

The attached 3 pages of regulations, dealing with the allocation of trust land revenues, are certified to be a correct copy of the regulation changes that the Alaska Mental Health Trust Authority Board of Trustees adopted at its August 26, 2020 meeting, under the authority of AS 37.14.031 and 47.30.031 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Alaska Mental Health Trust Authority Board of Trustees paid special attention to the implications to Trust beneficiaries of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date: 9/4/20




Michael K. Abbott, CEO

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

November 25, 2020 at 11:35 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



for Kevin Meyer, Lieutenant Governor

Effective: December 25, 2020.

Register: 236, January 2021.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



K-Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

20 AAC 40.610 is repealed and readopted to read:

20 AAC 40.610. Allocation of trust land revenues between principal and income. (a)

Revenues received from the management of trust land will be allocated between principal and income as follows:

(1) to principal,

(A) net proceeds from land sales transactions;

(B) net proceeds from royalties from resource transactions; and

(C) net proceeds from permanent easements;

(2) to income,

(A) interest and transaction costs;

(B) recovery of development costs from land sales, royalties, or other resource transactions and perpetual easements;

(C) bonus bids; and

(D) rents and other revenues from the temporary use of land, regardless of whether the use is exclusive or non-exclusive, or is short- or long-term.

(b) Development costs are attributable to the management of specific trust land in

the authority approves the costs
preparation for a transaction if approved in advance, as follows:
the authority will base approval

(1) before Approval must be based on a development plan that considers the value of the land or resource prior to the commitment of development costs compared to the value of the improved land or resource; the risk that the value of the improvement will not be realized; and

(c)

the duration of time between improvement and consummation of the land or resource

transaction

«lowercase»

(2) Development costs not approved in advance are generally not attributable to

the management of specific trust land in preparation for a transaction

«lowercase»

of this subsection

(3) Notwithstanding (2), if a timber sales transaction is not subject to an approved development plan, net proceeds will be allocated 85% to principal and 15% to income.

#percent

#percent

(c) Valuations for the purposes of this section will be based on the best evidence reasonably obtainable. After reviewing the methodology and supporting evidence, the board may rely on Department of Natural Resources estimates of value.

(d) In this section,

(2)

(1) "net proceeds" means all financial or other consideration attributable to a transaction less

(A) interest; and

(B) development costs

(1)

(2) "development costs" means all expenses reimbursed to the Department of Natural Resources under AS 37.14.041(a)(4)(B) attributable to the management of specific trust land in preparation for a transaction, including surveying, marketing, clearing, accessing, improving, or otherwise enhancing the value or marketability of the land or resource.

(3) "trust land" or "land" has the meaning given in 11 AAC 99.990(2), except that

en

interests in real property held indirectly through business entities are not land, but may be treated

a

entity is

MISCELLANEOUS BOARDS

Register 236, January 20 21 ~~ALASKA MENTAL HEALTH TRUST AUTHORITY~~

an

as intangible assets for purposes of allocation if the land and the entity are sold in the same transaction.

(Eff. 10/24/2004 Register 172; am 12/25/2008 Register 236)

Authority: AS 37.14.031 AS 47.30.031


MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: November 24, 2020

File No.: 2020200456

Thru: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
Legislation and Regulations Section

Re: Alaska Mental Health Trust
Authority regulations re: allocation of
revenue (20 AAC 40.610)

The Department of Law has reviewed the attached regulations of the Alaska Mental Health Trust Authority against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Alaska Mental Health Trust Authority after the close of the public comment period.

Essentially, the regulations allow the Alaska Mental Health Trust Authority to net out, from the allocation of revenue to trust principal, development costs attributable to the management of trust land in preparation for a transaction, and to allocate to trust income--available to mental health programs for current beneficiaries, or available for future development--recovery of development costs post-transaction. The attribution of development costs to the management of specific trust land is subject to authority approval, based on a development plan grounded with evidence from the trust lands office in the Department of Natural Resources, comparing the land value before commitment of development costs to the value of the improved land, addressing the risk that the value of the improvement will not be realized, and addressing the length of time between the improvement and consummation of the transaction. The effect is to allow the authority to act more like a prudent investor: balancing the interests of current beneficiaries in a greater cash flow in the present against the interests of future beneficiaries, not only from an increase in principal that marginally increases income over time, but also from increased income in the future that results from a present use of some income for development costs that maximize future trust value.

The July 1, 2020 public notice and the September 4, 2020 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

CES:SCW:scw

cc w/enc: Genevieve Wojtusik, Special Assistant and Regulations Contact
Department of Revenue

Mike Abbott, Chief Executive Officer
Alaska Mental Health Trust Authority

Wyn Menefee, Executive Director
Alaska Mental Health Trust Lands Office
Department of Natural Resources

Allison Biastock, Chief Communications Officer
Alaska Mental Health Trust Authority

Valette Keller, Administrative Manager
Alaska Mental Health Trust Authority

Stuart W. Goering, Senior Assistant Attorney General
Commercial, Fair Business, and Child Support Section

NOTICE OF PROPOSED CHANGES ON ALLOCATION OF TRUST LAND REVENUES
IN THE REGULATIONS OF THE ALASKA MENTAL HEALTH TRUST AUTHORITY

The Alaska Mental Health Trust Authority proposes to adopt changes in Title 20 of the Alaska Administrative Code dealing with the allocation of revenues earned by the Trust Land Office between AMHTA principal and income.

20 AAC 40.610 is proposed to be changed as follows: Under the section governing allocations to principal, "revenues" allocated to principal are the "net proceeds" after returning development costs and interest to income, as well as defining "net proceeds", "development costs", and "trust land."

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Valette Keller at 3745 Community Park Loop, Suite 200, Anchorage, AK 99508 or valette.keller@alaska.gov. The comments must be received not later than 5:00 pm on July 31, 2020.

You may submit written questions relevant to the proposed action to Valette Keller, at 3745 Community Park Loop, Suite 200, Anchorage, AK 99508 or valette.keller@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Alaska Mental Health Trust Authority will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at alaskamentalhealthtrust.org.

If you are a person with a disability who needs a special accommodation to participate in this process, please contact Valette Keller at valette.keller@alaska.gov not later than July 21, 2020 to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Valette Keller at valette.keller@alaska.gov or 907-269-6039.

After the public comment period ends, the Alaska Mental Health Trust Authority will either adopt the proposed regulation changes or other provisions dealing with the same subject without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 37.14.031; AS 47.30.031

Statutes being implemented, interpreted, or made specific: AS 37.14.031; AS 47.30.031

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: July 1, 2020 _____



Valette Keller, Administrative Manager

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Mental Health Trust Authority
2. General subject of regulation: Allocation Trust Land Revenues
3. Citation of regulation (may be grouped): 20 AAC 40.610
4. Department of Law file number, if any: 2020200456

5. Reason for the proposed action:

- () Compliance with federal law or action (identify): _____
- () Compliance with new or changed state statute
- () Compliance with federal or state court decision (identify): _____
- (X) Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: Mental Health Trust Operations

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0

Another state agency: \$0

A municipality: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>2021</u>	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>
Other (identify)	<u>\$ 0</u>	<u>\$ 0</u>


9. The name of the contact person for the regulation:

Name: Michael K. Abbott

Title: Chief Executive Officer
Address: 3745 Community Park Loop Suite 200, Anchorage AK 99502
Telephone: 907-334-5909
E-mail address: mike.abbott@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change⁷
☐ Other (identify): _____

11. Date: July 1, 2020 Prepared by: 

Name (printed): Valette Keller
Title (printed): Administrative Manager
Telephone: 907-269-6039

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Allison Biastock, Chief Communications Officer of the Alaska Mental Health Trust Authority, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 20 AAC 40.610 Allocation of Trust Land Revenues has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 9/8/2020


[affiant's signature]

Allison Biastock, Chief Communications Officer

Subscribed and sworn to before me at Anchorage, AK on 9/8/20.


Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Allison Biastock, Chief Communications Officer for the Alaska Mental Health Trust Authority, being duly sworn, state the following:

The Alaska Mental Health Trust Authority did not receive any factual or other substantive information that was submitted in writing or orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alaska Mental Health Trust Authority regulation on the allocation of trust land revenues.

Date:

9/8/2020



Allison Biastock, Chief Communications Officer

Subscribed and sworn to before me at Anchorage, AK on 9/8/20.


Notary Public in and for the State of Alaska

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

RECEIVED

AUG 28 2020

Account #: 270173
3645 COMMUNITY PARK LOOP STE 200, ANCHORAGE, AK 99508

Order #: W0016757

Cost: \$318.76

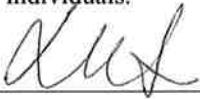
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the afore-said place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

07/01/2020

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed



Subscribed and sworn to before me
this 18th day of August 2020.

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

7/14/2024

NOTARY PUBLIC
JADA L. NOWLING
STATE OF ALASKA
MY COMMISSION EXPIRES July 14, 2024

NOTICE OF PROPOSED CHANGES ON ALLOCATION OF TRUST LAND REVENUES IN THE REGULATIONS OF THE ALASKA MENTAL HEALTH TRUST AUTHORITY

The Alaska Mental Health Trust Authority proposes to adopt changes in Title 20 of the Alaska Administrative Code dealing with the allocation of revenues earned by the Trust Land Office between AMHTA principal and income.

20 AAC 40.610 is proposed to be changed as follows: Under the section governing allocations to principal, "revenues" allocated to principal are the "net proceeds" after returning development costs and interest to income, as well as defining "net proceeds", "development costs", and "trust land."

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Valette Keller at 3745 Community Park Loop, Suite 200, Anchorage, AK 99508 or valette.keller@alaska.gov. The comments must be received not later than 5:00 pm on July 31, 2020.

You may submit written questions relevant to the proposed action to Valette Keller, at 3745 Community Park Loop, Suite 200, Anchorage, AK 99508 or valette.keller@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Alaska Mental Health Trust Authority will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at alaskamentalhealthtrust.org.

If you are a person with a disability who needs a special accommodation to participate in this process, please contact Valette Keller at valette.keller@alaska.gov not later than July 21, 2020 to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Valette Keller at valette.keller@alaska.gov or 907-269-6039.

After the public comment period ends, the Alaska Mental Health Trust Authority will either adopt the proposed regulation changes or other provisions dealing with the same subject without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 37.14.031; AS 47.30.031

Statutes being implemented, interpreted, or made specific: AS 37.14.031; AS 47.30.031

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: July 1, 2020
By: /s/ Valette Keller,
Administrative Manager

Published: July 1, 2020

AFFIDAVIT OF ALASKA MENTAL HEALTH TRUST AUTHORITY
BOARD OF TRUSTEES ACTION

I, Allison Biastock, Chief Communications Officer, for the Alaska Mental Health Trust Authority, being duly sworn, state the following:

The attached motion dealing with the proposed adoption of changes to 20 AAC 40.610 Allocation of Trust Land Revenues was passed by the Alaska Mental Health Trust Authority Board of Trustees during its August 26, 2020 meeting.

Date: 9/8/2020


Allison Biastock, Chief Communications Officer

Subscribed and sworn to before me at Anchorage, AK on 9/8/20.




Notary Public in and for the State of Alaska

ALASKA MENTAL HEALTH TRUST AUTHORITY

**FULL BOARD MEETING
EXCERPT
AUGUST 26, 2020**

WebEx Videoconference/Teleconference

**Originating at:
3745 Community Park Loop, Suite 120
Anchorage, Alaska**

Trustees Present:

Chris Cooke, Chair
Verne' Boerner
Rhonda Boyles
Ken McCarty
John Sturgeon
Laraine Derr
Anita Halterman

Trust Staff Present:

Mike Abbott
Steve Williams
Carol Howarth
Miri Smith-Coolidge
Kelda Barstad
Luke Lind
Michael Baldwin
Carrie Predeger
Katie Baldwin-Johnson
Jimael Johnson
Valette Keller
Eric Boyer
Autumn Vea
Allison Biastock
Kelda Barstad
Kat Roch

PROCEEDINGS

EXCERPTED MINUTES

CHAIR COOKE did a roll call and stated that Trustee Boyles would not be present for the rest of the afternoon. He continued that it was time to consider the proposed regulation changes on the allocation of Trust land revenues, and recognized Mike Abbott.

MR. ABBOTT stated he had a short presentation and asked that the motion be read into the record.

MOTION: A motion to adopt the proposed changes to 20 AAC 40.610, as put forth for public comment on July 1, 2020, was made by TRUSTEE DERR; seconded by TRUSTEE McCARTY.

MR. ABBOTT noted that the action item before the board would adopt the proposed regulations. This is the final substantive step for these regs. He continued that, if approved today, they would then be submitted to the Governor's Office and the Department of Law for another relatively mechanical review. Then, they would be submitted to the Lieutenant Governor for ultimate inclusion in the Alaska Administrative Code. He added that if the action is taken to adopt the regs this afternoon, they should be in effect well before the end of the year. He gave a short history of the development and the promulgation process, and stated that this set of regs will usefully help to move forward to further develop Trust lands. He explained that the changes would allow the Trust to recover spendable income that would be decided to be spent on revenue-generating activities on Trust land. He continued that it would allow for the allocation of net proceeds to principal rather than the gross proceeds, which is the case now. It would allow to use settlement income, or spendable income, to enhance the value of the lands without reducing the amount of settlement income that could be used for any purpose at a later date. He added that this would still grow the principal and the invested assets, and still allow to distinguish between the funds that are invested from settlement income and the principal that is then recovered when Trust lands are ultimately disposed. He then explained the process used to consider the regs, develop them, and ultimately bring them to this step in the adoption process. He stated that the standard state regulatory adoption process was followed, and the Trust does have the authority to issue regs. He then proactively addressed some potential questions that the trustees or the public may have. Typically this would be discussed after public comment, but since there was no public comment, he explored some of the issues that should be considered. He concluded his presentation and stated that he would answer questions.

TRUSTEE HALTERMAN asked, as a point of clarification, if there was not one question or inquiry raised about the regulations in public comment.

MR. ABBOTT replied that was correct. Staff tried to be very thorough in addressing in advance, prior to the comment period beginning, the stakeholders that might be interested in the regulations. The statutory advisory boards were especially highlighted, and they were satisfied that these regs were in the best interest of the Trust.

TRUSTEE HALTERMAN asked if these regs afford the opportunity to make residential investments, or will it be strictly commercial developments.

MR. ABBOTT replied that the regs do not specify what they would be used for. He stated that the scenarios described would not cover commercial real estate investments of the sort the Trust had made over the last ten years. He continued that the regs would allow the use of settlement income to improve the Trust lands received in the settlement with the State.

CHAIR COOKE stated that it would be fair to say that the idea is to permit recovery of the costs of developing or improving the land that the Trust already owns.

TRUSTEE BOERNER asked if there would be a restriction to simple interest, or could compound interest be applied.

MR. ABBOTT replied that the regs allowed for interest to be applied, and they do not specify what type.

TRUSTEE McCARTY asked about commercial properties.

MR. ABBOTT replied that it is possible for the Trust to invest settlement income in commercial real estate. One of the primary concerns in the legislative audit was the concern that the Trust used principal to purchase those properties. He did not believe that the audit challenged the potential for the use of income for that purpose. He added that these regs were designed to help invest in and improve Trust lands that were acquired via the settlement, not investment properties that were acquired separately.

CHAIR COOKE added that the principal involved in those commercial real estate properties has already been paid back to the Fund.

TRUSTEE STURGEON stated that it makes perfect sense, and he thought that it was a good idea.

TRUSTEE DERR agreed that it was a good idea and needed to go forward.

TRUSTEE HALTERMAN commended Mr. Abbott on the matter-of-fact way he presented this and appreciated the fact that it was easy to understand.

CHAIR COOKE stated that if there was no further discussion, he called the vote on the motion to adopt the proposed changes to 20 AAC 40.610, as put forth for public comment on July 1, 2020.

After the roll call vote, the MOTION was approved. (Boerner, yes; Derr, yes; Halterman, yes; McCarty, yes; Sturgeon, yes; Cooke, yes).

MR. ABBOTT thanked all.

CHAIR COOKE asked for anything further on the topic.

MR. ABBOTT replied no, and stated that the trustees will be kept apprised of the progress through the final steps in the process.