

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Rosalie Coal Lease

MHT 9400553
MH Parcel FM-1663-05

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. Negotiated Coal Lease.

II. Applicant/File #. Usibelli Coal Mine, Inc.(UCM)/MHT 9400553

III. Subject Property.

A. Legal Description. The lands (Subject Lands) affected by this best interest decision are described as NE1/4SW1/4, SE1/4NW1/4, and N1/2SE1/4 of Section 19, Township 12 South, Range 6 West, Fairbanks Meridian, containing 160 acres more or less, as depicted on Exhibit A attached hereto.

B. Settlement Parcel Number(s). FM-1663-05.

C. Site Characteristics/Primary Resource Values. The Subject Lands are in a relatively undeveloped area, east of the town of Healy and the Parks Highway in the Healy Valley. The surrounding area is primarily rolling hills covered by brush and mixed spruce and birch. The parcel is adjacent to an existing state coal lease that is now owned by The Trust that has been mined underground in the past, and is considered to be highly prospective for coal development.

- D. Historical and Existing Uses of the Property.** The Subject Lands proposed for lease are located in an area that has a long history of coal exploration and development.
- E. Adjacent Land Use Trends.** As noted above, land use in the area has been limited primarily to coal exploration and development. Almost all of the adjacent lands, both public and private, in the vicinity of the lands covered by this decision have been or will be the focus of some type of coal leasing, exploration or production effort since UCM has acquired almost all of the available land in this area for this purpose. Given the fact that UCM has ongoing contracts both in-state and overseas for coal supplies, it is likely that UCM's exploration and development activities will proceed in an expedited manner.
- F. Previous State Plans/Classifications.** There are no federal, state or local management plans that would prevent the proposed action. The property is within Unit 4D of the Tanana Basin Area Plan, which directs that state land in the vicinity is to be managed with an emphasis on coal and hard rock mineral development, recreation, and maintaining fish and wildlife habitat.
- G. Existing Plans Affecting the Subject Parcel.** The lands being offered for coal leasing are located within the boundaries of the Denali Borough. UCM will be required to comply with all applicable plans, ordinances and other provisions of law.
- H. Apparent Highest and Best Use.** As the interest being offered is limited to the coal estate associated with the subject lands, the highest and best use of the Subject Lands is coal exploration, with the hopes of subsequent development and production.

IV. Proposal Background. UCM currently holds a Trust coal lease directly adjacent on the east of this tract. Underground coal seams have been mined on this lease in the past, and coal is projected to extend onto the proposed lease parcel. UCM is in the process of permitting to allow for further exploration and development of the coal resources on the existing lease as well as the proposed lease acreage. It is anticipated that mining would be initiated as early as next year on the adjacent Trust lease.

V. Terms and Conditions.

- A. Lease Term:** 10 years.
- B. Royalty:** 5% of gross
- C. Rent:** \$5.00/acre/year which totals \$800/year

VI. Resource Management Considerations. The proposal is consistent with the "Resource Management Strategy for Trust Land" (RMS), which was adopted November 2013 in consultation with The Trust and provides for the TLO to focus first on land or resources at the high end of market values ("best markets"). UCM has expressed that they are anticipating increased demand for coal both domestically and abroad in the near future, which constitutes an increased opportunity for the development of Trust lands in this area for coal production; a "best market" situation for Trust land here. Further, the proposed action is a step toward generating potentially significant revenues from The Trust coal resources in this area, consistent with a key Trust land management principle of encouraging a diversity of revenue generating uses of Trust land.

VII. Alternatives. (1) Offer the lease tract competitively, which is not warranted for this relatively small acreage; (2) Do not offer the land for lease for coal development.

VIII. Risk Management Considerations.

- A. Performance Risks.** Performance risks will be minimized through aggressive enforcement of the terms and conditions of the coal lease, including, but not limited to those provisions that address rent and royalty payments, development plan approval and diligent resource development over time. In addition, insurance and bonding requirements associated with the ASMCRA permit process will be in full force and effect throughout development, production, and reclamation activities.
- B. Environmental Risks.** Environmental risks will be minimized by ensuring that the lessee complies with applicable environmental laws and is adequately insured and bonded. Oversight by state regulators in the enforcement of ASMCRA will also help to ensure that environmental risks are minimized.
- C. Public Concerns.** Historically, significant concern has been expressed about the impact of the leasing activities on public resources, such as fish and wildlife resources. Environmental laws and regulations have been promulgated over time to address these concerns. As noted above, the TLO lease will require full compliance with those laws and regulations and, additionally, will contain some operating stipulations that exceed the requirements of those laws and regulations. Additionally, withholding Trust lands from leasing will not likely result in UCM discontinuing its intended exploration and development of adjacent lands. Accordingly, it would not be prudent for the TLO to withhold Trust lands from leasing due to public concerns when exploration and development of adjacent lands will proceed whether or not Trust lands are leased.

IX. Due Diligence.

- A. Site Inspection.** TLO employees have inspected the Subject Lands. Those inspections provide the TLO with a sufficient understanding of the Subject Lands.
- B. Valuation.** The annual rental rate for this lease is slightly higher than that charged by the Division of Mining for state issued coal leases. The royalty rate (5%) differs from state leases in that it is based on the gross value of the coal rather than an adjusted value. Additionally, a Trust lease provision requires adjustment to a comparable royalty if other leases in the area are negotiated at a higher rate.
- C. Terms and Conditions Review.** The TLO contracted with a private law firm and consulted with the Division of Mining and other public and private land managers for the purposes of developing a lease form that best serves the interest of The Trust.

X. Authorities.

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99.
- B. Inconsistency Determination.** As the proposed negotiated coal lease 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, including those applicable to coal related matters), AS 38.05.300 (Classification of land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals). In addition to the above, the TLO hereby deems other existing or future provisions of AS 38.05.150 and 11 AAC 85 inconsistent with Trust responsibilities accepted by the state under the Alaska Mental Health Enabling Act in the event that the application of said provisions would result in the TLO being required to act in a manner that is not solely in the best interest of The Trust and its beneficiaries as required under 11 AAC 99.020. Examples include, but are not limited to 11 AAC 85. 200, .215, .220, .225, .235, and .240.

- XI. Trust Authority Consultation.** The Alaska Mental Health Trust Resource Management Committee was consulted on October 22, 2014. 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 November 20, 2014, and the Board of Trustees concurred with the negotiated coal lease 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.)

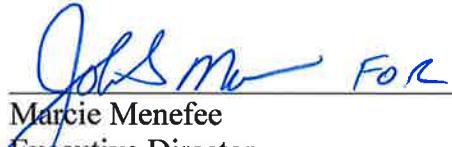
XIV. Reconsideration. To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

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:

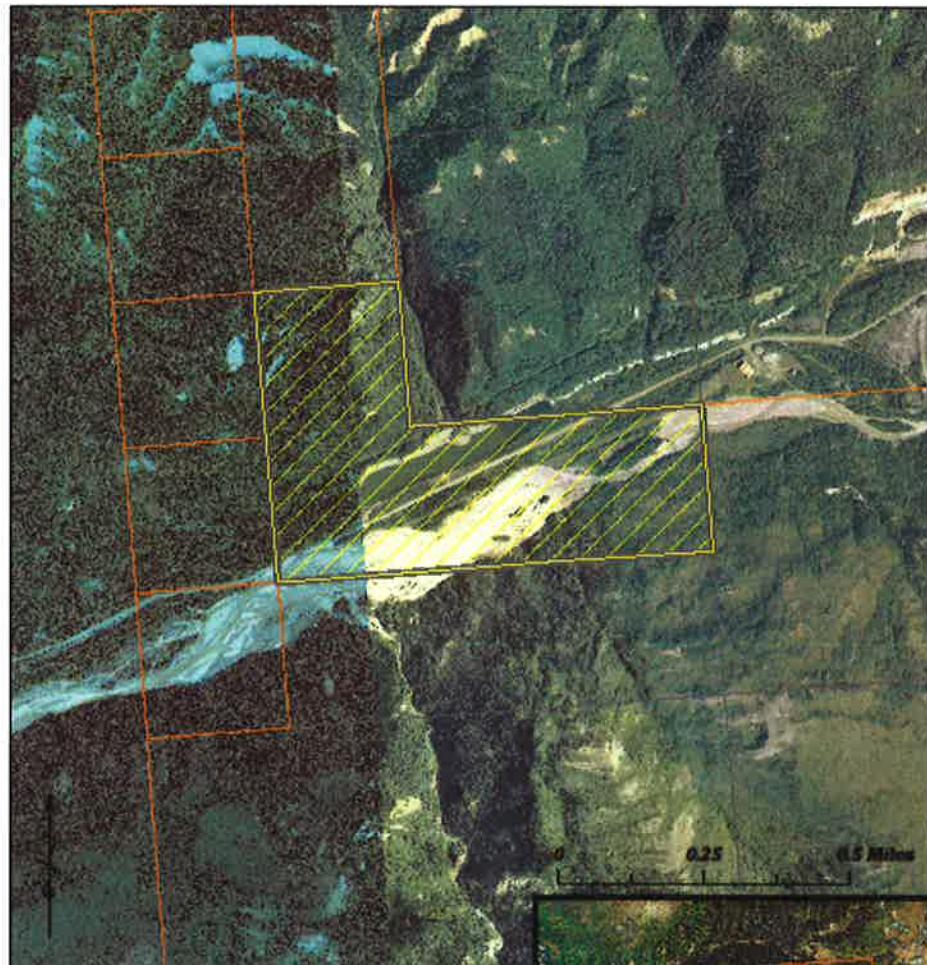


Marcie Menefee
Executive Director
Alaska Mental Health Trust Land Office



Date

Attachment A



Usibelli Coal Mine, Inc. Proposed Coal Lease

- Mental Health Parcels
- Proposed Lease Area

