

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to MTA Fiber Optic Line Clear to Fairbanks
MHT # 9400661

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 an Easement of certain Trust land to the Matanuska Telephone Association, Inc.. 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 communities of Anderson, Nenana, and Fairbanks; and is more particularly described as Section 1, Township 6 South, Range 8 West, NW ¼ NW ¼ of Section 13, Township 4 South, Range 8 West, Sections 1 and 2, Township 4 South, Range 8 West, Section 13, 14, 21, 22, 23, 28 and 29 of Township 1 South, Range 3 West, and Section 18, Township 1 South, Range 2 West, Fairbanks Meridian, containing 15.86 acres more or less (a portion of MH Parcels FM-0868, FM-0916, FM-0917, FM-0920, FM-0951, FM-0952-A01, and FM-1166, FM-1172, FM-1173, FM-1174, FM-1175-02 FM-1262, and FM-1438).

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, September 25, 2017. 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 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.

 8/22/17
for John Morrison Date
Executive Director
Published Fairbanks News Miner: August 24, 2017

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION MTA Fiber Optic Line Clear to Fairbanks

MHT #9400661
MH Parcel(s) FM-0868;FM-0916;FM-0917;FM-0920;FM-0951;FM-1166;FM-1173;FM-1174;FM-1175-02;FM-1262

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. To issue a new non-exclusive easement agreement (Easement) under the terms of the MTA Master Utility Easement Agreement MHT 9200605 (Master Agreement). The new non-exclusive Easement is for aerial and buried fiber optic cable approximately 6.5 miles in length.

II. Applicant/File #. Matanuska Telephone Association, Inc. / MHT 9400662.

III. Subject Property.

A. Legal Description. Section 1, Township 6 South, Range 8 West, NW ¼ NW ¼ of Section 13, Township 4 South, Range 8 West, Sections 1 and 2, Township 4 South, Range 8 West, Section 13, 14, 21, 22, 23, 28 and 29 of Township 1 South, Range 3 West, and Section 18, Township 1 South, Range 2 West, Fairbanks Meridian, containing 15.86 acres more or less.

B. Settlement Parcel Number(s). A portion of MH Parcels FM-0868;FM-0916;FM-0917;FM-0920;FM-0951;FM-1166;FM-1173;FM-1174;FM-1175-02;FM-1262.

- C. Site Characteristics/Primary Resource Values.** The proposed activity is co-located with Golden Valley Electric Association, Inc (GVEA) transmission line and Alaska GCI telecommunication lines.
 - D. Historical and Existing Uses of the Property.** Mining, recreation, utilities, and rights-of-way.
 - E. Adjacent Land Use Trends.** A mixture of trends including industrial, utility infrastructure, mining, recreation, forestry, wildlife habitat, and telecommunication facilities.
 - F. Previous State Plans/Classifications.** DNR issued the Tanana Basin Area Plan (TBAP) for State Lands, adopted in 1985 and updated in 1990 and 1999. The project areas cross Sub-region 1, Fairbanks North Star Borough, Sub-region 2 Lower Tanana, and Sub-region 4, Parks Hwy & West Alaska Range. Utility easements are compatible with TBAP in these Sub-regions.
 - G. Existing Plans Affecting the Subject Parcel.** The Clear to Fairbanks line is affected by the Denali Borough Title 9 Land Use Code and FNSB Title 18, Zoning Ordinance and are zoned General Use 1, or Rural Estate 2. The proposed action is compatible with the Zoning Districts.
 - H. Apparent Highest and Best Use.** Utility easements. The Easement does not prevent future development of the parcel.
- IV. Proposal Background.** On June 22, 2017, MTA applied for a utility easement between Clear and Fairbanks to create a redundant fiber optic network from Clear to Fairbanks. MTA will utilize the existing electric line easements and doing a combination of aerial and buried facilities.
- V. Terms and Conditions.**
- A.** This Easement will run concurrently with the Master Utility Agreement 9200605, unless it is extended or earlier terminated as provided in the Master Agreement.
 - B.** The Master Agreement may be extended beyond its initial term upon written notice and subject to the policies and procedures of the Grantor in effect at the time of the extension request.
 - C.** The location rate for this Easement is valued at an amount of \$0.40/Lineal foot for a fiber optic line located in Rural areas and \$0.20/Lineal foot located in Remote areas.
 - D.** Every five years, the fee schedule will be subject to a Consumer Price Index adjustment increase for the rental period beginning on the anniversary date.
 - E.** Each new Development Plan application will be subject to a one-time assessment for a transaction fee of \$250 in addition to the prorated Utility Easement Fee. A Survey Review Fee of \$200 may also be collected if a survey is required by the Grantor.
 - F.** The Grantee will pay a onetime back rental payment in the amount of \$18,683 for all uses of the Parcel by the Grantee prior to the issuance of this Easement. This negotiated payment represents approximately four years' worth of annual rent.

VI. Resource Management Considerations. The proposed action is consistent with the key provisions of the Resource Management Strategy guidelines. Protection of the corpus and long-term productivity will be enhanced by terms and conditions in the Easement. Secondary and cumulative impacts are reduced by the terms and conditions, which require insurance, bonding, and indemnification. The Easement will not negatively affect the Trust's opportunity to maximize revenues from this site or adjacent Trust lands over time.

VII. Alternatives.

- A. Do Nothing.** Doing nothing would preclude an opportunity to receive additional value for the proposed activities.
- B. Proceed as Proposed.** Co-location of this Easement with the RS2477 ROW would provide additional revenue to the Trust without increasing the TLO's stewardship obligation.

VIII. Risk Management Considerations.

- A. Performance Risks.** The fiber optic infrastructure will be co-located with electrical transmission and distribution lines, and no additional land disturbance aside from normal maintenance is anticipated. The standard easement indemnification, bonding, and insurance coverage naming the Trust as an additional insured should mitigate unknown liabilities.
- B. Environmental Risks.** The Commercial Liability Insurance coverage requirements should mitigate unknown environmental and liability risks.
- 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.

IX. Due Diligence.

- A. Site Inspection.** A site visit was not conducted prior to Agreement negotiations.
- B. Valuation.** The Trust will receive approximately \$13,820 in annual rent payments and approximately \$414,600 over the 30-year term of the Master Agreement.
- C. Terms and Conditions Review.** The Master Agreement and form of the Utility Easement are periodically reviewed by the Department of Law. Insurance and indemnification have been imposed per the standard conditions of the Easement.

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.** As the proposed the Easement 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), AS 38.05.300 (Classification of Land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals). AS 38.05.850 (b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state.

- XI. 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.
- 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:



John Morrison
Executive Director
Alaska Mental Health Trust Land Office

8-14-17

Date

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.



Russ Webb
Chair, Board of Trustees
Alaska Mental Health Trust Authority

8/21/2017

Date

