

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue a Negotiated Ground Lease to Usibelli Coal Mine, Inc.
MHT #9200635

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 a negotiated ground lease of certain Trust land to Usibelli Coal Mine, 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 near to Wishbone Hill in the Matanuska-Susitna Borough, and is more particularly described as: a corridor of land, located within Section 35, Township 19 North, Range 2 East, Seward Meridian, containing approximately 95 acres (a portion of MH Parcel **S20568**).

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, January 19, 2016. 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 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.



John Morrison
Executive Director

12-16-15

Date
Published Alaska Dispatch News: 12/18/2015
Mat-Su Valley Frontiersman: 12/18/2015

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Negotiated Ground Lease to Usibelli Coal Mine, Inc.

**MHT #9200635
MH Parcel(s) S20568**

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. Issuance of a ground lease to Usibelli Coal Mine, Inc. (UCM) for access and transportation of coal connected with the State of Alaska, Division of Mining, Land and Water (DMLW), Coal Regulatory Program permitted Wishbone Hill Coal Project, Permit Numbers 01-89-796 and 02-89-796. UCM proposes to improve and maintain access across 95 acres of Trust land along an existing pioneer mine access road for the planned mine haul road. Under the Coal Regulatory Program permits, UCM will need to restrict public access within the proposed lease area for the purposes of public safety and to maintain compliance with the active Alaska Department of Environmental Conservation Air Quality Control Minor Permit (AQ1227MSS04) regarding the permitted Ambient Air Quality Boundary.

II. Applicant/File #. Usibelli Coal Mine, Inc / TLO File MHT 9200635.

III. Subject Property.

A. Legal Description. The subject lands (Subject Land) affected by this Best Interest Decision are legally described as:
Township 19 North, Range 2 East, Seward Meridian, Alaska

Section 35: NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 95 acres, more or less.

- B. Settlement Parcel Number(s).** A 95 acre portion of S20568 or approximately 30-percent of the total 320 acres.
- C. Site Characteristics/Primary Resource Values.** The Subject Land is in a relatively undeveloped area, approximately five miles northeast of the City of Palmer. The surrounding area is primarily rolling hills covered with brush and a mix of birch, aspen, and spruce. An existing rough truck road is located where the planned mine haul road will be. The subject land is adjacent to a state coal lease and is within the Wishbone Hill Mine Permit Area, as authorized by the State of Alaska, Department of Natural Resources, Coal Regulatory Program.
- D. Historical and Existing Uses of the Property.** Coal mining in the Wishbone Hill area dates back to the early 1900s. Under a DMLW land lease, issued in 1990, the property was used to access the Wishbone Hill coal fields.
- E. Adjacent Land Use Trends.** As noted above, land use in area has been influenced by coal exploration and development. Most of the adjacent lands, both public and private have been or will be the focus of some type of land use associated with coal exploration or production. Adjacent land to the east is under lease, ADL 17103, to the Department of Corrections for the Palmer Correctional Center. Portions of the Wishbone Hill area are also used for commercial timber harvesting, personal use and commercial firewood sales, and Christmas tree cutting. These activities are regulated by the Division of Forestry. A series of roads and trails were created to transport forest products from the area. In addition to mining and forest management, public lands in the Wishbone Hill area are also used for recreation activities.
- F. Previous State Plans/Classifications.** The proposed lease area is located within the Susitna Matanuska Area Plan (SMAP), Glenn Highway Region, Units G-05 and L-05. The primary land classifications are Coal Land, Wildlife Habitat Land, and Reserved Use Land. Land lease authorizations and coal development are allowed in this unit, and the proposed lease is consistent with the SMAP.

In addition, the proposed leased area is subject to the Matanuska Valley Moose Range Management Plan. This plan was adopted in 1986 and complements the SMAP. The management plan further clarifies that coal mining is an acceptable use of these lands and that the reclaimed lands will be "directed towards producing habitat that is primarily beneficial to moose".

- G. Existing Plans Affecting the Subject Parcel.** The Subject Land is located within the boundaries of the Matanuska-Susitna Borough (MSB) and under Zoning Code MSB 17.27. This Code covers the Sutton Special Land Use District which became effective January 1, 2003. On January 27, 2003, UCM submitted an application to the MSB for certification of pre-existing legal nonconforming use status (grandfather rights) associated with the Wishbone Hill Project within the Sutton Special Land Use

District. On November 7, 2008, the MSB, Planning and Land Use Division, approved the pre-existing legal nonconforming status for the Wishbone Hill Project area within the Sutton Special Land Use District.

H. Apparent Highest and Best Use. The highest and best use at this time is to allow surface uses associated with the Wishbone Hill Project.

IV. Proposal Background. The coal-related activities occurring on the Subject Land was managed under DNR surface lease, ADL 224865, from 1990 to 2015. Through the 1994 Alaska Mental Health Settlement, the Trust received title to the 320 acre parcel (S20568) which included the 95 acres under ADL 224865. When ADL 224865 was in the process to be renewed, the TLO exercised the right to obtain the management authority of the 95 acres. This transfer of management required UCM to obtain authorization from the TLO for the use of the Subject Land.

V. Terms and Conditions. The proposed lease will have a term of 25 years. Annual rental will be \$13,110 and subject to adjustment at the commencement of the sixth year of the term and every fifth year thereafter based on an appraisal. The annual rent will never decrease at an adjustment date. Under the proposed lease, UCM will be required to comply with DMLW, Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA), which regulates coal mining on private, municipal, state and federal lands. Alaska's coal program, which must comply with federal standards, comprehensively regulates almost all aspects of coal mining activity from exploration through final reclamation.

VI. Resource Management Considerations. The proposed action is consistent with the key provisions of the Resource Management Strategy guidelines (RMS). The RMS provides for the TLO to focus on "resources at the high end of their market values ("Best Markets") and then on land or resources with Best Market potential within the next two to ten years." Given the existing markets that UCM provides coal for and the need for continued production of coal from this area, the land affected by this decision is in a "best market" situation that should be offered now rather than later. Additionally, the infrastructure added to property will increase the value of the property for future uses.

VII. Alternatives. Proceed as proposed. Given the Subject Land's location, circumstances, and previous uses associated with the Wishbone Hill Coal Project, alternative uses such as residential or other commercial development is unlikely.

VIII. Risk Management Considerations.

- A. Performance Risks.** Performance risks will be minimized through aggressive enforcement of the terms and conditions of the lease, including, but not limited to those provisions that address rent payments, insurance, and bonding.
- B. Environmental Risks.** Environmental risks will be minimized by ensuring that UCM complies with applicable environmental laws and is adequately insured and bonded. Oversight by state regulators in the enforcement of ASCMCRA 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. Additionally, withholding Trust lands from leasing will not likely result in UCM stopping 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 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 Land. Those inspections provide the TLO with a sufficient understanding of the Subject Lands.
- B. Valuation.** The annual rental rate for the proposed lease is based on 12% of assessed value of adjacent parcels in the area.
- C. Terms and Conditions Review.** Standard documents will be used by the TLO for this authorization with terms in conditions of these documents reviewed periodically by the TLO's legal counsel.

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 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), AS 38.05.300 (Classification of land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals).

XI. Trust Authority Consultation. TLO consultations are defined in statute and regulation. Under AS 37.14.009(a)(2)(C) and 11 AAC99.050 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.)

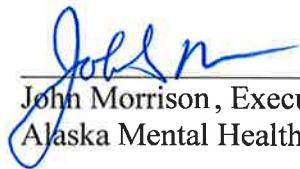
XIV. Reconsideration. To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

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

12-14-15

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.

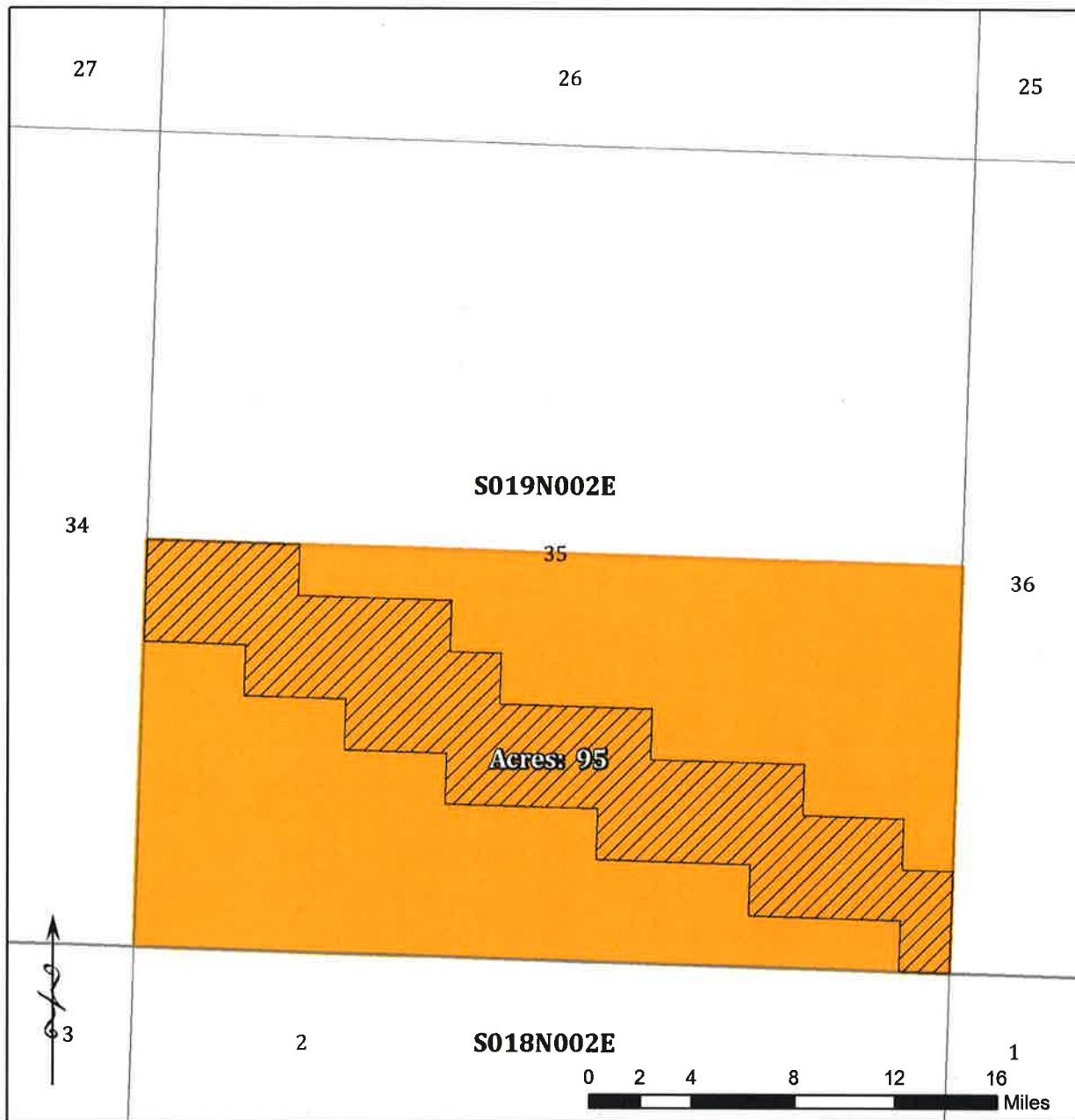


Russ Webb
Chair, Board of Trustees
Alaska Mental Health Trust Authority

12/15/2015

Date

MHT 9200635



Ground Lease Area 9200635 - Usibelli

Legend

- Lease Area, MHT 9200635
- Trust Land Parcel S20568



Location Map