

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue a Ground Lease - Ester Dome
ACS Rural Internet Project
MHT #9400732

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 Ground Lease of certain Trust land to the Alaska Communications Internet, LLC (ACS). 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 Ester, and is more particularly described as: Government Lot 7, Section 36, Township 1 North, Range 3 West, Fairbanks Meridian, containing 0.1 acres more or less. (MH Parcel FM-0439-01)

Persons who believe that the written 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 on or before **4:30 PM, October 9th, 2020. 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 <https://alaskamentalhealthtrust.org/trust-land-office/>. 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.

DocuSigned by:

Wyn Menefee

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Wyn Menefee
Executive Director

9/3/2020

Date

Fairbanks Daily News Miner: 09/08/2020

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Ground Lease - Ester Dome
ACS Rural Internet Project

MHT: **9400732**
MH Parcel(s): **FM-0439-01**

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. ACS is expanding their high-speed internet service to rural areas of the Fairbanks area. The proposed lease area would be for a 50’ x 50’ equipment area which would include driveway, ground equipment, and a 150’ tower. The network design of the government sponsored rural internet project requires a microwave connectivity to this location.

II. Applicant/File #. Alaska Communications Internet, LLC (ACS) / MHT 9400732.

III. Subject Property.

- A. Legal Description.** Government Lot 7, Section 36, Township 1 North, Range 3 West, Fairbanks Meridian, containing 0.1 acres more or less.
- B. Settlement Parcel Number(s).** A portion of FM-0439-01.
- C. Site Characteristics/Primary Resource Values.** The elevation and location of Ester Dome makes the land ideally suited for telecommunications purposes. Communication towers and utilities are supportive to other industries and resources. Mineral development is a designated use for the Ester Dome area.
- D. Historical and Existing Uses of the Property.** The area has high-grade mineralization and, because it is close to Fairbanks, it is economically feasible to develop. Approximately 73 known placer and lode occurrences are located in the

Ester Dome and surrounding area. Multiple telecommunications sites are located on Ester Dome both on and adjacent to Trust parcels. Under Quitclaim Deed No. 8000031, the Department of Natural Resources (DNR) conveyed the subject property to The Trust on September 20, 1996 and recorded on September 25, 1996.

- E. Adjacent Land Use Trends.** Mining, recreation, trails, communication, and residential.
- F. Previous State Plans/Classifications.** State land in this unit is retained in public ownership for multiple use management. The emphasis is on subsurface resource development and communication sites. All state land in this unit is open to mineral entry. Other resource values in the area include fish and wildlife, forestry, settlement, and recreation.
- G. Existing Plans Affecting the Subject Parcel.** Tanana Basin Area Plan for State Lands, 1991.
- H. Apparent Highest and Best Use.** The optimal use of this land is for telecommunications purposes. Due to slope, groundwater, vegetation, and other development limitations, the surface estate has little potential for other types of development at this time.

IV. Proposal Background. ACS applied for a negotiated, commercial land lease on April 2, 2020.

V. Terms and Conditions.

- A. Term.** This Agreement shall automatically expire at 11:59 pm on September 30, 2030, unless it is extended or earlier terminated as elsewhere provided in this Agreement.
- B. Rent.** The Trust will receive approximately \$50,000 over the 10-year initial term of the lease.
- C. Negotiation of Other Lease Terms.** TLO will provide an example of the Lease form and may entertain proposals for minor modifications of the Lease but will retain the ability to reject any requests.

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 Lease. Secondary and cumulative impacts are reduced by the terms and conditions, which require insurance, bonding, and indemnification. The Lease will not negatively affect the Trust's opportunity to maximize revenues from this site or adjacent Trust lands over time. Leases for communication towers create a diversity of income revenue-producing uses on Trust property.

VII. Alternatives.

- A. Proceed as proposed.** The proposed use is practical and feasible, as demonstrated by the prior use of the land by the applicant and its predecessors in interest. Telecommunication facilities in the Ester Dome area enhance all Trust

resources by improving communications within the area whether for commercial development or residential housing. Failure by the lessee to abide by the terms and conditions of the Lease provides the TLO with adequate justification to revoke the Lease for cause and thereby reducing the risk to The Trust.

- B. Development other resources.** No other resource development proposals are being considered at this time. Telecommunication facilities are compatible with other types of resource development on Ester Dome.
- C. Do nothing.** Loss of long-term income revenue.

VIII. Risk Management Considerations.

- A. Performance Risks.** The standard Lease indemnification and insurance coverage naming the TLO as additionally insured should mitigate unknown liabilities.
- B. Environmental Risks.** There is little risk associated with tower sites in this location, two adjacent towers have operated on Trust land in the area since 1996 without incident.
- C. Public Concerns.** Subject to additional comments received through the public notice process, there are no known public concerns.
- D. Other.**
 - i. An as-built survey to more accurately reflect the sites location and footprint is required.
 - ii. The Grantee may not co-locate other equipment owned or operated by a third-party on the Parcel, unless the Grantor approves a separate Agreement with the third-party.
 - iii. The Lease allows for periodic fee adjustments to reflect significant increase in markets but will not decrease.

IX. Due Diligence.

- A. Site Inspection.** A site inspection was conducted on September 10, 2014.
- B. Valuation.**
 - i. The Lease value was determined by national averages presented at a seminar, Current Issues in Cell Tower Leases by John W. Pestle, Esq., Varnum LLP and Jonathan L. Kramer, Esq., FSCTE, BTS, BDS, BPS, Kramer Telecom Law Firm, P.C. and researching other Alaska landowners regarding rates charged to cellular companies.
 - ii. The Trust will receive approximately \$50,000 over the initial 10-year term of the lease.
 - iii. Co-location of third-party equipment will require TLO approval under a separate lease agreement.
- C. Terms and Conditions Review.** This Lease uses a modified TLO Ground document to incorporate terms and conditions desired by ACS. Insurance and indemnification, requirements have been imposed per the standard conditions of the Lease. The bond is waived.

X. Authorities.

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99.

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 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.

A. Non-competitive Disposal Determination. 11 AAC 99.020 (d) allows for the disposal of Trust land through a competitive basis, unless the Executive Director in consultation with the Trust Authority, determines in a written decision required by 11 AAC 99.040 that a non-competitive disposal is in the best interest of the Trust and its beneficiaries. This proposal is consistent with adjacent uses of Trust land and no alternative applications have been submitted for this location and the proposed use produces acceptable revenues that would otherwise not be generated. If another party submits a qualified offer as explained in Section XIII, the Executive Director may consider a competitive sale under the authority of this decision. Therefore without valid alternative proposals being expressed during the public comment period, the non-competitive disposal is in the best interest of the Trust. 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 may 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. Other persons who may be interested in purchasing the Property must submit their proposals during the 30-day public notice period. Instructions to apply can be found online at <https://alaskamentalthrust.org/trust-land-office/land-sales/land-use-application/>. To be considered a qualified competing interest, applications must include the application fee, a formal Letter of Intent to include an offer price that matches or exceeds the current offer of \$5,000 initial annual fee for the parcels, a deposit of 10% of the offered price in certified funds. In the event that there is competing interest, all qualified interested parties will be notified by phone, fax, or e-mail how they may participate in the alternative sale process. 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 may 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). This request must be accompanied by the fee established by the Executive Director under 11 AAC 99.130, which has been set at \$500, to be eligible for reconsideration. 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:

<https://alaskamentalhealthtrust.org/trust-land-office/>.

XVI. APPROVED:

DocuSigned by:



Wyn Menefee

Executive Director

Alaska Mental Health Trust Land Office

9/2/2020

Date

XVII. CONSULTATION CONCURRENCE:

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.

DocuSigned by:



Michael K. Abbott

Chief Executive Officer (CEO)

Alaska Mental Health Trust Authority

9/3/2020

Date

