

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue MTAC Koenen Road Fiber Utility Easement - Palmer
MHT 9200768

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 issue a non-exclusive easement of certain Trust land to MTA Communications, LLC. 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 Palmer, Alaska and is more particularly described as: the North 20 feet of N1/2SE1/4 and the North 20 feet of NE1/4SW1/4, located within Section 7, Township 18 North, Range 2 East, Seward Meridian, containing approximately 2.72 acres (MH Parcel SM-0065).

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, June 14, 2021**. **Comments should be submitted to the TLO at 2600 Cordova Street, Suite 201, 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:

Jusdi Doucet

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Jusdi Doucet

Acting Executive Director

5/7/2021

Date

Published Matsu Valley Frontiersman: 05/12/2021

**The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
MTAC Koenen Road Fiber Utility Easement - Palmer**

MHT: **9200768**
MH Parcel: **SM-0065**

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. Construction, maintenance, and operation of a new fiber optic line to be installed on existing Matanuska Electric Association (MEA) electrical distribution line by MTA Communications, LLC. Segment A of the fiber utility easement will be 20' wide by approximately 3,938' in length (see Exhibit A – Map).

II. Applicant/File #. MTA Communications, LLC. (MTAC) / 9200768.

III. Subject Property.

- A. Legal Description.** The North 20 feet of N1/2SE1/4 and the North 20 feet of NE1/4SW1/4 of Section 7, Township 18 North, Range 2 East, Seward Meridian, Alaska. Containing approximately 2.72 acres.
- B. Settlement Parcel Number.** SM-0065
- C. Site Characteristics/Primary Resource Values.** Site characteristics are typical of residential and recreational properties in the area with the primary resource value being recreation sites and residential real estate development.
- D. Historical and Existing Uses of the Property.** Historic and existing uses of property include a 30' public access easement, ADL 46125, and the MEA power line, which have been on the parcel since the late 1970's. Other nearby uses on the

larger parcel include section line easements for access, utility easements, and minor public recreation use.

- E. Adjacent Land Use Trends.** Adjacent private land within the nearby area is mostly recreational and year-round residences.
- F. Previous State Plans/Classifications.** None.
- G. Existing Plans Affecting the Subject Parcel.** This area lies within the Matanuska-Susitna Borough, but is not specifically zoned.
- H. Apparent Highest and Best Use.** The current highest and best use is either recreational or residential real estate development. This utility easement does not prevent future development of the parcel.

IV. Proposal Background. On October 21, 2020, MTAC applied for a new utility easement in the Koenen Road area to serve the local community. MTAC will utilize the existing electrical pole line and install an aerial fiber optic cable.

V. Terms and Conditions.

The terms and conditions are established in MHT 9200605 MTAC Master Utility Agreement, and include the following:

- A.** This Easement will run concurrently with the Master Agreement that expires at 11:59pm on September 30, 2047, 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/Linear foot for a fiber line in rural areas.
- D.** Every five years, the land use fee will be subject to a price adjustment increase of no less than three percent (3%).
- E.** Each new application will be subject to a one-time assessment 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.

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.** Proceed as Proposed. The proposed easement for new fiber optic line is co-located with MEA electrical distribution lines and would provide additional revenue to the Trust without increasing the TLO's stewardship obligation. The adjacent Trust land

may be suitable for subdivision development, and enhanced telecommunication services would increase the value of individual lots.

B. Do Nothing. Doing nothing would preclude an opportunity to receive value for the proposed activities within an existing footprint that is currently being used as a utility corridor.

VIII. Risk Management Considerations.

A. Performance Risks. 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. TLO staff and contracted surveyor inspected the parcel in June 2020.

B. Valuation. The Trust will receive \$1,575.20 annually and approximately \$40,955.20 over the remaining 26-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). AS 38.05.850 Permits.

B. Inconsistency Determination. As the proposed non-exclusive 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.

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. 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. 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 or that additional infrastructure may be co-located with 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://alaskamentalhealthtrust.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 \$1,575.20 annual rent for the footprint and a deposit of the first-year annual rent in certified funds must be received. 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 201, 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:

Jusdi Doucet

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Jusdi Doucet
Acting Executive Director
Alaska Mental Health Trust Land Office

5/4/2021

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:



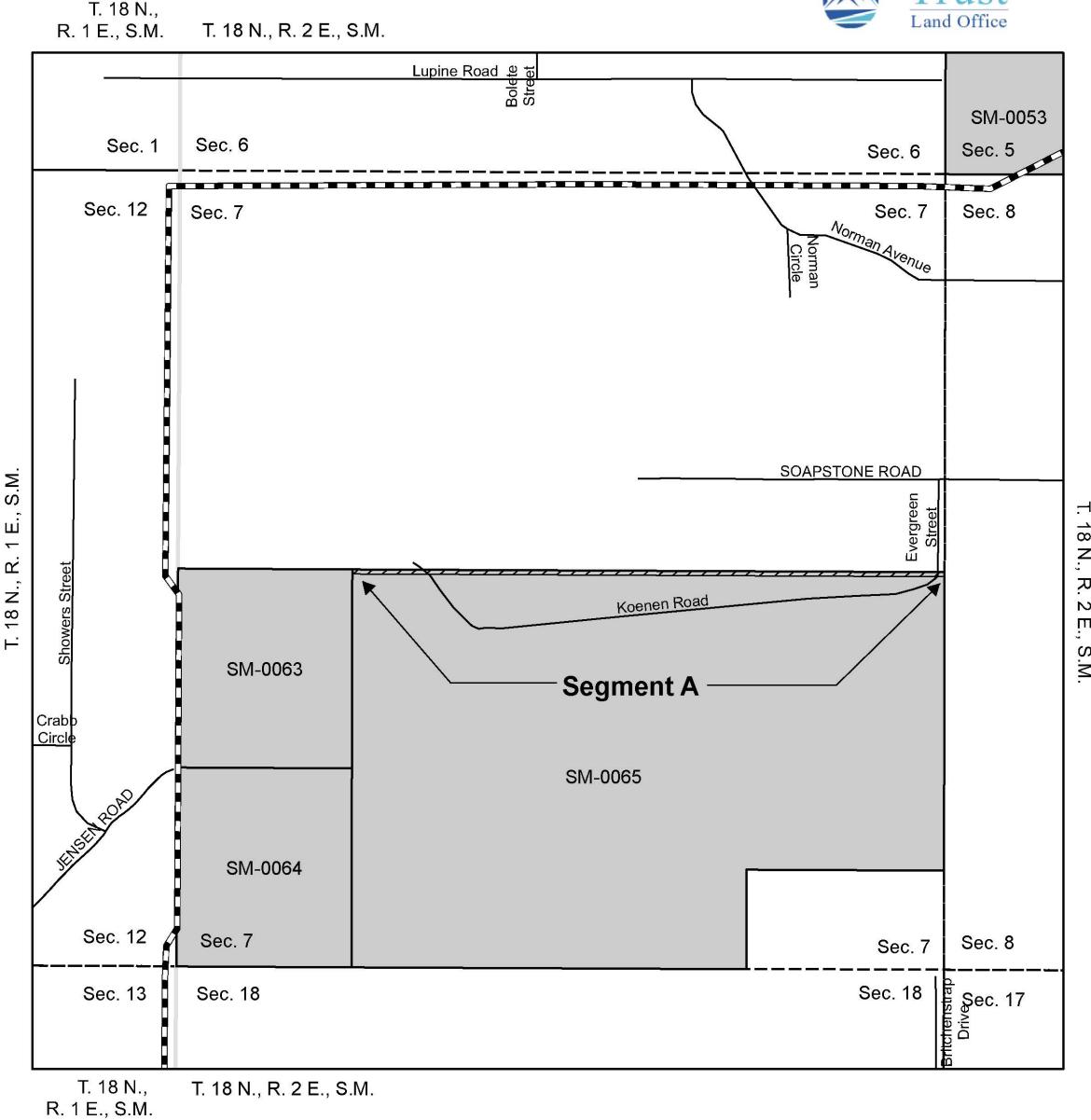
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Michael K. Abbott

Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

5/4/2021

Date

Exhibit A



MTA Work Order 745-30406 Koenen Road

- Segment A
- Mental Health Trust Parcel
- Transmission Lines
- Roads

0 0.25 0.5 1 Miles

