

**The Alaska Mental Health Trust Authority  
Trust Land Office  
BEST INTEREST DECISION  
ProComm Telecommunication Site**

MHT 9400045  
MH Parcel 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 (P.L. 84-830, 70 Stat. 709 (1956)), 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 (Lease) for 20 years to ProComm Alaska, LLC to operate and maintain a commercial relay station for two-way radio repeaters in the Ester Dome area of Fairbanks. The site consists of two communications buildings and a small tower secured by a fence.

**II. Applicant/File #.** ProComm Alaska, LLC/MHT 9400045.

**III. Subject Property.**

- A. Legal Description.** Land within Section 36, Township 1 North, Range 3 West, Fairbanks Meridian, known as Ester Dome Site 11. Beginning at Corner 4 of ASLS 2001-8 as depicted on Plat 2003-12, thence S 46° 12' 35" W a distance of 100 feet, thence N43° 47' 25"W a distance of 100 feet, thence N46° 12' 35"E a distance of 100 feet, then southeasterly following the boundary of ASLS 2001-8 a distance of 100 feet to the point of beginning, and containing 0.10 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 Area.** 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.** In 1997, the TLO issued a ten (10) year Land Use License to PMC Telecommunications (PMC) to locate and operate a telecommunications facility. Public notice for the decision to issue a non-exclusive license was published October 31, 1996, and the TLO consulted with the Trust's Chief Executive Officer on November 11, 1996. The Revocable License expired in 2007. Since that time, ProComm has not paid land use fees but has continued to operate the facility. ProComm, the successor of interest to PMC, submitted an application to extend the terms of the license on August 28, 2013. The permanent nature of the telecommunication facilities is consistent with a lease disposal then a revocable license.

**V. Terms and Conditions.**

- A. Term.** This Agreement shall automatically expire at 11:59 pm on December 31, 2034 unless it is extended or earlier terminated as elsewhere provided in this Agreement.
- B. Rent. Annual Payments.**
  - i. The Grantee shall pay an Annual Payment to the Grantor in the amount of \$5,000 plus twenty-five percent (25%) of all Gross Receipts from any tenants, sublessees/sublicensees or site sharing agreements. Annual Payments shall be paid in advance.
  - ii. Gross Receipts paid from any tenants, sublessees/sublicensees, or site sharing agreements from the prior year will be calculated from actual receipts and

paid no later than March 1 of the current year. For example, gross receipts for the calendar year of January 1, 2013 through December 31, 2013 will be paid on March 1, 2014.

- 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.
- D. **Back Rental.** Fees in the amount of \$30,000 will be collected for rental payments for use of the facilities between January 15, 2007 and acceptance of this agreement. The Grantee shall pay eight quarterly payments to the Grantor in the amount of \$ 3,750 each.

**VI. Asset 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 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. The greater property right granted is offset by the increased business opportunities that may result in long-term benefit to The Trust and beneficiaries. 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 revenue. Permanent facilities are located on the site and would take oversight to ensure the site is reclaimed to the satisfaction of the TLO.

**VIII. Risk Management Considerations.**

- A. **Performance Risks.** The standard Lease indemnification and insurance coverage naming the TLO as second should mitigate unknown liabilities. The facility has operated since 1996 without incident and the bond guarantee is waived.
- B. **Environmental Risks.** There is little risk associated with tower sites, especially one that has been operating since 1996 without incident. Permanent facilities are located on site and would need to be removed and the site reclaimed to the satisfaction of the TLO.

**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 site's location and footprint is required.
- ii. Gross receipts of 25% will be calculated on actual monies received during the calendar year and paid no later than the following April 15. This will streamline the previous process of advance payment of estimated gross receipts of sub-lessees at the beginning of the year and a reconciliation of actual receipt monies owed or credited to TLO at year-end.
- iii. The Lease allows for annual fee adjustments to reflect significant increase in markets.

**IX. Due Diligence.**

**A. Site Inspection.** A site inspection was conducted on May 21, 2014. The site was well marked, secured with a fence, and clean.

**B. Valuation.**

- i. The tower site has contributed a total of \$53,938 from 1996 through 2007. A Lease for the next 20 years will continue to provide a steady stream of revenue and is anticipated to generate \$100,000 to Income over the term of the Lease and an additional \$30,000 will be collected in back rental payments.
- ii. 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 contacting other Alaska landowners regarding rates charged to cellular companies.
- iii. TLO Processing and Guidelines for Land Use Fees was reviewed and the rental fee was established at \$5,000 per year.
- iv. The Trust will receive an additional fee of 25% of the Gross Receipts paid to the applicant by the sub-lessees.
- v. Gross Receipt information may be kept confidential, at the request of the applicant, under AS 38.05.035(a)(8).

**C. Terms and Conditions Review.** This Lease uses the standard TLO Ground Lease documents that are periodically reviewed by the Department of Law. Insurance, indemnification, and bonding requirements have been imposed per the standard conditions of the Lease.

**X. Authorities.**

**A. Applicable Authority.** Alaska Statutes 37.14.009(a) and 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.** Under Article IX of the Trust Bylaws, the Chief Executive Officer may authorize disposal of assets with an annual rental of \$50,000 or less. Consultation with the Trust Resource Management Committee and the Board of Trustees is not required.
- 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 Alaska Mental Health 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 public 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, 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 Trust Land Office, located at 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503. Phone (907) 269-8658. Email: [mhtlo@alaska.gov](mailto:mhtlo@alaska.gov).

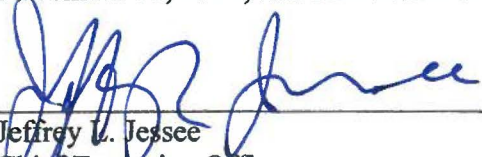
The disposal action proposed by this decision will occur no less than 30 days after the first publication date of this decision, and after the conclusion of the Trust Land Office administrative process. For specific dates or further information about the disposal, interested parties should contact the Trust Land Office at the above address, or visit the TLO website at: [www.mhtrustland.org](http://www.mhtrustland.org).

**XVI. APPROVED:**

  
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Marcie Menefee  
Executive Director  
Alaska Mental Health Trust Land Office

8.12.14  
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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 pursuant to Alaska Mental Health Trust Authority Bylaws, revised November 15, 2012, and Resolution 02-01.

  
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Jeffrey L. Jessee  
Chief Executive Officer  
Alaska Mental Health Trust Authority

8/19/14  
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Date