

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue AT&T Pedro Dome Fiber Optic Easement
MHT #9400581

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 (455)** of certain Trust land to ALASCOM, Inc. d.b.a. AT&T Alaska. 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 Fox, Alaska, and is more particularly described as: located in a portion of MH Parcels F20286;F70015, Township: 2 North, Range: 1 East, Sections: 2, 3, 4, 7, 8, 9, 18, containing 16 acres more or less.

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, November 16, 2015. 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

10-12-15

Date

Published Fairbanks Daily News Miner: 10/15/2015

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION Pedro Dome Alternate Route

MHT #9400581
MH Parcel(s) F20286 and F70015

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 AT&T Master Utility Easement Agreement MHT 9200564 (Master Agreement). The new non-exclusive Easement is for a buried fiber optic cable approximately 4.75 miles in length. The cable will be located along the Silver Fox Road, an established RS2477 right-of-way. The fiber optic cable will connect the AT&T Toll Center on Gaffney Road to the AT&T Pedro Dome site.

Two, 1.25” HDPE Conduits will be installed via plowing and trenching methods to a minimum depth of 36 inches. One duct will have a fiber optic cable while the other will be used as a spare duct. Splice vaults will be placed at approximately 20,000’ spacing and handholes will be placed with approximately 5,000’ spacing along the route. Carsonites marking the route will be placed approximately every 500 feet.

II. Applicant/File #. ALASCOM, Inc. d.b.a. AT&T Alaska/MHT 9400581.

III. Subject Property.

A. Legal Description. Township: 02N, Range: 01E, Sections: 2, 3, 4, 7, 8, 9, 18, containing 16 acres more or less

B. Settlement Parcel Number(s). F20286;F70015.

- C. Site Characteristics/Primary Resource Values.** The elevation and location of Pedro Dome makes the land ideally suited for telecommunication purposes. A private inholding on the dome is dominated by an AT&T telecommunication facility. Mineral development is a designated use for the Pedro Dome area.
 - D. Historical and Existing Uses of the Property.** Mining, recreation, utilities, and RS2477 rights-of-way.
 - E. Adjacent Land Use Trends.** Adjacent land use trends include mining, recreation, forestry, wildlife habitat, and telecommunication facilities. Placer and load gold deposits are located within the Fairbanks Mining District.
 - 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. Under TBAP, the area was designated as mineral development and recreation. Secondary uses include forestry. Land disposals and remote cabins are prohibited uses. Utility easements are compatible with TBAP.
 - G. Existing Plans Affecting the Subject Parcel.** The subject property is affected by the Fairbanks North Star Borough (FNSB) Title 18, Zoning Ordinance and is zoned General Use 1 (GU-1). The GU-1 is intended for rural areas and allows for utility Easements.
 - H. Apparent Highest and Best Use.** Mineral development and telecommunication infrastructure.
- IV. Proposal Background.** The AT&T Master Agreement (MHT 9200564) was made effective on May 1, 2011 for a twenty five year term. Under the Master Agreement AT&T may submit an application for a development plan for new utility easements. On August 31, 2015, a new development plan for the Pedro Dome Alternate Route was submitted.
- V. Terms and Conditions.** The terms and conditions are established in the Master Agreement (MHT 9200564).
- A.** This Easement will be issued November 1, 2015 and the term will run concurrently with the Master Agreement that expires at 11:59pm on September 30, 2036 unless it is extended or earlier terminated as provided in the Master Agreement.
 - B.** The Master Agreement may be extended for a period of time 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 \$1.00/Lineal foot for the Clearly Summit area.
 - D.** Every five years, the land use fee will be subject to a price adjustment increase of at least three percent (3%).
 - E.** Each new Development Plan application will be subject to a one-time assessment for an application fee of \$250 in addition to the prorated Easement fee. A survey review fee of \$200 may also be collected if a survey is required by the Grantor.
 - F.** Co-location. The Grantee may not co-locate third party equipment without TLO written approval through an authorization.
- 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. The proposed fiber-optic line will be collocated with existing RS2477 right-of-way, creating diversity of revenue-producing uses on an existing utility footprint located on Trust property.

VII. Alternatives.

- A. 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. The adjacent Trust land may be suitable for mineral development.
- B. Do Nothing.** Doing nothing would preclude an opportunity to receive value for the proposed activities.
- C. Other Resource Development.** Possible alternatives include offering the area for placer or load mining or material sale. There are mining claims and mineral leases, including MHT 9400275, located along the route, but no project have been identified at this time. Annual rent and royalties from mineral development located along the proposed route will not be impacted.

VIII. Risk Management Considerations.

- A. Performance Risks.** The buried fiber optic cable within the width of the Silver Fox Road (RST 1846) minimizes additional impacts.
- B. Environmental Risks.** The buried fiber optic cable will have no additional land disturbance aside from normal maintenance.
- 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.
- D. Mineral Estate Risks.** State mining claims underlay the proposed route along most of the proposed route. The mineral estate is the dominate estate and the proposed fiber optic line may be impacted if mining occurs. AT&T would be required to work with the claimant to relocate the fiber optic cable.

IX. Due Diligence.

- A. Site Inspection.** No site inspections have been conducted within the previous two years.
- B. Valuation.**
 - i. The Trust will receive approximately \$513,000 over the remaining 22 year term of the Master Agreement.
 - ii. Co-location of third party equipment will require TLO approval under a separate agreement.
- C. Terms and Conditions Review.** The Master Agreement and form of the utility Easement are periodically review by the Department of Law. Insurance and indemnification have been imposed per the standard conditions of the Easement. The bonding requirements have been waived due to the low risk of additional adverse impacts.

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 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).

- XI. Trust Authority Consultation.** TLO consultation are defined in statute and regulation. Under AS37.14.009(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
Acting Executive Director
Alaska Mental Health Trust Land Office

Date 9-30-15

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

Date 10/2/2015