

The Alaska Mental Health Trust Authority Trust Land Office

BEST INTEREST DECISION VERIZON TELECOMMUNICATION SITE

MHT 9400556
MH Parcel(s) FM-0598

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 and non-exclusive easement to Cellco Partnership d/b/a Verizon Wireless (Verizon) for the installation, operation, and maintenance of a wireless telecommunications facility including outdoor Radio Frequency (RF) equipment installed inside a shelter with a 30 kW generator on a concrete pad. A 150'-0" lattice tower will support the initial installation of (12) panel antennas, (1) Medium Wave (MW) antenna, (3) Tower Mounted Amplifiers (TMA), (6) Remote Radio Heads (RRH), (1) surge protector on and one (1) Global Positioning System (GPS) antenna. Access from the Eielson Farm Loop Road to the 65' x 65" fenced lease will be from a proposed 85 foot long gravel access road and include a buried 200amp electrical and fiber service within the road prism.
- II. Applicant/File #.** 9400556, Cellco Partnership d/b/a Verizon Wireless.
- III. Subject Property.**
- A. Legal Description.** NE 1/4 Section 16, Township 3 South, Range 3 East, Fairbanks Meridian, Tract "A" of Alaska State Land Survey No. 84-63, Eielson II Agricultural Subdivision, containing approximately 5 acres of Trust land more or less.
 - B. Settlement Parcel Number(s).** A portion of FM-0598.
 - C. Site Characteristics/Primary Resource Values.** This parcel is ideally located for a

communication site because of the close proximity to Eielson Air Force Base (EAFB) and the Richardson Highway coupled with the lack of general use state land or suitable private land.

- D. Historical and Existing Uses of the Property.** Historic and existing uses of Trust parcel include utility and road easements.
 - E. Adjacent Land Use Trends.** Adjacent land use trends include agricultural, residential, and recreational use. A decommissioned military installation was located on adjacent Trust parcels.
 - 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 settlement, wildlife habitat, agricultural, forestry and recreation.
 - 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 major communications towers.
 - H. Apparent Highest and Best Use.** The optimal use of this land is for telecommunications purposes.
- IV. Proposal Background.** Verizon applied for a negotiated, commercial land lease on September 11, 2014.
- V. Terms and Conditions.**
- A. Term.** This Agreement shall automatically expire at 11:59 pm on March 30, 2040 unless it is extended or earlier terminated as elsewhere provided in this Agreement.
 - B. Rent.** The Trust will receive approximately \$546,000 over the 25 year 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 revenue-producing uses on Trust property.
- VII. Alternatives.**
- A. Proceed as proposed.** The proposed use is practical and feasible. Telecommunication facilities in the Eielson area will enhance other Trust resources by improving communications within the area whether for commercial development or residential housing. The greater property right granted by the lease agreement is offset by the increased business opportunities that may result in long-term benefit to the Trust and beneficiaries.

- 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 in the Eielson area.
- 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. Verizon has a proven track record and the bond guarantee is waived.
- B. Environmental Risks. There is little risk associated with telecommunication sites. Permanent facilities are located on site and would need to be removed and the site reclaimed to the satisfaction of the TLO. The parcel is comprised of approximately 4.6% wetlands. Other cellular communication sites in the Fairbanks area located on Trust land have not generated environmental actions.
- C. Public Concerns. Subject to additional comments received through the public notice process, there are no known public concerns.
- D. Other. Eielson Farm Road Anti-Aircraft Artillery (AAA) Formerly Used Defense Site (FUDS) contaminated soil removal project undertaken by the U.S. Army Corps of Engineers authorized under MHT 9400097 is located on the adjacent MH parcels FM-0595 and FM-0597. A revocable license (MHT 9400552) was issued to Verizon to conduct a Phase I environmental and geotechnical studies program for suitability as a communication tower site

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 \$546,000 over the 25 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 Lease document to incorporate terms and conditions desired by Verizon. Insurance, indemnification, and bonding requirements have been imposed per the standard conditions of the Lease.

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). Other statutes and regulations used to inform or determine the terms and conditions of the Ground Lease Agreement include AS 38.05.035(a)(8) Confidentiality, AS 38.05.070-105 Leasing of Land, AS 38.05.920 Assignments, 11 AAC 58.020 Commercial-industrial lands

(leasing of land), 11 AAC 96.060 Performance guaranty, and 11 AAC 96.065 Insurance.

- B. Inconsistency Determination.** As the proposed negotiated ground lease agreement 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). The requirement under 11 AAC 96.065 for a certificate of insurance to provide for a 30-day notice in the event of cancellation, nonrenewal, or material change of condition is deemed inconsistent with Trust principles for this authorization.
- 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 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.)

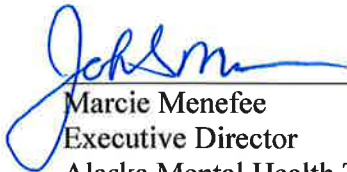
- XIV. Reconsideration.** To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

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:



Marcie Menefee
Executive Director
Alaska Mental Health Trust Land Office

3-2-15

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



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

Date