

**Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**Notice under 11 AAC 99.050 of**  
**Decision to Issue a Negotiated Placer Lease – Ester Creek**  
**MHT 9400703**

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 a negotiated Placer Mineral Lease for certain Trust land to Fairbanks Excavation, 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 located in the vicinity of Ester Creek, near Ester, Alaska, and is more particularly described as: Lot 14, Section 7, Township 1 South, Range 2 West (Trust Parcel FM-7028); NE1/4NW1/4 Section 11, Township 1 South, Range 3 West (Trust Parcel FM-0910); Lot 1, Section 12, Township 1 South, Range 3 West (Trust Parcel FM-0911); Lot 2, Section 12, Township 1 South, Range 3 West (Trust Parcel FM-0912); Lot 5, Section 12, Township 1 South, Range 3 West (Trust Parcel FM-0913); and Lot 6, Section 12, Township 1 South, Range 3 West, all Fairbanks Meridian, Alaska, consisting of approximately 76 acres.

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, May 20, 2019. 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](mailto: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.

  
Wyn Menefee  
Executive Director

4/19/19  
Date

Published in Fairbanks Daily News-Miner: April 19, 2019

**The Alaska Mental Health Trust Authority**  
**Trust Land Office**  
**BEST INTEREST DECISION**  
**Negotiated Placer Mineral Lease – Ester Creek**

MHT: **9400703**  
MH Parcel(s): **Various**

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.** Lease approximately 76 acres of Alaska Mental Health Trust mineral estate for placer mining.

**II. Applicant/File Number.** Fairbanks Excavation, LLC. The application is serialized as MHT 9400703.

**III. Subject Property.**

**A. Legal Description.** See Appendix A.

**B. Settlement Parcel Number.** FM-7028; FM-0910-0914.

**C. Site Characteristics/Primary Resource Values.** The topography of the area to be leased is stream bottom with elevations of approximately 800 feet with hill side elevations in the surrounding area ranging up to approximately 2,000 feet. Bedrock exposures are limited. Slopes vary from gentle to moderately steep. Based on publicly available information and field inspection(s) of the site, there are no known physical or ecological features associated with the parcels that would prevent planned mineral development and production activities from occurring as proposed.

**D. Historical and Existing Uses of the Property.** The Trust parcels proposed for lease are located on Ester Creek. Historical placer mining was conducted using

conventional gravity gold recovery methods. Some hard rock mining also occurred in the area. The property is located near the town of Ester. Trust parcels in the area were selected for the Trust in part because of the potential mineral values associated with the area. The area in general occurs along a mineralized belt (Tintina Gold Belt) which extends across Alaska from beyond the Canadian border on the east, arcs northwest through the Fairbanks Mining District, and then trends southwest toward the Alaska Peninsula. Located within this belt are mineral occurrences such as the Pogo Gold Mine, the Fort Knox Gold Mine, the Livengood prospect, and the Donlin Creek prospect. The area has a long history of placer mining operations and placer mining operations continue on a steady basis to this day.

- E. Adjacent Land Use Trends.** Active placer mining continues to occur on valid state and federal claims in and around the property. Besides mineral exploration and development, other uses such residential, gravel removal, hunting and hiking, occur in the area.
- F. Previous State Plans/Classifications.** The parcels are located in what was Management Unit 1C (Ester Dome) of the Tanana Basin Area Plan, which was the state management plan previously in effect in this area. This classification allowed for multiple use with an emphasis on subsurface resource development, so the proposed use was compatible with that designation.
- G. Existing Plans Affecting the Subject Parcels.** There are no federal, state or local management plans that prevent the proposed action. The property is within Classification Unit F-19 of the Eastern Tanana Area Plan (ETAP), which directs that state land in the vicinity be retained and managed for its mineral and public recreation values. While Trust land is not subject to the ETAP, the proposed land use is consistent with the designated uses in the Plan.
- H. Local Zoning.** The property is zoned as GU-1 General Use by the Fairbanks North Star Borough (FNSB). This designation does not prohibit the proposed use. Note that the FNSB owns the surface estate of some of the parcels.
- I. Apparent Highest and Best Use.** Parties to the Mental Health Trust Settlement assumed mineral development to be the highest and best use of lands in the area when they agreed to include acreage in this area in the reconstituted trust. The proposed use corresponds with this assumption of land use, and therefore appears to be the highest and best use of the subject lands from the Trust's perspective.

**IV. Proposal Background.** The TLO proposes to negotiate a lease of the property for the exclusive right to explore for placer minerals and the right to mine, extract, remove and sell placer minerals subject to 11 AAC 99.100. Consistent with the TLO's fiduciary obligation to maximize revenues from Trust Land over time, the proposed lease is a necessary first step in generating revenues from Trust mineral resources. The applicant has extensive placer mining experience in the Fairbanks area and has the necessary equipment available to conduct placer mining operations on the Lease Area.

**V. Terms and Conditions.**

- A. Lease Term:** Three years; then held by production but will not extend beyond five years unless agreed to in writing by Lessor.
- B. Annual Rental:** \$5,000. The rental payment for each year will be credited against production royalty as it accrues for that year.
- C. Production Royalty:** 10% net royalty for any production that occurs.
- D. Work Commitment:** The Lessee will be required to commence operations on the Property by June 1 of the first lease year, and diligently develop the lease during the lease term.
- E. Data:** The TLO will receive copies of all data and information generated as a result of the lease operations.
- F. Allowable Deductions.** Lessee will offset rental payments by production royalties due the Trust in the year those payments are due.
- G. Environmental Laws and Considerations.** Lessee will be required to enter into a placer mining lease with the TLO, with the lease requiring full compliance with all applicable environmental laws.
- H. Other.** In the event that significant changes occur in the market place or knowledge of the subject lands is significantly improved, the TLO, after consultation with the Trust Authority and public notice, may alter the terms and conditions of subsequent offerings in this area.

**VI. Resource Management Considerations.** The proposal is consistent with the Resource Management Strategy for Trust Land (RMS) which was adopted in March 2016 in consultation with the Trust and provides for the TLO to focus on land or resources at the high end of market values ("best markets"). The current market values of precious metals are sufficient to create a demand for mineable land so the prospective mineral land affected by this decision is in a "best market" situation and, based on demand, should be offered now. Further, the action is a step toward generating revenues from Trust mineral resources, consistent with a key Trust land management principle of encouraging a diversity of revenue generating uses of Trust land.

**VII. Alternatives.**

- A.** Offer the Trust land for lease as proposed.
- B.** Do not lease the land and discourage further development of mineral resources on Trust land in the area. This would delay potential revenues to the Trust.
- C.** Conduct a competitive offering for the subject land. However, there are no other known interests at this time.

**VIII. Risk Management Considerations.**

- A. Performance Risks.** Performance risks will be minimized through aggressive enforcement of the terms and conditions of the mineral lease, including, but not limited to those provisions that address royalty payments, work commitments, development plan approval, and diligent resource development over time. The exploration, development, and mining activities performed under this lease will be done within the parameters of local, state, and federal environmental protection laws that generally apply to private land. Lease terms require compliance with

applicable federal statutes as well as state reclamation requirements. The successful lessee will be adequately bonded and insured.

- B. Environmental Risks.** The exploration, development, and mining activities performed under this lease will be done within the parameters of local, state, and federal environmental protection laws that generally apply to private land. Lease terms require compliance with applicable federal statutes as well as state reclamation requirements. The successful lessee will be adequately bonded and insured.
- C. Public Concerns.** Historically, concern has been expressed about the impact of mineral leasing activities on public resources, such as fish and wildlife resources. Environmental laws and regulations have been promulgated over time to address these concerns. As noted above, the TLO lease requires full compliance with applicable laws and regulations.

#### **IX. Due Diligence.**

- A. Site Inspection.** TLO personnel are familiar with the area from past site visits.
- B. Valuation.** The Subject Land will be leased pursuant to terms and conditions of a Negotiated Placer Mineral Lease. It will be a standard form lease substantially the same as has been used in previous TLO mineral lease transactions, and includes the terms and conditions outlined above.
- C. Terms and Conditions Review.** The TLO contracted with a private law firm and collaborated with other public and private land managers as well as miners and representatives of the mining industry to develop terms and a lease form that best serves the interests of the Trust.

#### **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 negotiated mineral 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). In addition to those provisions of law deemed inconsistent by 11 AAC 99, the following relevant provisions of law are deemed inconsistent with Trust management principles and will not apply to this action: AS 27.30.010-

.070, which pertains to Exploration Incentive Credits, and associated regulations. This statute was developed to attract the mineral industry to state and private land and to provide general benefits statewide. Trust lands are managed solely for the benefit of the mental health beneficiaries, Exploration Credits for mineral exploration may apply to Trust land rents and royalties if this provision is negotiated in consultation with the Trust under 11 AAC 99.100(d). Terms and conditions applicable to this transaction do not provide for application of exploration credits to Trust land rents and royalties, Therefore, to the extent that AS 27.30.010-.070 requires otherwise is inconsistent and not applicable to Trust lands. Further, numerous provisions of law require levels of performance that are less than those required by terms and conditions negotiated in consultation with the Trust under 11 AAC 99.100(d). To allow application of those provisions of law would result in a transaction that does not comply with trust management principles provided for in 11 AAC 99.020. Therefore, provisions of law that are applicable to other state lands that are inconsistent with the negotiated terms of this proposed transaction are hereby deemed inconsistent with 11 AAC 99.020 and do not apply to this transaction. These provisions and their associated regulations include, but are not limited, to the following: AS 38.05.210, 211, 215, 225, 230, 235, 240 (Annual Rent and Labor); AS 38.05.245, 255, 265, 270, 275, (Surface Use of Land and Waters); AS 38.05.135, 137, 140, 145 (Leasing of Mineral Land); and AS 38.05.285 (Multiple Use).

**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 with the Trust Authority before issuing a public notice of a written decision of best interest. This decision document complies with that requirement, as signified by the signatures below.

**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. As previously stated, the applicant plans to re-mine placer tailings on the parcel and has specific knowledge of the historical activity on the parcel and the location of potentially valuable placers here. Further, the relatively small size of the parcel does not warrant conducting a competitive offering as there is no other interested party.

**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 based on the best interests 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.

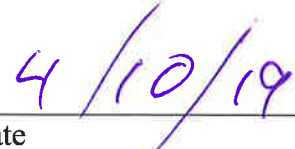
Persons who submit timely written comments will be provided with a copy of the final written decision and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). The Executive Director 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](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 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:**

  
Wyn Menefee  
Executive Director  
Alaska Mental Health Trust Land Office

  
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.

  
Michael K. Abbott  
Chief Executive Officer (CEO)  
Alaska Mental Health Trust Authority

  
Date



**Appendix A**  
**Legal Description of Lease Area**  
**MHT 9400703**

**Parcel FM-7028-** Lot 14, Section 7 of Township 1 South, Range 2 West, FM, containing 1.95 acres, more or less, as shown on the plat of survey, accepted February 20, 1961.

**Parcel FM-0910-** NE1/4NW1/4 Section 11, Township 1 South, Range 3 West, FM, containing 40 acres more, or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on April 28, 1966.

**Parcel FM-0911-** Lot 1, Section 12, Township 1 South, Range 3 West, FM, containing 9.09 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington D.C. on Aril 28, 1966.

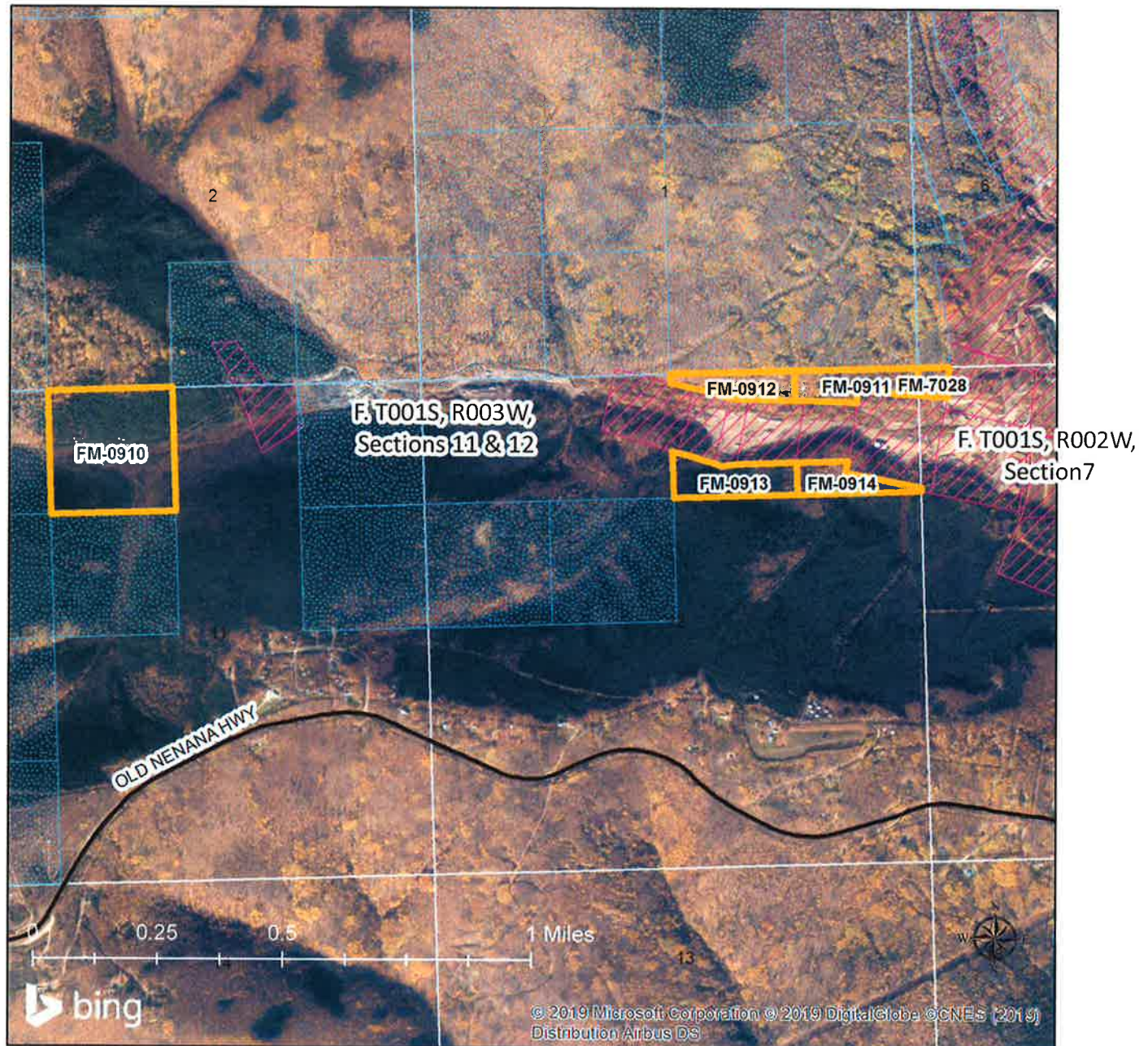
**Parcel FM-0912-** Lot 2, Section 12, Township 1 South, Range 3 West, FM, containing 7.46 Acres, more of less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington D.C. on April 28, 1966.

**Parcel FM-0913-** Lot 5, Section 12, Township 1 South, Range 3 West, FM, containing 10.90 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington D.C. on April 28, 1966.




**Parcel FM-0914-** Lot 6, Section 12, Township 1 South, Range 3 West, FM, containing 6.28 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington D.C. on April 28, 1966.

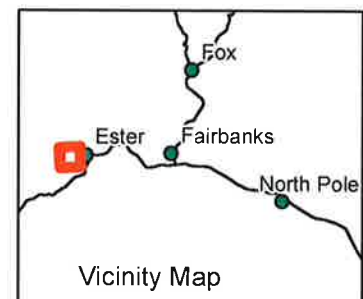
**Total acreage of Lease Area is 75.68 acres, more or less.**

# Fairbanks Excavation LLC Negotiated Placer Lease



## Legend

-  Lease Area - MHT 9400703
-  U.S. Mineral Surveys
-  State Mining Claims



Date Printed: April 2, 2019