

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Alaska Power & Telephone – High Mountain Electrical Cable
MHT #9100898 (Term Easement) & 9100921 (Perpetual Easement)

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 Easement Agreements upon certain Trust land to the Alaska Power & Telephone. 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 to Ketchikan on Gravina Island, and is more particularly described as: A strip of land 20 feet wide and 7,582 feet long within Sections 7 & 18, Township 75 South, Range 90 East, Copper River Meridian, totaling 3.5 acres more or less; located on Trust Parcel CRM-3129-03.


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, December 26, 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. 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



Date
Published Ketchikan Daily News: 11/25/2019

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Alaska Power & Telephone
High Mountain Electrical Cable – Perpetual and Term Easements

MHT: #9100898 & 9100921
MH Parcel: CRM-3129-03

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.** Perpetual easement (MHT 9100921) and term easement (MHT 9100898) for the installation and maintenance of an above ground armored electrical powerline.
- II. Applicant/File #.** Alaska Power and Telephone Wireless/MHT 9100898 (Term) & 9100921 (Perpetual).
- III. Subject Property (Exhibit A).**
- A. Legal Description.** A strip of land 20 feet wide and 7,582 feet long within Sections 7 & 18, Township 75 South, Range 90 East, Copper River Meridian, totaling 3.5 acres more or less.
 - B. Settlement Parcel Number.** CRM-3129-03.
 - C. Site Characteristics/Primary Resource Values.** The subject parcel is located on the northeast portion of Gravina Island near Ketchikan. The area is remote and undeveloped and consists of a mixture of forest and muskeg. The route of the powerline extends from Ketchikan Gateway Borough owned land along the Gravina Island Highway, into the uplands owned by the Trust, then on to US

Forest Service land near the top of the mountainous ridge, which is called High Mountain.

- D. Historical and Existing Uses of the Property.** Trust parcel CRM-3129-03 is very large and measures out at 3,824 acres in size. Portions of the parcel have been used in the past for a variety of timber related operations, and in 2014 an access easement was issued for the Bostwick Lake Road project which provides access to the western portion of Gravina Island. The Trust is also in the process of exchanging a portion of the subject parcel to the US Forest Service as part of a major land exchange, that will aid the Trust in perpetuating its timber resource operations throughout SE Alaska.
- E. Adjacent Land Use Trends.** Gravina Island is mostly undeveloped except for the Ketchikan Airport, and logging roads. Some private residential properties exist along the eastern shoreline of the island. The primary land use trends in the area pertain to resource extraction activities associated with logging and mineral exploration.
- F. Previous State Plans/Classifications.** The Trust parcel is on land that's located in "Region 5. Ketchikan" of the "Central/Southern Southeast Area Plan", that was adopted in November of 2000.
- G. Existing Plans Affecting the Subject Parcel.** Ketchikan Gateway Borough Comprehensive Plan 2020 (April 1, 2009).
- H. Apparent Highest and Best Use.** Under current conditions the highest and best use of the land is generating income through unique and diverse opportunities including utility and access easements, activities in support of resource extraction, such as mining and timber, and possible wetland or carbon credit mitigation.

IV. Proposal Background. Alaska Power and Telephone Wireless (AP&T) has applied to the Trust Land Office requesting permission to locate, install, and maintain an armored powerline on Trust land. The powerline cable measures 1.5" in diameter and will be affixed directly on top of the ground. AP&T owns and operates communications infrastructure on top of the mountain ridge (High Mountain), and the cable will provide a more reliable, efficient, and cost-effective method for powering the site.

As proposed the width of the easement would be 20 feet wide and 7,582 feet long. A portion of Trust land within the proposed project site has been selected for exchange with the US Forest Service, and where the cable crosses this segment of Trust land the easement would be issued as a "perpetual" easement (MHT 9100921); the portion of the segment that crosses land that will remain with the Trust would be issued as a "term" easement (MHT 9100898), therefore two easements would be issued. The first segment, which is lower on the hillside would be the "term" easement (MHT 9100898), and measures approximately 3,662 feet in length; the second segment would be issued as a "perpetual" easement (MHT 9100921), and is located higher up on the hillside near the ridgeline and adjacent to US Forest Service land, and measures approximately 3,920 feet in length.

- V. Terms and Conditions.** Two easement agreements will be drafted and used for the disposal, one agreement will be based on a term, and the other will be granted as perpetual.
- A.** MHT 9100898 - The term easement will have an initial term of 20 years with the option to extend, and the grantee shall pay an annual payment to the Grantor in the amount of \$1,831.00 per year and will include a CPI adjustment every five years. The grantee may not co-locate third party equipment without prior TLO approval.
 - B.** MHT 9100921 - The perpetual easement will be granted permanently and will require a one-time fee of \$10,190.00.

VI. Resource Management Considerations. The proposal is consistent with the “Resource Management Strategy for Trust Land” (RMS), which was adopted March 2016 in consultation with the Trust and provides for the TLO to maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets. Experience has demonstrated that it is unlikely that this property will appreciate at a rate that would justify holding for a later sale. It is also not cost effective for the TLO to hold this parcel for a long period of time and incur the associated management costs and liabilities.

VII. Alternatives.

- A.** Do nothing. This will result in a loss of income revenue.
- B.** Retain the property for another use. There is currently no other interest in the land.
- C.** Retain the property for a future timber sale, or mineral extraction. There is currently no interest, however since the footprint of the easement is relatively small, concurring uses on the land could be possible.
- D.** Retain the property for potential conservation or environmental mitigation purposes. There is currently no interest, however since the footprint of the easement is relatively small, concurring uses on the land could be possible.

VIII. Risk Management Considerations.

- A. Performance Risks.** In present condition the subject property is not generating any revenue for the Trust and is considered a non-performing asset.
- B. Environmental Risks.** There are no known risks associated with the proposed easements, and there is no history of the TLO authorizing any use at the described location on the subject property
- C. Public Concerns.** Subject to comments resulting from the public notice, there are no known concerns that suggest the easements are inconsistent with Trust principles.

IX. Due Diligence.

- A. Site Inspection.** A site visit was not conducted prior to agreement negotiations.
- B. Valuation.** Two easement agreements will be generated, a term easement (MHT 9100898) and a perpetual easement (MHT 9100921). The term easement (MHT

9100898) will be granted for 20 years based on an annual fee of \$1,831.00, with a CPI adjustment every five years. The perpetual easement (MHT 9100921) will be granted for a one-time fee of \$10,190.00.

C. Terms and Conditions Review. The proposed easements will be based on the standard TLO easement documents which are periodically reviewed by General Counsel to mitigate exposure to risk.

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 easements are 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). Other provisions of law the TLO deems inconsistent with Trust responsibilities include:

1. AS 38.05.055, Alaska Residency required for purchase of State land, and AS 38.05.940, Veteran's discounts allowed on purchase price of State land. Preferences or discounts provided to Alaska residents or veterans would be granted at a cost to the Trust, hereby violating key Trust management principles.
2. AS 38.05.127, Access to navigable or public water and requiring "to and along" easements on Trust properties diminishes the sale value of Trust lands and therefore is inconsistent with Trust management principles.

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.

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 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 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:

<https://alaskamentalhealthtrust.org/trust-land-office/>.

XVI. APPROVED:



Wyn Menefee
Executive Director
Alaska Mental Health Trust Land Office

11/15/19

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.

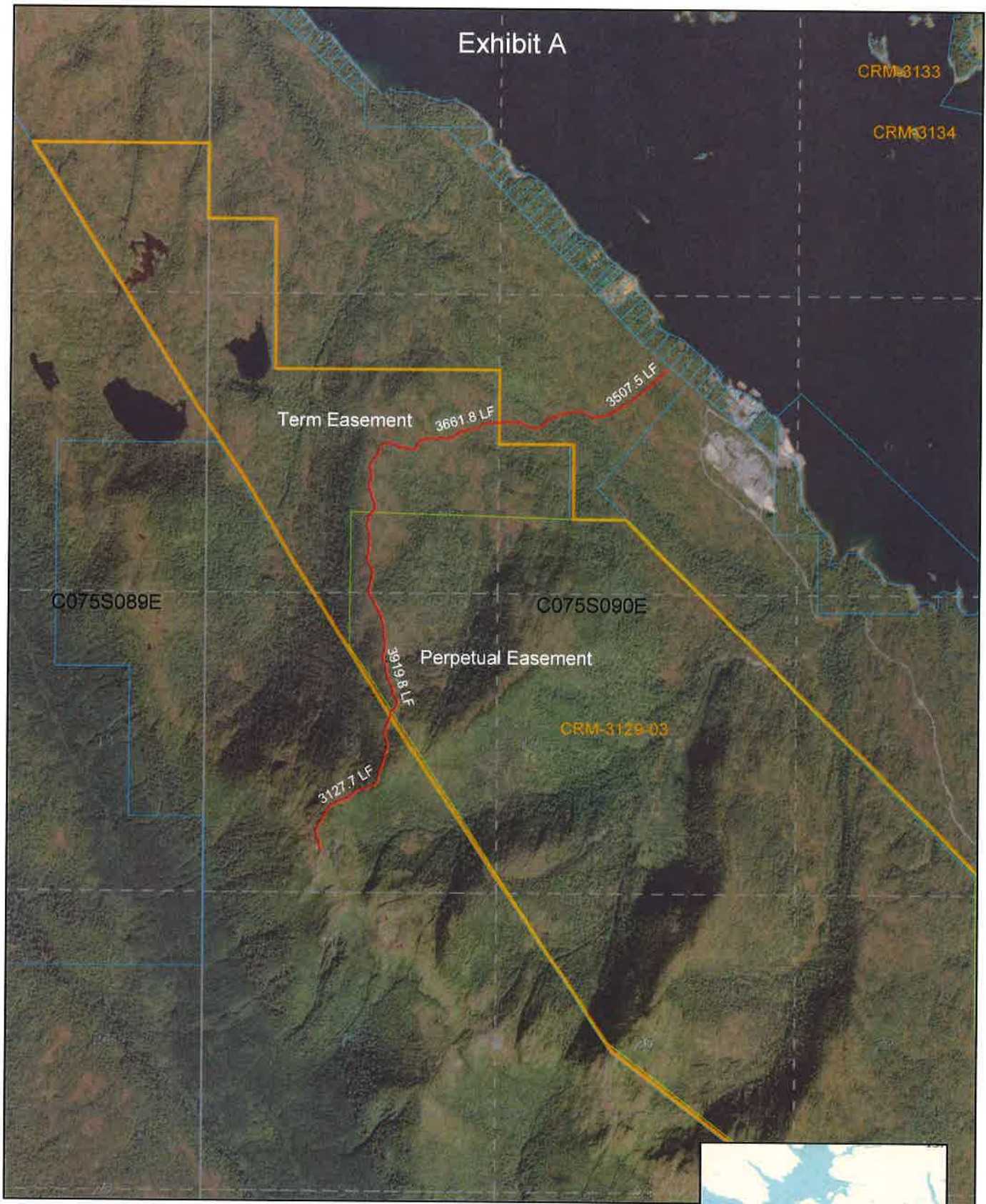


Michael K. Abbott
Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

11/19/19

Date

Exhibit A



- Gravina High Mt. Cable
- Land Exchange Act
- MHT Settlement Parcels
- Ketchikan Borough Parcels

