

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION

Decision to Issue Moose Pass to Cooper Landing Fiber Optic Utility Easement

Kenai Peninsula Borough

MHT: 9200840

MH Parcels: S20137.001, S20138.002, S20142 (portions of)

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. The Trust Land office proposes to issue an easement, per the terms of Alascom dba AT&T Alaska’s Master Utility Easement serialized as MHT 9200564, to Alascom dba AT&T Alaska for the installation of a 48-strand fiber optic cable to be collocated on existing aerial infrastructure authorized to the City of Seward. The proposed easement would measure 30-feet in width by 7,250 feet in length on three TLO parcels described in section III (Exhibit A - Map of Area).

II. Applicant/File #. Alascom, Inc. dba AT&T Alaska / MHT 9200840.

III. Subject Property.

- A. Legal Description.** A strip of land 30 feet in width located in Section 25 and the NE1/4 of Section 26, Township 005 North, Range 001 West, Seward Meridian situated in the Seward Recording District, Third Judicial District, State of Alaska, the centerline of which is the same as the centerline shown on the as-built survey dated March 21, 1988, and the Right of Way easement under ADL 219510.
- B. Settlement Parcel Number.** S20137.001, S20138.002, S20142 (portions of)
- C. Site Characteristics/Primary Resource Values.** Site characteristics are typical of residential, transportation corridor and recreational properties in the area.

- D. Historical and Existing Uses of the Property.** Historic and existing uses of property include a 60’ utility easement, ADL 219510, issued to the City of Seward 7/1/1988. Other use is a term easement non-exclusive for a fiber optic transmission line, MHT 9200317, issued to Telalaska, Inc. 1/1/2006.
- E. Adjacent Land Use Trends.** Adjacent private land within the nearby area is mostly residential, recreational, and a transportation corridor.
- F. Previous State Plans/Classifications.** 2000 Kenai Area Plan; Kenai Peninsula Borough.
- G. Existing Plans Affecting the Subject Parcel.** The Kenai Peninsula Borough rural district includes the rest of the area of the borough outside of cities which have exercised zoning power. Land use is unrestricted. Applicable KPB land use regulations (e.g., minimum lot size, well-septic separations, building setbacks, etc.) are typical.
- H. Apparent Highest and Best Use.** The current highest and best use of the parcels is either recreational, or residential real estate development. Adding an overlying easement on the pre-existing easement is in the best interest of the Trust considering the encumbrance exists and this is an opportunity to gain additional revenue. This utility easement does not prevent future development of the parcel.

IV. Proposal Background. On June 13th, 2022, AT&T Alascom applied for a new utility easement in the Upper Trail Lake area near Moose Pass to serve the local community. AT&T Alaska will utilize the existing electrical pole line and install an aerial 48-strand fiber optic cable.

V. Terms and Conditions.

The terms and conditions are established in the Alascom Inc. dba AT&T Alaska Master Utility Agreement MHT 9200564 and include the following:

- A.** This term easement non-exclusive will run concurrently with the Master Agreement which expires at 11:59pm on September 30, 2036, unless it is extended or earlier terminated as provided in the Master Agreement. The annual fee is due on or by May 1st each year.
- B.** The Master Agreement may be extended 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 an amount of \$1.06/Linear foot for a fiber line in the Kenai Peninsula Borough per the terms of the Master Utility Agreement 3.(d.).

Year	rate/foot	rate*length of 7,250 feet
2011-2016	\$ 1.00	\$ 7,250.00
2017-2021	\$ 1.03	\$ 7,467.50
2022-2026	\$ 1.06	\$ 7,691.53
2027-2031	\$ 1.09	\$ 7,922.27
2032-2036	\$ 1.13	\$ 8,159.94

- D. A late payment penalty fee of 10.5% or \$50, whichever is greater, will be assessed and accrued on the unpaid balance beginning May 15 until Grantor receives payment in full.
- E. Every five years, the land use fee will be subject to a price adjustment increase of no less than three percent (3%).
- F. Each new application will be subject to a one-time assessment fee of \$500 in addition to the prorated Utility Easement Fee. A Survey Review Fee of \$200 may also be collected if a survey is required by the Grantor.

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.

VII. Alternatives.

- A. Proceed as Proposed. The proposed easement for a new fiber optic line, collocated with The City of Seward's utility lines and Telalaska, Inc. communications line, would provide additional revenue to the Trust without increasing the TLO's stewardship obligation. The adjacent Trust land may be suitable for subdivision development, and enhanced telecommunication services would increase the value of individual lots.
- B. Do Nothing. Doing nothing would preclude an opportunity to receive value for the proposed activities within an existing footprint that is currently being used as a utility corridor.

VIII. Risk Management Considerations.

- A. **Performance Risks.** No additional land disturbance aside from normal maintenance is anticipated. The standard easement indemnification, bonding, and insurance coverage naming the Trust as an additional insured should mitigate unknown liabilities.
- B. **Environmental Risks.** The Commercial Liability Insurance coverage requirements should mitigate unknown environmental and liability risks.
- 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.

IX. Due Diligence.

- A. **Site Inspection.** TLO staff inspected the parcel in June 2021.
- B. **Valuation.** The Trust will receive \$7,691.53 annually and approximately \$118,868.94 over the remaining 25-year term of the Master Agreement and per terms and conditions in section V.(C.) of this contract.
- C. **Terms and Conditions Review.** The Master Agreement and form of the Utility Easement are periodically reviewed by the Department of Law. Insurance and indemnification have been imposed per the standard conditions of the Easement.

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). AS 38.05.850 Permits.

B. Inconsistency Determination. As the proposed non-exclusive 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). AS 38.05.850 (b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state.

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 201, 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:

DocuSigned by:
Jeffrey Green
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Jeffrey Green
Acting Executive Director
Alaska Mental Health Trust Land Office

9/29/2022

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.

DocuSigned by:
Steve Williams
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Steve Williams
Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

9/29/2022

Date

Exhibit A

