

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
MTA Fiber Optic Pt. MacKenzie to Tyonek
Term Easement Non-Exclusive

MHT: 9201024
MH Parcel(s): SM-1747

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 installation of overhead and buried fiber optic line collocated with a Chugach Electric easement (MHT 9200647). See Exhibit A – Map.

II. Applicant/File #. Matanuska Telecom Association, Inc. / MHT 9201024

III. Subject Property.

A. Legal Description.

MH PARCEL NO.: SM-1747

AN EASEMENT 30 FEET BY 5,338 FEET, LOCATED WITHIN EXISTING CHUGACH ELECTRIC EASEMENT (ADL 28471 & ADL 201672), AND WITHIN SECTION 30 OF TRACT B OF TOWNSHIP 14 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, ALASKA, CONTAINING 3.7 ACRES, MORE OR LESS, ACCORDING TO THE AMENDED SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON NOVEMBER 22, 1991 AND OFFICIALLY FILED ON NOVEMBER 27, 1991.

B. Settlement Parcel Number(s). SM-1747

C. Site Characteristics/Primary Resource Values. Point MacKenzie area, approximately thirty miles southwest of Wasilla, Alaska. The land includes typical,

native mature forest mix of birch and spruce with identified wetlands by U.S. Fish and Wildlife Service National Wetlands Inventory.

- D. Historical and Existing Uses of the Property.** The Point MacKenzie area was used by Alaska Natives, the Dena'ina Athabascan, for subsistence activities and trading at seasonal camps. The town of Knik was settled in 1915 becoming a major logistical supply center to stage goods to the gold rush in the interior of Alaska. Subsistence trails through various Point MacKenzie areas were constructed to connect communities during this time including a portion of the Iditarod Trail. Today, State and Borough large-scale capital project investments fund the economic growth and development in the area such as the development of the port, the railroad extension project, the bridge between Anchorage and Port MacKenzie, and Goose Creek Correctional Center. In 1966, the Chugach Electric constructed and operated a 230kV transmission line connecting the Beluga Power Plant and the Port MacKenzie substation under a Letter of Entry (ADL 201672) issued by the Division of Lands. This Early Entry Authorization predated land exchanges that have occurred between DNR and UA, Mental Health, MSB, and CIRI as part of several lawsuits and settlements affecting the Cook Inlet Region. On September 20, 1996, the state conveyed the parcel to the Trust under QCD 8000058. A completed DNR-approved as built survey of ADL 28471 and ADL 201672 filed on December 9, 2003 depicts the location of the easements within Susitna Flats State Game Refuge, recorded as Palmer Plat 2003-164. The proposed MTA fiber optic line will run collocated with the Chugach Electric transmission line.
- E. Adjacent Land Use Trends.** A mixture of industrial, utility infrastructure, agricultural and recreational uses.
- F. Previous State Plans/Classifications.** The subject parcel was included in the Willow Sub-Basin Area Plan (1982) and superseded by the current Southeast Susitna Area Plan (adopted in 2008 and revised by DNR in 2009). Current management of State land is for its recreational or habitat resources values.
- G. Existing Plans Affecting the Subject Parcel.** The subject parcel is not located within the boundaries of any city and does not have zoning regulations; however, development restrictions are imposed by the Matanuska-Susitna Borough (MSB) through a Conditional Use Permits Program and Special Land Use Districts. The subject parcel is within the MSB's Point MacKenzie Community Comprehensive Management Plan (adopted July 2011). The plan's Community Vision states: "Development of Point MacKenzie's infrastructure including major transportation routes, public utilities, and services is to be achieved for both the betterment of the community, the region, and the State of Alaska." The plan further states under Land Use Goals & Objectives, "Encourage development along the Point MacKenzie Road and major collectors/thoroughfares." The Easement is consistent with the Point MacKenzie Community Comprehensive Plan..
- H. Apparent Highest and Best Use.** There are no feasible development options apparent for the parcel, with the current highest and best use for either real estate or potential oil and gas resource development. The Easement does not prevent future development of the parcel.

- IV. Proposal Background.** Matanuska Telecom Association, Inc. (MTA) requests an easement from the Alaska Department of Natural Resources (ADNR) to support construction and operation of a buried primary fiber optic telecommunications facility connecting Point MacKenzie to Tyonek. MTA has been awarded a United States Department of Agriculture (USDA) Rural Utility Service (RUS) grant that will fund the construction of a new fiber optic broadband system from Point MacKenzie to Tyonek, Alaska. This facility will bring reliable high-speed internet to underserved and under privileged remote communities, as well as providing telecommunication diversity to the region.
- V. Terms and Conditions.** The terms and conditions are established in MHT 9200605 Matanuska Telecom Association, Inc.'s Master Utility Agreement (formerly Matanuska Telephone Association, Inc.), and include the following:
- A.** This Easement will run concurrently with the Master Agreement that expires at 11:59pm on September 30, 2047, unless it is extended or earlier terminated as provided in the Master Utility Agreement.
 - B.** This easement is subject to all the terms and conditions as laid out in the Master Utility Agreement, MHT 9200605.
 - C.** 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.
 - D.** The location rate for this Easement, per MHT 9200605, is valued at an amount of \$1.60/Lineal foot for an easement measuring 30 feet wide in the Matanuska Susitna area.
 - E.** Every five years, the land use fee will be subject to a Consumer Price Index adjustment increase as defined in MHT 9200605.
 - F.** Each new Development Plan application will be subject to a one-time assessment for a transaction fee of \$250 in addition to the prorated Utility Easement Fee. A Survey Review Fee of \$300 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, which were adopted in October 2021 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. 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. Do Nothing.** Disallowing the collocation of a concurrent user for a compatible use will result in the loss of income-generating revenue on Trust land.
- B. Alternate Development.** The Chugach Electric easement hosts a major transmission source to supply electricity to Anchorage and northern Alaska through the Alaska Intertie. It is unnecessary to require MTA to locate the fiber optic line from the subject parcel since it does not prohibit future development.
- C. Proceed as Proposed.** The applicant is willing to complete the easement disposal and return market value for the land use to the Trust, including cost adjustment every five years.

VIII. Risk Management Considerations.

- A. Performance Risks.** No additional land disturbance aside from installation and 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.** A site visit was not conducted prior to Agreement negotiations.
- B. Valuation.** The Trust will receive approximately \$196,438.40 over the remaining 23-year term of the Master Agreement not adjusting for routine CPI adjustments.
- 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.
- 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 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. The Alaska Mental Health Trust Board of Trustees were consulted on August 29, 2024, and the Alaska Mental Health Trust Board of Trustees adopted the motion concurring with the Executive Director of the Trust Land Office's decision to issue a term easement on a portion of Trust parcel SM-1747 to MTA for the purposes of fiber optic infrastructure.
- 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:

Signed by:	
Jusdi Warner	<u>9/24/2024</u>
Jusdi Warner	Date
Executive Director	
Alaska Mental Health Trust Land Office	

Exhibit A – Map



MHT 9201024

MHT 9201024 is located within the existing easement for ADL's 28471 & 201672.

- Survey Boundary
- PLSS Township
- PLSS Section
- ADL 28471 & 201672 Easement
- Mental Health Parcels (Land & Fee)



Best Interest Decision
 MHT # 9201024
 MH Parcel SM-1747
 Matanuska Telecom Association, Inc.

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision - MTA Fiber Optic – Term Easement Non-Exclusive – Point MacKenzie/Tyonek
MHT #9201024

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 **Non-exclusive Term Easement (455)** of certain Trust land to the Matanuska Telecom Association, Inc. 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 Point MacKenzie, AK and is more particularly described as: AN EASEMENT 30 FEET BY 5,338 FEET, LOCATED WITHIN EXISTING CHUGACH ELECTRIC EASEMENT (ADL 28471 & ADL 201672) , AND WITHIN SECTION 30 OF TRACT B OF TOWNSHIP 14 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, ALASKA, CONTAINING 3.7 ACRES, MORE OR LESS, ACCORDING TO THE AMENDED SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON NOVEMBER 22, 1991 AND OFFICIALLY FILED ON NOVEMBER 27, 1991.

Persons who believe that the written 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 on or before **4:30 PM, October 28th, 2024**. Comments should be submitted to the TLO at **2600 Cordova Street, Suite 201, 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 notice period ends.

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.

Signed by:
Jusdi Warner

Jusdi Warner
Executive Director

9/24/2024

Date
Frontiersman 08/27/2024