

The Alaska Mental Health Trust Authority  
Trust Land Office  
**BEST INTEREST DECISION AFFIRMED**  
**Negotiated Ground Lease to Usibelli Coal Mine, Inc.**

MHT 9200635  
MH Parcel S20568

**Action:** Adopt the Best Interest Decision dated December 14, 2015 regarding the above referenced disposal as final, with the modification described below. This decision document, combined with the Best Interest Decision dated December 14, 2015, constitutes the final decision on this matter, in accordance with 11 AAC 99.040.

**Notice under 11 AAC 99.050.** The Trust Land Office published the public notice of the decision to issue a ground lease to Usibelli Coal Mine, Inc. (UCM) for access and transportation of coal connected with the Wishbone Hill Coal Project in the Alaska Dispatch News and the Mat-Su Valley Frontiersman on December 18, 2015, and distributed the notice to other interested public and private parties.

**Summary of Comments:** 208 commenters submitted timely written comments, containing multiple parts. An additional six commenters submitted written comments after the public notice period closed. Of the comments that were timely filed, ten were supportive of the proposed ground lease for an access haul road, citing jobs and revenues that could be generated by this lease as being important to the Valley's economic future. The remaining comments were opposed to the proposed road and transportation lease, and include concerns for the environment, public health, financial instability in coal markets, and transportation safety. Several commenters raised concerns regarding the proposed lease not being in the best interest of the Mental Health Trust (Trust), its beneficiaries, or did not meet the goal of being the highest and best use of Trust land.

TLO manages Trust land to generate revenue, which is used by the Alaska Mental Health Trust Authority (TA) to improve the lives and circumstance of Trust beneficiaries. Unlike other state lands that are generally managed for the benefit of the Alaska public-at-large, Trust land is managed specifically to protect and enhance Trust assets in perpetuity for the beneficiaries. This management responsibility means that TLO decisions must be consistent with trust responsibilities accepted by the state under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)), which means that management shall be conducted "solely in the best interest of the Trust and its beneficiaries" and not based on broad public interests.

### **Specific Responses to Comments**

- 1. Land Use/Highest and Best Use.** A large number of comments suggested UCM's use of the Trust property for an access haul road is not the highest and best use of the land, and other uses such as alternative energy, carbon credits, wetlands banking, recreation resources, and other ecosystem based resources should be considered.

**Response.** The proposed ground lease for the UCM's access haul road meets the highest and best use criteria by being legally permissible, physically possible, appropriately supported, and financially feasible. When determining the best interest of the Trust and its beneficiaries, the TLO is encouraged to diversify the revenue-producing uses on Trust land. Provided the uses are reasonably compatible, the TLO may enter into multiple ground leases, easements, or authorizations for the same parcel. The ground lease does not prohibit other feasible proposals or future uses. At this time the TLO has not received any applications for alternative uses on these parcels but will evaluate other proposals that meet Trust land management principles as described in 11 AAC 99.020. Additionally, the infrastructure added to property will increase the value of the property for future access and uses.

**2. Financial Concerns.** Numerous comments received express concern that coal was a poor investment because of reliance on falling seaborne thermal coal markets for generating revenue for mental health services. Some of these comments also included concerns about the annual rental fee being affected by current and future market conditions of coal and development at the site not occurring in the near future due to these conditions.

**Response.** The annual rental fee is not based on global economics forecasts or UCM's market shares in seaborne thermal coal markets. The ground lease fee is based on real estate market values and on the TLO's Resource Management Strategy which provides guidelines for the management and development of surface lands to generate a predictable stream of income and principle funds. As stated in the Best Interest Decision, "Annual rental will be \$13,110 and subject to adjustment at the commencement of the sixth year of the term and every fifth year thereafter based on an appraisal. The annual rent will never decrease at an adjustment date." The annual rental fee will be due regardless if the Wishbone Hill Project site is developed or not.

In addition to the annual rent the Trust will receive a road which will provide increased access to the Trust land following cessation of mining operations. The road will enhance the value of the property and reduces TLO development costs for future uses.

**3. Environmental Concerns.** A large number of comments pertained to the effects of coal mining and transportation on the environment, water, and fish and wildlife.

**Response.** The proposed ground lease is for the access and transportation of coal for that portion of the permitted mine access haul road that crosses Trust land, and is not for the extraction of coal. The access haul road for the Wishbone Hill Project will consist of an approximately three mile segment of road, of which one mile will be located on Trust land. Construction, operations and maintenance for the access haul road is regulated by the Department of Natural Resources, Coal Regulatory Program under the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) permits 01-89-796 and 02-89-796. The purpose of ASCMCRA is to prevent, minimize, and mitigate potential impacts from exploration and development of coal resources. There are no requirements of the TLO to perform environmental or geotechnical studies to issue a lease for a Trust resource; these requirements would be considered during the permitting or regulatory review by the appropriate state and/or federal agencies, if a mining permit is pursued by a mining applicant. The TLO's mandate only requires that the ground lease is in the best

interest of the Trust and its beneficiaries, and is based upon Trust land management principles as outlined by the Resource Management Strategy.

**4. Public Health Concerns.** Several comments had concerns of reduced air quality from airborne coal dust during transport within an area where winds are a common occurrence.

**Response.** An air pollution control plan is required for the mining permit and must comply with all Federal and State quality air standards and regulations. UCM is required to obtain an Air Quality Control Minor Permit from the Department of Environmental Conservation (DEC) for the Wishbone Hill Coal mining, processing and transportation operations. The permit includes provisions for state emission control standards, fugitive dust, ambient air quality protection standards, recordkeeping and reporting provisions, source testing and monitoring requirements as well as General Permit and Standard Permit Conditions. If air quality problems are encountered, either by residents or regulatory staff during regularly scheduled inspections, DEC will be notified and appropriate measures will be taken to mitigate the impacts.

**5. Resource Management Considerations.** A few comments questioned the statement in the Best Interest Decision under Section VI Resource Management Considerations which read “Given the existing markets that UCM provides coal for and the need for continued production of coal from this area, the land affected by this decision is in a “best market” situation that should be offered now rather than later.” One comment states “there is no current production at Wishbone Hill; there is nothing at all at Wishbone Hill but a pioneer road from the Glenn Highway to the proposed mine site and some evidence of exploration. Therefore the statement about a “need for continued production from this area” is insupportable. A lease cannot be justified by misinformation.”

**Response.** The comment is correct; there is no current production of coal at the Wishbone Hill Project site. The TLO will modify Section VI of the Best Interest Decision (see Modifications below) to clarify Section VI of the Best Interest Decision.

**Trust Authority Consultation:** The Alaska Mental Health Trust Authority was consulted on this matter on December 15, 2015.

**Modifications:** The Trust Land Office hereby modifies the third sentence of Section VI of the Best Interest Decision dated December 14, 2015 titled Negotiated Ground Lease to Usibelli Coal Mine, Inc. to read, “Given UCM expressed interest to use the ground lease area as a road for access and transportation of coal connected with the Wishbone Hill Coal Project and the ground lease area has been legally permitted by the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) to be used as such, Trust land affected by this decision is in a “best market” situation that should be offered now rather than later.” The Executive Director has determined the Best Interest Decision dated December 14, 2015 as modified serves the interest of The Trust and its beneficiaries.

**Final Decision of the Executive Director:** Considering all of the above, the Executive Director of the Trust Land Office hereby adopts the Best Interest Decision with modifications dated December 14, 2015 as final.

**Reconsideration:** Persons who submitted timely written comments during the notice period that ended at 4:30 pm on January 19, 2016, are eligible to request reconsideration of this final best interest decision under 11 AAC 99.060(b) within 20 calendar days after publication of the notice or receipt of the final decision, whichever is earlier. A request for reconsideration must be submitted in writing to the Executive Director. Before filing an appeal to the Superior Court under AS 44.62.560, a person must be eligible to request and must actually request reconsideration within the time specified above.

The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the written request for reconsideration. If the Executive Director takes no action during the 20-day period following the request, 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.

**APPROVED:**

  
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John Morrison  
Executive Director

2-3-16  
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Date