Alaska Mental Health Boards Briefing

ALASKA MENTAL HEALTH BOARD

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Senator Bettye M. Fahrenkamp
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Alaska 99811

January 31, 1990

Honorable Senator,

In order to fulfill its statutory mandate representatives of the Board should meet with the Senate Resources Committee. The purpose of the meeting would be to report the Board's observations of the valuation process applied to the Mental Health Trust Lands and also other matters within the Board's mandate. Over the past nineteen months, members of the AMHB Lands Committee have attended nearly every meeting of the Interim Mental Health Trust Commission.

It would be helpful to be scheduled with your committee for one-half hour ~~either~~ on Wednesday February 14th. AMHB Lands Committee Chair, Mr John Malone of Bethel, would be the primary presenter assisted by myself. Please, let me know if a meeting with the House Resources Committee can be scheduled. Thank-you.

Sincerely,

Dennis M. Scholl, Ph.D.
Executive Director

cc: J. Malone
T. Langdon
IMHTC
DNR

INTERIM MENTAL HEALTH TRUST COMMISSION

DRAFT FINAL REPORT

(December 20, 1989)

on

Approved Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands

I. INTRODUCTION AND BACKGROUND

In 1956, the Congress granted the Territory of Alaska the right to select one million acres of land to be managed as a public trust to produce income that would be, "applied first for the necessary expenses of the mental health program of Alaska." However, after selecting the most promising income producing potential lands available at the time, the State never actively managed these lands as a trust. There was no effort to protect the corpus from dissipation or to generate maximum income in the interest of the primary beneficiaries.

To the contrary and from the beginning, lands were conveyed from the trust at, frequently, less than fair market value and for purposes not allowed in the 1956 legislation. The Alaska Legislature even attempted to dissolve the trust in 1978. (Ch. 181, 182, SLA 1978) By October 4, 1985, of the original one million acres, only 194,672 acres of land remained in unencumbered grant land status. (Interim Mental Health Trust Commission, Report to the Legislature, February 1987, "APPENDIX C: THE MENTAL HEALTH LAND TRUST")

In 1982, beneficiaries of the trust sued the state for breach of its trust responsibilities. In October, 1985, the Alaska Supreme Court agreed the state had breached its trust responsibilities and ordered that, "the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective." State v. Weiss

706 P.2d 681 (1985). This reconstitution was deemed impracticable at best by the State and it strenuously resisted the reversal of previous actions taken on mental health trust lands that would be required. Therefore, to help devise an acceptable method of alternative or constructive reconstitution of the trust, and to assure proper trust management in the interim, the legislature in 1986 created this Interim Mental Health Trust Lands Commission (Commission). See Ch. 132 SLA 1986. Under legislative auspices, discussions thereafter took place between all interested parties to seek acceptable alternative means of reconstituting the trust.

In its February, 1987 report to the Legislature, at page 20, the Commission concluded that, "[t]he number, complexity and importance of the questions raised by the Weiss Opinion's trust reconstitution instructions urges a negotiated settlement." The concurrent work of special legislative committees also all supported and adopted the concept of a negotiated resolution. This unanimity culminated in the passage of Chapter 48, SLA 1987 (Chapter 48). Chapter 48 directed a replacement trust corpus be created from lands currently in legislatively designated areas equal in value to the September, 1987, value of the original one million acres received by the State under the 1956 legislation, with the state then to pay "rent" at 8% per year on this value into the mental health trust income account.

Under Chapter 48, this Commission, composed of the Commissioner of the Department of Natural Resources (or her designee),

and two public member, Dr. George Rogers, and Dr. Lidia Selkregg[1] was directly charged with approving procedures on behalf of the Commissioner of the Department of Natural Resources for determining the 1987 fair market value of the original one million acres of mental health trust lands and, also, of identifying lands of equal value among eight million acres of potential replacement lands within legislatively designated areas.

Commencing with its June 9, 1987 meeting and continuing through its meeting of November 7, 1989, the Commission held over thirty public meetings or work sessions in order to evolve its finally approved procedures for determining the fair market value of the original mental health trust lands. Each meeting was public and its subject matter was noticed to all interested parties and an opportunity allowed for all to present and argue their views both orally and in writing[2].

1.The chairman of the Commission, Dr. George Rogers, is a professional resource and general economist, having his first contact Alaska resources in 1937 while working in the economics department of Standard oil of California. He has been an Alaska resident since 1945, serving as an economist with the Department of Interior, Resources for the Future and the University of Alaska where he established its Institute of Social and Economic Research in 1960-61. The other public member of the Commission, Dr. Lidia Selkregg, is a professional geologist and planner. Dr. Selkregg has served on the Anchorage Assembly and its Planning and Zoning Commission. She is also a Professor Emeritus at the University of Alaska and developed its planning curriculum. Both of these members have served on many State and Federal land use and natural resources commissions and committees and bring decades of experience in many of the issues being addressed by the Commission.

2.References to documents herein that have not been published, are to documents presented to or prepared by the Commission and kept on file by DNR, acting as the Commission's staff.

At its November 7, 1989 meeting, the Commission (with one dissent) adopted final valuation procedures in conformity with the legislative intent (copy attached as Appendix A). In all instances, standard and specific industry methodologies were adopted, as necessarily modified for use within rather severe constraints of available time and money. The procedures were then forwarded on the same date to the Commissioner of Natural Resources to make the resulting determination of fair market value for the one million acres of mental health trust lands, as required by Chapter 48. This Report is intended to provide in one document the background and rationale supporting adoption of these procedures.

II. DISCUSSION

A. FAIR MARKET VALUE

Chapter 48 requires the determination of the "fair market value" of the original corpus and replacement lands. While there was consensus on the general approach and procedures to be followed, the precise definition and means of determining the fair market value has caused continuing disagreement.

In legal memoranda to the Commission, attorneys for the Plaintiffs and the State agreed that "fair market value is the highest price which a hypothetical willing buyer would pay a hypothetical willing seller in a free and open market." (Gottstein, May 4, 1989, Re: Definition of Fair Market Value;" Koester, May 9, 1989, "Fair Market Value.") Additionally, they agreed

"that there is no 'inexorable rule' by which fair market value is to be determined, and that the comparable sales method is not the only one which may be used." (Koester, op. cit., page 4) All parties also agreed on the following statement at the July 12, 1989 Commission meeting:

> Fair Market Value for purposes of Chapter 48 means utilization of the best information and methodology available within time and funding constraints to arrive at fair market value.

(Transcript, page 54)

While recognizing the income approach was the appropriate methodology for valuing resources, DNR applied only the market or "comparable sales" approach in valuing the mineral endowment. As late as the September 5, 1989, meeting, the lead staff member for DNR, Mr. Gustafson, stated: "The market approach [comparable sales] is what we always felt is required under terms of the legislation. There are a lot of other ways that you could put a value on this thing. We could have done that too, but we have been faithful to the market approach because that is what the Legislature required." (Transcript, page 55). The Commission does not agree the Legislature required use of only the "comparable sales" ("market") approach for valuation.

Under Congress' intent in the 1956 legislation and subsequent selection of the lands by Alaska, mental health trust lands were to be managed as a public trust for income production rather than as a repository of land for resale. Pursuant to that in-

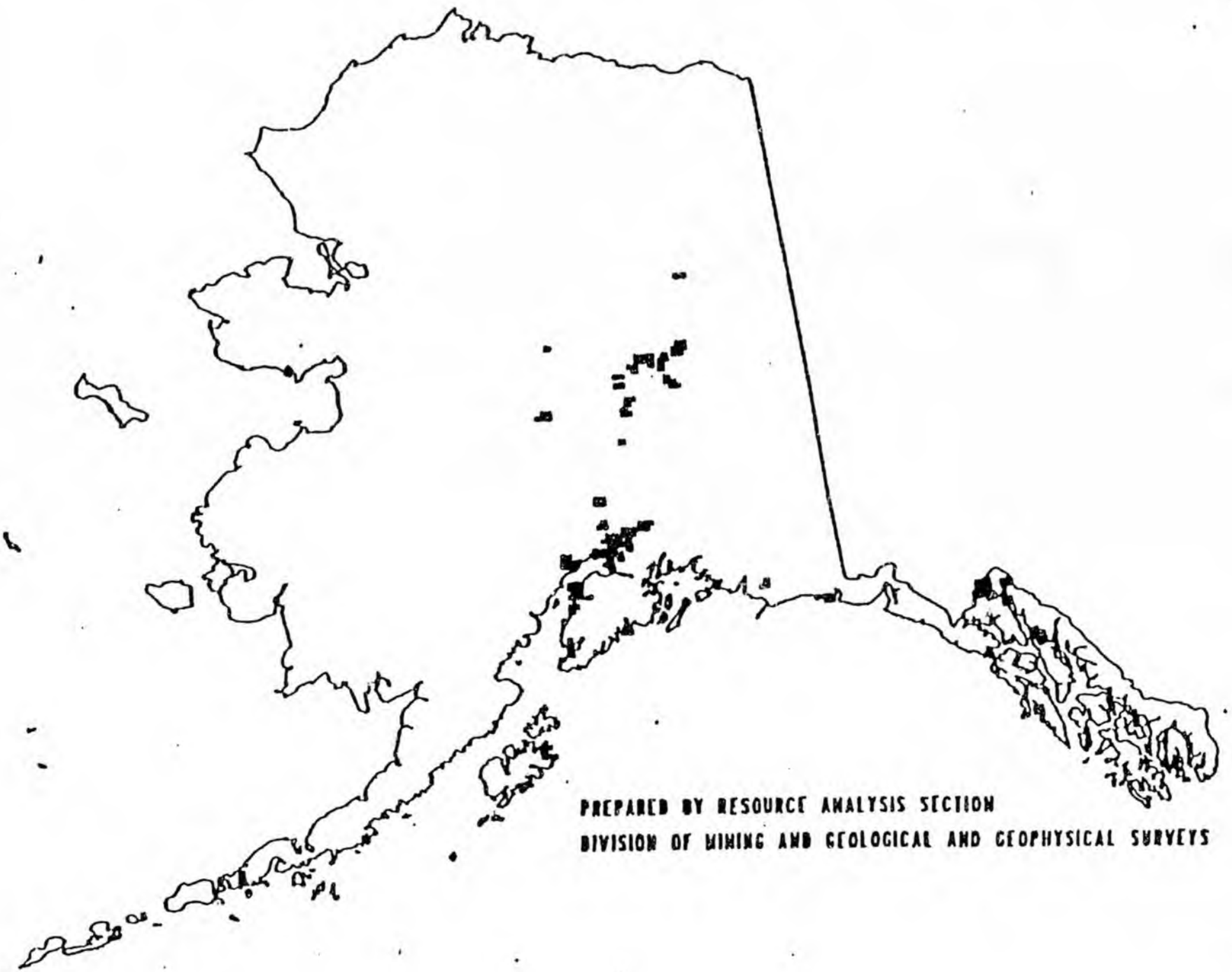
tent, the land selections made by the Territory and State of Alaska between 1956 and 1965 were based upon income analysis. Selections were anticipated to be suitable for development and targeted lands surrounding the principal urban centers and known commercially valuable natural resource lands along or adjacent to the main rail, water, highway and road transportation systems. (Refer to Figure 1).

Approximately half the mental health trust lands were urban and sub-urban lands, selected because their values would appreciate at a high rate in response to community growth. Timber lands were selected with the view that they would become the core of the State's forest system (which they are) and hydrocarbon and mineral lands were selected from the major mining areas of the State.

These selection methodologies are inherently inconsistent with an intent to base mineral value on comparable sales, as value or income would have been derived from these lands without any sales, but through mineral leases, joint ventures, and similar transactions between the trust and developers. Accordingly, rather than being restricted to the comparable sales approach, the Commission adopted procedures that are most appropriate to the valuation being performed. As noted, these are in all instances those used in practice by industry, with appropriate adjustments dictated by lack of funds and time.

FIGURE 1.

TRUST LANDS: MENTAL HEALTH GRANT (1956)



PREPARED BY RESOURCE ANALYSIS SECTION
DIVISION OF MINING AND GEOLOGICAL AND GEOPHYSICAL SURVEYS

B. ESTABLISHING PROCEDURES

In his June 1987 Review, Commission Chairman Dr. George Rogers recommended that:

> Rather than use one appraisal approach (market data) as was done in 1985 and 1986, the accepted approaches most appropriate to each classification should be used. For example the market approach would appear suited to urban residential and commercial lands while the income discounting approach would be best for. . . lands which were selected not for resale but income production management. . . [these] should be valued by contract with a firm experienced in natural resource analysis and valuation rather than another panel of real estate appraisers.

This was not acceptable to DNR but, since consensus was desired, a compromise was reached. The surface estate of the entire corpus would be valued by means of three geographic opinion-of-value panels of three appraisers each, with provision for review, questioning and mediation of any remaining differences. The "review process" of Plaintiffs submitting questions regarding valuations through their review appraisers and the subsequent consideration and resolution of these questions, was deemed

essential to the legitimacy of the process and to overcoming the demonstrated shortcomings of the opinion-of-value process[3].

The natural resource endowment and value estimates would be accomplished by the natural resources division of DNR, with input from the beneficiaries. Where it was not possible to arrive at a value in-house, this task would be contracted to a consultant.

3.In 1985 the State attempted to put a value on the trust corpus in response to the initial lower court decision in the Weiss litigation. This effort is an illuminating case study of the role of procedure design and implementing methodology in determining the outcome of a process. A rough opinion of value process was used for the surface, a token value for only part of the sub-surface endowment, and addition of 10.5% interest annually from July 1978 to July 1985. (Alaska Department of Natural Resources, May 1985, "Value Summary Mental Health Land Retained in State Ownership.") To this was added the estimated value of conveyances from the trust prior to July, 1978, giving a total estimate of approximately $600 million as of July 1985.

There was a great deal of criticism of this 1985 opinion of value panel process, and the majority of the Commission as well as others believed the figure arrived at was too low. During their study of settlement options, for example, the 1986 special legislative joint committee and the Commission used a proxy value for the trust of $2 Billion. According to the Commission's chairman, the low 1985 estimate was due to an inadequate and incomplete value definition and use of inappropriate methodology. (Rogers, June 19, 1987, "Analysis of Valuations and Appraisals of Mental Health Trust Lands.") Coal, oil and gas subsurface values were limited to token estimates based only on proven reserves, and no value was assigned to other resources with development potential. The surface value panel's instructions were that "only the Market Data Approach (comparable sales) will be used" as the "subject property is being valued as vacant [and unimproved] and no income stream is projected." This further biased the results toward a low value. Value of improvements on MHTL and much of the income producing values were lost without the cost and income approaches.

DNR staff did not agree with the conclusion that the 1985 opinion of value panel results were invalid and defended its exclusive use of the comparable sales approach on grounds of practicality -- it was used customarily by the State, would cost less than other approaches, and the results would not significantly differ (Gustafson letter to Rogers, July 24,1 987). Other methodologies were also deemed by the State to be speculation.

The actual task of implementation was much bigger, complicated and controversial than anyone envisioned initially and for a brief period between its April and July, 1989 meetings, the Commission explored alternative paths to valuation.[4] However, recognizing that none of these approaches might prove feasible, the Commission remained oriented towards completion of its mandate in Chapter 48 to approve procedures to determine the fair market value of the original mental health trust lands. In this

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4.At its May 16, 1989 meeting the Commission discussed (but did not adopt) a draft report to the Legislature which concluded: "Continuing with the Commission's currently approved valuation procedures no longer appears possible." It was proposed, alternatively, that (1) a range of values be determined for each category, (2) mediation between Commission members would attempt to narrow this range "to the maximum extent possible," (3) these values would be integrated into two sets of values, and (4) the Commissioner of Natural Resources would determine a value within these ranges (Draft of "Interim Mental Health Trust Commission Report Sixteenth Alaska Legislature", dated April 1989, submitted by G. Thomas Koester in response to a "Discussion Draft", dated April 13, 1989 with the same title submitted by J. Gottstein").

By the July 1989 meeting no significant progress had been made in narrowing the range and the Commissioner of Natural Resources indicated she would not necessarily determine the value between the range established by the procedures. Further options were then examined. The first was to go beyond Chapter 48 and negotiate a value <u>for settlement purposes only</u>. The Commission appointed a team (the three attorneys active in its work and the chief DNR staff member) to explore the feasibility of negotiation. The final report of the negotiating team of October 27, 1989 stated that "the parties are at impasse" and the remaining difference of more than $1.5 billion" can not be resolved through negotiation at this time."

connection, the attorney for the State advised the Commission[5] that these procedures,

> could be as general as . . . [saying] the Commissioner will come up with a value based on all the information of record and justify it. . . or they could be as detailed and specific as to say, with respect to mineral valuation, the Commissioner shall determine the value of the subsurface estate by employing a ten percent discount factor, assuming production begins in year five, you know, all those assumptions that go into that kind of an economic analysis. Those can be specified. It seems to me those are part of the procedures that the Commission can approve.

(July, 12, 1989, Commission Meeting Transcript, P. 59). And as observed earlier, all parties agreed such procedures could reflect compromises and abbreviations necessitated by funding and time constraints.

C. IMPLEMENTING THE PROCEDURES

The procedures approved match as closely as possible accepted valuation methodology for the various estates and result in an appropriate determination of fair market value for the purposes

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5.The Attorney General's office, at its insistence, represents, through the same Assistant Attorney General, both the State as the Defendant in the Weiss litigation and the Commission in performing its duties under Chapter 48.

of Chapter 48. This is so despite the lack of a completed surface estate valuation and despite the lack of formal "appraisals" occasioned by the previously noted funding and time constraints.

The surface estate valuation was terminated before the first review step was completed because funds and time were exhausted. This was due, in large part, to the approximately 4,000 parcels questioned by the review appraisers[6]. The total fair market value of the original mental health trust lands recommended by the review appraisers was $833.3 million. The total fair market value of the original mental health trust lands found by the panels, after adjustment to reflect as much of the review process that did occur was $499.8 million. Recognizing that differences of this percentage magnitude between appraisers' opinions of value were not uncommon[7], the Commission determined that the only reasonable procedure to approve was simply to "split the difference" between these two figures, as is more fully discussed in Appendix B.

With respect to the mineral endowment, the Alaska Division of Geological and Geophysical Services, (DGGS) provided an esti-

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6.All of the parcels questioned by the Plaintiffs' review appraisers that were looked at by the Commission appeared to have a reasonable basis for the question.

7.Even where formal "appraisals" have been commissioned, the appraiser's "appraisal" is that appraiser's opinion of the value of the subject property. The percentage difference between the panels opinions' of value and the review appraisers' would not be unusual if full appraisals had been used in both instances. Appraisals are simply an "estimate" or "approximation" of "the highest price a willing buyer would pay a willing seller, . . .",

mate of the physical endowment for the mineral estate of mental health trust lands. However, instead of pursuing the industry standard discounted cash flow ("income") approach as agreed, DNR reverted to use of the comparable sales approach. DNR's use of the comparable sales approach first produced a zero value, as in 1985, and was later revised to approximately $16 million on the basis of three alleged comparable sales.

The use of the comparable sales approach for valuing the mineral estate was summarily rejected by the majority of the Commission as not being in accordance with accepted industry valuation practices and, moreover, as being manifestly unreasonable and unrealistic. These lands were all within the three major active mining districts of Alaska and had been selected by a team of experts as representing the most promising lands in these areas.[8] (See Appendix C).

In the absence of a viable valuation of the mineral estate, a team of consultants was commissioned by the Plaintiffs to estimate the mineral endowment value using accepted industry methodology, i.e., the income approach, as originally proposed in June of 1987. Their report (Paul Metz and Colin Dixon, December 31, 1988, "Mineral, Coal and Aggregate Resource Appraisal of

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8.The reason offered by DNR for failing to utilize the income approach was DGGS's estimated cost of providing a value estimate at $53 million, which involved a surveying and drilling program. In this connection, it may be worth noting that D. Harris, the State's consultant later estimated the cost of estimating a value at $350,000 using essentially the same data that the Commission ultimately approved (Harris, Sept. 1989).

Alaska Mental Health Trust Lands") discussed their methodology, data and assumptions and the decisions they made, based upon their professional judgments, regarding the best way to value the mineral estate under the circumstances. At the presentation of their Report to the Commission at its February 24, 1989, meeting, Metz and Dixon also reviewed for the Commission the areas of uncertainty and the "safety factors" they used to insure the value was not overstated. Their analysis resulted in an estimated $1.5 Billion value for the mineral estate of mental health trust lands. Following intensive critical review by DNR staff and others, an independent study commissioned by DNR concluded that although not always following "best practices," the methods and assumptions were acceptable " . . . if only approximations were required and that their methods were consistent with the data available through DGGS's mineral endowment assessment" (Harris, May 30, 1989).

In the follow-up study by Harris issued in September, 1989, "Activities and Costs for the Estimation of Market Value of Mineral Resources of Alaska Mental Health Trust Lands," and the earlier study by Bradford Tuck and Matthew Berman commissioned by DNR entitled, "Review and Analysis of 'Mineral, Coal, and Aggregate Resource Appraisal of Alaska Mental Health T st Lands' by Paul A. Metz and Colin Dixon" (March 1989), was also agreement as to utilization of the income approach as being the appropriate methodology. DNR nevertheless remains insistent, but without any expert having indicated it was a valid methodology, that they would only accept their comparable sales approach.

Since the State's approach had no expert support, resulted in an unrealistically low value, was not pursued with any sort of rigor by the State, and was not even supported by its own independent study, it was rejected by the Commission. On the other hand, there was general agreement by all experts that the income approach used by Metz/Dixon to arrive at their valuation was the appropriate one and that, while perhaps "best practices" were not used for every element because of time and funding constraints, the methodology, data, assumptions and judgment utilized were the result of informed decisions by knowledgeable experts. Therefore, the Commission approved the procedures used in the Metz/Dixon valuation (see Appendix C for a complete description).

For the remaining land categories, the dollar differences were not so great and the Commission's basis for resolving the differences has therefore not been as controversial. The Commission approved the report of the Division of Forestry in its valuation of timber resources (August 1988). Plaintiffs argued that reforestation costs (approximately $31 million) should not have been deducted from the value because the timber should be valued as if "sold" to the State as "standing timber." The Commission rejected their approach and agreed with DNR's position that these costs were essential to sustained yield forest management and that the original mental health trust lands selections were made with the intention that they would become the core of a State forest system (which they are).

The Division of Oil and Gas proposed a plan for valuing hydrocarbon (oil, gas and coal) potential which was accepted by the Commission (October 13, 1987). A preliminary report (July 1988) and a revised report (November 2, 1988) were criticized because they did not accomplish what the accepted plan proposed to do, and because they considered only known reserves (Vreeman, March, 1989). The range of values presented ($135,953 to $856,040) appears grossly low in light of the State having received over $25 million for exploration and development rights on mental health trust lands. Although clearly needed, no attempt by the Plaintiffs was made to produce an alternative estimate. In light of the lack of any alternative estimate and the necessity of arriving at procedures for determining the fair market value of the oil & gas resources, the Commission approved as its procedures those presented by DNR, using the midpoint between the high and low range.

DNR staff bogged down in an effort to put a value on aggregate (sand, gravel and crushed rock) by first attempting to estimate the quantity and quality of the resource. The Commission ordered this halted because the task was approached from the wrong side (the supply side). Aggregate in Alaska is ubiquitous and its economic value determined by demand. DNR staff were directed to estimate demand and value this, possibly using Department of Revenue's methodology for estimating State revenues from this resource. This was not done by DNR and the Plaintiff's consultants included the task in their assignment.

There was full agreement that integration of surface and resource values would be achieved by adding the values to produce the total fair market value of the trust and replacement lands. The forest lands have been valued on the basis of sustained yield management. Metz and Dixon, while not quantifying the "multiplier" or "knock on" effects of mineral development, informed the Commission that any loss of surface value for particular acreage actually being mined, would be more than offset by increasing values of lands in the vicinity due to the increase in demand as a result of the economic activity generated by the mine. Additionally, it was noted the Surface Mining Act of 1977 requires restoration of land after completion of mineral extraction. Mineral and timber values and surface values were therefore treated as additive rather than one exclusive of the other.

III. SUMMARY AND CONCLUSION

In presenting the final approved procedures to the Commissioner of Natural Resources, the majority of the Commission agree that they follow the law, will be fair to all parties, and accomplish the objectives of providing a reconstituted trust and removing the threat of continued litigation and resulting disruption.

APPENDIX A

INTERIM MENTAL HEALTH TRUST COMMISSION

RESOLUTION

(Final Approval of Procedures for
Determining Fair Market Value)

BE IT RESOLVED, the Interim Mental Health Trust Commission hereby approves the following final procedures for determining the fair market value of mental health trust lands under AS 38.05.800(a):

1. Surface. The Commission previously approved procedures for determining the fair market value of the surface estate. Because of insufficient funding to conduct appraisals, these procedures provided for an opinion of value process by three geo-panels of appraisers; an opportunity for review and questioning by interested parties; referral back to the panels for reevaluation of their original values when necessary; and mediation, including the possibility of site visits.

Due to the large number of questioned values and limited funding, a sampling strategy was used for the review. The State's method of applying the southeast region's sampling results to all three regions results in a figure of $499.8 million. The Plaintiffs' appraisers assigned a value of $833,280,096.

The Commission is fully aware that appraisers often have such large differences in their opinions. Such differences are resolved through mediation but because of lack of funds and time, mediation of the fair market value as the original procedures contemplated was not possible. Therefore, the Commission approves as the final procedure for determining the fair market value of the surface estate that the difference between these two figures be split equally between the two values.

2. Timber. The Commission has approved as the procedures for arriving at the fair market value of the timber resource, the methodology, data, assumptions and judgments which were utilized in "An Economic Evaluation of Timber Potential on Mental Health Grant Lands and Legislatively Designated Replacement Lands - Final Report", by McMahon, Wallingford, and Wehrman, August, 1988. The Plaintiffs dispute the appropriateness of deducting reforestation costs, but the Commission has rejected their view.

3. Oil and Gas. The State has estimated the value of oil and gas resources on mental health trust lands after consultation with the Commission regarding appropriate procedures to be in a range from $135,953 to $856,040. The Plaintiffs have not submitted their own valuation, but assert the State's analysis did not follow the procedures approved by the Commission, and the value range appears to be grossly low in light of the State having received over $25 million for exploration and development rights on mental health trust lands. In light of the lack of any specific valuation from the Plaintiffs

and the necessity of arriving at procedures for determining the fair market value of the oil and gas resources of mental health trust lands, the Commission hereby approves as its procedures, the methodology, data, assumptions and judgments utilized in the "Hydrocarbon Potential of Mental Health Grant (Trust) Lands and Legislatively Designated Replacement Pool Lands in Alaska", by Ariey, Hansen, Kornbrath, Phillips, Ryherd and Smith, July, 1988, with the fair market value being the midpoint between the low to the high range.

4. Minerals, Coal, and Aggregate. After review of proposals by both sides, and much consideration, the Commission approves as the procedures for determining the fair market value of the mineral, coal and aggregate resources on mental health trust lands, the methodology, data, assumptions, and judgments utilized in "Mineral, Coal, and Aggregate Resource Appraisal of Alaska Mental Health Trust Lands," by Paul Metz and Colin Dixon, dated December 31, 1988.

5. Integration of Values. The Commission has approved adding the values as its procedure for integrating the surface and resource values to arrive at the total fair market value of mental health trust lands.

Approving	Disapproving	Abstaining
Commissioner Rogers	Commissioner Swope	
Commissioner Selkregg		

Date: November 7, 1989

George W. Rogers, Chairman
Interim Mental Health Trust Commission

APPENDIX B: SURFACE VALUATION

SUMMARY

When the Mental Health Lands Trust was originally selected at least half of the million acres were specifically selected for their proximity to communities. It was believed by those selecting the trust that these lands would be in demand for community expansion and the surface value would appreciate at a greater rate than more remote lands. It was also expected that active trust management of these community expansion lands would add substantially to the value of the trust.

The fair market value of the surface estate of the original one million acre Mental Health Lands Trust is thus a major component of the overall trust value. Different strategies have been tried to place a dollar value on this estate. In 1985, in response to the trial court's directive to value the land, the State used a modified opinion of value approach to establish a cash value for purposes of compensating the trust for the illegal redesignation of the Mental Health Trust Lands as general grant lands by the Legislature in 1978 (This effort is discussed in the Report above, at page ____).

In 1986 the State used a similar approach to value some 55,000 acres of Mental Health Trust Lands that had been approved or conveyed to Municipalities. A value of some $100 million resulted from that effort. Traditional appraisals were done in 1987 on 15 of these parcels as a "validity check" on the opinion

of value effort. For Anchorage the appraisals ranged from 47% below to 30% above the panel's value for the same parcels. For Juneau the range of variation was from 467% above to 214% below, and in Fairbanks from 76% above to 798% below! The totals ended up within 4% of each other, however, and DNR asserted this demonstrated the opinion of value process created "offsetting errors". The plaintiffs' review appraiser reviewed these appraisals and found that where the appraisal valuation was substantially below the opinion of value valuation, the appraisal was in error. Due to the change in direction with the enactment of Chapter 48, these differences were never addressed by the Commission. In any event 800% differences in values for specific parcels are clearly cause for concern about the validity of the opinion of value panel process that does not allow for adequate review. The entire exercise reinforced the Commission's appreciation of the subjective nature of appraisals as well as the wide variation of opinions of value even of qualified appraisers.

The task of valuing the entire million acre mental health surface estate using standard appraisals was beyond the resources of funds and time available to the Commission. The previous efforts to value the surface estate of the trust had proven so unreliable that the Commission was faced with quite a challenge. To develop a surface value the Commission approved a set of procedures that relied on a panel of three expert appraisals for each of the SouthEast, SouthCentral and Northern regions in which Mental Health Trust Lands (and the replacement lands) were locat-

ed. Due to the funding and time constraints an "opinion of value" approach had to be utilized. However, in fashioning the opinion of value panel process to be utilized, certain safeguards not present in the earlier attempts were created, in an attempt to arrive at valid results.

The approach adopted by the Commission was designed to use the appraisers' regional knowledge of property values as in past opinion of value panels, with the very important check that interested parties (primarily the plaintiffs) could raise questions which would be resolved through a review and mediation process that would include site visits where necessary. The three member panels were required to value a total of approximately _____ parcels of which 7,000 were Mental Health Trust Lands and _____ were replacement lands. Only 10 minutes could be spent on each parcel. The panels were not allowed any site visits -- their examination consisting of reviewing a written description of the parcel, referencing available maps, aerial photos, plus any comparable sales information provided by DNR or the appraisers brought with them. In assigning a value to a parcel agreement between two of the three panel members was required. When the parcel was completed a written form was used to document the decision, but the basis of the valuation was normally not provided because DNR insisted the panels did not have time to do so. However, the panels' deliberations were tape recorded to provide a complete record.

Once the panels had submitted their opinions of value and they were reviewed by the State's review appraiser, the plaintiffs were provided an opportunity to review the values and raise questions by submitting a written form outlining the question and basis for a different value. These "Questioned Values" were to be submitted to the panels for a "collegial" discussion with the plaintiffs' review appraiser(s) and, hopefully, resolved at that point. Failing resolution at that point, mediation could be directed by the Commission where it deemed it warranted, including the possibility of site visit(s).

As they neared completion of their work, the SouthCentral panel sent a letter to the DNR review appraiser itemizing the limitations on their product. The first was that "our value estimates are not appraisals, and in fact they are not even 'preliminary opinions of value' as commonly understood in the appraisal profession, wherein the appraiser states that an appraisal would conclude within a stated range or near a given figure and material to support this conclusion is on file." Other comments noted the limited time, that the work was performed "within the confines of State offices", the problem with finding large parcel comparable sales, and the like (April 22, 1988).

The results of the opinion of value panels, before review, was a total of $407,668,683, for a per acre value of $407.67. A total of just over 4,000 parcel values were questioned by the plaintiffs' review appraisers. The result of accepting the

review appraisers' opinions with respect to the Questioned Values was to more than double the value of the surface estate by adding some $426 million to the value for a total of $833.28 million[1].

To address all of the Questioned Values in the manner initially approved by the Commission would have required far more time and funds than available. Therefore, in order to obtain information about the validity of the opinion of value panel valuations and the validity of the Questioned Values, the Commission directed that a sample of 387 of the 2,103 Questioned Values for SouthEast proceed through the process. Another goal of this sampling process was to determine if the results could be applied to the rest of SouthEast, and perhaps the other regions. Even without any mediation the SouthEast panel increased their total value by 42% for the parcels that were questioned on the basis of comparable sales (excluding large parcels). All categories of SouthEast values questioned increased an average of 22%.

Unfortunately, the process could not even be carried through to completion with respect to these 387 parcels because of lack of time and funds. However, what did occur was illuminating. A

1.In addition to the "Questioned Values" submitted by the Plaintiffs through their review appraisers, well over one hundred "Technical Corrections" were submitted by the Plaintiffs to correct mathematical and other errors identified through their computerized "error checking routines". In many case, although the validity of the corrections was not challenged, DNR did not make the corrections saying that only the panels could do so. Since the panels were never called together for this purpose most of these errors were never corrected.

number of Questioned Values focused on consideration of site improvements and the proper way to value rights-of-ways (given no value by the panel). Additionally, there were a number of Questioned Values where comparable sales data presented by the review appraiser(s) seemed to support a higher value than accepted by the SouthEast panel. Perhaps the most difficult valuation problem was handling the "large parcels", that is those parcels that were larger than normally sold in the market place. Because of continuing disagreements, some 25 or so parcels were addressed by the panel members and review appraisers before the Commission in order for it to have first hand knowledge of the nature of the continuing differences. Without ever attempting to decide what the fair market value of any particular parcel was, the Commission did not find any Questioned Value that did not have a reasonable basis for the questions. While 207 parcels were recommended for mediation, a mediator was never engaged for any parcels because of lack of funds.

Because the SouthCentral region had the most large parcels, the SouthCentral panel was reconvened, with the Commission and review appraiser in attendance to consider the review appraiser's presentation of information developed regarding large parcels. Until compiled by the plaintiffs' review appraiser(s), the panel members were apparently unaware of the relatively few comparables for large parcels that did exist when the panel was doing its work. In addition, three very important large parcel sales occurred in late 1988 -- early 1989. When reconvened, the SouthCentral panel agreed the market information provided by the

review appraiser shed new light on large parcels and increased their opinion of five of the six parcels reexamined an average of 68%.

An issue never adequately addressed was the difficult one of "parcelization." In order to initiate the valuation process it was necessary to determine what parcels were to be presented to the panels for their consideration. The decision was made to simply use the parcels that in fact existed, which was a matter of historical happenstance, with the largest tract being a township. In many cases the parcel presented to the panel was a township of 22,000+ acres. While the panels were allowed to "reparcel" tracts, they did not do so, apparently due to lack of time and misunderstanding of its appropriateness. The panels thus concluded that if an entire township, or other large parcel was sold as a single parcel, the per acre value would be quite low. The plaintiffs' review appraisers, in such instances, in addition to the market information they had for some large parcels, suggested that since township size (and other large parcel) sales normally do not occur, the parcels should be valued on the size that the land involved would normally sell, taking into consideration platting requirements (or the lack of a platting requirement).

The Plaintiffs supported this approach by reference to an Alaska condemnation case where the Special Master accepted the approach and rejected the condemnor's (the State) objections to

it (Report of Master, Alaska v. 17.183 Acres and Sloboda, 3VA 86-145 Civ.). However, DNR strenuously objected. When appraisers were asked about the issue, they replied it was not up to them to decide -- that they could do it either way, but would need direction. The only other apparent method of resolving the issue was litigation. Since the Commission did not desire to be in the position of directing the panel members how to decide the issue, and litigation of the issue considered undesirable, "parcelization" was never decided. However, if resolved in plaintiffs favor, there is no doubt but that substantial additional increases in the surface value would have resulted.

In analyzing the results of the relatively small percentage of Questioned Values addressed by the panels, the State applied a 45% increase for all SouthEast parcels questioned by the review appraisers. For the other regions, the state applied a 21% increase to all Questioned Values where the acreage was under 1,000 acres and 67% where the acreage was greater than 1,000 acres. These adjustments resulted in a total increase of $91.6 million for a new total of $499.8 million. However, this increase does not reflect the additional increase that would have necessarily occurred if mediation had taken place (leaving aside the increase that would have occurred if parcelization had been allowed). The Plaintiffs contend that their estimate of $833.28 million is closer to the actual total fair market value for the surface estate, and may even be low because their review appraisers also did not have an adequate opportunity to perform their work.

The Commission, lacking the necessary funds to resolve the Questioned Values, and recognizing that pursuing the process initially approved would have necessarily increased the values, approved as its final procedures for determining the fair market value of the surface estate that the difference between the $499.8 million figure and the $833.28 million figure should be split equally.

The Commission recognizes that in approving procedures that "split the difference" it may be perceived as having crossed over the line from approving "procedures" to approving "values" as directed by Chapter 48. However, it is the Commission's belief that "splitting the difference" was the only procedure that could logically be utilized under the circumstances. It must be remembered the original procedures promulgated called for a review and mediation process for every parcel's value that was questioned. This procedure could not be carried out due to funding deficiencies. It was clear that following the procedures as originally promulgated would have necessarily increased the surface value. Since, there was absolutely no basis to determine where the final value would have ended up between the $499.8 million and $833.3 million, the Commission believes "splitting the difference" was the only objective approach.

The alternative would have been to fail to achieve the legislative mandate to value the land, and more importantly, defeated Chapter 48's entire purpose of resolving the litigation.

However, in the event it is determined such a "splitting the difference" is not a procedure, the Commission strongly recommends that it be adopted as the basis for the final valuation of the surface estate.

APPENDIX C: MINERAL ENDOWMENT VALUATION

To accomplish the mineral endowment valuation for Mental Health Trust Lands, following the August 19-20, 1987, meeting of the Commission, the Commissioner of Natural Resources directed "DGGS to assess the quantity and quality of known and potential hard rock minerals... The assessment reports will then be followed by a resource valuation process....The value of the minerals will be determined by an independent entity, likely retained under contract to the department." (Emphasis added, Brady, Sept. 29, 1987. The deleted material refers to other natural resources.)

Mineral Endowment Estimation

In the process of discharging the task of mineral endowment estimation, DNR informed the Commission that serious budgetary, data and time constraints "will result in the deletion of numerous tracts from the mineral valuation process" (Gustafson, "Outline of Mineral Valuation Process", November 23, 1987). The first deletions were in the inventory of mineral types to be evaluated. A number of available mineral deposit models were not projected and the DGGS inventory did not include industrial and heavy minerals. Although these deletions may have had low unit values, they did constitute a deletion from the valuation of the total mineral endowment.

In its second step, DGGS ranked the Mental Health Trust Lands (MHTL) from 5 to 1 by their favorability for mineral deposits and, secondly, from 5 to 1 by the amount and quality of information available. In April, 1988, DGGS presented maps of mineral potentials of the MHTL by these rankings. A further major short-cut introduced at this point was to consider only areas with favorability rankings of 4, 5 and "super-5's" (an added sub-category) for classification by deposit types and for valuation. In discussions with staff, furthermore, it was learned that the low rankings included areas that had simply not been evaluated yet, as well as areas that had been given evaluations that their potential was low.

It was noted by Plaintiffs that the combination of these deletions and short-cuts would significantly impact the mineral valuation process and result in a lower value. "While having no solution within the budgetary constraints that exist, we must repeat our oft-stated observation that lack of sufficient appropriations and an unrealistically short time frame does not reduce the state's legal obligation to fairly value mental health lands. Please be assured, this does not change our approach which is to try and work with the administration to develop the absolutely best valuation process possible within budgetary constraints." (Gottstein, December 14, 1987, "Re: Outline of Mineral Valuation Process").

Staff compiled the following statistics for use in valuations:

"Mental Health Grant Lands -- Mineral potential

93,213 acres have high mineral potential	("4's")
15,221 acres have very high mineral potential	("5's")
47,565 acres have super high mineral potential	("Super 5's")

155,999 acres total"

Similar statistics were compiled for the replacement lands. (McMahon, August 23, 1988).

Mineral Endowment Valuation by DNR

With this data DNR was prepared to attempt the actual valuation, but "assuming it proves impossible to complete an in-house mineral valuation (for whatever reason), we will be prepared to proceed with contract solicitation to complete the work "(Gustafson, November 23, 1987, "Outline of Mineral Valuation). The Division of Geological and Geophysical Services (DGGS) then, however, said that they could not use the information they had compiled to value the mineral endowment without an exploration program consisting of surveying and drilling all MHTLs that received mineral potential rankings of 4 or 5. DGGS proposed a program for doing so and estimating the value of the mineral endowment that cost $53 million. (Wiltse, March 1988, "Cost of

generating valid gross metal value estimates for mineral-potential Category 4 and 5 Mental Health Trust and Replacement Pool lands").

Instead of following the agreed upon procedure to contract out the mineral valuation to qualified experts in the event DNR could not do it in-house, DNR made a valuation using only the total acres (i.e ignoring the breakdown given by rankings) and the "comparable sales" approach. DNR valued the trust's highest ranked mineral lands as having no value because they could not find any comparable sales! Later they announced that diligent search had discovered three sales which when applied to the "4's", "5's" and "Super 5's" yielded a total value of $16,040,000 for the mineral endowment of MHTL. The MHTL mineral lands are undoubtedly the most promising in the State. Furthermore, the areas selected from this larger pool by DGGs for actual valuation were only in the high to super-high potential classifications.

The value of $16 million did not appear to be near, let alone "in the ball park". The disclosure of the actual basis for DNR's calculation raised further basis for rejection (letter and attachments to J.B. Gottstein from G.T. Koester, August 23, 1989). The "sales" cited by the State were too small in size and few in number (three) to be statistically significant. Furthermore, their comparability was questionable. One purchase appeared to be for recovery of "construction and road gravel" from tailings. Although traces of gold were present, production was

reported as uneconomic. Another was the purchase of adjacent land by an active miner for "site expansion" and overburden disposal. In addition, other comparable sales not used by DNR, but that were identified by Metz and Dixon (October 1989) supported the Metz/Dixon valuation arrived at by the income approach.

In any event, the "comparable sales" approach for valuing mineral values for MHTLs was not supported by any economist or other mineral valuation expert and was rejected by the Commission. All the experts agreed that the comparable sales approach for valuation was inappropriate for valuing mineral endowment because of problems of comparability and the limited use of sales in large mineral transactions. Valid comparable sales are not normally available due to differences in grade, tonnage and similar factors. As noted previously, mineral rights to lands are typically subject to agreements in which the seller receives a a share on production, whether through a lease, a joint venture or some other arrangement rather than simply a sale of the land or the mineral rights. All the experts agreed that a discounted cash flow method (the "income approach") was the industry standard method.

Several recent mineral discoveries and resultant mines lend additional support to the Commission's conclusion to reject comparable sales in favor of the income approach as a method of mineral valuation. The Greens Creek silver discovery 20 miles west of Juneau has proven and estimated reserves worth $3.6

billion. As of this date the Greens Creek mine is the largest silver mine in North America. The Red Dog Mine has much greater reserves with a gross value of $20 Billion at current market prices. Both were developed without any direct sales of surface or subsurface estates. The Greens Creek discovery was on Federal land and patented land resulted. Red Dog is a joint venture involving a Native corporation with no sale involved. These and a number of other significant discoveries have occurred and are being developed without "sales". In fact, active management of the original trust would have utilized these types of transactions to generate income.

Mineral Endowment Valuation by Plaintiff's Consultants

To complete the mineral valuation in accordance with the procedures originally accepted by the Commission (Brady, September 29, 1987; Gustafson, November 23, 1987), the Plaintiffs commissioned a study of the mineral, aggregate and coal potential of the MHTL by an internationally known consultant and an Alaskan mineral consultant. The consultants (Professor Paul Metz of UAF and Colin Dixon, Senior Lecturer in Mining Geology, Imperial College of Science and Technology, London) were instructed to follow as closely as data (that provided by DGGS) and time available (two months) allowed, the normal methods used by the minerals industry in determining the fair market value.

Their report (Metz and Dixon, December 11, 1988) produced within the specified time and data constraints a range of probable values for mineral resulting in a final estimated value of $1.5 billion. After preliminary review by DNR staff and the Institute of Social and Economic Research, DNR contracted with a methodology expert (Professor DeVerle Harris of the University of Arizona) to critique the report using "best practices" as the standard of criticism without allowance being made for cost, time or data limitations.

Harris fully stated the restricted nature of his charge at the outset. Although finding that it did not always follow "best practices", he noted "such analysis is very difficult and usually entails compromises of best practices.. and approximations" and that the less than best practices used by Metz/Dixon might be accepted "if a rough estimate of value is adequate". Harris goes on to say "In fairness to Metz and Dixon, the use of net smelter return methods is consistent with the simplistic treatment of mineral potential and exploration [by DGGS]." (Harris, May, 1989).

He further noted that "replacing [the Metz/Dixon] estimate by best practice will require a much greater effort" and still would result in an estimate based upon professional judgment (report dated May 30, 1989). Apparently this was too inconclusive for DNR and a second contract was entered into with Harris in which

he presented the design of a best practices undertaking and estimated the price at $350,000 (report September 1989)[1].

"Best practices", however, under Harris' proposal would require much more than money. "Much of the geologic analysis by ADGGS personnel will have to be redone for the estimation of mineral endowment". (Harris Sept., 1989). The product of the DGGS effort was a ranking of MHTL by their favorability for mineral deposits, not probabilities for number of deposits required by "best-practices". Metz/Dixon, having no alternative but to use this data, introduced an additional step converting the DGGS rankings into probabilities. They would have preferred to have had the best practices version advocated by Harris (Metz/Dixon, October 1989, pp. 6-7). Harris also noted shortcomings and gaps in the basic data collection and compilations requiring that "the geologic analysis for endowment estimation would have to repeat this initial data and information acquisition" (Harris, September 1989, pp. 3-4)[2]. However, at the November 7, 1989, Commission meeting, which Harris declined to attend, C. Dixon explained how they used generally accepted "rules of thumb" that would not be seriously in error and built in "safety factors" at each step to insure that the valuation would not be overstated.

1.DGGS had previously advised DNR and the Commission that a $53 million surveying and exploration program would be necessary before they could attempt a valuation.

2.This would not involve acquiring new geologic data, but reworking the same data that DGGS utilized.

In discussing the kinds of expertise required (geoscience of mineral resource formation, regional knowledge of geology, and estimation methodology), Harris rated some of DGGS personnel as "well qualified for the first expertise, at least as to certain deposit types", as "especially well qualified for the second expertise", and "not highly experienced in expertise three". (page 8). Beyond expertise, Harris noted the appearance of conflict of interest because of the litigation (page 9). He recommended contracting with the USGS for mineral endowment estimate and with an outside contractor (such as his Center for Mineral Resource Science) for other phases. (page 10).

Commission Decision

On the basis of the two Harris reports, the ISER study commissioned by DNR ("Review and Analysis of 'Mineral, Coal, and Aggregate Resource Appraisal of Alaska Mental Health Trust Lands," Tuck and Berman, March, 1989), and the Metz/Dixon Reply (October 12, 1989) important areas of broad agreement between all the mineral valuation experts emerged. There was consensus that: (1) a value can be estimated for undiscovered mineral deposits (Harris devoted an entire book to appraisal of undiscovered mineral resources, "Mineral Resources Appraisal", Clarendon Press, Oxford, 1984), (2) the comparable sales approach was not an appropriate method to value the mineral endowment of MHTLs, (3) the use of a discounted net income stream is the appropriate means of estimating the fair market value, and (4) the dominant mineral production from a district comes from a few very large

deposits (Harris, p. 17, Metz/Dixon, p. 12), . The areas of disagreement were related to degree of refinement of the analysis and estimates, on techniques used at each point of procedure (i.e costly econometric modeling vs. accepted industry practices).

Given (1) the unanimity that the discounted cash flow approach utilized by Metz/Dixon was the appropriate methodology; (2) that compromises made from "best-practices" for other portions of the total valuation process were far more serious than for the minerals valuation (e.g. surface and oil & gas), and (3) the complete lack of any viable alternative, the Commission approved the Metz/Dixon approach and methodology for determining fair market value for the mineral endowment of MHTL.

While not approving the values per se, the Commission also notes that the estimate of $1.5 Billion, as a "reality check" of the processes generating the figure, is a reasonable and conservative one. That the Greens Creek mine has a $3.6 billion estimated reserve and Red Dog $20 Billion, lends ample supports that the $1.5 billion advanced by Metz/Dixon for all MHTL is reasonable. Other new projects in advanced stages of exploration are the Fort Knox near Fairbanks, the Kensington Mine project in the Juneau area, and the Golden Zone between Anchorage and Fairbanks.

Mental-health programs await end of land dispute

p1 B-5 Anchorage Daily News 2/12/90

By LARRY PERSILY
The Associated Press

JUNEAU — The future of state funding for mental-health programs depends on what the legislature and the courts do with 1 million acres of land scattered across Alaska.

The land was provided by the federal government in 1956 to give Alaska a continuous source of income for mental-health programs.

In 1978 the legislature dissolved the federal land trust. Since then, hundreds of thousands of acres have been sold or leased, dedicated for special uses or given away to municipalities.

No trust fund was ever estab-

Please see Page B-2, LAND DISPUTE

LAND DISPUTE: Mental health trust stands at center of legal feud

Continued from Page B-1

of the lands was in response to public pressure to make more state land available for development, according to a report from the Senate Special Committee on Mental Health.

That move, however, led to a 1982 lawsuit by advocates of mental-health programs. Little has been resolved since. There is no agreement on how much the land is worth, how much should be spent on mental-health programs or who should benefit from them.

The differing sides cannot even agree if the legislature or the courts should resolve the dispute.

Meanwhile, mentally ill and developmentally disabled Alaskans wait for a solution.

"We have thousands of people who are not receiving any treatment to speak of," said Sen. Pat Pourchot, D-Anchorage and chairman of the Senate special committee.

Lawmakers will review the dispute again Wednesday when the Senate Resources Committee is to hear from the Alaska Mental Health Board. The board was created three years ago as part of a court-ordered attempt to resolve the dispute.

The 1982 lawsuit was filed on behalf of two Alaskans in need of mental health services that were unavailable in the state.

The Alaska Supreme Court in 1985 ruled the legislature's dissolution of the land trust was illegal and ordered the state to recreate the trust to provide income for mental-health programs.

Legislation adopted in 1987 set up a procedure for appraising the land and using a percentage of its value to pay for the programs. The appraisal is important because the more the land is worth, the more money will be available for spending.

The trust lands include coal fields; oil and gas leases, part of the trans-Alaska pipeline corridor and land bordering several cities.

Almost three years after the legislature directed the Natural Resources Department and Interim Mental Health Trust Commission to set a value for the land, the process is deadlocked and apparently headed back to court or the legislature.

The department says the land is worth about $700 million. Proponents of increased mental-health funding and the plaintiffs in the lawsuit say the land is worth $2.2 billion.

The trust commission last month voted 2-1 to adopt the higher value. The lone dissenting vote was cast by the Natural Resources representative on the commission.

The commission also voted 2-1 to block any further transfers of mental-health lands. That has added to the problem, said a commission member who voted for the freeze.

"I didn't want to do it as a punitive concept at all," said Lidia Selkregg, an Anchorage geologist who has served on the commission since it started. But the land valuation is at an impasse, she said.

Selkregg said she would prefer to see the state and the plaintiffs negotiate a price, but that appears unlikely.

Instead of working together, the commission has been polarized over how the land should be valued, said George Rogers, a Juneau economist who voted with Selkregg for the $2.2 billion valuation and the freeze on transfers.

The action was necessary because of the likelihood that the issue will go back to court and title to the land could be overturned, Selkregg said.

That is little consolation to Usibelli Coal Mine Inc., which wants some of the land to provide gravel for its mining operation about 60 miles south of Fairbanks.

"It really restricts our ability to expand," said Mitchel Usibelli, chief of engineering for the company. Many of the company's mining leases are surrounded by mental-health lands, he said.

The proposed Wishbone Hill coal project near Palmer also includes mental-health trust lands.

If the opposing sides are unable to settle on a value for the land, it could send the entire settlement back to court, said David Walker, the attorney for the plaintiffs in the 1982 lawsuit.

Meanwhile, the Alaska Mental Health Association is considering a lawsuit to challenge the 8,000 sales, leases and transfers of mental-health lands that already have occurred statewide.

The association also may go to court for an order enforcing the $2.2 billion land valuation, association attorney Jim Gottstein said.

State officials are looking to the legislature for answers.

"We all feel it's going to require a legislative fix," said Rod Swope, a deputy commissioner with the Natural Resources Department and a member of the trust commission.

Swope's recommendation that the land be valued at $700 million — along with the two-member majority's recommendation of $2.2 billion — will be sent to Swope's boss, Commissioner Lennie Gorsuch. She may pick either value or anything in-between, Swope said. A decision is expected this month.

Swope said the commission did not follow state law in valuing the land at $2.2 billion. Because of that, Gorsuch should reject the majority report and refer the issue to the legislature to decide, he said.

But Pourchot said the legislature would not get any further than the commission. Enough lawmakers would be persuaded by Natural Resources to reject the $2.2 billion figure, and anything less than that likely would result in a legal challenge, he said.

"The land value is just a foreshadowing of the real issue," Pourchot said. "I would argue that we can get too wrapped up in this valuation process."

The real problem is that the state is not spending enough for community health services, counselors, hospital care, housing and support services, Gottstein said.

"The state has attempted to evade its responsibility ... by not spending the money on programs that everybody knows are appropriate," he said.

If the state and the plaintiffs are ever able to settle on a value for the land, an amount equal to 0 percent of the value would be taken from the state general fund each year and made available for mental-health programs.

Not all of the money would have to be spent on mental health, and whatever is left each year could be used to cover other state expenses.

Until the valuation is settled, the 1987 legislative compromise said 5 percent of the state's general fund income should be available each year for mental-health programs. The governor and legislature, however, have never spent all the money available in the Mental Health Trust Income Account.

Gov. Steve Cowper has proposed a $6.2 million increase in state funding for mental-health programs for fiscal 1991, but that is not enough, said Rep. Mark Boyer, D-Fairbanks and chairman of the House Finance subcommittee on health and social services funding.

Boyer said the state should spend twice that amount to meet legitimate needs and to stay out of court.

Based on history, however, the legislature probably will continue to underfund mental-health needs, Pourchot said.

The trust account had available $97.7 million in fiscal 1989. The Mental Health Board recommended $55 million in programs and the legislature and governor approved $39.6 million.

In fiscal 1990, the account had an estimated $114.8 million. The board wanted $54.2 million and lawmakers and the governor approved $43.4 million, according to the Senate special report on mental health.

Part of the problem is deciding who and what programs should receive funding.

The mental health board recommended that an independent board of trustees be established to decide who and what services should be covered by the trust fund income.

And while the entire matter remains before the courts, the legal expenses continue to climb higher. Under a court order, the state is responsible for the plaintiffs' legal bills.

By June 30 the state will have paid almost $1.28 million for the plaintiffs' legal bills, said Richard Pegues, administrative services director for the state Law Department.

Mental health lands dispute a matter of money

By LARRY PERSILY
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In 1978 the Legislature dissolved the federal land trust. Since then, hundreds of thousands of acres have been sold or leased, dedicated for special uses or given away to municipalities.

No trust fund was ever established, and mental-health programs have been funded instead from the state's general fund.

The Legislature's move to dispose of the lands was in response to public pressure to make more state land available for development, according to a report from the Senate Special Committee on Mental Health.

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Part of the problem is deciding who and what programs should receive funding.

"The question of who the trust should serve is important, but equally important is the question of who makes the determination," the report said.

The mental health board recommended that an independent board of trustees be established to decide who and what services should be covered by the trust fund income.

Pourchot favors letting the amount of money determine who is covered. A priority for services should be established, and money would be appropriated to programs starting with the top of the list until the money is gone each year, he said.

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Senate Resources Committee Briefing: by Alaska Mental Health Board Lands Committee, February 14, 1990

- PURPOSE FOR AMHB APPEARING BEFORE RESOURCE COMMITTEES
- STATUS OF THE VALUATION PROCESS & STATUS OF THE LAND
- History of the Selections: Multiple Estates for Income Production
- A Review and Critique of the Process of Valuation
- "The Linking of the Appraisal Process"
- The TRUST
- Chapter 48 SLA 1987, The Legislature's Settlement Proposal
- The Opportunity for Legislative Action

PURPOSE FOR AMHB APPEARING BEFORE RESOURCE COMMITTEES

- REVIEW REPORTS FROM THE DEPARTMENT OF NATURAL RESOURCES REGARDING THE VALUATION OF THE MENTAL HEALTH LAND TRUST AND THE STATUS OF MENTAL HEALTH TRUST LAND
- MEET WITH APPROPRIATE LEGISLATIVE COMMITTEES CONCERNING THE BOARD'S ACTIVITIES

STATUS OF THE VALUATION PROCESS & STATUS OF THE LAND

- IMHTC Final Approved Procedures, November 7th, 1989
- IMHTC Majority Report, (Final Draft), December 20th, 1989
- Minority Report by Designee Swope, Febraury 1, 1990
- Senate Special Committee on Mental Health Report, January 1990
- Impasse
- Final IMHTC Resolution, January 24, 1990

History of the Selections: Multiple Estates for Income Production

- Surface Estate: Municipal Expansion
- Forrest
- Mineral

A Review and Critique of the Process of Valuation

- Envisioned mutuality of purpose: fair market value
- The reality of IMHTC dealing with a matter in litigation

THE LINKING OF THE APPRAISAL PROCESS

- VALUE THEORY
- VALUATION THEORY
- APPRAISAL THEORY
- VALUE PREMISE

VALUE THEORY

- A. Answers why a particular property, or an interest therein, has worth
- B. Defines the sources and bases of an asset's worth
- C. Currently recognized elements of an asset's worth include:
- ---Utility (both as the ability to satisfy needs and for practical use)
- ---Scarcity (of supply)
- ---Demand
- ---Ratio of exchange
- ---Ability to transfer ownership

VALUATION THEORY

- A. Valuation theory is the method of estimating, measuring and predicting a defined worth.
- B. Valuation theory enables us to focus on the various methods that are used to arrive at a value estimate.
- C. Valuation theory further allows and recognizes that there is a distinction between value and price that may be commanded in a market at a given point in time. This suggests the following:

C. Valuation theory further allows and recognizes that there is a distinction between value and price that may be commanded in a market at a given point in time. This suggests the following:

1. Value is a collection of elements that comprise worth, each of which must be defined.
2. Price is an historical fact that may or may not coincide with an assets recognized worth at the same point in time.
    a. Some examples of Price not being representative of Value are seen during periods of economic depression and recession and in liquidation sales.

APPRAISAL THEORY

- A. Appraisal theory is the logic format by which Value Theory is linked to Valuation Theory as it relates to a specific defined interest, i.e. any one of several estates subject to ownership in any given parcel of real property at a specific point in time.
- 1. Appraisal theory is the logical relationship between the Source of Value and its estimation.
- B. It is perhaps the failure to recognize the theoretical underpinnings of this analysis that results in the inability to link different value concepts, such as sales comparison, income capitalization or cost approach, to an assets worth.
- 1. There is still a lingering perception that within the many land estates that are the subject of valuation, that these approaches somehow constitute equivalent value measures. They do not.

VALUE PREMISE

- A. DEFINITION OF VALUE PREMISE
- B. EXAMPLES OF VALUE CHARACTERISTICS
- C. POSITIONING THE VALUE PREMISE
- D. THE NATURE OF THE DEBATE

A. DEFINITION OF VALUE PREMISE

- The emphasis of the appraisal logic placed on the **characteristics of value** as they relate to an identified estate, i.e. timber, mineral, surface etc..

B. EXAMPLES OF VALUE CHARACTERISTICS

1. Surface estate: Dependent on size, location and market activity may be valued by all three methods. Comparable sales would only be appropriate where such a market within a comparable context exists for the subject being valued.

a. Surface estates are unique in that demand must be created in place. Commodity estates (minerals, oil & gas, etc.) in theory can respond to demand anywhere within the global market place.

2. Large mineral estate: Typically by income approach

a. Large mineral estates have a very limited market of qualified developers.

b. Large mineral estates are usually developed via Joint Venture and leasing arrangements, not outright purchase.

c. Large mineral estates are usually promoted into development by their owners.

C. POSITIONING THE VALUE PREMISE

Identifying the varying value premises and the different emphasis that can be placed on each value characteristic, leads to a valuation process that supports the appropriate positioning of the value premise.

1. Here is where Highest and Best Use analysis focuses.

   a. The considerations in such analysis generally are:
      - Is the use legally permissible?
      - Is the use currently feasible?
      - Is the use functionally compatible?
      - Is the use most profitable?

   b. Current management practices are not a consideration in this evaluation. It is assumed that a property shall be managed to its highest and best use.

2. Highest and Best Use is not a fact to be found. It is a judgment decision on the part of the valuator.

D. THE NATURE OF THE DEBATE

- The foregoing considerations applied to the IMHTC/DNR rendering of value for Mental Health Trust Lands shows that the debate is not one of Value or Valuation Theory, but where the parties asserted a different value premise for several estates under consideration that led to different appraisal methodologies being applied. The failure of DNR to accept the value characteristics of the mineral estate, as approved by the majority of the IMHTC, led to the most serious value diminution of the trust corpus.

The TRUST

- The Supreme Court stated there is a Trust.
- To have a Trust there must be a Corpus.
- There appears to be no Statutory Authority to manage the Trust properly.
- Reserving: No provision for reserving for the depletion of non-renewable resorces.

Chapter 48 SLA 1987, The Legislature's Settlement Proposal

- Purpose: To reconstitute a mental health trust through identification of land in legislatively designated areas that is equal in value to the land selected by and patented to the state under section 202 of the Alaska Mental Health Enabling Act.

The Opportunity for Legislative Action

- Return to the Courts
- SB493/ HB548

AKAMI

February 1, 1990

Dear Senators and Representatives

Attached is a position paper recently adopted by the Alaska Alliance for the Mentally Ill regarding the issues surrounding the Mental Health Land Trust.

This is one of the many issue papers we have prepared on the topic and because it is well-reasoned and may present some new information, we would urge you to consider it.

I will be available to answer any questions you might have on Mental Health Issues as the lobbyist for the Alaska Alliance for the Mentally ill. Our membership represents over 300 families and consumers with mental illness in 13 separate affiliated groups in our state. The President of the organization is Francis Cater of Kodiak, Alaska.

Sincerly,

Sharron Lobaugh

Sharron Lobaugh
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Juneau, Ak 99801

cc: Francis Cater, Pres.
AKAMI

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THE ALASKA ALLIANCE FOR THE MENTALLY ILL

POSITION PAPER ON

THE MENTAL HEALTH LANDS TRUST

AND

CHAPTER 48

Adopted January 1990

ALASKA ALLIANCE FOR THE MENTALLY ILL

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Senator Pat Pourchot, Chairman
Senate Special Committee on Mental Health

Re: Mental Health Trust Lands Settlement

Dear Senator Pourchot,

These are supplemental remarks to my oral testimony before your committee at the November 17 hearing. My interest in this subject is multiple: as the father of a mentally ill son; as a member of the Alliance for the Mentally Ill, and former president of the Anchorage Chapter; as counsel for the Alliance for the Mentally Ill on the intervenor's brief in Weiss et al v. State; as former legislator; and as a very concerned citizen.

The 3 page summary you provided at the hearing gives a very good thumbnail background, but suffers some shortcomings due to (1) its compactness, and (2) the fact that it looks at the "advantages of the settlement proposal", but fails to raise questions of disadvantages, or whether Chapter 48 really amounts to a settlement.

One of the witnesses at the November 17 hearing compared the handling of the Alaska Mental Health Trust with what would occur if one were to create a trust for the education of his son and provided that whatever trust proceeds might be surplus to the needs of the beneficiary could be expended by the trustee for his own purposes as he sees fit. I believe the speaker concluded that instead of a Harvard education, the son would probably wind up in a community college. I submit that the example did not go nearly far enough.

Suppose that, in the same scenario, the trustee had accepted the corpus, but never managed or invested any part of the trust corpus, never created a trust account, never kept or rendered any accounting. Instead, each year the trustee gave the beneficiary some funds out of his own pocket, as he deemed he could spare. Suppose further that after over 20 years of such practice, the trustee decided to appropriate the entire corpus and assign 1.5% of his own revenues in lieu of trust proceeds, but never made a deposit to that account, and simply continued to give the beneficiary whatever annual handout the trustee felt he could afford. From then on, the trustee sold some of the former trust assets, gave some away, created monuments out of other such assets, until another 4 years went by, and the beneficiary finally sued.

Instead of recognizing the error of his ways, the trustee used

his well staffed salaried lawyers to fight the litigation at every turn. Then, having lost in the Supreme Court, and having been ordered to reconstruct the trust, and manage it as originally intended, the trustee makes an offer of settlement whereby the trust assets are to be replaced by other assets owned by the trustee, chosen by the trustee, to be leased by the trustee from the trust, and the rental proceeds according to a stated percentage of value would be considered the trust revenues from which the needs of the beneficiary would be met. The beneficiary's needs would be established by another body appointed by the trustee, and whatever revenues might be surplus to those needs could be used by the trustee as he might see fit, and the trustee was not bound by the described needs or their designated budgetary values.

In order to work out this new arrangement, the parties agree to hold the litigation in abeyance. Another three years go by, during which the trustee fails, each year to abide by the determination of needs presented to him, and makes yearly appropriations short of the budget presented to meet those needs. In the meantime, the litigation remains pending in court.

I submit that the trustor, the beneficiary and the court would all have good reason to resent and distrust such a trustee-owner-landlord-tenant and, in effect, co-beneficiary to the extent that he determines the amount of surplus he is entitled to keep for himself.

The actual picture is even worse, as the trustee has not provided for any payment to the trust from the extraction of subsurface materials from the real estate assets, so that while the trustee gets richer from such subsurface assets, the value of the corpus diminishes as the years go by, and the needs of the beneficiary increase.

If your son were the beneficiary of such a trust, Mr. Chairman, would you, could you advise him to ratify such a settlement?

WHERE ARE WE?

Are we dealing with a misguided but well intended trustee who did not cross the "t"s or dot the "i"s, but has met the needs of the beneficiary nonetheless? Unfortunately, NO. The mentally ill (including the "Green Group" members) of Alaska do not fare well, and do not compare favorably with those of most other states. Because of inadequate facilities in Alaska's institutions, we have resorted to treatment of mental patients in correctional facilities. It is not uncommon to hear recipients of services for the mentally ill say that they are treated better at the Cook Inlet jail than at API.

Certification of API has been touch and go, and staffing has been a continuous problem. We have no forensic halfway house. Members of the mentally ill population too often fall unnecessarily into the criminal justice system. Only a minority of the mentally ill receive treatment or services, with the remainder experiencing a living hell, often winding up as part of the homeless, the street people, or as part of homes they involuntarily abuse emotionally and otherwise. Others are residents of our correctional system, some with medical care for their mental illness, and others without.

WHAT HAS THE EXECUTIVE BRANCH DONE?

This is one instance where it is easy to be non-partisan. Every governor, Democrat and Republican, has participated in the self-serving-trustee scenario described above, every year since 1956. Each has included yearly mental health appropriations in the budget without regard to the trust, and without effort to create an appropriate trust management. At no time has any governor of Alaska presented a program to achieve an acceptable level of care and services for the mentally ill.

If anybody should be aware of the extent of needs, of the long practiced failure to carry out the fiduciary duties of a trustee, it is our present governor, Steve Cowper. As attorney in private practice, he was the attorney of record who filed and prosecuted the Weiss v. State case until he became a candidate for the office he now holds.

In his present position, Governor Cowper has maintained a hands off policy, letting his Attorney General fight his former clients, with the assistance of various departments of his cabinet. There is good reason to believe that as one who is very familiar with the bona fides of the the plaintiff's position, the governor could and should have used his office to attempt to rectify the wrongs of more than 30 years. Apparently, it goes with the position to look out for the interest of the trustee as opposed to the interest of the beneficiaries.

Unfortunately, the continued opposition to the mentally ill, plaintiff in the litigation, is the administration, and that includes the Department of Health and Social Services with which and through which care and services are dispensed to the mentally ill. Of course, the same department competes for dollars to be appropriated for its many other concerns, and suffers from a conflict of interests as a member of the trustee team because of those budgetary concerns.

WHAT ABOUT THE LEGISLATURE?

Just as with the various governors, the same bi-partisanship has touched both houses of every legislature since 1956 in failing to carry out the fiduciary responsibilities and duties of trustee.

It was up to the legislature to create the necessary managerial system for the trust, proper handling and investment of the corpus, adequate formulation of the Alaska Mental Health Plan, and funding to carry out the Plan. Not only did that not happen, but it was the legislature that enacted the wrongful appropriation of the corpus in 1978. Subsequent legislatures continued along the same path until the attempt to resolve the legal dispute by way of HB 92 which became Chapter 48, SLA 87. Even from that point on, yearly appropriations have fallen short of funding the Alaska Mental Health Plan, even though the Mental Health Trust Income Account exceeded considerably the very reasonable Mental Health Board's budget requests.

What both the legislature and the governor have demonstrated clearly and emphatically since 1987 is that the "settlement" formula settles nothing. The same conflicts of interests continue to exist in both the legislative and the executive branches that constitute the trustee. Both look at their total budgetary needs, and at the fact that, as far as they are concerned, whatever is not appropriated for mental health out of the Mental Health Trust Income Account is available "for other public purposes".

As state income continues to decline in the future with the expected drop in oil and gas revenues, the temptation to create available surplus in the Trust Account can only increase at the expense of the Mental Health Plan, and thus at the expense of the beneficiaries.

DISADVANTAGES OF CHAPTER 48.

The following is a seriatim review of disadvantages of Chapter 48:

1. Sec.1 (a) (15) -(17) and (19) negatively portray "advocates of stringent mental health trust land management" vis a vis advocates of "highest and best use". The first group is intended to describe the plaintiffs, intervenors and their supporters as the black hats, while the second group, the wrong-doing trustee-state, is the white hatted hero.

2. Sec.1 (a) (22) assumes that the assertion of a "substantial legal question" about an alleged conflict with the prohibition

against dedicated funds in Art. IX, Sec. 7, is sufficient to abandon the concept of preservation of the corpus in perpetuity if it consisted, in part, of money. The section raises at least two erroneous conclusions:

(a) The possibility of a substantial legal question does not, normally, keep the legislature or the governor from enacting a bill into law. How well I recall presenting the legislature with subtantial legal question about the validity or constitutionality of a bill on the floor of the House, only to have supporters of the bill retort that if someone wished to challenge it, the courts would have the opportunity to pass on the question. Examples that readily come to mind include a number of state preference laws for employment, contracting, right of access to courts, and, of course, the 1978 wrongful appropriation of mental health trust lands, all of which were judicially defeated.

(b) There are "subtantial legal questions" about the validity of the Chapter 48 approach, such as failure of the trustee to manage the trust, failure of the trustee to invest and ADMINISTER THE LAND, AS WELL AS ANY INCOME FROM THE LAND AND PROCEEDS FROM DISPOSITIONS OF THE LAND AS A PUBLIC TRUST. (See Sec. 202 (e), Alaska Mental Health Enabling Act, and Ch.48 Sec.1 (a) (3)). There is also the question of failure of the state to comply with the Procurement Act in the leasing of these lands. In fact, if substantial legal questions as to a bill were to stop the legislature, we would see a great deal less legislation. The argument only seems to have merit when it stems from a majority of the legislators.

(c) The obvious intent of Congress, as stated in Sec. 202(e), was that the trust consisted not only of the land, but also of its income, and proceeds from sales. It was intended that the land produce money and/or other property, that it be "sold, leased, mortgaged, exchanged or otherwise disposed of . . . in order to obtain funds or other property to be <u>invested, expended or used</u> by the Territory (now State)." Note particularly that Alaska is not free to do all these things in any manner it sees fit, but that the legislature must exercise this broad authority "in a manner compatible with the conditions and requirements imposed by this Act."

Thus, if one reads these instructions and guidelines as a road map for the trustee, it should lead to the inescapable conclusion that none of the monies generated lose their "trust" character until after the needs of the Mental Health Plan have been met, and nothing requires that surplus, if any, be determined annually. Obviously, mortgages and investments are not normally for a life of one year or less, but that is the convoluted conclusion reached by the State-trustee in order to

keep its hand in cooky jar.

Recognizing that the income and proceeds are part of the trust until surplus to the needs of the Mental Health Plan are met, it follows that there can be no conflict with the prohibition against dedicated funds. Only in this manner can the trustee's functions, responsibilities and duties be carried out and discharged, and only when a surplus is declared on a fair basis within the intent of the trustor can such surplus become a part of the general funds, subject to appropriations for other public purposes, and, as such, subject to the prohibition against dedicated funds.

The fact is that there has never been any investment or management of the corpus as intended, and as instructed, at any time past, and Chapter 48 does not contemplate any at any time in the future. As it has always done, the legislature skips over the mandate that the land AS WELL AS income and proceeds be administered as a trust.

(d) Sec. 1 (a) (20)-(21) aver that the state has the authority to remove land from the trust IF THE TRUST IS COMPENSATED for the fair market value of the land, but that the state is not financially able to provide such cash compensation and will not be so able in the foreseeable future. So what? There are other ways to take care of that kind of problem. There could be exchanges, and it or they would not necessarily have to be of the same kind, i.e. land for land. Such is provided for in the Enabling Act. Or, the state as "buyer" could do that which most purchasers of real property do, namely become a mortgagor to the trust to the extent of the value of part of the trust lands. That, too, is specifically provided for by the Enabling Act. And since the mortgage payments are part of the corpus and are administered as a trust together with the land, there can be no constitutional conflict. State revenues contain many Federal source funds that, because they are dedicated federal funds, remain dedicated as an exception to the prohibition. There is nothing novel about the concept, and it well established and accepted.

(e) Sec. 1 (a) (25) commits the same error that has been committed through the years and discussed above, by providing that the rental value of the trust lands be identified as an account in the general fund. In order to have the income and proceeds managed together with the land as a trust, and in ordr to permit investment, mortgage, exchanges and other trust management tools, these funds should not be fungibble and co-mingled with general funds any more than a lawyer's trust account or any fiduciary's accounts should be co-mingled with his own.

This subsection suffers from another infirmity. Rent is to be a stated percentage of the appraised value of the land, but nothing is said about compensating the trust for any depletion in value due to removal of oil gas, minerals, other assets such as standing timber, or changes in topography by acts of the state-lessee, or with its consent. Thus, the state-trustee-owner-landlord-tenant-manager could excavate, deplete the land of value, keep all benefits and royalties, and then pay less rent for the devalued land. That would obviously not be management by the trustee in the best interest of the beneficiary. But Chapter 48 fails to address the problem.

(f) Most of the problems with Sec. 1 (a) (27) have been covered above, except for the fact that the Mental Health Board's function is described as to assist and advise the legislative and executive branches. In other words, the Board is not shown as having any real jurisdiction or authority. The extent to which the legislative and executive branches are guided by the Board's recommendations is painfully evident from the appropriations made since 1987.

(g) reference to portions of Chapter 48 beginning with Sec.2 are by AS numbers.

AS 37.14.011 (a) - (c) these issues have been discussed in detail hereinabove, except for the valuation to be by DNR, without active participation by the Board or anyone on behalf of the trust or the beneficiaries. The conflict is self evident.

AS 37.14.021. This section fails to give the legislature any guideline, control or restriction as to appropriations "to meet the necessary expenses of the mental health program of the state." The lessons of the past teach us that this approach amounts to putting B'rer Rabbit in the briar patch. The temptation to create surpluses "for other public purposes" has been covered above. Furthermore, the format is contrary to the management and investment as a trust together with the land, and promotes dissipation of trust assets consisting of income and proceeds. The only recourse apparently left to frustrated beneficiaries is to return to the courts, assuming that beneficiaries can keep on marshalling their forces against the strength, wealth, and litigiousness of the state.

AS 47.30.661 et seq. It should be obvious that the Board has very limited powers and jurisdiction. Although designated as the advocate of the beneficiaries before the executive and legislative branches, it has no power to sue or be sued, its recommendations are just that, recommendations that need not be followed and that can be deviated from with or without stated basis in facts, and without any ability to carry

out its program or see to it that it is carried out as intended.

RECOMMENDATIONS:

1. The conflicts of interests of the state-trustee-owner-landlord-tenant-manger-and alleged beneficiary of self-serving declared surpluses, coupled with the political process, the expected reduction in state revenues coupled with inflation-fanned future state budgets, together with competing interests of DHSS, Revenue, DNR et al, and past interpretations of the Enabling Act and other breaches of the trustee's fiduciary duties by both the legislative and executive branches give more than ample evidence of the fact that just as a bank establishes a separate Trust Department, the State of Alaska needs to take the trustee's functions out of the political process.

2. Just as the Permanent Fund has been effectively removed from the reach of both the legislative and executive branches, and other activities have been entrusted to public corporations such as AHFC, ASHA, the Alaska Railroad and others, it seems that the best way to have the trust managed in the interest of the beneficiaries is to create an independent trustee, preferably by way of a public corporation, with the power and duty to administer the trust, its corpus, income and proceeds, subject to proper oversight and reporting. There is adequate precedent for the creation of such a Mental Health Trust Corporation or Authority (hereinafter referred to as MHTC).

3. The MHTC should have its own counsel, not connected with the AG's office.

4. MHTC should be empowered to manage, invest, re-invest, lease, mortgage, exchange assets other than designated lands leased by the state, and do and perform all things that a prudent trustee may do and perform.

5. MHTC should participate with DNR in periodic re-appraisals of land values for purposes of establishing fair market values as the basis of rental. In the event of disagreement between these agencies, a method of resolving conflicts should be provided.

6. The Mental Health Board, within MHTC, should prepare the Mental Health Plan, with its budget, on a 5 year plan with annual increments, including capital improvements, facilities, and services, and, where necessary, in conjunction with other agencies such as DHSS, Corrections, and possibly others.

7. The Board should be given the power and duty to carry out the Plan, and to this end, the Divison of Mental Health in DHSS should be shifted to the jurisdiction of the Baord.

8. The statute should spell out the interpretation of the Mental Health Enabling Act as including land, other assets, including income and proceeds as part of the trust to be administered, with declared surplusses, if any, to be accessible to the state for incorporation into the general fund and use for other public purposes at stated interval of 3 or 5 years.

9. The Alaska Mental Health Plan and proposed budget therefor, prepared by the Board, reviewed by MHTC, DHSS, and possible other distributees, should be submitted to the legislature. The legislature, in turn, could (a) approve it as submitted, or (b) amend it in whole or in part, together with specific findings supporting substantive and/or budgetary changes, thus preserving the legislative prerogative of final oversight and disposition.

10. The statute should specifically provide that it is intended as a settlement and final resolution of the litigation, to be concurred in by the litigants, and to be approved by the court and incorporated into the final judgment, with leave for future amendment by the legislature with concurrence of MHTC as representative of the beneficiaries, and that failing such concurrence by the parties and approval by the court, within a given time frame with possible agreed continuance, the said statute shall be null and void and deemed repealed, and the litigating parties returned to their prior status in court.

The previous proviso is for the reason that it is not possible for the state to end the litigation unilaterally. I am well aware of the fact that you, Mr. Chairman, have stated that it was the specific intent of the legislature that the statute be a settlement, but the mechanics of cocncurrence by the parties, approval by the court and incorporation of the settlement into a final judgment were not made part of Chapter 48, as I believe is necessary to achieve a settlement that would have some binding efect on future legislatures and administrations.

Surely, other minds than mine will come up with other wrinkles, criticism, and refinements, but I believe that the foregoing represents a fair analysis of the past and present, as well as a feasible and sound approach for the future.

Respectfully submitted,

Nissel A. Rose

cc: Alaska Mental Health Board
Alliance for the Mentally Ill
Alaska Mental Health Association

Mental Health Consumers of Alaska
Advocacy Services of Alaska
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