SCOMM

#9:132

April 14, 1977

MEMO TO: TERRY GARDINER

FROM: DOUG POPE

RE: PROGRESS ON THE RENEWABLE RESOURCES DEVELOPMENT FUND

After devoting a lot of time in the last two weeks to forming up a good approach for this project, I've come to a few conclusions about direction. In the first week of moving on this project, I contacted a lot of people and began gathering a lot of information. I was moving on several fronts at once:

a) forming up a legal foundation and defense of the development fund itself;

b) gathering information about structures that might be useful in creating a model for this fund;

c) gathering information about the needs of the state, and the resources of the state; and

d) interacting with a lot of the players for the purpose of synergising ideas.

I found it necessary, in order to form a more realistic goal of achievement in a specific work product to cut back on certain things I was involving myself with early on. Accordingly I've curtailed my activities in gathering information about the needs and about the specific resources in parts of Alaska, and have moved towards involving the research staff in LAA more often in the area of idea-synergism, and structure information. One suggestion I have is that there is a definite need for a full time information researcher, not only for the Renewable Resources

Development Fund, but for the Permanent Fund itself. I understand that LAA has promised a full time person for the interim, but we could actually use that person now. That person should be working in the office with us, so that we may make the most efficient use of his talents.

One thing that I would like to point out here, is that I have specifically refrained from leaning towards any one particular policy direction in gathering my information. What I mean by this is that in the gathering of information I have been absorbing as much as possible from many different directions, and from many different sources, not attaching any specific priority to any of that information. The reason that I've been doing this is multifacited: I don't believe it is my purpose to suggest policy directions to the policy decision makers, neither do I feel that a coherent policy direction can be formulated at this time. We are really working in a vacuum, a vacuum which is not without limits admittedly since there are certain policy directions that everyone seems to be able to agree upon, but within those broad parameters, we really have nothing to work from other than the information we are gathering right now. Accordingly, I would construe it to be rather presumptuous of me to edit material because of a presupposed conclusion that the material was not relevant to the direction that this committee wanted to go.

Those thoughts bring another subject into mind. In an earlier memo I began to express skepticism at the approach of setting certain policy objectives regarding the direction of population growth and density without getting into full scale population planning right now. I think

that initial skepticism has since evolved into a more substantive analysis. Is it at all realistic to think that we can set policy direction now that should effect the state throughout the rest of this century? I've decided that may be more than a little unrealistic, that presently any conclusion about population size and density beyond a forseeable four or five years is at best a guess, and that any policy direction established now must be flexible enough for constant reevaluation to meet changing needs. Accordingly, it appears to me that form might quite possibly be more important than substance at this time, that most important policy decision made by this committee effecting the future of Alaska may well be in the form structure of the fund rather than in the substantive direction. Future legislatures will have to decide what the needs are and what the directions should be.

Policital Considerations.

Two weeks ago there were objections to the Renewable Resources Development Fund from several different fronts. There seemed to be a general objection from the Department of Law regarding some constitutional and statutory aspects of the enabling legislation. Those problems have been discussed in earlier memos, and as discussed in earlier memos I accordingly instructed LAA to draft corrective legislation and if necessary a corrective constitutional amendment. That legislation and that amendment have been drafted, along with an accompanying memo by Bill Berrier regarding the corrective legislation. Since I ordered that corrective legislation there have been other developments. I felt that perhaps we were wasting a good deal of time by preparing a legal defence

when the Administration and specifically Law's position seemed to be hinged to a policy without identifiable direction. After discussing this matter with Terry Gardiner and John Sund, I explained my feelings to Hugh Malone. Hugh asked Bob Palmer to check with the Governor and see if there was specific executive position in opposition to the fund, and if so, what those objections were. I suspected the objections were coming from lower level officials and not from the ultimate policy makers themselves. Apparently Palmer did talk to the Governor, the Governor's reply was that there was no specific objections to the Renewable Resources Development Fund from a constitutional viewpoint, and that if the enabling legislation was challenged in court, that the Department of Law would defend it. This immediately eased the necessity of worrying about the proposed constitutional amendment to clear up any possible laws constitutional infirmities with the RRDF. However, I would like to point out that there was no specific committment from the Administration regarding some statutory problems in the enabling legislation itself. Therefore, I feel that we should still consider that the enabling legislation may have to be amended. Rather than review the amendment of the enabling legislation, I am attaching a copy of the amendment and the memorandum from Bill Berrier with this memo.

The Department of Revenue has voiced some objections from an entirely different direction. So far, the most I've been able to get out of them is a rather vague generalization about the potential for pork barrel, state subsidization of local industry, lack of accountability to the legislative body, etc., etc. Revenue's objections I'm sure boil down to specific problems in approach rather than to conceptualization of the

fund itself. Accordingly, I have requested that Jim Rhode, who seems to be speaking for someone other than the legislative body itself, to prepare a memo detailing his specific objections to the fund itself. I have also today contacted Sterling Gallagher with a request that his department do the same. One more comment on Revenue's objections in passing. I feel that they are with merit, and that the bottom line of their objections is the key to the entire fund. If we can solve the problems inherent in any fund with such broad spending guideline, vis-a-vis pork barrelism in the bureaucracy sucking up the majority of the bucks rather than the project itself, then we will have created a tool rather than a monster, a tool which can be used by not just this but by succeeding legislatures as well. This is what I was referring to above when I discussed that perhaps the most important legacy of this fund would be the form rather than the direction.

As I understand the Senate's position from talking with Rob Kocsis, they are taking a similar approach to the entire Permanent Fund, and therefore have not yet voiced any general objections to the approach in the RRDF. I feel it is important we work closely with the Senate in this matter, in hopes that they will participate in the collective evolution of the Development Fund concept. The whole fund has too much potential to let it wallow as a bicameral priority.

Substantive Matters.

It appears to me that we can make some basic conslusions about the fund. The implementation should contemplate a coherent policy. The Legislature

should exercise as much input and control as possible. Dollars spent from the Fund should be maximized on the efficiency factor. Moving away from those fundamental policy conclusions, we have to also assume that there will be several levels of cash flow in order to meet objectives and satisfy needs. First, pursuant to the amending of the enabling legislation, it will be the basic cash flow into the fund itself. That cash flow may come solely from the dedicated fund or could be supplemented by a cash flow from the interest of the Permanent Fund itself, or by legislative appropriations. In any event, it is reasonable to contemplate that some of those dollars will flow directly from the fund planners to specific projects. Other directions of cash flow could be to certain sub-funding mechanisms designed to dovetail with the fund itself. Attached to the memo are existing Alaska state loan funds. The ones that I have placed an asterisk by are ones directly relevant to Renewable Resources. These funds of course have to be viewed as funding mechanisms directed towards the same end as the RRD enabling legislation. I have researched other models of funding mechanisms which I will discuss shortly. In any event, I feel that it is necessary that all of these sub-funding mechanisms for RRDF dovetail in form. Therefore, I feel an early policy decision must be made as to whether the parameters and discretion eventually plugged into the RRDF itself should also be attached to the sub-funding mechanisms.

A. FUND EFFICIENCY

Without getting into a discussion about the relative merits of the fund being operated as a trust, or a corporation, or merely at the discretion

of the executive, there does seem to be a general need to define efficiency directions. I have been talking with a lot of people about this problem. As I discussed above, I consider it the bottom line problems setting up this fund model. If we can satisfy Revenue's objections, then we will have gone a long way towards satisfying all broad, vague objections to the fund itself, and will be able to build from the basic foundation of efficiency. I spent some time with several research analysists over at LAA, in which I asked them to suggest some standards of care which could be incorporated into legislation amending the enabling act. Enclosed is a memo dated April 11 regarding some of the suggestions. While I had LAA working on that request, I searched through a number of Federal Acts with different approaches to the efficiency problem. It is of interest to me that many of the suggestions by the research staff were quite similar to some of the approaches I researched in some of these federal acts. Enclosed is a memo dated April 14 which discusses the Land and Water Conservation Fund which is directed by the Bureau of Outdoor Recreation on the federal level. That memo is rather technical in nature, and a thumbnail sketch might be more appropriate here. Basically, the efficiency of that fund is plugged into cost benefit analysis. Now cost benefit analysis, as we all know, is often more rhetorical than substantive. It appears that the only way to make a cost benefit approach to development rehabilitation and enhancement projects work is to specify in detail the evaluation process. They do that to some extent in the Land and Water Conservation Act, but it also seems to be an approach that could have the legislative body mired down in so many details that it can't operate functionally. However, the concept of cost benefit analysis of the projects as being an important

determining factor in whether those projects will proceed is perhaps the best available approach so far. The problem of course is how to evaluate the many spillover costs and benefits. In Alaska spillover such as environmental impacts, immigration, long-term boom-bust cycles, the distribution of in-state as opposed to out of state ownership, and the distribution of projects costs and benefits are spillover matters that are very difficult to measure. One approach in simplifying this evaluation process is the so-called score card technique. That technique is referred to in the long memorandum developed by DPDP entitled "Structuring Decisions for the Alaska Permanent Fund: A Conceptual Approach to the Allocation of a Public Capital Resource". While I'm not advocating that the score card approach to cost benefit analysis evaluation is the way we want to go, I do think that we should all thououghly review that approach in determining which direction we want to go to maximize efficiency of the fund. Rather than go into the score card system here, I will refer you and others to that memo from DPDP, since the person writing that memo has a much deeper grasp of the subject matter than myself.

Also enclosed in this appendix is a model economic impact disclosure act. This seems to come from a rather conservative group and is directed more appropriately at agency regulations, and rule making, but it is concept worthy of discussion relevant to the development fund itself.

Last month I gave you a memo regarding the federal approach in the Renewable Resources Planning Act. I am including a copy of that memo in the appendix to this memo, because it seems to me that fund efficiency

has to go hand in hand with fund planning. I think a fast reveiw of that memo will make obvious how the federal approach in the renewable resources planning act fits in to the efficiency considerations of the fund itself.

I will discuss below an emerging idea on how to keep track of the fund efficiency, and how the Legislature might acquire their desired level of control over renewable resource development, but I do not want to leave this area of fund efficiency on a substantive basis with the impression that the door is closed on ideas for efficiency within the fund itself. I am soliciting ideas constantly on this matter, and would appreciate all of you funneling your suggestions or other suggestions in my direction.

B. SUBFUNDING MECHANISMS.

Earlier I mentioned that appended to this memo was the sheet listing numerous Alaska state loan funds relevant to renewable resource development. These state loan funds are, of course, existing mechanisms for funding renewable resource development projects. Other mechanisms which I have studied include the following:

1) The hatchery and salmon enhancement program as conceptualized in HB 264. Although some of you already are quite familiar with that bill and the way it amends the current law, I am appending a memo which deals with the subject for those of you who are not.

2) Land and Water Conservation Fund under the federal law. As mentioned previously an April 14 memo details this fund. This

fund, as managed by the Bureau of Outdoor Recreation, has some marked similarities to the RRDF. However its basic thrust is in the area of recreational, and fish and wildlife enhancement. I've had glowing praise of this fund program from some people who are familiar with it. As mentioned in the memo of April 14, it has been labeled as probably the most efficient fund of this nature in maximizing the use of the dollars allocated for the project itself. This fund may well serve as a good model for a subfunding mechanism for the enhancement of certain of our renewable resources.

3) Community Development Corporations. If the basic policy decision is made to fund some or all of development projects regarding our renewable resources through the community level, then this may well be one approach worth analysing closely. Included is a memo on Community Development Corporations in the appendix which discusses why CDCs are needed, what is their strategy, how are they developed, and what is their role.

4) Community Renewable Resource Development Centers. This is another conceptual approach to assisting communities in developing their renewable resources. Enclosed is a proposal for legislation to create Community Renewable Resource Development Centers by Dr. Wayne Burton from the University Extension service. Dr. Burton also drafted the proposed legislation which would be the enabling act for such development centers, however, I found his legislative proposal to be rather vague and deficient and have therefore only included his memo rather

than the actual legislative proposal itself.

Again as in the material above regarding efficiency of the fund itself, inclusion of these different funds and concepts of subfunding mechanisms was in this memo not intended to exclude any other ideas. Again I would appreciate all of you sending suggestions or funneling other suggestions my direction regarding mechanisms and ideas for mechanisms for funding projects.

MAXIMIZING LEGISLATIVE CONTROL.

As discussed earlier, there are quite a few loan funds presently in law that have to do with renewable resource development. Those funds are spread out throughout four different executive departments: Commerce, Fish and Game, Natural Resources, and Revenue. That fact spawned an idea that has been emerging and evolving.

The idea started like this. Perhaps it would be a good idea to pull all of these loan funds and the renewable resources development fund under one umbrella. The first reaction seemed to be that it would be necessary to reorganize part of the executive branch to pull all of these funds together under one umbrella. That brought to mind Kerttula's bill to organize a Department of Renewable Resources. However desirable that might be from the viewpoint of executive efficiency, and it may well be a policy decision that the Legislature would later decide to move on, the only thing that it does for maximizing legislative control over the efficiency of this fund is to get everything on one stage to look at.

From its humble beginnings as a moderate reorganization of part of the Executive Branch, the idea has evolved that perhaps what the Legislature really needs is a reviewing and advisory system to keep it plugged in to Renewable Resource Development on a professional level on an on-going basis. The idea being that if the Legislature had a body or a committee that could report to it each year about where the money is going, what the particular needs of each area are, and which programs seem to be working and which not, that intelligent decisions could be made reflecting where the monies from this fund should be appropriated. One idea that has been suggested is to amend the enabeling legislation for Legislative Budget and Audit to include a general audit and review authority over renewable resource development vis-a-vis these different funds, and on a continual basis advise the Legislative Branch on policy matters and directions with these funds and Renewable Resource Development enhancement. I talked with Gregg Erikson about this matter, and without commenting on the soundness of the idea he reflected that Budget and Audit would have to change much of its present style in order to implement that sort of a direction. He felt that Budget and Audit did not direct itself for on-going review, and therefore made the conscious choice not to have any specialists in any one field. Part of the approach is, I guess, to have people without any particular predisposition reviewing the efficiency of a particular part of the Executive Branch. So, obviously in order for the function that I have discussed to be worked on an on-going basis, Budget and Audit would have to have a limited staff reorganization with the result in developed expertise in renewable resource economics. I do feel there is a lot of potential for this idea though, and I would appreciate input from all sources and directions.

An interesting matter to review along this same subject is the federal employment act of 1946. That act created the Council of Economic Advisors to the President. Concommittantly it also created a joint committee on the economic report with the functions of a joint committee to make a continuing study of matters before the Council of Economic Advisors, study means of coordinating programs in order to further the policy of the act, and to report to Congress each year about their conclusions. This of course, has a thrust, although on a much larger scale, that goes directly toward the idea we are developing. I am including a copy of that act in the appendix.

As with the other matters I have discussed in this memo, I have not closed the door on ideas for maximizing legislative envolvement in the efficiency and policy direction of the Renewable Resources Development Fund. Please advise of all your ideas relevant to the subject matter of this memo.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 12, 1977

SUBJECT: Renewable Resources Development Fund

TO: Doug Pope

FROM: Billy G. Berrier, Director of Legal Services

I have prepared the constitutional amendment to explicitly validate the Renewable Resources Development Fund and an amendment to AS 37.11.020 placing the dedicated amount directly in the fund.

The constitutional amendment ties into permanent fund language and explicitly deals with the contention of the Department of Law that a dedication by law must have been valid at the time enacted in order for the constitutional language to have effect.

The amendments in AS 37.11.020 again essentially conform to the permanent fund amendment to the constitution, but in addition, deals with a problem which does not occur in the constitutional amendment. This is the question of how much shall be deposited in the fund. The constitutional amendment, of course, contemplates subsequent enabling legislation which would set the percentage to be deposited so the language "at least 25 per cent" creates no problems. However, in the statute the language ""not less than five per cent" also contemplates a further determination of what amount shall be placed within the fund which apparently is to be by appropriation. Changing this to five per cent sets an amount to be directly placed in the fund, but if it is desired that amounts in excess of this percentage be placed in the fund and an appropriation would still be required.

BGB:lmk

ALASKA STATE LOAN FUNDS

* 37.11 Renewable Resources Development Fund
* 37.11 Renewable Resources Permanent Fund
37.11 Economic Disaster Impact Fund
44.33 Child Care Facility Revolving Loan Fund
* 16.05 Commercial Fishing Revolving Loan Fund
* 41.22 Outdoor Recreational, Open Space and Historic Properties Development Fund
35.10 Public Facility Planning Fund
* 45.90 Tourism Revolving Fund
23.15 Vocational Rehabilitation Small Business Enterprises Revolving Fund
* 45.86 Water Resources Revolving Loan Fund
* 41.30 Area Development Revolving Fund
18.55 Alaska State Housing Authority Revolving Fund
18.56 Housing Development Fund
~~03.15 Agricultural Pest and Disease Control Fund~~
41.05 Mineral Resources Revolving Fund
45.95 Small Business Revolving Loan Fund
26.15 Alaska World War II Veterans Revolving Fund
* 16.10 Commercial Fishing Loan Act
14.40 Scholarship Revolving Fudn
14.40 Memorial Scholarship Revolving Loan Fund
* 03,10 Agricultural Revolving Loan Fund
44.19 Disaster Relief Fund

* Alaska Power Authority
Municipal Bond Bank Authority
Small Business Development Authority
* Alaska Industrial Development Authority
State Development Corporation
Alaska Toll Bridge Authority

Other Funds for Investment:

General Fund (surplus)
Retirement Funds
Permanent Fund

Note: The Department of Commerce & Economic Development and the Department of Revenue are currently preparing a brief description of all loan funds and surplus funds for the Committee. These should be available by Monday, March 21.

(list may not be complete)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 11, 1977

SUBJECT: Standards of Care for the Renewable Resource Fund: Partial Completion of Work Order No. 3631

TO: The Honorable Terry Gardiner
Doug Pope, Permanent Fund Committee

FROM: John Williams JW
Research Analyst

Richard Haggart RH
Research Analyst

As per your request to suggest some standards of care which could be incorporated into legislation amending the Renewable Resources Fund statute, we offer the following suggestions.

Line Agency Financing: You may wish to consider limiting the amount which can be utilized to fund ongoing state agency programs. This could be accomplished by stipulating a maximum percentage of each year's appropriation which could be used to fund ongoing state agency activities.

Research and Development: You may wish to consider designating a minimum portion which shall be dedicated to research and development activities. This seems particularly pertinent, since the Permanent Fund is prohibited from such nonprofit making activity.

Loans: You may wish to consider designating a portion of the yearly appropriation for use as loans (or seed money) for new or expanding private sector renewable resource activities.

Limit Single Receiver Share: You may wish to consider limiting the percentage of the yearly appropriation which can be committed to one project, thus preventing a single party from capturing a large share of the Fund. EPA oil spill research funds come to mind when considering this aspect, in that EPA funds for such research reportedly go to four programs, with one of those programs receiving an estimated 85% of the total.

Long Range Commitments: It is conceivable that future years appropriations may be tied up by previous commitments in that the Fund will be asked to sustain the capital construction costs or maintenance costs of programs which have been previously funded. You may wish to consider protecting against this unintended commitment by requiring programs to become self-sustaining within a time certain, unless special consideration is given for continuing funding beyond a predetermined number of years. Past performance standards may be a stipulated review topic before such programs receive continued funding.

Community Level Appropriation: We have discussed the previous points in the context of either private or state-level public funding. As you have mentioned, a potentially fruitful approach may be to pass through monies to the local governments for renewable resource development at the local level, based on locally perceived needs. You may wish to consider stipulating the criteria which will be used to screen and select proposed projects which would receive support from the passed-through funds. This aspect would fit well with the public trust concept which you intend to propose for the statute.

Please let us know if we may be of further assistance on this subject. Both of us would be happy to assit you in this effort in any way possible.

JW:RH:mo

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [*Short title.*] This act may be cited as the Economic Impact Disclosure Act.

Section 2. [*Legislative findings and intent.*] A. The legislature finds that excessive and ill-advised regulation by government agencies has had severe adverse consequences for the citizens of this state. Such indiscriminate regulation has fueled inflation, stifled competition, produced mountains of paperwork and red tape, and resulted in production cutbacks and reduced consumption. Agency functions have often tended to overlap, causing wasteful duplication. Individual regulations have been frequently made without due consideration of the relative costs and benefits involved. And case-by-case handling of matters, in the absence of broad policy guidelines, has produced unreasonable delays and fragmented and incoherent policy. In short, much of the existing regulatory system has constituted an oppressive burden on business, the consumer, and the economy of this state as a whole. The present intolerable situation highlights the urgent need for comprehensive reform.

B. The legislature intends this act to supplement all other laws of the state. All laws and agency actions shall be administered in accordance with the policies stated herein. Nothing in this act shall affect the specific statutory obligation of a state agency to comply fully with criteria and standards otherwise prescribed by law.

Section 3. [*Definitions.*] For the purposes of this act, the term—

(1) "Agency" means any department, board, commission, agency, or other entity of the state. It shall not include local governmental units or entities within the legislative or judicial branches of government.

(2) "Agency action" means any action by an agency or subdivision thereof which may have substantial economic impact upon any person. Substantial economic impact may occur through a related series of agency decisions which individually may not have substantial economic impact, but which cumulatively have substantial economic impact. Agency action includes, but is not limited to, all rules as defined in [insert appropriate

statutory references], as well as policy statements, agency bulletins, and internal agency procedures and other agency decisions which may have substantial economic impact.

(3) "Rule" means each agency statement of general applicability which implements, interprets, or prescribes law or policy. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of an agency and not affecting private rights, procedures available to the public, or declaratory rulings.

Section 4. [*Economic impact statement required; content.*] Every agency, in advance of any agency action, shall justify its proposed action by preparing an economic impact statement using professionally accepted methodology, with quantification of data to the extent practicable, giving effect to both short and long-term consequences. The economic impact statement shall include the following information:

(1) A description of the action proposed, the purpose for taking the action, the legal authority for the action, and the plan for implementing such action.

(2) A comparison of the cost-benefit relation of the action to non-action and to alternative courses of action.

(3) A determination that the action represents an efficient allocation of public and private resources.

(4) A determination of the effect of the action on competition.

(5) A conclusion as to the economic impact of the proposed agency action on preserving an open market for employment.

(6) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

Section 5. [*Economic impact statement to accompany certain agency proceedings.*] The economic impact statement prepared pursuant to Section 4 shall be filed with [an appropriate officer of the state] along with the notice of the agency action, shall be filed with the president of the Senate and the speaker of the House of Representatives for transmittal to the chairman of the appropriate standing committee of each house, shall be a public record,

and shall be a part of the record for judicial review pursuant to Section 7.

Section 6. [*Exemptions.*] The following agency actions are exempt from the provisions of this act:

(1) The collection and payment of social security funds, retirement funds, or employee benefit funds.

(2) Participation in any federal program, if under federal law the participation would be prevented by compliance with this act.

(3) All emergency rules, provided that the governor agrees that an emergency exists and that a timely economic impact statement could not be prepared; provided, however, within a reasonable period of time after the action, an appropriate economic impact statement shall be prepared, filed, and transmitted in accordance with Sections 4 and 5.

(4) All legislative actions including, but not limited to, bills, reports, and expenditures.

(5) All purchases by any state agency except for actions leading to the determination of whether a substantial purchase shall be undertaken.

(6) Ministerial action by an agency which complies with applicable statutes and rules.

(7) Action which is required by law to be maintained as confidential.

(8) Preparation and sale of all bonds by [an appropriate state agency].

(9) Expenditures of money from trust funds which previously have been designated by the legislature for a specific purpose, and agency actions implementing such specific purposes.

(10) Judicial actions by the judicial branch of government.

(11) Judicial or quasi-judicial functions of [insert references to certain judicial bodies contemplated as exempt].

(12) Action taken by [a state board of administration].

(13) The prosecution of civil, criminal, or administrative actions before any court or before an administrative hearing officer.

(14) Actions involving persons in the custody of the state voluntarily or pursuant to court order.

Section 7. [*Procedural and substantive judicial review.*] Any person aggrieved by an agency's failure to comply with the provi-

sions of this act may bring suit against a person or the agency in [insert appropriate court] to enjoin implementation of the action or to obtain such other relief as may be appropriate. In an action pursuant to this section the following procedures shall apply:

(1) The court of competent jurisdiction, in its deliberations, may review, among other things, the timeliness of the filing of the economic impact statement and the adequacy of the statement to determine whether or not the statement was prepared in accordance with the standards of Section 4 of this act.

(2) The agency acting shall not be accorded a presumption of expertise and a person challenging the action shall have the burden of proving the case by a preponderance of the evidence.

(3) The court may, in its discretion, award court costs and attorney's fees to the prevailing party.

Section 8. [*Severability clause.*]

Section 9. [*Repealer clause.*]

Section 10. [*Effective date.*]

Alaska State Legislature

House

JUNEAU ALASKA

March 15, 1977

MEMO

TO: TERRY GARDINER

FROM: DOUG POPE

RE: THE FEDERAL APPROACH IN THE RENEWABLE RESOURCES PLANNING ACT

BACKGROUND:

In 1974, Congress passed renewable resources planning act. That act has since been amended by the National Forest Management Act of 1976. Pursuant to that act, the secretary of Agriculture was directed to prepare and transmit to the President a recommended renewable resource program. The program is to be developed in accordance with the principles set forth in the Federal MultipleUse Sustained Yield Act, and the National Environmental Policy Act. The dovetailing of the Multiple-Use Sustained Yield Act and the National Environmental Policy Act is significant. The Multiple-Use Sustained Yield Act grants broad discretion to the secretary of Agriculture in determining the priority of articulated uses within the National Forest, and whether any one particular use best fits the public interest more than another. The National Environmental Policy Act, of course, directs that there shall be environmental planning. Dovetailing the two acts together results in a limiting of the secretary's discretion in the area of renewable resource planning to the extent that the broad discretion accorded him in the Multiple-Use Sustained Yield Act might conflict with the goals of the National Environmental Policy Act. The secretary developed five alternative programs. These different programs were developed in response to different assumptions about future US and world socio-economic conditions. The programs are not forecasts of the future but examples of how policy makers might respond to different assumptions about the future.

Some social, political, economic and environmental factors are found to be so important that a major change in one could in itself create a fundamentally different future. The secretary called these factors themes. The selected themes are:

1) Energy availability.
2) Quality of Life.
3) Population.
4) Income.
5) Economic Activity.
6) Technology.

Certain conclusions were adopted about these themes. For example: economic activity was predicted to continue to rise; population was predicted to continue to grow although room was made for high, medium or low growth rates; it was predicted that technology will increase production and protect and improve the environment; energy availability will change with a concomitant rise for major energy sources. The five alternative programs then resulted from juggling the growth rates in population, income, and economic activity. The size of the population, and its rate of growth are the fundamental factors.

OBSERVATIONS:

I like this approach, at the policy meeting on Sunday last we discussed a low population and low densities of populations as fundamental goals. Right now of course, we are working in a vacuum of population predictions. It seems to me that we need to gather population size and rate of growth information from varying sources, as well as the assumptions the growth rate predictions are based upon. I think that that information might give us a handle on one thing that has bothered me. What is the planetary realism of setting goals and enacting tools to implement those goals, when, during the lead time needed to effectuate those goals and objectives, population patterns and rates of growth have altered needs? In short the population planning must start now.

cc: Gruening
Meekins

NON-PROFIT HATCHERY PROGRAM

Under Present Law As Amended by HB 264

The present concept calls for the creation of regional wide non-profit corporations throughout the State of Alaska. Presently, one exists at Prince William Sound, and a second regional corporation for Southern Southeast Alaska, from Petersburg south to the Canadian Boarder. Those regional corporations are qualified under the present Non-Profit Hatchery Program. The Commissioner of the Alaska Department of Fish & Game qualified the structure of the corporations in light of AS16.10.380 which states that the corporation must be broad based in its board of directors and encompass all of the user groups within the area including commercial fishermen, processors sport fishermen, subsistance fishermen, municipalities and other user group entities.

The establishment of such a region into a cohesive functional unit requires an immence amount of energy, time and money. The above mentioned user groups have never in history been united together. In the Southern Southeast Region over 30 to 40,000 dollars has been expended in organizational and planning efforts. Primarily to inform the fishermen within the area of the basic concept, what is possible, why hatcheries should be built, who should build them, the economics of doing so, the requirement of an assessment upon the fishermen to help pay for it, and various other matters.

AS16.10.510(9) Organizational and Planning Grants

HB 264, AS16.10.510(9) provides for additional grant monies for further organizaitional effort on the human level and also to begin site preparation and site selection so that some pilot projects can be commenced.

An Assessment Program

The next step in establishing the private non-profit corporation is to move from the organizational planning stage into site selection and also an assessment program for the fishermen. AS16.10.530(e) is a new section proposed by HB 264. This establishes and sets up a rather detailed and extensive means of establishing an assessment within a qualified regional association. At this point, the regional boundaries have been established, the initial board of directors has been created and the Commissioner of the Dept. of Fish & Game has authorized that corporation to represent the area within its boundaries.

The present law allows for two different means of arriving at an assessment on the fishermen. One under section AS16.10.530 and one under section AS16.10.540. The Prince William Sound Corporation has opted to establish, is assessment under section 540, primarily based upon the inherent make-up of their area prior to the non-profit hatchery legislation being introduced. They have a very cohesive marketing association to which most fishermen in that area belong to. That is very different from the experience in Southeastern and other parts of Alaska where there is no cohesive unit to which most of the fishermen in the area belong to.

AS16.10.530 provides a means by which the fishermen in the area encompassed by the regional corporation can decide whether to impose an assessment upon <u>all</u> of the fishermen. Basicly section 530 states that if the Regional Corporation follows the proceedures outlined in 530(e) and a majority of the limited entry permit holders which participate

in the fishery within the boundaries of the corporation, vote to have an assessment imposed upon their gross income, then that assessment will be imposed upon the gross income of all of the fishermen who participate in the fishery in that area. The reason being that the money will go towards the construction of hatcheries within the regional area which will produce fish for the benefit of all of the fishermen in the area.

HB 264 also amends the law regarding participation with the State Dept. of Fish & Game in drawing up a comprehensive plan for the implementation of the non-profit hatchery program within each regional area throughout the State. The present law called for the development of the comprehensive plan and HB 264 further defines the language and sets up a regional planning team composed of department personnel and personnel from the regional corporations to develop a plan and such plan would then be subject to approval by the Commissioner of the Dept. of Fish & Game.

Financing Opportunities

AS16.10.520(b) 100% Loan Financing

The remainder of HB 264 deals with the financing structure and opoprtunities for the regional corporations to begin to develop a viable hatchery program. AS16.10.520(b) is deleted from the present law. That provision provided that the State would lend up to 75% of the total project costs as determined by the Commissioner. Such a loan cannot exceed three million dollars per hatchery as limited in AS16.10.520(a). It has been the experience of the regional corporation in Prince William Sound and the regional corporation in Southern Southeast Alaska

that it is near impossible to come up with 25% of the cost of building a production size facility without time delays of many years. The estimated cost for such a facility is 2 to 4 million dollars which means front money of 500,000 to 1 million dollars. To this date the Southeastern Region has not been able to raise that type of money through the private industry sector. Total annual assessment of all expenses is 350,000 dollars.

The second factor in beginning one of these types of facilities on loan money less than 100%, is the fact of the uncertainty of the venture. There is a long lag time before the possible return of any money through surplus fish back to the hatchery, potentially 6 to 10 years. Since hatcheries are non-profit entities it is difficult to generate capital from normal outside private sources when there is no possibility for large profits.

Assessments from fishermen are not large enough to finance a viable hatchery program. A 3% assessment on gross income of fish caught within the boundaries of the Southern Southeast Regional Aquaculture Assoc. over historical catch periods range from 200 to 400,000 dollars per year. That is not a sufficient amount of money to participate in the present loan program and at the same time provide operating capital to run a hatchery program on an area wide basis. If assessment monies are tied up as front money for the loans, they are unavailable for operating costs to run the hatcheries. The hatchery program would be delayed up to two years while the assessment monies would be collected in a bank account in order to come up with enough money to front end the loan program.

AS16.10.510(8) Deferment of Principle & Interest

The present law,. AS16.10.510(8) as amended by HB 264, defers payment on principle and interest for loans from the State up to a period of 6 years and states that interest shall not accrue on those loans during that 6 year period. That provision is necessary due to the fact there may be no return to the hatchery for a 6 to 10 year period and therefore no money to make payments on the loans. If hatchery corporations must set aside assessments as collateral to repay loans they will be unable to build more than one hatchery.

For the private sector venture to succeed we have to look down the road for a twenty or thirty year period and look for methods and means by which to institutionalize the regional non-profit corporate concept and their financing. In order to enable the regional corporation to undertake the job or rebuilding the salmon runs, they must have a financing base. The corporation must have access to the assessment monies for the operating revenues of the regional corporation itself to create strong and viable organizations and to continue to site and develop more hatcheries.

AS16.10.600 - Creation Of Regional Salmon Enhancement Authority

The bill from page six to the end of the bill deals with the creation of a regional salmon enhancement authority and gives that authority a quasi-public status. The purpose of that portion of the bill is to allow the regional corporation the option of forming a regional salmon enhancement authroity and obtaining a quasi-public status for openning up greater opportunities for financing from sources other than the state revenues. Primarily this is to become elegible for

Federal Economic Development Authority grant monies, EDA. The Prince William Sound Regional Aquaculture group recently had an experience in which they were eligible for a substantial amount of grant money from EDA under a certain program if they were able to qualify as a quasi-public organization. There are also other programs presently in the Congress which are being investigated at this time which eligibility may require a quasi-public status.

It should be noted that in no way is the state encumbered financially by the establishment of such an authority. Specifically AS16.10.690 on page 15 of the bill, it is stated that 'the credit of the state is not pledged.' It should be noted that this bill is identicle to SB 39 which has passed out of the Senate Resources and is in Senate Commerce State Affairs

COMMUNITY DEVELOPMENT CORPORATIONS

A community development corporation (CDC) is organized and controlled by local residents to develop the economy of their own community. The CDC is, in fact, a new community tool created by people in low-income areas to gain influence over the economic conditions of their lives. To get that influence to make fundamental changes in their communities, CDCs

- identify and develop local skills and talents
- own and control land and other resources
- start new businesses and industries
- increase job opportunities
- sponsor new community facilities and services
- improve the physical environment

The Center for Community Economic Development (CCED) is an independent research group located at 639 Massachusetts Avenue, Suite 316, Cambridge, Mass. 02139. Its primary function is to conduct public policy research by examining the ongoing problems of community development corporations (CDCs) and of other community-based economic organizations. CCED acts also as a clearinghouse and library for materials and information on community-based economic development, and it has assisted CDCs as an advocate on social and economic problems. Its work is supported primarily by a grant from the United States Office of Economic Opportunity.

Opinions expressed in this paper should not be construed as representing the opinions or policy of any agency of the United States government.

This is one of a series of publications. A complete list of publications is available upon request.

In short, CDCs carry out programs of economic development. But unlike other economic development programs (private or governmental), the CDC approach aims to increase power and influence for the low-income community as a whole—not just for a few individuals or groups. For this reason, the CDC operates solely under the guidance of a community-based and community-selected board of directors. By 1975, dozens of communities in at least 30 states had organized CDCs.

Why Are CDCs Needed?

To understand why many communities feel they must have a CDC, start with the fact that any low-income area is in deep trouble—even if the rest of the country is in good shape. And if the rest of the country happens to be in an economic downturn, a low-income area can feel virtually hopeless. There are many reasons—economic, social, and political--for the impoverished conditions of the inner-city slum and the chronic depression of certain rural areas. To understand some of the reasons and to make a plan for dealing with them marks the beginning of hope.

One of the most important keys to understanding a poverty district lies in seeing the interrelation or network of impoverishing conditions. That is, each bad condition reinforces the negative of every other condition. Poor housing holds only the people who cannot afford better, and their low income means that local businesses cannot find enough customers, tax returns go down, local services cannot be paid for, schools are poor, families move away for better educational facilities, the community loses the leadership of concerned families, and political strength of the community is thereby weakened so that it cannot insist on federal or state help for its area—for example, for improved housing—and so on and on.

Low-income areas stay that way because their economic and social environments weaken individual attempts to do something. Only a broad community effort has a chance to reverse the pattern of isolation that handicaps a depressed rural area or the pattern of deterioration that destroys an inner-city neighborhood.

A depressed rural community or a deteriorated city neighborhood is generally the victim of external economic forces that have overexploited or bypassed its needs. The pattern of those forces is continually strengthened at the expense of the low-income areas. It is up to the disadvantaged communities to change that pattern as it affects their own localities, because no one else will.

Poverty in these areas is not a problem of poor individuals and families; it is a problem of a poor community that cannot help its residents prosper. The key long-term solution, then, is development—not welfare payments. (Welfare payments, of course, will always be necessary for temporary misfortune and to aid those who cannot work even though they want to.) The goal of community economic development is to develop—that is, create or improve—economic, social, and other local resources and opportunities.

Only a local group, like a CDC, can do the job of fitting together a comprehensive development program. Outsiders, however well-intentioned, cannot do this. For example, the history of federal efforts to attract outside firms into inner-city poverty areas is dismal. The firms simply cannot be persuaded to identify their interests with the social and financial costs of locating in a depressed area.

Rural regions have the same problem. When a rural village tries to get an outside firm, it often finds that it has paid a price that is too high: Outsiders get the new, good jobs, the firm demands tax rebates and yet requires expensive county services, profits flow away from the area, and still the far-off corporate board room may decide at any time to relocate or close the plant if its profit rate is not attractive enough.

Even an energetic local resident cannot, by himself, effectively start or expand a local business that will help the community. He finds banks will not lend money for a business in a risky community; insurance companies will not give him fire and theft insurance; politicians will not heed his requests for zoning regulations. But a CDC as an institution with broader resources has a better chance to overcome such obstacles. With more political and economic muscle, it can handle these problems either for its own businesses or for local businessmen who need help.

Breaking the vicious circle of community poverty is a matter of a coordinated attack on many levels. It is not possible to cause fundamental change in a community by working on just one of its problems—say, better education, *or* better roads, *or* new housing. When the rest of the community is deteriorating, the better educated will move away, the better roads will carry prosperity through to another location, and new housing will begin to deteriorate.

Success in building a strong community is possible only when the community situation is seen as a whole, with a plan for comprehensive action laid out in step-by-step progression. Only a broad-based representative organization that responds to the community alone, because it is a creation of that community, can prepare and carry out a comprehensive strategy for development.

What Is the CDC Strategy?

The strategy of community economic development is essentially a plan of action to build new resources that will strengthen the community internally *and* in its relations with the larger world. It begins with a coordinating, planning, and action tool, like a CDC, to carry out this strategy.

One of the most important parts of that strategy creates community-controlled businesses and industries. These provide jobs for residents, as well as managerial and entrepreneurial opportunities. They also represent important links with the larger economy. Local business and industry help construct the base for increasing local influence, but new businesses are only one tactic in the strategy.

The land resources of the community are especially critical to development. Most CDCs, therefore, have some plan by which they expect to exert influence on the use of local land. Usually that requires the CDC to own and control large parcels of it. Only by so doing will it be possible to carry out other parts of the CDC strategy. For example, new businesses may need an industrial park. Or to take another example, an economical program for rebuilding dilapidated housing may require large-scale land development. Land then is usually a central focus for CDC strategy.

Another part of the strategy of community economic development aims at what is called "community infrastructure." This is the network of physical and organizational facilities that can make an area a hospitable place to live, work, run a business—or can make it totally unattractive. A CDC will press for the creation or improvement of these facilities by the local government or by others. For example, local government will be pressured to provide better street lighting, sewer and water systems, road resurfacing, parks, schools, and security. Other facilities, such as housing or day care centers for the children of working mothers, might be provided by local government or, with CDC help, by a private organization. In any case, all of these are necessary parts of a growing, improving environment.

Part of the "community infrastructure" is not so much physical as it is simply established ways of doing things—things like not making credit available to local residents, or not hiring them because of their color, or payoffs to building inspectors to get them to pass slum conditions. The CDC has to have a strategy for dealing with this sort of problem too. Changing the practices of the established institutions is a crucial part of giving the community a better chance at the advantages other communities have.

Still another part of the strategy of local development makes sure that the opportunities created in the new businesses, in the new hiring practices of established institutions, and in the new community facilities go to local residents. Plans also have to be made for upgrading skills and developing local talent, so that the community does not have to depend upon attracting outside specialists to relocate there. However, a community will also want to make itself attractive so that it can benefit from the talent and specialized skills of people who may choose to move back to their old neighborhoods or new people attracted by the hope of the area.

All these plans in a development program take money, and a lot of it. That is just what no poor community has. So a CDC must finally face up to the problem of outside capital and financial resources. It is unreasonable to expect that poor communities can do the development job with their own financial resources. The necessary capital *must* come from outside the low-income area. Yet that capital is not going to flow into the area on its own.

The CDC strategy plans for the community to develop its organizations and political strength to make sure that the capital becomes available. An organized community is the only community that can insist that government and private funds are committed to the community—and committed in ways that the community wants, according to priorities that the community sets.

Who Starts a CDC?

CDCs always begin by the initiative of local residents. Sometimes residents have been encouraged by others who are not local residents (for example, a VISTA volunteer, a sympathetic state or municipal political leader, a concerned businessman, a church leader). But local people must take the initiative.

To date, CDCs have been started by people of many different racial and ethnic backgrounds. They have been sponsored by a variety of neighborhood civic groups and churches, by Model Cities Boards, poverty program Community Action Agencies, and by people who just got together without a previous organization and built one up from there.

The individual history of each CDC is a special story in and of itself, but, generally, all are directly or indirectly by-products of the civil rights movement in America. What started with the black minority has been taken up by others, including inner-city white ethnics and rural Appalachians, as well as Chicanos, Native Americans, Puerto Ricans, and others.

Some CDCs were started by coalitions of local community leaders and organizations. For example, the Hough Area Development Corporation, in Cleveland, included as its founding members virtually every recognized spokesman in the neighborhood, from street corner leaders to settlement house directors, lawyers, and politically active welfare recipients.

Some CDCs have been created by Community Action Agencies. Job Start in southeastern Kentucky is one of these. The CAA in Knox County, Kentucky, had been providing job training and other educational and social services to its predominantly white residents only to discover that there would be no jobs in the area no matter how good the training. The CDC was started to remedy this situation.

Some CDCs begin as a limited group and then become a broader community organization. Under the leadership of the Reverend Leon Sullivan, members of Philadelphia's Zion Baptist Church founded

Zion Investment Associates (Progress Enterprises) in 1962, which in 1968 was opened to others besides his church members.

Whatever might be the organizational background of the local CDC, it usually has a special history of some important or dramatic success in attacking one problem and then deciding to move on to a broader campaign. For example, the East Boston CDC grew out of an Italian-American neighborhood's battle against the taking of its houses for airport expansion. The Featherfield Farm project of New Communities, Inc., in southwest Georgia became a vision for black sharecroppers who had organized for voting rights. The economic development program of FIGHT in Rochester, New York, was one outcome of a campaign against discriminatory hiring at the major local industries. Perhaps it is true that no poverty community can launch an ambitious development program until it has experienced success in an important battle on a more limited issue.

What Is the Role of Outsiders?

Although a CDC is a resident-controlled organization, no CDC can get along without assistance from outsiders. In fact, that is one of the jobs of a CDC—to get help, especially financial help, from outside sources, but to get it on the terms that the community can accept.

Outside assistance has been important even in the beginning of many CDCs. For example, the biggest CDC—Bedford-Stuyvesant Restoration Corporation—would not have moved toward its massive community program without the help of Senators Robert Kennedy and Jacob Javits, who mobilized financial and industrial leaders to take an interest in the community. The two senators, in fact, sponsored federal legislation that today provides the single most important source of funds for all CDCs.

Harlem Commonwealth Council in New York City is an example of a CDC started with major help from academic institutions (Columbia University and the New School for Social Research). The academic group made economic studies of Harlem and showed the feasibility of specific industrial and commercial alternatives for economic development, but local leaders actually built the CDC organization and its program.

Other CDCs, such as The East Los Angeles Community Union (TELACU), have begun as the direct result of following the model of another CDC. TELACU was formed in May 1968 when the United Auto Workers gave funds to a group of its Chicano labor union members to set up a broad-based economic development program comparable to the one UAW had sponsored in the riot-torn black area of Watts. The TELACU area contains the largest concentration of Mexican-Americans in the Southwest—over 500,000.

To describe the crucial part sometimes played by outsiders is simply to describe reality. But it is not real to suppose that an impoverished area can be changed with outside help, unless the local leadership is enlisting local energies to guide the outside specialists and to make sure that decisions are made with local approval and according to local judgments about what comes first. For instance, one of the toughest problems of comprehensive economic development is deciding the trade-offs: that is, deciding, for example, what cost in reduced business income should be accepted for hiring and training less skilled employees because they are residents, rather than taking already skilled workers from other areas who would be more productive right away. Outside specialists cannot make that decision—or make it stick. Only people taking responsibility for their own community can make the trade-offs between one benefit now and another later on. In each situation, the decision may be different, depending upon the needs of the program and its community.

Where Does the Money Come From?

The ambitious programs of the CDCs require a lot of money. If you want to rebuild a neighborhood or strengthen a rural area, with housing, new businesses, and community facilities, you must mobilize a whole range of financial resources—for planning, administration, and investments.

There must be money for equity (ownership) investments by the community, and there must be money available as loans to the community, or as guarantees for loans, and a whole host of other complex financial arrangements by which the CDC can pay for what it needs. There must be flexible grant funds and outright gifts which can be used for any investment purpose or indeed held for a while until priorities can be sifted out for their use. Less flexible funds are also necessary. The CDC has to have access to specialized dollars, like sewer grants or mortgage loans or other credits, that are linked to specific purposes.

Funds for CDCs have come from many sources: the local community residents themselves, labor organizations, private industry, private foundations, churches, and government agencies. Progress Enterprises illustrates the potential of community residents' own resources. This CDC began on the 10-36 plan—church members contributed $10 per month for 36 months. By this approach, in about eight years Progress Enterprises had enrolled 6,000 members and had accumulated more than $2 million to invest in its economic development program. However, Progress Enterprises has also received millions in private and government grants and loans. Thus dollars raised in one way can often lever dollars in another way from different sources.

CDCs have received funds from a variety of charitable institutions, but the Ford Foundation has provided by far the largest support in this category. In 1973 it committed itself to grant $75 million to selected CDCs over a five-year period.

The chief support for a very significant proportion of the CDCs in the United States has been the Office of Economic Opportunity (now the Community Services Administration). From 1968 to the end of fiscal year 1974, the Special Impact Program at OEO had invested over $165 million in the support of about 45 CDCs. Other programs at OEO have also offered considerable support, and recent changes in the government structure of the antipoverty programs will probably not affect that. However, one now-discontinued federal program was a source of substantial investment assistance: the Model Cities Program of HUD provided an estimated $50 million to CDCs.

Some sources of support from other national, state, and local government agencies usually are available only after the CDC has been in operation for a while. The Small Business Administration, Economic Development Administration, Office of Minority Business Enterprise, Farmers Home Administration, and other federal agencies have provided both financial and technical assistance. With "seed money" from government agencies, the CDCs have successfully levered additional funds from local and regional banks and other lending institutions. State and local housing authorities have also provided dollars.

In the past, the larger corporations as well have provided support. FIGHT, a CDC in Rochester, New York, received subsidies and technical support from Xerox Corporation for FIGHT's electronics plant. Other business corporations, such as Cummins Engine and IBM, have also assisted CDCs by starting a plant in a CDC's target area, or by giving technical assistance, or by guaranteeing a market for the products of a CDC's new business venture. Aid from the corporate world, however, has decreased considerably in the past few years.

What Do CDCs Look Like?

The operations of the CDCs are as diverse as the problems they face and as unique as the communities they serve. Nevertheless, a few examples will illustrate their possibilities.

Job Start in southeastern Kentucky serves ten counties of about 220,000 people, two-thirds of whom have annual family incomes below $3,000. Job Start itself is the parent or "umbrella" organization for a number of smaller groups; it is a planning body controlled by a 14-member board of directors. Twelve directors are elected from existing Community Action Agencies and from other development agencies in the area. Two state-organized area development districts operating within the ten-county area also each elect one director. The bylaws specify that a majority of the directors be in a low-income bracket.

Job Start's major objective has been to create jobs by establishing its own wholly owned small industries. The CDC currently owns and operates three related woodworking and cut-and-sew manufacturing facilities, under the marketing label of Possum Trot. Although from 1970 to 1972 Job Start created 65 jobs through these three subsidiaries and its own offices, 600 people were on the waiting list for 23 jobs at one of the subsidiaries as it opened. There are more openings now because Possum Trot products have caught on in the marketplace; they are sold through high-quality mail order catalogues in the country and in department stores serving well-to-do customers in major cities. Yet the need for jobs is still overwhelming.

To create a substantial number of additional jobs, Job Start modified its policy of wholly owned industries to invest $250,000 in a corporation it would jointly own and run with a private entrepreneur. This plant, which makes tents and other outdoor recreational products, has produced about 200 more jobs. By 1973, a total of over 400 people were employed through the efforts of Job Start, which had generated an increase in total community income of over $5 million in 1973 alone. The involvement of local people in this endeavor has raised the community spirit and influence. For example, the CDC can now bring improved roads: In an arrangement with the county officials, the CDC furnishes manpower and the use of some equipment, and the counties cover the other direct costs. By this means the CDC groups have gotten the right to decide which roads get county attention.

Harlem Commonwealth Council in New York City is run by a board of directors of 30 members. The original community leaders and founders (or their internally elected replacements) represent over one-third of the board. Another eight are elected by the United Block Association (a neighborhood-based coalition of Harlem residents). The remaining 10 directors are representatives of community organizations operating within Harlem, such as the local branches of the NAACP and the Urban League, and local church groups.

The chief focus of this CDC is to develop a cluster of profitable business ventures, which are technically owned by HCC's holding company. Ultimately, the ownership of these businesses is to be turned over directly to community residents through the sale of stock in the holding company. In 1973, HCC had eight ventures in operation and a nonprofit subsidiary offering technical services to local businesses.

HCC's efforts have produced planned land development, job opportunities, and manufacturing in Harlem. The City Office Building on West 125th Street, owned by a subsidiary of HCC, was built as a

joint venture of HCC and a major white-owned firm. Chase Manhattan Bank provided the needed loan. The resulting seven-story, fully modern building, centrally located on Harlem's main street, is the first new office building constructed in Harlem in decades. The upper five floors are rented by city agencies on 21-year renewable leases, and the street floor is leased by small businesses and franchise firms. HCC's own offices and those of another of its subsidiaries, Harlem Commonwealth Tours, are also in this building.

The Shultz Company, the largest manufacturing plant in Harlem, was purchased by HCC in September 1972. Occupying two six-story buildings, the Shultz Company employs 100 to 150 people in its production of specialized display and counter facilities for supermarket chains in the middle Atlantic and southern New England areas.

A small CDC, the Lummi Indian Tribal Enterprise, Inc., is changing the life of approximately 1,600 Lummi Indians, most of them living on a reservation on a small peninsula off the northern coast of the state of Washington (about a 5,700-acre reservation). In 1965 the total annual income for the tribal organization was less then $9,000; the median family income was $2,000, with one-third making less than $1,500. Unemployment was sky high; health care was almost nonexistent.

That year the tribe launched a campaign to gain help and bring attention to their needs. Over a number of years, they prepared proposal after proposal for federal grants from many different agencies, and their success in effectively using the initial grants garnered enough additional money to make massive changes.

By 1973, the Lummis had harvested their first crop from their new tribal business—one of the most extensive and sophisticated aquaculture ventures in the United States. The $2 million that OEO had granted the Lummi CDC, together with substantial other federal funds, was being transformed into three million fish, thirty million oysters, hundreds of thousands of silver salmon, and fifty million seed oysters—an annual output expected soon to gross $6 to $7 million annually.

Ten times as many Lummis were going to college as in 1965, and projections were seriously being made that within a few more years the average attainable net income for each tribal family would be well over $10,000 a year. The Lummis have capitalized effectively on their initial successes to begin a process of community transformation.

The Lummi CDC is run by a board of directors chosen by the 11-member administrative governing body of the tribe, which itself is elected annually by all members of the tribe. This structure is specially adapted to accommodate the traditions of the tribal organization with the requirements of business administration.

TELACU, The East Los Angeles Community Union, formed in 1968, has brought over $40 million to its Chicano neighborhood. An example of its influence is the way it affected a major Los Angeles firm that was to develop the 504-unit Nueva Maravilla Housing Project. TELACU, by bringing together a planning group of residents—welfare mothers and young gang leaders as well as residents with jobs—created the plan for this housing project so that it includes recreation and health care facilities and social services. Nueva Maravilla then received $10 million from Los Angeles County. In order that its constituents might benefit from the jobs that would be created from the project, TELACU obtained $500,000 in manpower training money to train residents and also secured $3.8 million in subcontracts for community businessmen. But TELACU also creates its own projects in business or in housing—for example, the 20-unit Happy Valley Villa.

Membership in TELACU (a federation of organizations) is open only to organizations that either have their principal office in the target area or serve residents in the area. Individuals cannot become members as such. Eligible organizations must have a substantial membership of low-income residents of the area served by TELACU. Each group appoints one authorized representative to sit on the TELACU board of directors. In this way, community control is achieved by the method of indirect representation.

TELACU, the Lummis, HCC, Job Start—these illustrate the very different forms that the CDC can take.

How Successful Are CDCs?

An extensive independent evaluation of the largest federal program of support (OEO's) has estimated that as of 1973 about two-thirds of the CDCs were successful. To be realistic, there are also many CDCs that are not successful. And it is a fact that sometimes a generally successful CDC launches unsuccessful projects. Yet compared to what has happened to other ventures in poverty areas, the CDC record—for OEO-funded CDCs—is excellent, according to the only research available.

The independent evaluatnes of these CDCs found, for example, that 50 percent of the 250 ventures started by CDCs would be at least breaking even by their fourth year. Nationally, for new, small businesses in general, only about one-third even live to the age of five years. Moreover, in the depressed areas in which CDCs operate, the figures for failure are higher: For example, in Chicago 80 percent of new black-owned businesses folded in 1972; these are the businesses that operate in the same unfriendly economic environment where black (and other) CDC ventures are making a go of it.

Moreover, the OEO-supported CDCs have been able to attract new loans and other investments at a leverage ratio comparable to all U.S. corporations in attracting loans, bonds, and mortgages—in the years studied, $.61 to every dollar for CDCs, compared to $.65 to every dollar for U.S. corporations in general. Further, the 30 CDCs evaluated had created 2,066 permanent jobs and 5,500 temporary jobs in an average three-year period. Other detailed statistics show that the training and hiring practices of the CDCs have resulted in impressive job opportunities for local residents.

The statistics of success of the CDCs must not, however, be overweighed against nonstatistical measures—for example, the ways of building a community sense of well-being. To take two cases: in St. Louis, Missouri, the efforts of the Union Sarah Economic Development Corporation, which serves 32,000 people in a 133-city-block area, have encouraged private developers to return to the area. One absentee landlord, whose property abuts a CDC project of townhouses, garden apartments, parking lot, and swimming pool, has not only rehabilitated his own property, but also has moved back to his old neighborhood. In Bedford-Stuyvesant, the CDC has created a black cultural affairs center by renovating a large abandoned building and using it as the centerpiece of an ambitious development of commercial, educational, and housing properties. The children from this predominantly black area come from all the public schools to view performances at the modern theater, and major corporations have competed for commercial space there.

Such local creativity builds hope and pride, necessary ingredients for the future of any community. CDCs, therefore, consider it essential not to measure their performance simply on statistics of business profits or even number of jobs created. There is a lot to building a community that cannot be measured that way. In addition, statistical methods of research are hard to use, and the best available studies have grave limitations.

What Problems Do CDCs Face?

CDCs face three basic problems, as they continue their work. First, they must get more funds, and the flow of capital must be stable, not dependent on short-term grants. Their job is a big one, and it will take big money over many years. Even good profits from their businesses will not support the necessary massive development needed. Second, they will always face tough decisions in their attempt to balance broad community interests with success on any one project. A multipurpose organization will always have to trade off a little success in one goal for more achievement in another. Third, they have to maintain a high level of community participation to keep their energy potent.

The first problem probably boils down to whether or not federal appropriations will grow to match the needs of communities that seek to improve themselves. Private foundations, churches, and others simply will not be able to provide the fundamental capital investment that is required. Ultimately, the proposed creation of a national community development banking system could decrease dependence on annual federal appropriations. But for some years the solution to the financial problem of developing communities will lie in the one possible source of major investment funds--federal tax dollars.

It is important to remember, however, that CDCs do not merely spend the federal funds. They use that money to raise more money from the private capital market. To repeat, many CDCs have just about matched the private corporate world in their ability to get loan funds from banks and other private sources. But debt capital (credit) depends on having equity money to begin with, and that must come from federal grants.

The second category of problems (the tough trade-off decisions) has caused some critics to doubt that a CDC can, for example, establish profitable enterprises with stable jobs. These critics say that a business cannot survive if it has to meet multiple social goals (not to speak of contending with the unfriendly economic environment of the low-income areas). Although the research evidence so far does not support this criticism, inescapable tensions do exist between making a big profit and producing other community benefits. Moreover, trying to create the largest number of jobs usually means selecting businesses in which most of the jobs are low-paying. While community residents may at first be satisfied with such jobs if they have been unemployed, sooner or later they will demand that the CDC produce better jobs.

Choosing appropriate markets for CDC goods and services raises a comparable problem. The need for dollars from outside the community inclines the CDCs to develop businesses that produce goods for export and bring cash to the area. The desire to service the CDC community, however, applies pressure to produce goods and services marketable in the immediate area. Also, the CDC may be torn between a project of assistance to local businesses and a business venture that it starts and runs itself.

The resolution of another conflict is technically difficult. There is a "multiplier effect" for each type of business, depending upon where the money goes for goods and services. If people spend money where they live, the effect of the expenditure can be multiplied into benefits for others in the community. Each business, too, spends money, and the CDC must weigh where that expenditure takes effect and how much difference an investment put in one sector would make compared to another. Yet multiplier effects, themselves, have to be gauged against the

different risks of each business as a venture.

Further, budgeting limited time is as hard a decision to make as budgeting limited funds. CDCs deeply involved in successful business ventures will naturally be pressed to sharply diminish their other activities for the community. The CDC director and staff can become so engrossed in running the business operations that they have neither time nor energy to work on other community projects.

This leads to the third problem—how to keep the whole program moving by community participation in the CDC affairs. If residents cease to identify the CDC as theirs and as worthy of the contributions of energy that it takes to keep an organization effective, the CDC will soon run down. At best, it will turn into a minor business operation. At worst, the CDC can be taken over by people who will turn it to their own private advantage. An alert community will strengthen a CDC, and the CDC, as one of its goals, must always be working to keep the community alert.

Most of these program tensions can be reduced somewhat by the thoughtful and active participation of the CDC board of directors. The board of directors has the responsibility as trustees for the community to decide the trade-offs and the allocations of time, money, and energy. That is a heavy responsibility and means a lot of unpaid work by citizen leaders.

To date, the CDCs are only a small effort for social change, carried on without much fanfare. The CDC as an organizational form seems to have promise, and communities are learning what it can do and what it cannot. They are also learning that although the CDC begins from the idea that only a comprehensive multipurpose strategy will work, one organization does not and cannot do the whole job. CDCs have to foster and work with other community organizations that do particular tasks in the overall development strategy. For example, a CDC could assist a food-buying cooperative or help set up an independent credit union. A CDC could invest in a MESBIC (Minority Enterprise Small Business Investment Corporation), which helps the small businessman at the right time with a loan or a shared investment. Also, CDCs can join forces on many projects with local antipoverty agencies, the Community Action Programs.

The CDC cannot attack the problem of poverty without working with all sorts of other groups in the community—and outside of it. Yet not everything can be done at the same time. Thus, operating a CDC is a tough process of choosing priorities, making choices, and learning the differences between the various types of specialized tools that must be used to build the community.

What Are Prospects for the Future?

Assuming that federal support for the community economic development movement continues, CDCs appear to have a good future. Even though some CDCs have failed, enough have succeeded to demonstrate that they can assist the poor and the disadvantaged to join the nation's social and economic mainstream. Although they are definitely not a panacea, CDCs can carry out social and economic change in some communities, and in others the CDCs can be important at least for purposes of amelioration. The particular role a CDC plays, its legal structure, the problems it faces, and its likelihood of success depend greatly upon the community itself—*and* upon the people who want to make their community a better place to live.

Each community must recognize that the particular social, political, and economic tools it creates for self-development will be different from another community's organizations. There is nothing special about the words "community development corporation." The important thing is the process of development and self-determination that a community undertakes, with whatever councils, cooperatives, corporations, or other organizations. The CDC is *one* powerful form of organization to express and achieve community self-determination.

How to Get More Information

The Center for Community Economic Development and the National Congress for Community Economic Development inform the public about CDCs. The National Congress (with offices at 1126 16th Street, N.W., Washington, D.C. 20036) offers membership and technical services to community groups. The Center is a nonprofit research and advocacy organization in support of groups like the National Congress, individual CDCs, cooperatives, and other low-income urban or rural development councils. Both organizations publish a newsletter, and the Center also maintains a national library and publishes research reports and materials like this pamphlet.

A PROPOSAL

for legislation to create

COMMUNITY RENEWABLE RESOURCE DEVELOPMENT CENTERS

Dr. Wayne E. Burton
Agricultural Development Economist
Palmer, Alaska 99645

February 4, 1977

The interaction of land resources and genetic resources with our socio-economic conditions has determined our present levels of productivity, with which we are not satisfied. (Miranda)

THE CONCEPT

A community renewable resource development center is conceived as a public institution which serves local community desires, anticipations, and needs for agricultural, agroeuthenics, forestry, recreation, and other renewable resource developments, with a maximum local determination in program emphasis, program content, and means by which program goals are attained. These centers are anticipated to provide integrated functions of research, development, consultant, demonstration, "peer-group substitute", service, and contact in the local rural community. Community renewable resource development centers will play a role in renewable resource development analogous to that of community colleges in education and human resource development.

The purposes (objectives) of a renewable resource development center are:

(a) To evaluate renewable resources for development.

(b) To identify and assess alternative renewable resource development alternatives.

(c) To identify and evaluate new and innovative information, germplasm, technology, conservation measures, factor input responses, and production systems.

(d) To demonstrate, on a functional pilot scale, new production systems and technology identified as applicable to the particular community environment and need.

(e) To provide "*public consultants*" who will work directly with individuals or groups in the community during planning and/or initiating renewable resource development projects or efforts.

(f) To provide a "*peer-group substitute*" for beginning producers, particularly in those situations, and locations, where there is little or no community experience with the product or enterprise.

(g) To provide coordination and communication between and among the local community and those institutions and agencies which have mission responsibilities for providing services which will contribute to renewable resource development and/or conservation.

JUSTIFICATION

The domesticated production of agricultural crops and livestock for subsistence was introduced into Alaska some 193 years hence. Commercial production of domestic livestock began before 1800. Progress, since that time, has been sporatic and, in most instances, temporary in nature eventhough feasibility for successful production has been demonstrated in every decade. At present, not more than 1/10 of one percent of identified latent and viable agricultural lands are being tilled for subsistence and/or commercial production. Less than 5 percent of the agricultural foods consumed in Alaska are produced within the state.

Conventional wisdom tells us that this profound state of underdevelopment has resulted from a hostile climate, agriculture not being "economic", too few people to develop markets, and that such development is not in "the national interest". The "hostile climate" theory cannot be substantiated for a wide range of crop and livestock enterprises in most areas of the state. Agricultural enterprises have a better record of economic survival and time continuity than most other types of business enterprise in Alaska. The "limited population" theory ignores subsistence, amenity, and export possibilities, and further ignores the size and rate of growth of Alaska's population at this time. Also, the assumption that renewable resource development in Alaska "is not in the national interest" patently ignores state, national, and world food and fiber needs, rural area socio-economic and nutritional needs, and amenity needs to satisfy the cultural transition in both rural and urban areas of the state.

Most rural villages, Native and non-Native, outside the traditional "agricultural communities" (now predominately suburban) located in proximity to Fairbanks, Palmer, and on the Kenai Peninsula, are not being served by public institutions and agencies in a manner that viably stimulate and serve renewable resource development. The primary concentration of institutional and agency service centers are to be found in Fairbanks, Palmer, Anchorage, and Juneau. Modes and frequency of transportation, geographic distribution of rural population, and budgets and staffing of relevant institutions and agencies, preclude the timely and critical concentration of comprehensive efforts needed to identify, develop, and serve significant renewable resource enterprises. The limited and infrequent services available to most villages only serve to create anticipations and desires which cannot be fulfilled.

The community renewable resource development center program would provide the institutional framework, technical staffing, and public institution and agency communication and service linkages for viable community action programs and efforts directed to renewable resource enterprise development. It would provide an opportunity to address socio-economic, nutritional, and resource development problems, in the village community, that are totally beyond the competencies and capabilities of present public agencies and institutions while maximizing the opportunity for local determination.

SPECIFIC PROBLEMS AND NEEDS

The overall problem and need is to provide the opportunity for local communities to identify, assess, and develop information, technology, and production systems unique to their locational and climatic environments, while concurrently staging for development of renewable resource enterprises which will serve their socio-economic, nutritional, and amenity desires and needs.

The following is a list of prospective problems and situations that would be served by community renewable resource development centers.

A. Domesticated Grazing Livestock.

1. Reindeer.

Problem: Lack of well defined reindeer husbandry system.

Needs:
a. Reindeer herd improvement program.
b. Breeding stock test station program.
c. Disease and parasite control program.
d. Reindeer nutrition and feed supplement program.
e. Range evaluation and improvement program.
f. Reindeer ranch management program.
g. Alternative production systems.
h. Reindeer product development and packaging.

2. Ranch Cattle.

Problem: Lack of well defined production and marketing systems.

Needs:
a. Range evaluation and seasonal use planning.
b. Genetic engineering to meet locational and environmental requirenments.
c. Herd inprovement programs.
d. Alternative production and management systems.
e. Supplemental feeding requirements and systems.
f. Disease and parasite indentification and control.
g. Product identification, packaging, and merchandising.
h. Identification and assessment of resource requirements, facilities, and equipment.

3. Subsistence Dairy and Beef Cattle.

Problem: Lack of a well defined dual-purpose production and management system and associated genetic stock, information and technology.

Needs:
a. Identification and evaluation of suitable genetic stock.
b. Identification of adapted production and management systems
c. Feeding requirements and feeds to meet subsistence goals.
d. Identification and evaluation of facilities and equipment suited to subsistence enterprise.
e. Health and sanitation requirements and procedures.
f. Feed and forage production and handling systems and evaluation.
g. Miscellaneous.

B. Vegetables and potatoes.

1. Subsistence and Commercial Garden (truck) crops.

Problem: Varieties, fertilizers, and production and storage systems.

Needs:
a. Screening of adapted varieties.
b. Testing of fertilizer responses.
c. Identification and testing of machinery and equipment

particularly suited to size and nature of enterprise.
d. Vegetable and potato production and tillage systems.
e. Product harvest and handling systems.
f. Storage requirements and facilities.
g. Processing facilities, equipment, and standards.
h. Market grading, standards, and sanitary requirements.
i. Identification of subsistence needs and marketing probabilities.

C. Forestry and Wood Products.

1. Subsistence and/or commercial timber harvest and mill operation.

Problem: Lack of technical knowledge, engineering and design inputs, mill operation experience, and market acceptance of the product.

Needs:
a. Product identification and evaluation.
b. mill design.
c. Training program for cruisers, scalers, quality control, and mill operators.
d. Sustained yield harvest program.
e. Identification of market probabilities and specification requirements.

2. Wood Products.

Problem: Lack of previous design and production experience.

Needs:
a. Resource identification and evaluation.
b. Prospective product identification.
c. Training program for product designers.
d. Training program for woodworkers.
e. Identification of prospective markets, marketing opportunities, and quality control requirements.

D. Cereal Grains and Forages.

1. Feed and Food Grains.

Problem: Too much talk and too little do at the statewide policy and program decision making level.

Needs:
a. Varietal screenings.
b. Fertilizer response data.
c. Sources of selected seed stocks.
d. Land resource evaluations and assessments.
e. Resource and environmental conservation planning.
f. Alternative tillage system assessments.
g. Identification and assessment of alternative production and harvesting systems.
h. Identification and assessment of prospective product markets, utilization, and quality control requirements.

2. Harvested Forages.

   Problem: Lack of identification of forage needs and well defined production systems to meet specific utilization needs in particular geographic locations.

   Needs:
   a. Varietal screenings.
   b. Fertilizer response tests.
   c. Product use identification.
   d. Production and harvest systems.
   e. Storage facilities and equipment suited to need.
   f. Identification of prospective product use, markets, and quality control standards.
   g. Nutritional assessments and evaluations.

The above are intended as being illustrative rather than exhaustive in subject and content.

MEANS AND FACILITIES

The community renewable resource development center is conceived as a program which can be developed, directed, and supported by the local community, in cooperation with the Alaska Department of Natural Resources. It can be initiated using existing facilities and local talent to the extent available, hiring only those technical competencies necessary to carry out specific priority programs. As the program grows and develops, it is anticipated that land, facilities, and equipment, of a more permanent nature, will be required.

Each community (or group of communities) renewable resource development center will be initiated by the local community when there is sufficient interest in, and recognition of, the need for socio-economic and resource development. A board of directors will be selected by the local community to develop preliminary plans for the center, seek approval for the center by the Commissioner of Natural Resources, and identify sources of funding for the beginning center program. On approval of the center, the board of directors will select a director to administer and carry out center programs and activities. The director, in concurrence with the board, will seek and accept cooperative program assistance, and financial aid and assistance from federal, state, philanthropic foundations, private corporations, and other sources, to attain community program goals.

Selected programs, offered by various divisions od the Department of Natural Resources and the University of Alaska, including that of "plant materials", to meet local needs, may be coordinated through the office of the director of the community renewable resource development center. Certain career development programs, directed to renewable resource development, may also be coordinated through the office of the director. However, primary emphasis of the center will be directed to priority community programs and interests.

of this Act were actually operating on July 1, 1941, may become effective, without notice, as of the date of enactment of this part, if tariffs covering such joint rates or charges and concurrences are filed with the Commission within thirty days after the date of enactment of this part;

New or additional joint rates, restriction.

"(4) No new or additional joint rate or charge may be established under authority of this subsection for service from any point of origin to any point of destination with respect to any particular commodity or class of traffic unless at least one rate or charge for service from such point of origin to such point of destination with respect to such commodity or class of traffic, established by an individual freight forwarder or by a freight forwarder jointly with a common carrier by motor vehicle, is already lawfully in effect; but for purposes of this paragraph the making of a change in a joint rate or charge which has been established, or which has become effective pursuant to this subsection, shall not be deemed to constitute the establishment of a new or additional joint rate or charge;

Changes.

Cancellation or withdrawal.

"(5) Any joint rate or charge or concurrence established, or which becomes effective pursuant to this subsection, may at any time be canceled or withdrawn in accordance with the provisions of part II of this Act;

Filing of tariffs.

"(6) The filing of tariffs under paragraph (2) or (3) of this subsection may be in accordance with the requirements with respect to the form and manner of filing tariffs in effect under part II of this Act prior to December 31, 1936;

"(7) For the purpose of computing the period of thirty days prescribed in paragraph (1), (2), or (3) of this subsection, the date of mailing by registered mail shall be deemed the date of filing; and

"Rates or charges."

"(8) As used in this subsection the term 'rates or charges' includes classifications, rules, and regulations with respect thereto."

Approved February 20, 1946.

[CHAPTER 33]

AN ACT

To declare a national policy on employment, production, and purchasing power, and for other purposes.

February 20, 1946
[S. 380]
[Public Law 304]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Employment Act of 1946".

Post, pp. 838, 912, 915.

DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power.

ECONOMIC REPORT OF THE PRESIDENT

Transmittal to Congress; contents.
Post, p. 833.

SEC. 3. (a) The President shall transmit to the Congress within sixty days after the beginning of each regular session (commencing with the year 1947) an economic report (hereinafter called the "Economic Report") setting forth (1) the levels of employment, production, and purchasing power obtaining in the United States and such levels needed to carry out the policy declared in section 2; (2) current and foreseeable trends in the levels of employment, production, and purchasing power; (3) a review of the economic program of the Federal Government and a review of economic conditions affecting employment in the United States or any considerable portion thereof during the preceding year and of their effect upon employment, production, and purchasing power; and (4) a program for carrying out the policy declared in section 2, together with such recommendations for legislation as he may deem necessary or desirable.

Supplementary reports.

(b) The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 2.

Reference.

(c) The Economic Report, and all supplementary reports transmitted under subsection (b), shall, when transmitted to Congress, be referred to the joint committee created by section 5.

COUNCIL OF ECONOMIC ADVISERS TO THE PRESIDENT

Creation, composition, etc.

SEC. 4. (a) There is hereby created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 2, and to formulate and recommend national economic policy to promote employment, production, and purchasing power under free competitive enterprise. Each member of the Council shall receive compensation at the rate of $15,000 per annum. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman.

Specialists, experts, and other employees.

42 Stat. 1488.
5 U. S. C. §§ 661-671; Supp. V, § 661 *et seq.*
Post, pp. 216, 219.

(b) The Council is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for the carrying out of its functions under this Act, without regard to the civil-service laws and the Classification Act of 1923, as amended, and is authorized, subject to the civil-service laws, to employ such other officers and employees as may be necessary for carrying out its functions under this Act, and fix their compensation in accordance with the Classification Act of 1923, as amended.

Duty and function of Council.

(c) It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy declared in section 2 for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 2 for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise, to avoid economic fluctuations or to diminish the effects thereof, and to maintain employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

Annual report.

(d) The Council shall make an annual report to the President in December of each year.

(e) In exercising its powers, functions and duties under this Act—

Advisory committees; consultations.

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable;

Services, etc., of other agencies.

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

Appropriations authorized.
Post, p. 913.

(f) To enable the Council to exercise its powers, functions, and duties under this Act, there are authorized to be appropriated (except for the salaries of the members and the salaries of officers and employees of the Council) such sums as may be necessary. For the salaries of the members and the salaries of officers and employees of the Council, there is authorized to be appropriated not exceeding $345,000 in the aggregate for each fiscal year.

JOINT COMMITTEE ON THE ECONOMIC REPORT

Composition.

SEC. 5. (a) There is hereby established a Joint Committee on the Economic Report, to be composed of seven Members of the Senate, to be appointed by the President of the Senate, and seven Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. The party representation on the joint committee shall as nearly as may be feasible reflect the relative membership of the majority and minority parties in the Senate and House of Representatives.

Party representation.

Functions.

(b) It shall be the function of the joint committee—

(1) to make a continuing study of matters relating to the Economic Report;

(2) to study means of coordinating programs in order to further the policy of this Act; and

Reports.
Post, p. 838.

(3) as a guide to the several committees of the Congress dealing with legislation relating to the Economic Report, not later than May 1 of each year (beginning with the year 1947) to file a report with the Senate and the House of Representatives containing its findings and recommendations with respect to each of the main recommendations made by the President in the Economic Report, and from time to time to make such other reports and recommendations to the Senate and House of Representatives as it deems advisable.

Vacancies.

(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the

case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

Hearings; powers.

(d) The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings as it deems advisable, and, within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words. The joint committee is authorized to utilize the services, information, and facilities of the departments and establishments of the Government, and also of private research agencies.

Appropriation authorized.
Post, p. 912.

(e) There is hereby authorized to be appropriated for each fiscal year, the sum of $50,000, or so much thereof as may be necessary, to carry out the provisions of this section, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman.

Approved February 20, 1946.

[CHAPTER 34]

AN ACT

February 21, 1946
[S. 1405]
[Public Law 305]

To authorize the President to retire certain officers and enlisted men of the Navy, Marine Corps, and Coast Guard, and for other purposes.

Whereas the wars in which the United States has been engaged are now in the process of being brought to a successful close with the probability that the services of a number of officers of the Navy and Marine Corps, particularly some of those in the higher ranks, cannot be utilized: Therefore

Retirement boards, Regular Navy and Marine Corps.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Navy shall, whenever he deems it advisable, appoint boards of officers to consider and recommend for retirement officers of the line and staff corps of the Regular Navy serving in the ranks of rear admiral and commodore and officers of the Regular Marine Corps serving in the ranks of major general and brigadier general.

Composition.

SEC. 2. (a) The boards to consider and recommend for retirement officers of the Navy serving in the ranks of rear admiral and commodore shall consist of not less than five officers of the Regular Navy serving in ranks above that of rear admiral except that officers of the staff corps of the rank of rear admiral may be appointed as members of any board appointed for the consideration and recommendation of officers of the staff corps for retirement.

(b) The boards to consider and recommend for retirement officers of the Marine Corps serving in the rank of major general shall consist, so far as practicable, of three line officers of the Regular Marine Corps serving in ranks above that of major general. If there be an insufficient number of such officers available, the deficiency shall be supplied by the appointment to the board of officers of the line of the Regular Navy serving in ranks above that of rear admiral.

(c) The boards to consider and recommend for retirement officers of the Marine Corps serving in the rank of brigadier general shall consist, so far as practicable, of five line officers of the Regular Marine Corps serving in ranks above that of brigadier general. If there be an insufficient number of such officers available, the deficiency shall be supplied by the appointment to the board of officers of the line of the Regular Navy serving in the rank of rear admiral or above.

IN THE HOUSE

BY THE SPECIAL COMMITTEE ON THE ALASKA PERMANENT FUND

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska renewable resources development fund."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 37.11.020 is amended to read:

Sec. 37.11.020. FUND AUTHORIZATION LEVEL. Five [NOT LESS THAN FIVE] per cent of the receipts received by [PAID] the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land shall be directly placed [DEPOSITED] in the Alaska renewable resources development fund. These deposits shall be invested in accordance with AS 37.10.070 (investment of surplus state funds) and the resulting interest shall accrue to the fund.

#132

MEMO TO: TERRY GARDINER

FROM: DOUG POPE

RE: THE LAW OF TRUST AS APPLICABLE TO THE PERMANENT FUND

April 29, 1977

You have requested a memo regarding the Law of Trust that will help us conceptualize better the spending parameters of the Permanent Fund. There has been some controversy as to what the establishment of the Permanent Fund actually did. There seems to be a consensus that a trust of sorts was created by the voters, but the disagreement comes in the interpretation of the trust and the limitations. The major disagreement is over the spending limitations of the principal. Some would have the principal available primarily as grants for business and development incentives, others have spoken about investment controls so rigid that the only place for the principal would be investments outside of Alaska through large financial institutions. I look at either of these positions as the extreme from the other, and not reflective of the language or the law supporting the language in the amendment.

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create the trust. (Restatement of Trust, Second, section 2.) A person in a fiduciary relation to another is under a duty to act for the benefit of the other as to matters within the scope of the relation. In application to the Permanent Fund this basically means that the managers of

the Permanent Fund have a broad duty to deal with the property for the benefit of all the citizens, tempered by whatever limitations the amendment or subsequent statutes might put on it. The purpose of this memo is to discuss the minimal limitations the amendment placed upon the operation of the fund.

In trust law as in constitutional law we look to all the circumstances surrounding the creation of the amendment or of the trust, as the case may be, to interpret the intentions in creating the amendment or the trust. In constitutional law we have the further provisio that we interpret every section of the constitution as a part of the whole rather than solely by itself. The actual words used in the creation of the trust are the starting point. It is fundamental that "no trust is created unless the creator manifests an intention to impose enforceable duties." (Restatement of Trust, Second, section 25.) What this means in regard to the Permanent Fund is that the voters must have manifested an intent to impose enforceable duties upon the managers of the Permanent Fund, or no trust was created. In reviewing those words the following circumstances are relevant:

A) the imperative character of the words used;

B) the relations between the parties;

C) the motives which may reasonably be supposed to have influenced the voters in making the disposition; and

D) whether the result reached by construing the transaction as a trust or not a trust would be such as a person in the situation of the creator would naturally desire to produce.

Looking at the above circumstances leads me to the following: pursuant

to my interpretation of Art. VIII of the Constitution, the state now stands as trustee of the land for the benefit of the citizens in future generations. The Permanent Fund is addressed to non-renewable resources held by the state as trustee, and more specifically was addressed to the saving of certain revenues from non-renewable resource extraction. This motive to save a part of the non-renewable resource wealth is evident in the imperative words of the amendment. The construction of the language as a trust seems to follow the implicit intent of the voters, i.e. they manifested an intent to impose an enforceable duty that the revenues placed in the Permanent Fund should not be used for other than income-producing investments. It is clear to me from this construction that a trust was created. However that does not address the issue of the scope of the trust.

The Law of Trust places certain duties on the trustee. These duties can be modified by agreement, or by the language creating the trust.

Upon acceptance of the trust by the trustee, he is under a duty to the beneficiary to administer the trust. The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary. The trustee in dealing with the beneficiary on the trustee's own account is under a duty to the beneficiary to deal fairly with him and to communicate to him all material facts in connection with the transaction which the trustee knows or should know. The trustee is also under duties to the beneficiary to (a) keep and render clear and accurate accounts with respect to the administration of the trust, (b) to give

the beneficiary upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him or a person duly authorized by him to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust, (c) to use reasonable care and skill to preserve the trust property, (d) in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property. Finally when there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them. (Restatement of Trusts, Second, section 169-section 183). All of these broad duties seem consistent with the intent of the voters at the time. However, there is one duty that is at the basis of this controversy regarding the spending parameters of the fund. That duty is the duty of a trustee to the beneficiary to use reasonable care and skill to make the trust property productive. Some people have interpreted this duty to be a duty to establish maximun productivity of the principal. However, it turns out that is not even a duty imposed upon the trustee of a private trust. In reading from the comments on the Restatement of Trust, Second, relevant to the duty to make the trust property productive I will quote: "In the case of money, it is normally the duty of the trustee to invest it so that it will produce an income. The trustee is liable if he fails to invest trust funds which it is his duty to invest for a period which is under all the circumstances unreasonably long. If, however, the delay is not unreasonable, he is not liable." It seems that the language of the amendment is very close to the above sited language of section 191 of the Restatement of Trust, Second, and further that that language countervails any notion of maximum productivity of the principal and merely requires that the investment produce income,

not maximum income. It is my conclusion, then, that as long as some income is produced, and as long as the trustee uses reasonable care to protect the trust property from loss or damage, that the investments of the principal may take any turn.

A trustee, to invest, is required to conduct himself faithfully and to exercise the sound discretion, observing how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, and considering the probable income as well as the probable safety of the capital involved. Bogert on Trusts speaks to the same prudence in this manner: "Where left to his own discretion and not controlled by the settlor (the settlor is the creator of the trust), the trustee is required by equity to exercise the skill and prudence of a reasonably prudent man in making, keeping, and converting trust instruments. In the exercise of his discretion he is expected to display the same care and judgment that would be shown by an ordinarily able business man in managing his own affairs for the purposes of accomplishing ends similar to those of the trust." (Bogert, Trust and Trustees, section 612.) The trustee must keep in mind the selection of a security which will to a satisfactory extent accomplish the main object of the trust, which usually are the furnishing of a continuous flow of at least moderate income and the guaranteeing of the safety of the principal. However, it is to be noted that the Permanent Fund does not give managers uncontrolled discretion. The Legislature has to implement, and by that very and other subsequent acts is controlling to some extent the managers of the trust, vis-a-vis the trustees. The discretion of the trustee, then, is also limited by another one of the main objects of the Permanent

Fund: the diversification and the improvement of the Alaskan economy, and the availability of funding for the Alaskan citizen as well as the Alaskan businessman.

Appended to this memo are some selections from Scott on Trusts, another recognized authority in the area. Included in that appendage is a section from Scott on mortgages, that section can better explain the limitation on mortgage loans from the Permanent Fund than I can. However, in reading the material from these appendages it should be remembered that the Permanent Fund does not grant uncontrolled discretion to the managers, and that other purposes of the fund than protection of the principal and production of income are as mentioned above.

With respect to hydro loans, it seems that the answer boils down to this: as long as the subfunding mechanism for planning and implementing the hydro-project has an acceptable level of stability, and as long as there is some prospect of return on the investment, then hydro-projects are within the spending parameters.

TOPIC 5. INVESTMENT OF TRUST FUNDS

§ 227. Investments which a trustee can properly make. It is the duty of a trustee to preserve the trust property and to make it productive.[1] It is ordinarily his duty to invest trust funds in such a way as to receive an income without improperly risking the loss of the principal. It is not possible, however, to state any definite rules as to what are proper trust investments. In many states the matter is regulated by statute, or even to a certain extent by constitutional provisions. Moreover, the duty of the trustee may be regulated by provisions in the trust instrument. Even in the absence of provisions in a statute or in the trust instrument, the courts of the different states differ in the rules which they apply or in the application of the rules. It is possible, however, to point out in a general way the principles upon which the courts act in determining whether an investment made by a trustee is or is not proper.

The only general rule which can be laid down as to investments is that the trustee is under a duty to make such investments as a prudent man would make of his own property having primarily in view

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strument, and thereafter such instrument shall be held wholly or partially invalid, such trustee shall not be responsible to those persons who would take in default of appointment."

By Colorado R.S. 1963, § 153-10-9, it is provided that "No act of a fiduciary appointed by a court shall be invalid or adjudged to be void solely by reason of any order thereafter entered revoking, annulling, or setting aside the appointment of such fiduciary, or by reason of revocation of probate of a will or by a finding of mental incompetency."

By Pennsylvania Stats. Ann. (Purdon), tit. 20, § 320.950, it is provided that "No act of administration performed by a testamentary trustee in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the trustee: Provided, That regardless of the good or bad faith of the testamentary trustee, no person who deals in good faith with a testamentary trustee shall be prejudiced by the subsequent occurrence of any of these contingencies."

By Massachusetts Ann. Laws, c. 215, § 9A, as enacted by Laws 1960, c. 179, it is provided that the acts of an executor, administrator, guardian, conservator or trustee performed after the entry of the decree appointing him and prior to the expiration of the period allowed for an appeal therefrom shall be valid to the same extent as if the appeal period had expired without any appeal in all instances where there has been no appearance entered against such appointment prior to the entry of the decree or where such appearance has been entered and withdrawn prior to the entry of the decree, notwithstanding the fact that an appeal may have been taken in the period.

By Rhode Island Gen. Laws 1956, § 33-9-22, it is provided that when an executor or administrator is removed or when letters are revoked, all previous sales and other lawful acts shall be valid in favor of purchasers for value and in good faith.

§ 227. [1] See §§ 176, 181.

the preservation of the estate and the amount and regularity of the income to be derived. In various forms this rule has been stated in innumerable cases. It involves three elements, namely care and skill and caution. The trustee must exercise a reasonable degree of care in selecting investments. He must exercise a reasonable degree of skill in makng the selection. He must, in addition, exercise the caution which a prudent man would exercise where a primary consideration is the preservation of the funds invested.

In making investments, as in other matters in the administration of a trust, the standard to which the trustee must conform is that of the prudent man. It was once suggested by Lord Northington that a trustee should not be required to manage the trust property with the same care with which he would manage his own property;[2] but of course this is not sound. It is, indeed, not sufficient that he should manage the trust property with the same care and skill with which he manages his own property, if he does not manage his own property with the care and skill of a prudent man. The standard fixed for the conduct of trustees is an external or objective standard. He must at his peril exercise the care and skill and caution that a prudent man would exercise under the circumstances.

Moreover in the making of investments it is not sufficient that the trustee should exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property, since men of prudence may well take risks in making investments which trustees are not justified in taking. A trustee must use the caution in making investments which is used by prudent men who have primarily in view the preservation of their property, of men who are safeguarding property for others. This distinction between the general duties of the trustee and his duties with respect to the making of investments is well expressed in *In re Estate of Cook*.[3] In that case the court said: "The rule of a trustee's duty is generally stated to be, that he is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property. When this rule which is applicable to a trustee's duty generally is given specific application

[2] Harden v. Parsons, 1 Eden 145, 148 (1758).

See In re Ebert (In re Cook's Will), 136 N.J. Eq. 123, 40 A.2d 805 (1945), criticizing Lord Northington's statement.

See § 174.

[3] 20 Del. Ch. 123, 125, 171 Atl. 730 (1934), noted in 19 Minn. L. Rev. 347.

See also Marshall v. Frazier, 159 Ore. 491, 80 P.2d 42, 81 P.2d 132 (1938).

to the matter of investments, it needs, for the purposes of the instant case, to be supplemented by at least two observations. The first is, that the external standard of 'such care and skill as a man of ordinary prudence would exercise in dealing with his own property' is not the standard he would use in dealing with his own property if he had only himself to consider. . . . In other words he must take no risks which would not be taken by an ordinarily prudent man who is trustee of another person's property. . . . The next observation to be made is, that the primary object to be attained by a trustee in the matter of investing the funds confided to his control is their safety."

The conduct of the trustee in making an investment is to be judged as of the time when he made it and not as of some later time.[4] It would obviously be unfair to the trustee to hold him liable for a loss which he had no reason to foresee at the time when he made the investment, although after the loss occurred it is possible to see that the causes of the loss were operating at the time when the investment was made. As was pointed out in a case in New York,[5] the facts should be looked at as they existed at the time of their occurrence, not aided by those which subsequently took place, and a wisdom developed after an event, and having it and its consequences as a source, is not a fair standard to apply.

It is difficult, however, for a judge or anyone else to disregard the lesson taught by subsequent events and to put himself in the position in which the trustee was when he acted. Perhaps the most extreme case in which the court judged the event from the aftermath is a case in a lower court in New Jersey where the court said: "It was common knowledge, not only amongst bankers and trust companies, but the general public as well, that the stock market condition at the

[4] *New York:* Matter of Clark, 257 N.Y. 132, 177 N.E. 397, 77 A.L.R. 499 (1931); Matter of Hamersley, 152 Misc. 903, 274 N.Y. Supp. 303 (1934); Guaranty Trust Co. of New York v. Fisk, 244 App. Div. 200, 278 N.Y. Supp. 809 (1935), *aff'd*, 270 N.Y. 550, 200 N.E. 312 (1936); Matter of Bunker, 184 Misc. 316, 56 N.Y.S.2d 746 (1944); Matter of City Bank Farmers Trust Co., 270 App. Div. 572, 61 N.Y.S.2d 484 (1946), *aff'd mem.*, 296 N.Y. 662, 69 N.E.2d 818 (1946); Matter of Ryan, 188 Misc. 61, 69 N.Y.S.2d 416 (1945), *aff'd*, 272 App. Div. 799, 77 N.Y.S.2d 926 (1947).

Pennsylvania: Detre's Estate, 273 Pa. 341, 117 Atl. 54 (1922); McGuffey's Estate, 123 Pa. Super. 432, 187 Atl. 298 (1936) (quoting Restatement of Trusts § 227); Saeger Estates, 340 Pa. 73, 16 A.2d 19, 131 A.L.R. 1152 (1940), noted in 25 Minn. L. Rev. 806, 89 U. Pa. L. Rev. 536.

Wisconsin: Welch v. Welch, 235 Wis. 282, 290 N.W. 758, 293 N.W. 150 (1940) (quoting Restatement of Trusts § 227).

[5] Matter of Clark, 257 N.Y. 132, 177 N.E. 397, 77 A.L.R. 499 (1931).

time of testator's death [1929] was an unhealthy one, that values were very much inflated and that a crash was almost sure to occur." [6] The higher court in New Jersey has condemned this statement.[7] It is easy to see now that the crash in the fall of 1929 was bound to occur either then or at some other time, but the fact remains that reasonable men did not foresee what was to happen.

On the question whether an investment was a prudent one, the testimony of persons expert in financial affairs is admissible.[8] In order to prove that the trustee acted prudently in making an investment in certain securities, evidence is admissible that insurance companies, trust companies, individual trustees and others in making investments have purchased such securities.[9]

Where a trustee makes or is about to make an investment, two questions arise: (1) whether the investment is of the type which trustees can properly make; (2) if it is an investment of that type, whether the particular investment is proper. The answer to the first question often depends upon a statutory provision, or upon the terms of the trust instrument. In the absence of a statutory provision or provision in the trust instrument the courts apply the general rule as to care and skill and caution; but in many states the rule has come to be more or less crystallized, with the result that the courts have come to hold that certain types of investments are proper and other types are not. In any event, the rule as to care and skill and caution is applied when the investment is one of a permitted type and the question is whether the particular investment is proper.

There are two difficulties in dealing with the application of the standard of prudence to trust investments. The first is that there is a tendency on the part of the courts even in the absence of a statute to lay down definite subsidiary rules on what is and what is not a prudent investment. When a certain investment is held in one case to be improper, the courts are likely to treat the case as a precedent holding that no investment of that type is proper. In other words, what was decided in one case as a question of fact tends to be treated as a precedent establishing a rule of law. The other difficulty is that although the question of prudence is one dependent on the time and

[6] In re Chamberlain, 9 N.J. Misc. 809, 810, 156 Atl. 42 (1931).

[7] People's National Bank v. Bichler, 115 N.J. Eq. 617, 172 Atl. 207 (1934).

[8] Chemical Bank & Trust Co. v. Reynaud, 150 Misc. 821, 270 N.Y. Supp. 301 (1933), *aff'd mem.*, 239 App. Div. 904, 265 N.Y. Supp. 944 (1933).

[9] Scoville v. Brock, 81 Vt. 405, 70 Atl. 1014 (1908).

place of the making of an investment, the courts are likely to treat the rules as universal rules. Undoubtedly in recent years there has been a more scientific study of investments, but the results of this study are not always reflected in the cases. The courts are also likely to treat each individual investment separately, instead of considering it in relation to the whole of the trust estate.

In determining the propriety of the securities held by the trustee, it is important to consider the portfolio as a whole, and not merely each individual security.[10] As we shall see, it is important to consider whether there has been a proper diversification of investments.[11] It is also important in determining whether the trustee is impartial as between successive beneficiaries to look at the whole of the portfolio, and not merely to consider whether each investment is sufficiently productive of income.[12]

§ 227.1. Requirement of care. Before making an investment it is the duty of the trustee to use reasonable care in making an investigation as to the safety of the investment and as to the amount of income which will probably be received. He is under a duty to make such an investigation as a prudent man would make under the circumstances. He should take into consideration the past history of any security which he proposes to purchase and its future prospects. His conclusion as to the propriety of the investment will depend upon not merely the facts which he ascertains but the opinion which he forms. In reaching his conclusion he may take into consideration advice given to him by attorneys, bankers, brokers and others whom prudent men in the community regard as qualified to give advice. He is not justified, however, in relying wholly upon the advice of others, since it is his duty to exercise his own judgment in the light of the information and advice which he receives. In relying upon the advice of another, he should consider whether the person giving the advice is disinterested. Thus it has been held that in purchasing securities for the trust he is not justified in relying solely on the advice of a broker interested in the sale of the securities.[1] It is a question of fact in each case whether the trustee has used proper care in making an investment. If he has not used proper care in making an investi-

[10] See § 227.12.

[11] See §§ 228, 230.3, 231.

[12] See §§ 232, 240.

§ 227.1. [1] State v. Washburn, 67 Conn. 187, 34 Atl. 1034 (1896); Cornet v. Cornet, 269 Mo. 298, 190 S.W. 333 (1916).

gation, he is liable for a loss which results from the making of the investment, if a proper investigation would have disclosed that it was not a proper trust investment.[2] On the other hand, if he has made a proper investigation and the investment is not otherwise improper, he is not liable for a resulting loss.[3]

In *Learoyd v. Whiteley*[4] a trustee made a loan upon a brickfield on which the business of brickmaking was carried on. A competent surveyor reported the value of the premises as £7000, including £2000 for the land, £2400 for the buildings and £2600 for the machinery. He advised the trustee that it would be safe to make the loan. The court held that this was an improper investment. Halsbury, L.C., said: "I think it is quite clear that a trustee is entitled to rely upon skilled persons in matters in which he cannot be expected to be experienced. He may perhaps rely upon a lawyer on some

[2] *England:* Fry v. Tapson, 28 Ch. D. 268 (1884) (advice of solicitor); Learoyd v. Whiteley, 12 App. Cas. 727 (1887), *aff'g* In re Whiteley, 33 Ch. D. 347 (1886) (advice of solicitor and valuer).

California: Estate of Hamon, 60 Cal. App. 154, 212 Pac. 399 (1923) (loan on mortgage without investigating nature of the land).

Connecticut: State v. Washburn, 67 Conn. 187, 34 Atl. 1034 (1896) (reliance upon broker's statements).

Delaware: In re Estate of Cook, 20 Del. Ch. 123, 171 Atl. 730 (1934) (purchase on recommendation of broker), noted in 19 Minn. L. Rev. 347.

Maryland: Gilbert v. Kolb, 85 Md. 627, 37 Atl. 423 (1897) (advice of solicitor as to value of land).

Missouri: Cornet v. Cornet, 269 Mo. 298, 190 S.W. 333 (1916) (reliance on broker's statement).

New Jersey: Tuttle v. Gilmore, 36 N.J. Eq. 617 (1883) (no investigation of value of real estate).

New York: Cobb v. Gramatan National Bank & Trust Co., 21 N.Y.S.2d 49 (1940), *aff'd on other grounds*, 261 App. Div. 1086, 26 N.Y.S.2d 917 (1941), *new trial denied*, 262 App. Div. 745, 28 N.Y.S.2d 157 (1941), *leave to appeal granted*, 262 App. Div. 861, 29 N.Y.S.2d 152 (1941) (purchase of mortgage certificate from mortgage and title company relying on its assurances that the mortgage met statutory standards), noted in 41 Colum. L. Rev. 1282.

Pennsylvania: Hart's Estate (No. 1), 203 Pa. 480, 53 Atl. 364 (1902) (no investigation of securities, relying on broker's statement and that of another on whom the settlor was accustomed to rely).

[3] *Maryland:* Fox v. Harris, 141 Md. 495, 119 Atl. 256, 26 A.L.R. 806 (1922) (advice of reputable brokers).

New Jersey: Beam v. Paterson Safe Deposit & Trust Co., 83 N.J. Eq. 628, 92 Atl. 351 (1914) (reliance on representation of reputable bankers).

Ohio: Willis v. Braucher, 79 Ohio St. 290, 87 N.E. 185, 44 L.R.A. (N.S.) 873 (1909) (advice of lawyer of high standing and businessmen).

Pennsylvania: Bartol's Estate, 182 Pa. 407, 38 Atl. 527 (1897) (consultation with businessmen, examination of Poor's Manual and Dun & Co.'s Reports as to railroad bonds); Detre's Estate, 273 Pa. 341, 117 Atl. 54 (1922) (information from reliable brokers and others).

Vermont: Scoville v. Brock, 81 Vt. 405, 70 Atl. 1014 (1908) (evidence of general reputation of securities and opinion of financier).

See § 204.

[4] 12 App. Cas. 727, 731 (1887), *aff'g* In re Whiteley, 33 Ch. D. 347 (1886).

matters of law, and in this case I do not deny that he would be entitled to rely on a valuer upon a pure question of valuation. But unless one examines with reference to what question the skilled person gives advice it is possible to confuse the reliance which may be properly placed upon the skill of a skilled person with the judgment which the trustee himself is bound to form on the subject of the performance of his trust. I do not think it is true to say that one is entitled to consider the special qualities or degree of intelligence of the particular trustee. Persons who accept that office must be supposed to accept it with the responsibility at all events for the possession of ordinary care and prudence."

§ 227.2. Requirement of skill. A trustee is under a duty not merely to exercise care in investigating a proposed investment, but he must also exercise a reasonable degree of skill. The standard is an external standard, that of the reasonably prudent man. It is no excuse that he does not possess the necessary degree of skill. On the other hand, if in fact he is more skillful than the average prudent man, he must exercise the skill which he has. It would seem also that where the trustee has secured his appointment as trustee by representing that he has a certain amount of skill, he may incur a liability if he fails to exercise the skill which he represented that he had. In a number of cases the court has expressed the opinion that a corporate trustee, a bank or trust company, may be held to a higher standard of care and skill than that which is required of individual trustees.[1]

§ 227.3. Requirement of caution. It is not enough that the trustee in investing trust funds uses care and skill. A man of business in investing his own funds, or even a speculator, may use a high degree of care and skill in attempting to increase the value of his estate. In so doing, however, he may take risks which a trustee is not justified in taking. The primary purpose of a trustee should be to preserve the trust estate, while receiving a reasonable amount of income, rather than to take risks for the purpose of increasing the principal or income. In other words, a trustee must be not merely careful and skillful but also cautious. It is difficult to state rules as to the amount of caution which a trustee must exercise without expressing the matter in a circular manner. It is certainly true that he

§ 227.2. [1] See § 174.1.

must exercise the caution which a reasonable trustee would exercise. It is possible to get outside the circle by saying that it is his duty to make such investments as a prudent man would make of his own property having primarily in view the preservation of the estate and the amount and regularity of the income to be derived. This statement of the rule has been criticized on the ground that investments made by individuals are in fact quite different from those made by trustees. To a certain extent this is probably so; but the reason is that the application of the general rule tends to become crystallized into more definite subsidiary rules as a result of the decisions of the courts in the various states. This will appear in the following sections.

In the leading case of *King v. Talbot*[1] the court said: "It therefore, does not follow, that, because prudent men may, and often do, conduct their own affairs with the hope of growing rich, and therein take the hazard of adventures which they deem hopeful, trustees may do the same; the preservation of the fund, and the procurement of a just income therefrom, are primary objects of the creation of the trust itself, and are to be primarily regarded."

Perhaps as good a statement of the rule as any is that of Lindley, L.J., in *In re Whiteley*.[2] He said: "The duty of a trustee is not to take such care only as a prudent man would take if he had only himself to consider; the duty rather is to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide." In other words the standard is that of the prudent family man.[3]

Of course this does not mean that a prudent trustee never takes any risks whatever. The future can never be predicted with certainty and all life involves risks. The question, like most questions, is one of degree. It cannot even be said that a trustee must always take the least risk possible. Even if government bonds were conceded to be securities as to which the risk of loss is at a minimum, a trustee is not bound to invest the whole of the trust estate or indeed any part of the trust estate in such bonds. There are other securities which yield a higher return as to which the element of risk is sufficiently small so as to make them proper trust investments.

§ 227.3. [1] 40 N.Y. 76 (1869).

[2] 33 Ch. D. 347, 355 (1886), *aff'd sub nom.* Learoyd v. Whiteley, 12 App. Cas. 727 (1887).

[3] See In re Ebert (In re Cook's Will), 136 N.J. Eq. 123, 40 A.2d 805 (1945) (citing the text).

a debt owing from the owner of the land to the trust estate, where he has no other means of collecting the debt.[9] This is an application of the rule that a trustee can properly compromise a claim if in so doing he exercises reasonable prudence.[10] So also it would seem that where the trust estate includes an undivided interest in a piece of land, the trustee may properly purchase the other undivided interest for the trust, since he can dispose of the whole interest more profitably than he can dispose of an undivided interest.[11]

There is a question whether a trustee can properly purchase a house as a residence for the income beneficiary. It has been held that such a purchase is not authorized.[12] So also, it has been held that ordinarily a trustee cannot properly erect a house as a residence for the beneficiaries, even though he is empowered to invade the principal for their support.[13] It would seem, however, that there is no absolute rule prohibiting the acquisition of such a residence where under all the circumstances it is reasonable to do so.

§ 227.7. Mortgages. Although a trustee can properly invest trust funds in a first mortgage on land, provided that he lends no more than a proper proportion of the value of the land, it is ordinarily improper to invest in second or other junior mortgages.[1] Even

[9] Foscue v. Lyon, 55 Ala. 440, 455 (1876).

[10] See § 192.

[11] Pine v. White, 175 Mass. 585, 56 N.E. 967 (1900). See § 170.21, note 23.

By New York Decedent Estate Law, § 127(2)(c), as inserted by Laws 1964, c. 681, a fiduciary is authorized to acquire the remaining undivided interest in an estate or trust asset in which the fiduciary, in his fiduciary capacity, holds an undivided interest.

[12] See Smith v. Robinson, 83 N.J. Eq. 384, 90 Atl. 1063 (1914); In re Ahrend, 99 N.J. Eq. 328, 132 Atl. 458 (1926).

In In re Bricklayers' Local No. 1 of Pa. Welfare Fund, 159 F. Supp. 38 (E.D. Pa. 1958), the court permitted the trustees of a union welfare fund to purchase land for the purpose of providing quarters.

In In re Power, [1947] Ch. 572, noted in 21 Aust. L.J. 238, 97 L.J. 629, 63 L.Q. Rev. 421, 204 L.T. 53, 207 id. 80, 91 Sol. J. 454, 540, 92 id. 79, where a trustee was empowered to invest moneys requiring to be invested in any manner he might in his absolute discretion think fit, "including the purchase of freehold property," it was held that he was not empowered to purchase a freehold house as a home for the beneficiaries since this was not a purchase by way of investment.

[13] Smith v. Paquin, 325 Mass. 231, 90 N.E.2d 1 (1950).

§ 227.7. [1] *Delaware:* In re Estate of Cook, 20 Del. Ch. 123, 171 Atl. 730 (1934), noted in 19 Minn. L. Rev. 347.

Indiana: Shuey v. Latta, 90 Ind. 136 (1883); Slauter v. Favorite, 107 Ind. 291, 4 N.E. 880, 57 Am. Rep. 106 (1886).

Iowa: In re Estate of Johnston, 198 Iowa 1372, 201 N.W. 72 (1924).

Kentucky: Davis v. Woods, 273 Ky. 210, 115 S.W.2d 1043 (1938).

Maine: Hanscom v. Marston, 82 Me. 288, 297, 91 Atl. 460 (1890); Mattocks

though the value of the land is so great in proportion to the amount of the prior mortgage that there would seem to be a sufficient margin of safety, the difficulty is that a junior encumbrancer cannot control the situation, and there is always the possibility that the senior encumbrancer may foreclose and the junior encumbrance may be cut off. In some circumstances, however, it has been held proper for a trustee to take a junior mortgage.[2] Thus where he holds a claim in trust which is not otherwise collectible, it may be proper to take a second mortgage from the obligor to secure the claim.[3] So also under some circumstances it has been held proper for a trustee who is authorized to sell land to take a purchase-money mortgage even though there is a prior mortgage outstanding. This is true, however, only in exceptional circumstances where the taking of such a mortgage is necessary to effect a sale, since ordinarily it is the duty of a trustee who has a power of sale to sell for cash.[4]

It has been held that it is improper for a trustee to invest trust funds in an equitable mortgage.[5] Such a mortgage does not cut off prior equities, and is itself liable to be cut off by a transfer of the

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v. Moulton, 84 Me. 545, 24 Atl. 1004 (1892).

Maryland: Gilbert v. Kolb, 85 Md. 627, 37 Atl. 423 (1897).

Michigan: Roberts v. Michigan Trust Co., 273 Mich. 91, 262 N.W. 744 (1935), noted in 34 Mich. L. Rev. 898.

New Jersey: Tuttle v. Gilmore, 36 N.J. Eq. 617 (1883).

New York: King v. Mackellar, 109 N.Y. 215, 16 N.E. 201 (1888); National Surety Co. v. Manhattan Mortgage Co., 185 App. Div. 733, 174 N.Y. Supp. 9 (1919), *aff'd*, 230 N.Y. 545, 130 N.E. 887 (1920).

North Carolina: McEachern v. Stewart, 114 N.C. 370, 19 S.E. 702 (1894).

North Dakota: Huso v. Jasper, 48 N.D. 102, 183 N.W. 366 (1921).

Oregon: Roach's Estate, 50 Ore. 179, 92 Pac. 118 (1907).

South Dakota: Dye v. Dodd, 55 S.D. 429, 226 N.W. 565 (1929).

Wisconsin: Estate of Dreier, 204 Wis. 221, 235 N.W. 439 (1931).

[2] *Massachusetts:* Taft v. Smith, 186 Mass. 31, 70 N.E. 1031 (1904) (trustees sold a farm subject to a first mortgage and took a note for a part of the purchase price secured by a second mortgage).

New York: In re Blauvelt, 2 Connoly 458, 20 N.Y. Supp. 119 (1890) (purchase-money mortgage).

Pennsylvania: Jacks' Appeal, 94 Pa. 367 (1880) (accepting junior mortgage from predecessor).

In Pike v. Camden Trust Co., 128 N.J. Eq. 414, 16 A.2d 634 (1940), it was held that a trustee which invested in participation certificates on premises which were encumbered by a small municipal lien for an unpaid tax assessment was not subject to a surcharge. The mortgage was for $200,000 and the assessment was for $3200 and the mortgagor had promised to pay it if in a pending appeal it was decided that the assessment was valid. The trust instrument permitted the investment in nonlegals.

[3] See §§ 177, 192.

[4] See § 190.7.

[5] Webb v. Ledsam, 1 K. & J. 385 (1855); Swaffield v. Nelson, [1876] W.N. 255; In re Turner, [1897] 1 Ch. 536.

legal title to a bona fide purchaser. Such an investment is peculiarly dangerous in England in the absence of a recording system. So also it has been held in England improper for a trustee to take a mortgage of a leasehold interest.[6] By statute, however, such mortgages are now permitted in England in the case of an unexpired term of not less than two hundred years and not subject to a reservation of rent greater than a shilling a year.[7]

Questions as to investments in first mortgages on land,[8] and as to mortgage participations,[9] are dealt with elsewhere.

§ 227.8. Unsecured loans. It has been held that it is improper for a trustee to lend trust funds without security, either to an individual or to a firm or to a corporation.[1] In a state where a trustee can properly invest in such securities as those in which a prudent man would invest, however, it is not necessarily improper to invest in unsecured obligations, such as corporate debentures, if they are of such a character that a prudent man would purchase them.[2] As we have seen, a deposit in a bank, although it is an unsecured loan, is proper as a method of safekeeping of trust funds; and even as an investment, a deposit in a savings bank or a time deposit in a com-

[6] In re Boyd's Settled Estates, 14 Ch. D. 626 (1880).

See 44 L.R.A. (N.S.) 873, 917 (1913).

[7] See Trustee Act, 1925, 15 Geo. V, c. 19, § 5.

See the Trustee Investments Act, 1961, 9 & 10 Eliz. II, c. 62, enlarging the scope of trust investments.

[8] See §§ 229, 229.1.

[9] See § 227.9.

§ 227.8. [1] *England:* Holmes v. Dring, 2 Cox Eq. Cas. 1 (1788).

Connecticut: Rogers v. English, 130 Conn. 332, 33 A.2d 540, 147 A.L.R. 812 (1943) (citing the text).

Delaware: In re Estate of Cook, 20 Del. Ch. 123, 171 Atl. 730 (1934), noted in 19 Minn. L. Rev. 347.

Maine: Mattocks v. Moulton, 84 Me. 545, 24 Atl. 1004 (1892).

Maryland: Hunt v. Gontrum, 80 Md. 64, 30 Atl. 620 (1894).

Massachusetts: Brigham v. Morgan, 185 Mass. 27, 39, 69 N.E. 418 (1904).

Michigan: Michigan Home Missionary Society v. Corning, 164 Mich. 395, 129 N.W. 686 (1911).

Missouri: Cornet v. Cornet, 269 Mo. 298, 190 S.W. 333 (1916).

Oregon: Roach's Estate, 50 Ore. 179, 92 Pac. 118 (1907); Marshall v. Frazier, 159 Ore. 491, 80 P.2d 42, 81 P.2d 132 (1938).

Pennsylvania: Pew Trust, 16 D. & C. 2d 1 (Pa. 1958), *aff'd*, 398 Pa. 523, 158 A.2d 552 (1960) (unsecured loan to income beneficiary).

Wisconsin: Simmons v. Oliver, 74 Wis. 633, 43 N.W. 561 (1889); In re Allis's Estate, 123 Wis. 223, 101 N.W. 365 (1904).

A loan to the trustee individually is obviously improper. Dufford v. Smith, 46 N.J. Eq. 216, 18 Atl. 1052 (1889); Brewster v. Demarest, 48 N.J. Eq. 559, 23 Atl. 271 (1891).

See also Cunningham v. Cunningham, 215 Ala. 484, 111 So. 208 (1927) (loan to a corporation in which the trustee was interested). See § 170.17.

[2] In re Estate of Cook, 20 Del. Ch. 123, 171 Atl. 730 (1934), noted in 19 Minn. L. Rev. 347.

August 2, 1977

Memo to: TERRY GARDINER

Re: RENEWABLE RESOURCES DEVELOPMENT FUND

This memo is for the purposes of boiling down the results of our meetings in Juneau and Ketchikan and the conversations and/or meetings we have had in the last 10 days with the following people:

Bob Dupere
Bob Laresche
The Governor
Jim Edenso
Tom Singer
John Williams
John Sund
Pat Rodey
Bill Bernier
John Sackett
Rob Koscis
George Hohman
Russ Meekins
Bill Miles
Clark Gruening
Jim Rhode
Steve Cowper
Walt Parker

Research and Development Committee

It should be noted that all of the discussions with these key people require a follow-up on our part and theirs. Those people from the Executive Branch are vital to the success of our plan regarding research and cooperation prior to the next session. The people from the Senate are integral on all levels and will be active in studying capital needs in renewable resource development. The House members, staff and consultants are seen as the key players in developing the structure and planning policy. I intend to use the above names as a partial mailing list for all further memos regarding the development fund.

A. As I interpret the basic plan, it is to include three major areas of work:

(1) Renewable Resource Development Planning. Our meetings exposed the need for a comprehensive planning system for renewable resource development. DNR, DPDP, and private consultants will provide a lot of assistance here, and the Research and Development Committee and the Senate to a lesser degree.

The concept of a Research and Development Council to hone the leading edge of the Development Fund has initiated widespread interest. However, it has also made clear that we are weak in the area of a planning system, and it is quite probable we must seek some aid through a contractual proposal.

(2) Present Fiscal Needs and Tools. We have had no information about fiscal needs or the lack of from anyone not connected with the banking profession, except for in-house staff work. The Senate should be a lot of assistance here. John Williams appears to have the fisheries questions under control. Land, water and non-depleting energy resources have not had the attention they need. Hopefully DPDP and DNR can help us with that.

Present fiscal tools have been superficially analyzed. It is apparent that, since those tools (loan funds, etc.) are spread out through the Executive Branch, there can be no coherent planning system or process that does not pull those tools under one umbrella. This matter has been the subject of previous memos, but I now suggest that we need someone working on a realistic proposal for that umbrella structure. I'll work toward that goal myself, until we can see who would be more qualified to work on such a proposal.

(3) Structure Policy & Development. Heretofore we have looked at several different structures: (1) development bank; (2) corporation; (3) development and conservation fund; and (4) cooperative bank. The obligation of each of those structures is fundamentally different. I now intend to spend most of my time on developing drafts of these different approaches and analyzing the long and short points. I intend to work closely with Bill Bernier on this and see him as a key player.

As I now understand it, the basic plan encompasses what we have been calling a sub-funding mechanism. Beldon Daniels spoke of financial intermediaries, and those words have caught the ears of the players more. We are trying to balance a continuity of development planning policy against legislative interest in meeting regional needs. It appears that the creation of an intermediary, with funding through legislative appropriation, may be a good balance. Accordingly, I intend to begin drafting revisions to the RRDF to provide for such an approach.

Revenue basically proposed an intermediary for the Permanent Fund, but suggested autonomy that many in the legislative body did not approve of. After our meetings with Jim Edenso, I suggested that Revenue can be of the biggest help in this matter of concern.

B. Regarding the budget for this plan, I feel the following factors are relevant:

(1) We will need an RFP for a consultant on a Renewable Resource Development Planning System.

(2) Analyzing structure policy will call for accountability and evaluation measure research. Tom Singer has and can help us in this matter, but, as we discussed earlier, it appears that we may have to travel to Washington and Boston to meet with the people Guy Martin and Beldon Daniels have recommended.

(3) Since the Permanent Fund structure is taking shape differently than the RRDF, Juneau is the apparent center of action. I anticipate that you, I, and several members of the Committee should spend more time there. I suggest at least 1 week a month for me. We can coordinate that time with other time demands in Juneau to defray costs, but we should set a work schedule now.

Douglas Pope