

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Mike Menge
Commissioner
Department of Natural Resources

DATE: July 10, 2006

FILE NO.: 661-04-0160

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FROM: John T. Baker
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SUBJECT: Title to Land Held by
Mental Health Trust

Sabrina E.L. Fernandez
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Natural Resources, Anchorage

You have requested an opinion on the extent to which the Alaska Mental Health Trust Authority (“Trust Authority”) holds title to Alaska Mental Health Trust (“Trust”) land distinctly from the State of Alaska, such that the Trust Authority should be deemed eligible to participate in the U.S. Forest Service’s Forest Legacy Program. Eligibility in the Forest Legacy Program is a determination ultimately committed to Forest Service administrators. Particularly when viewed from the context of the purposes of that program, Alaska Supreme Court rulings and statutory provisions demonstrate that the Trust Authority must, and in fact does, hold and manage Trust land distinctly from the State of Alaska and its primary realty agent, the Department of Natural Resources (“DNR”). The Trust Authority and Trust land should be found eligible for the Forest Legacy Program.

The Forest Legacy Program was authorized by Section 7 of the Cooperative Forestry Assistance Act of 1978, as amended,¹ to protect environmentally important forest areas that are threatened by conversion to non-forest uses. The program allows the use of federal grant funds to acquire fee or conservation easement interests in such threatened areas. Grant funds may be provided directly to a state to acquire threatened non-state land within that state.² The Trust Authority owns a significant amount of forested land in Alaska that may “have significant environmental values” or may be “threatened by present or future conversion to [non-forest] uses,” such as residential subdivisions, commercial development, or mining.³ If Trust land is not eligible for the

¹ 16 U.S.C. 2103c *et seq.*

² 16 U.S.C. 2103c (l).

³ 16 U.S.C. 2103c (c).

Forest Legacy Program, then the goals of the program may be thwarted when Trust land is managed and developed as required for revenue generating purposes.

The requirement to manage Trust land for revenue generating purposes arises from federal law. Congress before statehood enacted the Alaska Mental Health Enabling Act of 1956,⁴ which granted to the territory of Alaska one million acres of federal land to be held in a public trust for the benefit of mental health programs.⁵ This federal land grant was confirmed and transferred to the State of Alaska by section 6(k) of the Alaska Statehood Act.⁶ When the Alaska Legislature attempted in 1978 legislation to redesignate Trust lands as general state public domain lands (“State lands”) that could be used to promote broader public interest concerns without paying compensation, a group of Trust beneficiaries sued the State. The Alaska Supreme Court in 1985 found that Congress intended to create a trust to which private trust law principles applied.⁷ The Court also found the legislative attempt to redesignate Trust land to be a breach of trust.⁸

After many more years of litigation, a settlement was reached to cure the breach of trust and establish proper trust management over the trust corpus, including all reconstituted Trust land. The settlement and settlement legislation implemented several key components, three of which we believe are particularly relevant to why Trust land should be eligible for participation in the Forest Legacy Program.

First, the settlement establishes that the Trust Authority is the trustee of the Trust.⁹

Second, the settlement required that title to Trust land be conveyed to Trust Authority by at least one recorded quitclaim deed.¹⁰

Third, the settlement imposes on the Trust Authority the “fiduciary obligation to ensure that the assets of the trust are managed consistent with the requirements of the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956).”¹¹ The Trust Authority contracts with the Alaska Permanent Fund Corporation to manage the cash

⁴ Pub. L. No. 84-830, 70 Stat. 709 (1956).

⁵ See Section 202(e) of the Alaska Mental Health Enabling Act of 1956.

⁶ Pub. L. No. 85-508, 72 Stat. 339 (1956).

⁷ *State v. Weiss*, 706 P.2d 681, 683 n. 3 (Alaska 1985).

⁸ *Id.* at 683.

⁹ AS 37.14.007.

¹⁰ AS 37.14.010 (a)(2).

¹¹ AS 37.14.010(a)(1).

corpus of the Trust and with DNR to manage the land corpus of the Trust.¹² In order to manage the land corpus, consisting of roughly one million acres of Trust land throughout Alaska, a separate Trust Land Office (“TLO”) was established within DNR.

These three key components of the mental health trust settlement ensure that Trust lands will be administered primarily for development and revenue generating purposes, separately and differently from the management of State lands for broader public interest purposes. Implementing regulations based on private trust principles require that the Trust land be managed with the goal of “maximiz[ing] long-term revenue from Trust land” and “encourag[ing] a diversity of revenue-producing uses of Trust land[.]”¹³ Because the TLO is required to follow a management strategy designed to maximize revenue from land assets, the Trust’s forested lands face an ongoing threat of transfer into private ownership and conversion to non-forest uses, such as residential and commercial development. The Forest Legacy Program was intended to prevent this very result.

In summary, title to Alaska Mental Health Trust lands is held by the Trust Authority, separately from lands commonly understood to be State lands. Trust lands are also managed distinctly from State lands, under private trust principles requiring a maximum return from land assets. As such, we conclude that Trust lands should be found eligible for participation in the Forest Legacy Program to further the purposes of that program.

If you have further questions, please do not hesitate to contact this office.

cc: Marty Rutherford
Executive Director, TLO

Jerry Lewanski
Director, DPOR

¹² *Weiss*, 939 P.2d at 385.

¹³ 11 AAC 99.020(c).