

## **Lessons Learned from the Alaska Mental Health Trust<sup>1,2</sup>**

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### **Introduction**

The ways in which we manage our natural resources have become one of the key political debates of our time (Acheson 2000, Mundy 1999, Abbott et al. 1997, Alston et al. 1996, Souder and Fairfax 1996, North 1993, Ostrom 1990, Francis 1990, and Mitchell 1989). Four very different kinds of institutions have been used to manage natural resources including markets, property rights, government, and communal management (Acheson 2000). Questions abound about what kind of institution is most efficient for governing and managing natural resources. Acheson (2000) argues that while there is a tendency for social scientists to “lionize one or the other” of these, none of them provide a universal solution. He points out that one of the critical questions that social scientists need to answer is when and under what conditions each of these kinds of institutions succeed or fail in providing for the long-term sustainable use of natural resources.

In this brief case study, we examine one particular institution—the Alaska Mental Health Trust Land Office (TLO) and look at their institutional structure and identify some of the conditions that allow them to succeed or fail. The TLO is a relatively new

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<sup>1</sup> Views expressed are those of the authors and do not represent any other person or organization.

<sup>2</sup> Comments welcome.

organization, established in 1995, but the state trust land concept has been in use in the U.S. for over 200 years. The state trust land concept blends various gradations of public and private ownership and provides a useful model for a discussion of institutional structure as it relates to sustainable management of natural resources. Trusts provide a unique way of dividing ownership from the management authority and from the benefits resulting from management of trust resources. Trusts also provide distinctive measures for evaluating the success of management activities and for holding managers accountable to the stated goals.

Trust principles provide a different, alternative institutional design worthy of study for common property resources. The following discussion on state land trusts and the TLO is based on Souder and Fairfax's tenets of a clearly defined land trust and Ostrom's (1990) definition of "institution." Trust principles include clarity, undivided loyalty, accountability, enforceability, and perpetuity (Souder and Fairfax 1996, 2000). Ostrom defines institutions as:

Sets of working rules used to determine who is eligible to make decisions, what actions are allowed or constrained, what aggregation rules will be used, what procedures must be followed, what information must be provided and what payoffs will be assigned.

One of the reasons that state trusts can be so good at what they do is that the trust principles specify their working rules very clearly, particularly in terms of who is eligible to make decisions, what actions are allowed, the rules and procedures to be followed, information provided, and who receives the payoffs or benefits. In a state land trust, a trustee holds and manages the property under very exacting rules for the exclusive benefit of the designated beneficiary. This fiduciary relationship between the trustee and the designated beneficiary is what makes trust lands different from other state lands.

Ostrom proposes a collective action model for self governance of common property resources. She stresses that what advocates of centralization, privatization, and regulation have over looked is that under certain conditions communities of individuals through collective action can organize themselves to retain the residuals of their own efforts without destroying the resource. We believe that the Alaska Mental Health Trust through several of its programs working with local communities demonstrates that such self governance options do not have to be restricted to small rural communities of fishers and water users.

The TLO is a small nine-person special unit in the Alaska Department of Natural Resources (DNR) that is responsible for management of approximately one million acres of land dispersed throughout the State. While the TLO manages only one million acres of Alaska's 375 million acre land base, the amount of land and resources managed by state trusts nationwide is significant. According to the Western State Land Commissioners Association (WSLCA 2003), 146 million acres of federally granted surface lands are managed by 23 state trust programs. Some states like Alaska have more than one state trust managed by separate entities or institutions.<sup>3</sup>

Table 1 compares the amount of acreage for two Alaska state land trusts with total trust acreage in 23 western states and the amount of acreage managed nationwide by four federal land management agencies. There are wide variations in institutional arrangements between states and even between trusts within states which provide opportunities for comparison of outcomes for various types of institutional arrangements

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<sup>3</sup> The University of Alaska Land Management Office manages approximately 183,000 acres of land owned by the University of Alaska. Approximately 170,000 acres of this land is designated as investment property and 13,000 acres is designated as educational property.

and decision making processes between state and federal management programs and between states.

**Table 1. Acreage in Trust Lands and Federal Land Management Agencies**

Institution	Amount of Acreage
Alaska Mental Health Trust	1,000,000
University of Alaska Land Trust	183,000
Trust Programs 23 Western States	146,000,000
U.S. Forest Service	192,000,000
National Park Service	80,000,000
Fish and Wildlife Service	100,000,000
Bureau of Land Management	270,000,000

Source: Souder and Fairfax (1996) and Western State Land Commissioners Association (2003).

Land ownership in Alaska is a mixture of legal interests that are conditional rather than absolute. In classical economic literature, property rights refer to an individual's or group's ability to use and control valuable resources. An examination of TLO activities helps demonstrate that contemporary property is not so much a "bundle of rights" residing in a single owner, but rather a series of separable rights often held by a "bundle of owners." Some interests are more private, others more public. The misperception that land ownership must be firmly public or private limits consideration of potential policy options that could be used for a wide variety of present day problems related to use of natural resources (Geisler and Daneker 2000).

Alaska became the 49<sup>th</sup> state in 1959. Until 1960, the federal government owned over 99 percent of Alaska's 375 million acres. Land distribution was driven by the push for statehood, oil exploration and development, the 1971 Alaska Native Claims Settlement Act (ANCSA PL92-203),<sup>4</sup> and the 1980 Alaska National Interest Lands

<sup>4</sup> Alaska Native Claims Settlement Act (43 USC 1601-1629e) -- Public Law 92-203, approved December 18, 1971 (85 STAT. 688), and repeatedly amended, authorized Alaska Natives to select and receive title to 44 million acres of public land in Alaska, and \$962,000,000 in cash as settlement of their aboriginal claim to

Conservation Act (ANILCA, PL96 - 487).<sup>5</sup> Table 2 shows land ownership patterns for the State comparing 1960 and 2000. While the amount of federal land has decreased since Statehood from 99 percent to around 65 percent, the vast majority of Alaska lands are still in public ownership. State ownership accounts for approximately 24 percent of total land area. Alaska Native corporations hold by far the largest amount of private land in the State because they were awarded 44 million acres under ANCSA. Other private interests hold approximately 1.8 million acres—less than one percent. Alaska has the lowest percent of total lands in private ownership of any of the states.

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land in the State. The Act established a system of village and regional Alaska Native corporations to manage the lands and cash payments, and made extensive provisions regarding the operations of the corporations. Section 17 (d) 2 of the Act directed the Secretary of the Interior to withdraw 80 million acres of significant federal lands from development to be available for potential congressional designation as national parks, wildlife refuges, wild and scenic rivers, or national forests.

<sup>5</sup> Alaska National Interest Lands Conservation Act Public Law 94-487) approved December 2, 1980 (94 STAT. 2371), and repeatedly amended, was one of most ambitious conservation initiatives ever enacted through establishment and protection of large, "unrivaled" conservation system units and their associated resources, and the assurance that local rural residents engaged in a subsistence way of life have the opportunity to continue to do so. The Act protected over 100 million acres of federal lands in Alaska expanding the national park system in Alaska by over 43 million acres, creating 10 new national parks and increasing acreage in three existing units.

**Table 2. Alaska Land Ownership, 1960 and 2000**

	1960		2000	
	Acres (Million)	% of Total Acres	(Million)	% of Total
<b>Federal</b>				
Public Domain (BLM)	290.3	77.2	61.4	16.5
Wildlife Refuges	18.7	5.0	76.5	20.5
Parks, Preserves, Monuments	7.5	2.0	52	14.0
National Forests, Monuments	20.7	5.5	22	5.9
National Conservation and Recreation Acres	0.0	0.0	2.2	0.6
National Petroleum Reserve	23.0	6.1	23	6.2
Military Reserves	2.6	0.7	1.8	0.5
Native Reserves	4.1	1.1	0.1	0.0
Other Withdrawals	7.5	2.0	2.6	0.7
Total Federal Lands	374.4	99.6	241.6	64.8
<b>State Lands</b>				
General State Land	0.0	0.0	77.9	20.9
State Parks	0.0	0.0	3.3	0.9
State Game Refuges, Sanctuaries	0.0	0.0	3.2	0.9
State Forests	0.0	0.0	2.6	0.7
Total State Lands	0.0	0.0	89.2	23.9
<b>Private Lands</b>				
Alaska Native Corporations	0.0	0.0	37.4	10.0
Other Private	0.5	0.1	1.8	0.5
State Land Programs	0.0	0.0	0.8	0.2
Municipal Land Sales	0.0	0.0	0.1	1.0>
Total Private Lands	0.5	0.1	40.1	10.8
<b>Other Lands</b>				
Mental Health Trust Land	1.0	0.3	1	0.3
University of Alaska Land	0.2	0.0	0.2	0.0
Municipal Lands	1.2	0.3	1.8	0.5
Total Other Lands	1.2	0.3	1.8	0.5
<b>Total Alaska Lands</b>	<b>376.1</b>	<b>100.0</b>	<b>372.7</b>	<b>100.0</b>

Source: Teresa Hull and Linda Leask. "Dividing Alaska, 1867-2000: Changing Land Ownership and Management. *Alaska Review of Social and Economic Conditions*. Institute of Social and Economic Research, University of Alaska Anchorage, November 2000.

Note: The size most commonly quoted for Alaska is 375 million acre. Amounts cited above vary in part because some agencies count submerged lands and others do not. The number of acres in the table include only land patented at that time. For example under ANCSA Alaska Native Corporations are to receive 44 million acres, but only 37 million have been patented. The State has received about 90 million of the approximately 104 million granted at statehood.

### **How and Why Was the Alaska Mental Land Trust Authority Set Up?**

Before Alaska was a state, mental health services were not available in the Territory of Alaska and mentally ill residents were sent to Morningside Hospital in Portland, Oregon. As part of the transition to statehood, the U.S. Congress enacted the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709) in 1956 granting the Territory of Alaska the right to select one million acres of the best available land to establish a trust benefiting mental health programs. The responsibility for providing mental health services was transferred from the federal government to the Territory of Alaska by creation of the Alaska Mental Health Trust. The Alaska Mental Health Trust Authority selected some of the most easily accessible and saleable lands close to towns and the road system.

However, while the state legislature had a fiduciary responsibility to manage the lands as a trust to fund mental health services for Alaskans, it did not do so. In 1978, the State purported to abolish the Mental Health Trust because of pressures to make trust lands available for private development and recreational purposes particularly around the more urban areas of the state. Mental Health Trust lands were redesignated by the legislature as "general grant land" to "be managed and disposed of by the DNR."<sup>6</sup> By 1982, when the *Weiss v. State* lawsuit was filed to regain control of the assets on behalf of the beneficiaries, 50,000 acres had been transferred to individuals; 40,000 acres transferred to municipalities, and 350,000 acres designated by the Alaska State legislature

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<sup>6</sup> *Weiss v. State* (5/2/97), 939 P 2d 380.

as forests, parks, or wildlife areas. Approximately 35 percent of unencumbered original trust lands remained in state ownership.<sup>7</sup>

In 1985, the Alaska Supreme Court ruled that legislation abolishing the Trust was illegal and ordered the Trust to be reconstituted. The lawsuit was not settled until December 1994, after almost a decade of negotiations. The final settlement reconstructed the Trust with approximately 500,000 acres of original trust land, 500,000 acres of replacement land, and \$200 million dollars in cash. The settlement required appointment of an independent board of trustees and creation of a separate unit within the DNR for management of Trust lands.

In early 1995, an independent board of seven trustees was appointed by the governor and confirmed by the Alaska legislature. The TLO was established in 1995 within the DNR through a Memorandum of Understanding and Reimbursable Services Agreement, which was updated in April 2002. The Trust's \$200 million cash settlement was transferred to the Alaska Permanent Fund Corporation for management as a co-mingled monetary asset. In that first year, the Trust earned \$6.7 million in interest on the original settlement and \$380,000 in revenues from Trust land.

The Trust works with four advisory boards including the Alaska Mental Health Board (AMHB). The AMHB is the state planning and coordinating agency and advocate for clients of the state mental health program and *beneficiaries of the Alaska Mental Health Trust* [emphasis added] under federal and state laws. The board assists the Trust and the state with an integrated Comprehensive Mental health Program (AMHB 2003). Among its powers, duties, and responsibilities are the following items of note:

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<sup>7</sup> Weiss v. State (5/2/97), 939 P 2d 380



- Advocate for the needs of Alaskans with mental disorders before the governor, executive agencies, the legislature, and the public
- Advise the legislature, the governor, the Alaska Mental Health Trust Authority, and other state agencies
- Provide to the Alaska Mental health Trust Authority recommendations concerning the integrated comprehensive mental health program for those Alaskan described in AS 47.30.056(b)(1) and the use of money in the mental health trust income account

The AMHB has 12 to 16 members appointed by the Governor, and must represent population and geographic balance in these appointments. Additional specific requirements include:

- At least one-half of AMHB members must be consumers of mental health services, or parent or guardians of consumers
- At least two members must be licensed mental health professionals representing public and private providers of mental health services and may also be parents or guardians to consumers

The remaining members represent the public at large and at least one must be licensed to practice law in Alaska.

### **What Is a State Land Trust?**

The initial statute that established the school land grant program in the U.S. was part of the 1785 General Land Ordinance which also provided for the sale of western lands, the rectangular survey, and the reservation of Section 16 out of 36 in each township for the maintenance of public schools. However, it was not until 1803, when Ohio was admitted to the union, that school lands were actually granted to a state at statehood. Over the years, school land grants became larger increasing from one section per one township to four sections per township. Souder and Fairfax (1996) attribute this increase in size to the growing political power of the western states. During the 1800s, land grants were given to states for everything from salt licks, swampland, support of colleges, universities and other institutions, and for the railroads. Alaska received the last

allotment of state trust lands in 1959 at statehood. Alaska’s land selection was not based on townships.

Most school land grants, as is the case with the Alaska Mental Health Trust, appear in the federal Congressional enabling act for the state, which, in turn, are accepted into the state constitution. While the earliest grants were not very specific in regard to management options or principles, more specific language about management of state trust lands appears in later enabling acts (Souder and Fairfax 1996). Each state admitted to the Union between 1803 and 1959 brought with it a different combination of land, resources, and institutions. In 1835, Michigan was the first state to set up a permanent school fund. By 1875, Congress required each new state to set up such a fund. Today, it is generally accepted that states hold trust lands as a beneficial trust for the beneficiaries rather than the public at large, but this was not initially the case. The notion of a “trust” did not become a clear part of the federal land grant process until Arizona and New Mexico were admitted to the Union in 1912. A number of federal and state court cases have provided clarity and direction for the management of state trust lands (Souder and Fairfax 1996).

The fiduciary relationship between the trustee and the designated beneficiary is what makes trust lands different from other state lands. The trustee holds and manages the property under very exacting rules for the exclusive benefit of the designated beneficiary. Trust rules are fairly simple, focusing on assuring that the trustee does not enrich himself or herself or others by using trust resources, that trust resources are not frittered away through excessive manipulation, and that the trust is not allowed to lie

fallow and be wasted (Souder and Fairfax 1996). Trusts are best understood as an element of private law—a special kind of contract that can be enforced in the courts.

One of the most fundamental questions that must be answered for state land trust management is whether to sell trust lands and invest the receipts or to retain ownership and manage the lands (Souder and Fairfax 1996). States that became part of the Union before 1850 sold off all or most of their school trust lands. Some states including Arizona, Montana, New Mexico, Washington, and Wyoming today manage more acres of land than provided to them in their original land grants.

The Alaska Mental Health Trust Authority regards their land as part of their overall investment portfolio. The Trust recently adopted a long-term asset management strategy, emphasizing, among other things, leasing over sales and cost effective value enhancement prior to lease or sale of Trust resources. Additionally, the strategy establishes that TLO transaction outcomes should compare favorably to the long-term total rate of return of the Alaska Permanent Fund Corporation, which manages the cash assets of the Trust. Finally, the plan establishes a priority for land management and a development focus, with the first priority based on “best market” lands, second priority on “emerging market” lands, and the third priority being on “long-term management” lands.

The prioritization of management/development efforts provides a framework that is essential in the context of limited management resources and seemingly limitless land resources to be managed. For example, preparing land for sale, holding auctions, and administering sale contracts can generate high transaction costs. The number of Trust acres sold in any given year is limited by a variety of factors, including existing market

places, market conditions, development costs, and competition. Therefore, it is essential that the TLO prioritizes its focus in a manner that ensures reasonable returns related to the necessary development, marketing, and administration costs.

Once the decision has been made to retain land, a trust has three ways to produce revenues from the land (Souder and Fairfax 1996):

1. Hire their own labor and use their own capital to develop their own resources.
2. Rent or lease the lands to others who produce commodities from the land. In return the trust receives a fixed amount of return.
3. Share the costs, responsibilities, and risks for development of resources with others and share the returns.

U.S. federal land management agencies and many state land agencies forgo the first option in part because as the land owner and developer an agency assumes all the risk. In option two, the risk is assumed by whoever leases the land. In option three, risk is shared.

While the working rules of a trust such as the TLO make the TLO cautious and risk adverse, these working rules also provide the TLO with flexibility to take advantage of market conditions. Most TLO lands, like federal lands, are managed through a process of leasing. But the TLO has exercised option one above by developing and marketing subdivisions and through the purchase and development of commercial property.

The TLO has initiated activities that probably could not get beyond the discussion stage for some federal land management agencies and even other state agencies. For example, the TLO will soon be moving into a building they own and manage. This happened through a series of fortuitous events that demonstrate some of the differences between federal land management agencies and state trust land offices. A TLO employee

noticed property for sale in downtown Anchorage next to unimproved Trust property. The TLO, in consultation with the Trustees, negotiated the purchase of the property with the long-term goal of enhancing the value of the Trust's adjacent property. The plan was to make nominal improvements to the buildings on the property and lease the property with a projected annual rate of return of about eight percent.

The longer-term plan was to redevelop the assembled properties once the acquisition investment had paid itself off. As it turned out, the TLO was asked to vacate their office space to make room for the newly established Habitat Division of the DNR. So, the TLO plans to become the anchor tenant of their own property. This plan is still within the context of reasonable rates of return to the Trust as to the acquisition cost, because they will use rents that the TLO would likely pay elsewhere in the rate of return calculation.

Sometimes the TLO is constrained by the more rigid state land agencies policies used on state lands. The lease rate that may be appropriate for a state agency that wants to generate economic opportunities for the State may not be same rate or structure as most appropriate for use on state trust lands. For example, the TLO leases approximately 1,700 acres to Fairbanks Gold Mining, Inc. (FGMI) a wholly owned subsidiary of Kinross Gold U.S.A., Inc. for a large-scale open pit gold mine. The mine has been in operation since December 1996 when the first gold was poured.

The Mental Health Trust inherited the existing state mining lease so TLO revenues are tied directly to the land lease (also called a use charge) for the open pit gold and the mill site. An amended and restated lease was signed on July 8, 2002. The TLO receives approximately \$150,000 in annual lease payments. The TLO also realizes a

small annual amount from royalty sales of rock and gravel from the mine sold to the Alaska Railroad Corporation and others for rail ballast and highway construction. Additionally, the TLO will receive revenues in the form of mining royalties after the large capital costs for the Fort Knox mining operations are fully depreciated.

However, if the lease was based on a “net smelter” royalty basis (tied to operating revenues and operating costs), it would generate substantially more revenue for the TLO. In contrast to the lease with FGMI, the TLO negotiated in 2000, the first placer gold lease on Trust lands, that requires a percentage of gross royalty, rather than the percentage of net income royalty required on general State lands.

The mission of DNR who negotiated the original lease with FGMI is quite different from the mission of the TLO. DNR’s mission is “to develop, conserve, and enhance natural resources for present and future Alaskans.” DNR manages all state-owned land, water, and natural resources except for fish and game. Their goal is encourage the wise development of natural resources by making them available for public use. A state agency such as DNR is willing to essentially subsidize a private company like FGMI by offering favorable lease rates because of the economic benefits generated for the State. FGMI receives a subsidy that lowers the risk in developing the mineral resources. In return, the State receives jobs.

### **How Should State Land Trusts Be Evaluated?**

Five principles or clearly defined tenets underlie trust resource management: clarity, undivided loyalty, accountability, enforceability, and perpetuity (Souder and Fairfax 1996). These basic tenets are critical not only to maximizing benefits for

beneficiaries but are central to designing institutions capable of sustainable resource management.

The singularity of purpose and enforceability of the trust mandate make the incentives in trust management inherently different from the incentives that result from the available discretion and multiple use mandate of federal land management agencies. Trusts like the Alaska Mental Health Trust with their fiduciary relationship offer both a businesslike approach to program analysis found in market approaches or private ownership while at the same time offering the clarity of purpose and reliance on the courts for enforcement associated with government ownership (Fairfax and Guenzler 2001). State trust lands management is not to be confused with “land trusts” which are usually set up to protect land from all development.

### **Clarity**

Clarity of purpose is a key characteristic of trusts arising from the authority of the trustor’s stated purpose (Souder and Fairfax 2000). An obligation exists for trust resources to be managed for the benefit of beneficiary. Benefit is typically defined in terms of monetary returns to the beneficiaries (Souder and Fairfax 1996). Under the legislative and regulatory requirements of the Alaska Mental Health Trust, Trust lands are managed in accordance with state law (AS 38.05.801) **solely** (emphasis added) in the best interest of the Alaska Mental Health Trust and its beneficiaries. Trust assets are used to produce income to help ensure a comprehensive integrated mental health program for Trust beneficiaries. Trust beneficiaries are Alaskans who experience mental illness;

developmental disabilities; chronic alcoholism with psychosis; or Alzheimer's disease and related dementia.<sup>8</sup>

Regulations also provide that the following principles be used to guide TLO actions in determining the best interest of the Trust and its beneficiaries and in determining consistency between state law and the 1956 Alaska Mental Health Enabling Act (P.L. 84-830).

- Maximization of long-term revenue from trust land
- Protection of the corpus
- Protection and enhancement of the long-term productivity of trust
- Encouragement of a diversity of revenue-producing uses of trust land

### **Undivided Loyalty**

Tied to clarity of purpose in trust management is the notion of undivided loyalty—the trustee is strictly forbidden from diverting trust resources from the designated beneficiaries to others, unless compensated. The notion of undivided loyalty is an important principle of trusts—the trustee is strictly forbidden from diverting trust resources from the designated beneficiaries to others. Trusts are barred from actions that impose restrictions or impede long-term maximization of revenues in order to achieve a collateral or general benefit for another party (Souder and Fairfax 1996). Free riding is thus prohibited. Free riding is an economic theory that, in general terms, holds that those who do not contribute to some project or endeavor (public good) might nevertheless

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<sup>8</sup> Beneficiaries of the Alaska Mental Health Trust are, by law and regulation, those Alaskans with mental retardation or similar disabilities, mental illness, chronic alcoholism with psychosis, and Alzheimer's disease or related dementia, four separate beneficiary groups that are relatively broad. Alaska law defines mental illness as a particular set of mental disorders: schizophrenia, delusional (paranoid) disorder, mood disorders, anxiety disorders, somatoform disorders, organic mental disorders, personality disorders, dissociative disorders, other psychotic or severe and persistent mental disorders manifesting behavioral changes and symptoms comparable in severity to the above disorders; and childhood disorders manifested by behaviors or symptom suggesting risk of developing one of the preceding mental disorders.



benefit from it. However, the concept of undivided loyalty does not mean that an investment or activity is not allowed if it coincidentally benefits some group other than the designated beneficiary of the trust.

Clarity and the notion of undivided loyalty differentiate trust land management from federal land management (Souder and Fairfax 1996). For example, the stated mission of the TLO is to:

- Protect and enhance the value of Alaska Mental Health Trust Lands
- Maximize revenues from Trust Lands over time.

Contrast the clarity and transparency of the TLO's mission with the mission of the United States Forest Service (USFS) as it appears in their strategic plan (2002).

- Working with people to sustain the health, productivity and diversity of the land for the use and enjoyment of present and future generations.

According to the Forest Service's Strategic Plan, the beneficiaries of the USFS are as vague and ambiguous as "people" or "present and future generations."

Instead of undivided loyalty, USFS and Bureau of Land Management lands are managed for multiple use goals and objectives as defined by the Multiple Use Sustained Yield Act of 1960 (P.L. 104-333) and as outlined in forest and resource management plans. Inherent in management for multiple use is the division of loyalty on the part of the management agency, because one class of user or beneficiary must compete with other users for benefits.

### **Accountability**

Accountability is another important principle of state land trust management, based on the reasonable assumption that the trustee is better informed than the beneficiary. Accountability refers to the obligations of trustees to maintain extensive records, which can be used by beneficiaries to monitor and evaluate the trustees'

activities and performance. The clarity of purpose of the trust and the accountability requirements facilitate evaluation of whether trust goals and objectives have been realized. In contrast, the USFS continually struggles to identify “measurements of interest” that can be used in monitoring annual performance for individual objectives listed in their Land and Resource Management Plans.

The amount of information provided by each trust varies, but at a minimum, trust principles require the disclosure of the amounts of revenues received, their destinations, and the amount spent on land management activities. Revenue generating uses of Alaska Mental Health Trust Land include land sales, commercial timber sales, mineral exploration and production, oil and gas exploration, land leasing, sales of sand, gravel and rock and other general uses. Rents and fees from Trust land uses are considered “distributable income” and are forwarded to the Trust for use the following year. Land sale revenues, hydrocarbon and mineral royalties, and 85 percent of timber revenues are considered “principal” and are forwarded to the Trust with 3.5 percent of the balance of the principal account (including Trust land principal from prior years) available for use by the Trust each year.

In Fiscal Year 2002, the TLO generated \$7.7 million in gross revenues, with \$5.2 million being Principal and \$2.5 million being Income. TLO gross revenues provide a significant portion of the revenues that are available for distribution by the Trust. For example in Fiscal Year 2002, the Trust reported that \$14.3 million would be available for distribution the following year. The TLO contributed about 20 percent of this amount through the \$2.5 million in Fiscal Year 2002 rents, fees and interest, and interest from

TLO revenues that were deposited in the Trust’s Principal Fund in prior years. The following table illustrates this outcome.

**Table 3. Trust Land Office Fiscal Year 2002 Income**

Revenue Source	\$ Million
Trust Land Rents, Fees and Interest	2.5
3.5 Percent of Cumulative TLO Principal Account Deposits	.6
3.5 Percent on Non-Trust Land Principal Account Balance	11.2
Total Income	14.3

Source: Alaska Mental Health Trust Authority. Winter 2002. *Trustworthy*.

State trusts also differ from other land management agencies because of the composition of the trust corpus. State land trusts are accountable for more than just their land management activities. Their assets include not only lands and resources granted by the federal government to be sold or leased, but also a permanent fund established to hold in trust receipts from lands sales and leases. While the natural resource assets of the Alaska Mental Health Trust are managed by the TLO, the financial assets of the Trust are managed by the Alaska Permanent Fund Corporation on behalf of the Trust.

Under section 37.13.300 of Alaska’s Statutes, the Alaska Permanent Fund Corporation<sup>9</sup> manages the mental health trust in accordance with the corporations other provisions. Co-mingling the Trust’s funds with the Permanent Fund has provided the

<sup>9</sup> In 1976, Alaska’s voters approved a constitutional amendment that stated at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue-sharing payments, and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investment is specifically designated by law as eligible for permanent fund investments (Constitution of Alaska, Article IX, Section 15, Alaska Permanent Fund).

Voters established the Permanent Fund as a public trust, meaning the principal would be invested for its beneficiaries, Alaska’s citizens and the State of Alaska. The principal is invested permanently and cannot be spent without a voter-approved change to Alaska’s Constitution. However, earnings may be distributed by the Alaska State Legislature and the Governor. In addition, Alaska’s citizens have supported inflation proofing of the Fund, by retaining a portion of Fund income each year to offset inflation.

Trust and the Trust's beneficiaries with a level of experience and expertise that would have been difficult to achieve on its own. The Trust's use of the Permanent Fund has removed a major burden for the Trust's officer and directors. Investment decisions, advice, and day-to-day management of the corpus are assigned to others and the Trust is able to focus more directly on its management and programs. The assets of the Alaska Permanent Fund were estimated at \$24.1 billion on July 24, 2003. The total fund return over the past 18.5 years has been 10.2 percent, against a benchmark of 10.9 percent. Inflation over the same period has been 3.4 percent. This suggests the Fund's real rate of return has been 7.5 percent, well above its target of 5 percent.

Permanent funds as a component of a trust's portfolio have frequently been ignored by trustees, beneficiaries, and the public alike to the detriment of profitability (Souder and Fairfax 1996). Many states have restrictions on the investment of trust land permanent funds and as a result many of these funds cannot keep up with inflation. Indeed, trusts can and have been crippled by unreasonable restrictions on investment of trust funds. For example, some funds have been restricted to investment in government bonds or first farm mortgages.

State trusts can be viewed as peculiar institutions that put the institution and a pool of money beyond the reach of subsequent decision makers—the governor or the legislature—by tying the money and those who administer the trust as tightly as possible to the achievement of a specific, clearly stated purpose (Souder and Fairfax 1996). This long-term stability is another important distinction between state trust lands and other land management agencies.

For example, the more traditional way used to address agency accountability and to try and control public agencies is to allow the executive branch or the legislature the opportunity to define and redefine the goals of an agency by making changes in allocation of staff and budgets. For example, this spring, the Governor of Alaska issued an executive order to eliminate the Habitat Division of the Alaska Department of Fish and Game in order to reallocate permitting responsibilities. Permitting responsibilities for development projects in place to protect freshwater anadromous fish habitat were transferred from the Department of Fish and Game to the DNR. Such actions can hinder the ability of agencies to maintain consistency in their state purpose.

### **Enforceability**

The clarity of purpose of the trust and the accountability requirements facilitate the monitoring of trust goals and objectives. The trust's goals are legally enforceable because trust doctrine allows the beneficiary or others with an identifiable interest to sue to enforce the terms of the trust. This is what happened in Alaska in 1982. A father filed suit on behalf of his son who needed mental health services that were not available in Alaska in 1982. The suit alleged that the state breached the public trust by failing to account for revenues, using revenues for purposes other than mental health care, and passing legislation redesignating mental health trust land as "general grant land."

However, it should be acknowledged that the principle of enforceability depends on the presence of a beneficiary interested and able to be vigilant in monitoring trust activities (Souder and Fairfax 1996).

### **Perpetuity**

The final component of trust land management is perpetuity. State public land trusts are different from private trusts in that the trustee has responsibility for future

generations. Private trusts usually have a finite term usually limited to the current generation and perhaps their children. Preserving the productive capacity of the corpus of the trust (lands and permanent fund) in perpetuity with even flows over time is one of any trustee's fundamental obligations. It can be argued that the tenet of perpetuity provides a way to measure "sustainability" of resource use. In other arenas, it has been difficult to come up with an accepted definition of "sustainability."

While it is the duty of the manager to make the trust productive in terms of revenue, the trustee of state trust lands is not required to maximize current revenues at the expense of preserving the productivity of the trust for future generations. There is an emphasis in land trust management on sustainability to both preserve the productive capacity of the trust, lands and permanent fund, and to stabilize fluctuations in annual revenues. This commitment to perpetuity supports the concept of long-term sustainable use of natural resources. For example, in some parts of the country where the revenue potential of large blocks of trust land is low, trust lands have been leased to state and wildlife agencies for habitat enhance. Such a lease does not preclude the land being used for other purposes.

Souder and Fairfax (1996) argue that the existence and purpose of state land trusts provides incentives to treat the resources of the trust as a portfolio of assets that change over time.

### **What Is the Relationship Between Trust Goals and Public Benefits?**

While the operations of the TLO are legally tied to trust principles and maximizing net revenues, Alaska Mental Health Trust activities and lands have provided significant benefits to Alaska communities. Maximizing net revenues means that the TLO

evaluates impacts of decisions on both revenues and costs. If the TLO becomes involved in lengthy litigation with local communities or individuals, their transaction costs increase considerably and can negatively affect their net revenues and the returns to their beneficiaries.

One problem faced by state trusts lands across the nation and by the TLO is the tension that frequently exists between the need to serve the beneficiaries and pressures from local communities for public benefits. Trust lands are often considered common pool resources by one group and private resources by another. Communities or national interest groups can view their connection to trust lands in a fundamentally different way than they are viewed by the trust.

State trust lands are public lands and resources but they are managed according to private trust principles. The TLO's goal is to maximize net revenues—to increase the productivity of its entire portfolio—over time. In terms of sustainable use or the provision of a public good, maximizing net revenues over time can be quite different from maximizing profits on every individual transaction. The goal of maximizing net revenue over time gives the TLO room to maneuver in a particular place at a particular time. While conservation and other public goals appear to be antithetical to trust principles as described, the incentives that result from a system that maximizes net revenues over time can generate positive benefits for both beneficiaries and the public at large.

Maximizing net revenues means the TLO evaluates impacts of decisions on both revenues and costs. If the TLO becomes involved in lengthy litigation with local communities or individuals, their transaction costs increase considerably and can negatively affect their net revenues and the returns to their beneficiaries. The incentives

built into trust management encourage the TLO to participate with local communities. The TLO has worked in creative and collaborative ways that not only provide the potential to increase their net revenues but also provide benefits for local communities using a collective action model of self governance as outlined by Ostrom (1990). A couple of examples follow.

Sometimes the TLO maximizes net revenues by minimizing potential costs. For example, the City of Sitka wanted an easement for a trail used by residents to climb Mt. Verstovia. However, the City did not have money to pay for the easement. On the other hand, it would have been very expensive, if not physically impossible, for the TLO to deny access to local residents who have been using the trail for years. At the same time, the TLO was at risk in terms of liability from use of the trail. The City of Sitka and the TLO negotiated a strategy whereby the City received the easement without paying cash, but at the same assumed responsibility for maintenance of the trail and all liability. The arrangement also included the stipulation that the TLO could move the easement elsewhere when and if they develop TLO lands in the area. The value of potential risk and maintenance costs was transferred to the City of Sitka. This is a decision that could not have been made by the TLO if their actions were constrained by the goal to maximize revenues on each and every transaction.

In another example, the TLO has inaugurated a program to find buyers for Trust lands that have significant conservation values. The first transaction in this program occurred in 2000 when the Trust sold 160 acres of prime brown bear habitat on the Kenai Peninsula to the Nature Conservancy.



One of the first tasks undertaken by the TLO after it was formed in 1995 was to conduct a high-level inventory of its one million acres, cataloging known resources (including timber, oil and gas, minerals, and real estate potential), and setting priorities for development. The TLO found that approximately 9,000 acres of community sensitive TLO lands are located in vicinity of the communities of Gustavus, Ketchikan, Petersburg, and Sitka. While development of these lands would have detrimental affects on the long-term social and economic well being of local communities, preventing development would negatively affect the Trust's ability to maximize long-term net revenues. These lands included the watershed of the Southeast Alaska community of Petersburg, the waterfront area of the community of Gustavus, high value salmon streams, the view shed of Sitka, and other areas with considerable historic or recreational value. The Trust acknowledged that potential conflicts with local communities could make it difficult for the Trust to develop these lands and to generate revenue for their beneficiaries.

A solution was found that benefits all the major stakeholders—a way to generate revenue for the Trust without developing the lands. TLO staff met with community representatives and entered into good-neighbor Memorandums of Understanding (MOU). These MOUs provided a basis for the Community Enhancement Initiative program. The TLO then hired a Juneau-based contractor to visit communities such as Petersburg, Wrangell, Sitka, Ketchikan and Juneau and to provide an analysis of community concerns to the TLO.

Following that report, the TLO contracted with an appraiser in Sitka for a relative estimate of value. After values were approximated, affected communities were urged to take the lead on marketing lands for possible buy-outs, exchanges, or other treatment.

Potential funding sources identified included the Nature Conservancy, the U.S. Forest Service, the U.S. Park Service and the Land and Water Conservation Fund.

As envisioned by the Trust's Land Office, the CEI would establish a process for local communities to:

1. Identify Trust lands in the local area that the community felt should be retained for public use
2. Establish a support base within the community as well as outside of it to acquire the land
3. Buy these lands from the Trust

Since that time over a 1,000 acres of high priority land Trust lands as identified by the Community of Gustavus have been purchased with funding from the U.S. Fish and Wildlife Service, the Nature Conservancy, Ducks Unlimited, and the Gustavus Land Legacy.

In conclusion, while the TLO is still a young organization, they have begun to develop their land, often in creative ways while preserving community values. Trust managers have demonstrated an ability to generate revenue while avoiding significant controversy. TLO activities help to demonstrate that trust principles can be used to support the sustainable use of natural resources.

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