

PRELIMINARY FINDING AND DECISION
CONVEYANCE OF STATE REPLACEMENT LAND TO THE
MENTAL HEALTH TRUST AUTHORITY

ADL 229606

December 2005

Proposed Action. This Preliminary Finding and Decision (PFD) identifies 66 parcels of state land totaling about 16,040 acres that may be transferred to the Mental Health Trust Authority (Trust), to compensate the Trust for other parcels of state land that were conveyed in error by the Department of Natural Resources (DNR) or that have been determined to contain hazardous substances. The value of the state land that may be conveyed to the Trust is estimated to be up to 6.42 million dollars.

These parcels of state land, termed Nominated Replacement Land (NRL)¹, consist of the fee estate, mineral estate, or the hydrocarbon portion of the mineral estate, with most this acreage associated with the mineral estate (6,400 acres) and the fee estate (7,404 acres). The two mineral estate parcels occur west of the Nenana area while the fee estate parcels are scattered throughout the Northern, Southcentral, and Southeastern Regions of the state. The single parcel involving the selection of the hydrocarbon portion of the mineral estate occurs in the Knik area, north of Anchorage, and consists of 2,236 acres. The value of the proposed NRL parcels identified exceeds the value of the former Trust land that is being returned to DNR by about 1.15 million dollars. NRL fee estate parcels are estimated to have a value of 6.42 million dollars and the value of the Trust land being returned is estimated at 5.272 million dollars. DNR proposes to select, following public and agency review and consultation with the Mental Health Trust Land Office (TLO), those parcels of Replacement Land² for immediate conveyance to the Trust Authority that equal the value of the former Trust land (5.272 million dollars) and meet the ‘best interest finding’ requirement of AS 38.05.035. These parcels will be conveyed to the Trust within a five-year period from the date of approval of the Final Finding and Decision.

DNR has identified additional parcels for potential conveyance to Trust over the next eight year period if additional parcels of Trust Land are determined during that period to contain hazardous substances or were conveyed in error by the state. The value of these

¹ Nominated Replacement Land: Land (fee estate, mineral estate, and the hydrocarbon portion of the mineral estate) nominated by DNR or the TLO for consideration in a PFD with the intention of being used to compensate the Trust for designated mental health parcels previously determined to have been improperly conveyed or to contain hazardous materials.

² Replacement Land: Land (fee estate, mineral estate, and the hydrocarbon portion of the mineral estate) that have been accepted by DNR in a Final Finding and Decision that are to be used to compensate the Trust for designated mental health parcels previously determined to have been improperly conveyed or to contain hazardous materials. Replacement Land will be conveyed to the Trust within a 5-year period from the date of approval of the Final Finding and Decision.

Potential Replacement Land (PRL)³ parcels is approximately 01.152 million dollars. These parcels are to be ranked in order of importance by the TLO and DNR in the Final Finding and Decision (FFD), with the intent that should additional Replacement Land need to be transferred to the Trust over the next eight year period, they are to be conveyed according to this ranking. Since 1998, numerous additional parcels of Trust Land were found to have been conveyed in error or to contain hazardous materials, and therefore it is almost certain that some of the PRL reserve will need to be used.

Prior Replacement Land Decision

This decision proceeds a prior DNR action to convey Replacement Land to the Trust. The previous action occurred in October 1998 and is explained in more depth later in the section 'Land Conveyed in Error or with Hazardous Materials'. This decision continues the format and approach of the previous Preliminary Finding and Decision. It retains the small number of parcels that were included in the 1998 decision but were not conveyed to the Trust and adds parcels in order to meet the probable replacement value of 5.272 million dollars and provide a land reserve in the event that more parcels are found to have been conveyed in error or that contain hazardous materials subsequent to this decision.

Authority

DNR proposes to convey state land to the Trust Authority in accordance with Section 40, Chapter 5, FSSLA (1994) as amended by Sections 4 and 5, Chapter 1, SSLA 1994; the Settlement Agreement between the state and the Settling Plaintiffs (Articles III and IV(4); AS 38.05.801(b)2 and 3; AS 38.05.035(e); and AS 38.50. These documents are available for review at the address given in the Public Notice paragraph of this decision.

Administrative Record

The administrative record includes parcel files of each tract of state land under consideration for conveyance. These files are available in the Resource Assessment and Development Section of the Division of Mining, Land, and Water. Also incorporated by reference are applicable DNR area plans, the Settlement Agreement between the state and the Settling Plaintiffs (June 1994), Department Order #142 (Management of Mental Health Trust Land), and Replacement Land Process (January 2, 2000) between the Division of Mining, Land, and Water and the Trust Land Office.

³ Potential Replacement Land: Land (fee estate, mineral estate, and the hydrocarbon portion of the mineral estate) that have been accepted by DNR in a Final Finding and Decision that may be used to compensate the Trust for mental health parcels determined to have been improperly conveyed or to contain hazardous materials within a eight year period from the date of the approval of the Final Finding and Decision that is issued by DNR.

Scope of Decision

The scope of this decision is limited to deciding if it is in the best interest of the state to convey certain lands, or interests in land, to the Trust in order to satisfy the state's obligation to compensate the Trust for parcels conveyed in error or that contain hazardous substances. It also includes the determination of whether it is in the state's best interest to pre-identify additional state lands for possible conveyance to the Trust if it is later determined that additional Trust land contains hazardous substances or were conveyed in error during the settlement process and therefore require replacement in value.

Background

Mental Health Legislation and Settlement Agreement

After a series of failed attempts, the State was successful in reconstituting the Mental Health Trust in 1994. Under the enacting legislation⁴, approximately 570,900 acres of Original Trust Land were returned to the Trust and an additional 423,300 acres of other state land were designated as Trust Land.

A Settlement Agreement between the State of Alaska and certain settling plaintiffs to the Mental Health litigation preceded this legislation and was the basis, in part, for the enacting legislation. The Settlement Agreement recognized that, given the large number of parcels and their associated acreage, errors in conveyance, such as conveying parcels that already had been conveyed or committed to use by other parties, were likely. It provided⁵ that the Trust was to return such parcels to the state and that the DNR is to convey state land of equal value and similar character to the Trust. The Settlement Agreement also established the procedures that were to be followed in the event that hazardous materials were discovered on land that had been conveyed to the Trust Authority. Under this protocol, the state could either remediate the affected area(s) or could replace it with state land of equal value and similar character.

The requirements of the Settlement Agreement were made more explicit in two subsequent documents, DNR Department Order #142, which dealt in part with the management of Trust Land and with the requirement for replacement land, and a document between DMLW and TLO titled 'Replacement Land Process'⁶. The latter describes in detail the processes to be followed in identification of possible replacement land and its subsequent conveyance.

⁴ SCS CSHB 201(FIN, 1994 SLA and SB 382, Second Special Session, 1994)

⁵ Article III, "Provisions for Technical Corrections to List of Lands" in the "Settlement Agreement and Stipulations to Terms of Dismissal" in Civil case No. 4FA-82-2208 in the Superior Court of the Fourth Judicial District. (June 10, 1994).

⁶ Letter of Concurrence: Replacement Land Process dated January 5, 2000.

Requirement for Replacement Land

Under the terms of both the Settlement Agreement and the Replacement Land Process, the state is required to replace, with land of equivalent value and generally equal revenue potential, land conveyed in error by DNR to the Trust. The state is also responsible for replacing land conveyed to the Trust but that has subsequently been determined to contain hazardous substances.⁷ In almost all cases DNR will elect to provide Replacement Land rather than undertake the costs of remediation on parcels found to contain hazardous substances. This decision assumes that DNR will elect to replace such land rather than remediate the hazardous materials found on such parcels.

Land Conveyed in Error or with Hazardous Materials

As a result of an audit of land conveyed by the state to the Trust following the 1994 Settlement, it was determined that DNR had conveyed land in error to the Trust. The value of the parcels (fee estate) was estimated at \$616,200, the acreage of mineral estate parcels at 766 acres, and the acreage of the hydrocarbon estate at 5020 acres.⁸ DNR issued a Final Finding and Decision in October 1998 that established the basis for the conveyance of state land to the Trust in fulfillment of the state's obligation under the Settlement Agreement.⁹ Fee estate parcels in the amount of \$616,200 were subsequently conveyed to the Trust. In addition, 5,380 acres of mineral estate and 1,280 acres of hydrocarbon estate were conveyed. The Final Finding and Decision was valid for a period of five years from its date of adoption; it terminated in October 2003.

Since the 1998 decision, additional parcels of Trust Land have been identified that either were conveyed in error or contain hazardous substances. Approximately 130 parcels were conveyed in error and 10 parcels have been determined to contain hazardous materials, or at least a portion of the parcels were determined to contain such materials. The parcels conveyed in error total approximately 1,500 acres and have an estimated value of 2.66 million dollars. Parcels containing hazardous materials comprise about 950 acres and have an estimated value of 1.08 million dollars. In addition, DNR had previously agreed to compensate the Trust for parcels that had been already returned by the Trust; this amount is 0.673 million dollars. The total value of these parcels is 4.413 million dollars, and they comprise over 2,450 acres.

The state is required to convey state land to the Trust worth at least this value. To do so, the state must go through a formal 'best interest finding' determination under AS 38.05.035(e) since the 1998 decision has expired and since a new and significantly larger number of Nominated Replacement Land parcels are identified for possible

⁷ Article IV(4) of the aforementioned Settlement Agreement. The term 'subsequently' means after September 29, 1994.

⁸ Because of the difficulty in establishing the value of mineral estate and hydrocarbon estate parcels DNR and the TLO mutually agreed to use acreage as the basis for determining the amount of land to be conveyed to the Trust. Subsurface areas were to be similar in character and location to the areas that were determined to have been conveyed in error.

⁹ Final Finding and Decision (ADL 227494, dated October 1998)

conveyance. This decision uses a replacement value of \$5.272 million, in order to provide a parcel reserve in the event that additional state land is found to have been conveyed in error or to contain hazardous materials.

Nominated Replacement Land

Under Department Order 142, 'Management of Mental Health Trust Land', either the TLO or DNR may nominate new land to be included in a pool of Replacement Lands. These lands are termed 'Nominated Replacement Land'. DNR may not object to the parcels nominated by the TLO unless the value of the selected replacement parcels exceeds the value of the parcels that have been determined to have been conveyed in error or contain hazardous materials. Nominated Replacement Land parcels with values in excess of the latter may be approved for conveyance if this is consistent with the Settlement Agreement and both parties agree. The PFD includes those Nominated Land Parcels that have been found to be generally appropriate for conveyance, pending the results of the agency and public review processes.

The Trust Land Office has advanced a variety of parcels, scattered throughout the more developed parts of the state, as Nominated Replacement Land (NRL). Most of these are fee estate parcels, although a few are mineral estate (only) and hydrocarbon estate (only). NRL parcels are identified in Appendix A which provides a generalized description of the more important aspects of these parcels. It identifies their general location, nearest community, Meridian/Township/Range, their legal description, type of estate, acreage, and estimated value. Appendix B gives a more detailed description of these parcels, location, geography, resources, access and encumbrances. Location maps and individual parcel or parcel group maps can also be found in Appendix B.

Fee Estate Parcels. Generally, the majority of Nominated Replacement Land parcels that are fee estate either surround or border Trust land, or occur as enclaves within Trust land. There are some parcels that, in addition, are proposed either because they were included on the 1998 Replacement Land List, are intended to reconfigure Trust land into more manageable units, or are necessary to provide sufficient value to meet the estimated replacement value. The fee estate parcels comprise 7,404 acres, with the majority being of very small size (generally less than 10 acres), and have an estimated value of 6.424 million dollars. These parcels are distributed throughout the state with concentrations occurring around the Fairbanks area and Healy and within the Northern Region, around Willow in Southcentral and most notably in Southeast Alaska, near Ketchikan, Petersburg, and on Prince of Wales Island.

Mineral Estate Parcels. Two large, abutting tracts, comprising 6,400 acres, are identified as Mineral Estate only parcels. Situated directly west of Nenana, these parcels were nominated to deal with the possibility that future title problems may be encountered with state land conveyed as Mineral Estate to the Trust and because of the potential value of the hydrocarbon resources that exist in this location. This area is situated within the Nenana geologic basin, which has a high probability for the presence of both gas source rocks and reservoir rocks. In recently passed legislation (2005), the University of Alaska

was conveyed approximately 90,000 acres within the same geologic basin, primarily because of the potential gas resources of the basin.

Hydrocarbon Estate Parcels. A hydrocarbon estate parcel, totaling 2,235 acres and located near Knik in the Susitna Valley within South-central Alaska, is proposed. No monetary values are assigned to this parcel. This parcel was nominated to provide a reserve of replacement land in the event a Trust parcel of similar type is found to have been conveyed in error.

Description of Nominated Replacement Land Parcels

The description that follows provides a general overview of the parcels that have been advanced as Nominated Replacement Land by the TLO. Additional, more specific information on these parcels is contained within the two appendices. Appendix A provides basic information about parcels, including general location and nearest community, legal description, type of estate (fee, mineral, or hydrocarbon) and acreage. A more detailed description of these parcels, together with regional and individual parcel maps, is provided in Appendix B. Included in Appendix B is a general description of the parcel, information on acquisition authority, encumbrances that have been identified as affecting a parcel, area plan designation and classifications, local zoning or comprehensive plan designation if they exist, existing uses and improvements if known, access (physical and legal) and other resource information. Appendix B is organized by geographic region: Northern, Southcentral, and Southeast Alaska.

Title

Title. Parcels identified for possible conveyance to the Trust were acquired from the National Forest Community Grant in Southeast Alaska and from General Grant selections in other areas of the state. Except for one parcel west of Nenana, all of the parcels included in this list are owned by the state and may be conveyed to the Trust.

Encumbrances. There are relatively few encumbrances created by DNR that affect these parcels since they have not been developed or used in a significant manner. Most encumbrances that occur relate to easements or right-of-ways for public access.

Specific title acquisition authorities and known encumbrances are identified in Attachment B for specific parcels.

Public Access

Parcels conveyed to the Trust are to be subject to the requirements of AS 38.05.127 ('to and along' easements, corresponding to the requirements in 11 AAC 51.045), AS 19.10.010 (section line easements, corresponding to the requirements in 11 AAC 51.025), and any easement, right-of-way or other access under former 43 U.S.C.932 (sec. 8, Act of July 26, 1866, 14 Stat.253). Generally, 'along' easements are required adjacent to

tidal/submerged waters and adjacent to public and navigable streams. 'To' easements are generally provided by section line easements, where they exist. Section line easements that are surveyed only apply to a small number of parcels. RS2477 routes are those described in the 2001 Report to the Legislature and as depicted on DNR Map Guide software application. The requirements of these types of easements are identified in Attachment B on a parcel specific basis. There may be additional encumbrances that provide access; these are identified in the 'Encumbrance' column of this Attachment.

Planning and Classification

With few exceptions, all of the parcels are affected by DNR area plans. Because of the widespread distribution of the parcels in the decision, a variety of area plans affect the parcels. Area plans, plan designation, land use classification, and local zoning (if applicable) affecting these parcels are identified in Attachment B for specific parcels. The vast majority of the parcels are classified either Settlement or Resource Management. However, although not comprising significant acreage, some of the fee estate NRL parcels are classified Minerals or Wildlife Habitat, and some are not classified at all. Most of the unclassified parcels occur near Kashwitna, north of Willow in Southcentral Alaska. These parcels will be reclassified to Settlement in a Land Classification Order that is to be included within the Final Finding and Decision.

Mineral Closing Order

The Final Finding and Decision will include a mineral closing¹⁰ (MO 1046) that closes Replacement Land and Potential Replacement Land that has been determined to be appropriate for conveyance to the Trust. DNR Department Order 142 requires the Department to close Replacement Land to mineral entry and location until conveyed to the Trust. The purpose of this closure is to ensure that DNR can effectively convey the entirety of the fee estate. The effect of new mining claims would be to diminish the ability of DNR to convey lands approved for conveyance.

Traditional Use Finding

With the exception of the parcels on Prince of Wales Island, all other parcels occur within organized boroughs. Little conflict with traditional uses is expected on the Prince of Wales Island parcels since they are mostly located within established communities, particularly Hollis and Thorne Bay.

Environmental Risk

No known environmental risks are believed to be associated with these parcels. In the event that hazardous materials are subsequently discovered, the Settlement Agreement provides for the re-conveyance of the affected parcels by the Trust back to the state.

¹⁰ Section 7, DNR Department Order 142 (February 11, 1999).

Survey

Not all of the identified NRL parcels have been surveyed, although a substantial number have been surveyed. This, however, is not an issue as AS37.14.009 (a) (4) exempts conveyance to the Trust from survey requirements. The land will, however, have to be surveyed by the Trust Authority or its assigns at the time of project development or land disposal.

Valuation Process

Value estimates for fee estate parcels have been prepared, and the values are indicated for each fee estate parcel of Nominated Replacement Land in Appendix A. DNR and the TLO have agreed to use the values identified during the 1994 settlement process to determine the value of the fee estate parcels that are being returned to DNR as well as applied to Nominated Replacement Land parcels. These values are to a common 1994 base.¹¹ In some instances Nominated Replacement Land parcels may not neatly configure with Original Trust Land or Substitute Land parcels of the 1994 trust reconstitution process; in these instances per acre values from adjacent, similar Original Trust Land or Substitute Land parcels have been applied. Both parties have agreed to the use of these values. Because of the difficulty in estimating the value of the Mineral Estate, the parties have agreed to replace mineral estate and hydrocarbon estate parcels on a 'like-kind', acre for acre basis.

The value of the fee and land estate parcels that require replacement, either because they were conveyed in error or contain hazardous materials is estimated at 4.413 million dollars.¹² Past experience has shown, however, that additional parcels of Trust Land conveyed in error or to containing hazardous substances almost certainly will be found over the next five years, the period of application of this decision for Replacement Land parcels. Given this, both parties have agree to use an value expansion factor of 1.5 for parcels conveyed in error and a value expansion factor of 1.2 for parcels believed to contain hazardous materials. The resultant expanded value is intended to cover the value of those parcels that are determined to meet the standards for replacement in the Replacement Land Process over the next five years but are not identified at this time in the PFD. With these expansion factors applied, the estimated value for current and probably future land needing to be replaced is estimated at 5.272 million dollars.¹³

In addition, DNR has agreed to accept Potential Replacement Parcels in order to ensure that an adequate reserve of state land will exist beyond the first five years of this

¹¹ Replacement Land Process, paragraph VI, 'Conveyance of Replacement Land'.

¹² The final value of the parcels that are being returned to the state because they were conveyed in error may be somewhat different than the 4.12 million dollars estimates after a detailed analysis is conducted by DNR on each parcel submitted for replacement by the TLO, pursuant to the procedures described in Section V, Adjudication Process, of the Replacement Land Process report

¹³ DNR estimates this value at 4.413 million dollars but has agreed to use the larger figure to be conservative in the estimate of replacement value used in this decision, subject to the limitations given in footnote #13.

decision. Pursuant to this decision, DNR can convey these parcels of this type, if needed, to the Trust up to eight years from the date of adoption of the Final Finding and Decision. The value of the PRL parcels is estimated to be 1.15 million dollars. The additional value provided by the RPL parcels is intended to provide flexibility to DNR in making its decision on which parcels are appropriate to convey to the Trust in this decision. It is also intended to provide a 'cushion' in the event that additional parcels are determined to have been conveyed in error or contain hazardous materials and to pre-identify state land that can be used as a future reserve for additional parcels found to have been conveyed in error or to contain hazardous materials past the first five years of this decision.

Because of the difficulty of valuation of mineral and hydrocarbon, DNR and the TLO have agreed that tracts of these types are to be replaced on a 'like-kind', acre for acre basis.¹⁴ Although this PFD does not contain any state land of this type are that are believed to have been conveyed in error, it is probable that over the next five years that such instances may occur. Should this occur, such tracts will be replaced on a 'like-kind', acre by acre basis.

Performance Guarantees

Performance guarantees are not required since no projects are currently planned or scheduled on the Nominated Replacement Land identified in Attachment A. Once a project or further disposal of the land is intended, the Trust may require performance guarantees.

Agency Comments: General

DNR conducted a preliminary review of potential replacement land parcels in early 2003. This review was supplemented by a similar review in early 2005. Both the Southeast Regional Office (SERO) of DMLW as well as the Division of Forestry (DOF) provided extensive comments on a large number of parcels that were under consideration at that time for inclusion as nominated replacement land. Additional comments were provided by the Division of Agriculture (DOA), the Division of Oil and Gas (DOG), and DMLW on parcels that were nominated by the TLO in middle 2005. DOF was concerned with the inclusion of parcels at Control Lake, Exchange Cove, and Thorne Bay. They felt that, should these parcels be conveyed to the Trust, that DNR's timber base in Southeast would be adversely affected. SERO was concerned with parcels at Middle Island (near Sitka), a parcel near Ketchikan, and Lena Creek in Juneau. The DMLW was concerned with a parcel nominated at McLaren summit on the Denali Highway and DOA expressed misgivings about the nomination of fee estate parcels west of Nenana. DOA maintained that these areas (parcels F33024 and F33027) were important agricultural lands and that, if conveyed to the Trust, it would be unlikely that they would be used for agricultural purposes. In addition, DOG and the Alaska Department of Fish and Game (ADF&G) were concerned with TLO selections of the hydrocarbon estate within the Minto Flats State Game Refuge.

¹⁴ DO #142 (paragraph 6) and Replacement Land Process (section VI)

As a result of these comments, and based upon subsequent discussions with the TLO, a number of parcels, or portions of parcels, were dropped and in nearly all instances agency concerns on individual parcels were resolved. In the case of the two parcels occupying state land with agricultural value, the TLO agreed to take only the Mineral Estate, which was acceptable to DOA¹⁵. The parcels that are identified as Nominated Replacement Land in Appendix A are, from a DNR perspective, considered appropriate for conveyance to the Trust, subject to the results of the public and agency review process associated with this decision.

Coastal Zone Consistency Determination

A coastal zone consistency determination is not required for this action. Land conveyed to the Mental Health Trust, including Replacement Land, is categorically exempt from coastal zone consistency review. The actions proposed in this decision fall under the 'A List' category of coastal zone reviews, which lists all actions exempt from coastal zone review.

Potential Replacement Land

Because it is probable that additional parcels of Trust Land conveyed in error to the state or containing hazardous materials are likely to be discovered beyond the next five year period, and possibly beyond that, the parties have agreed that additional parcels can be identified in the PFD/FFD to account for this probability.¹⁶ The value of 5.272 million dollars will be used in the Final Finding to identify Replacement Land and the value of 01.152 million dollars will be used to identify Potential Replacement Land. Replacement Land will be conveyed during the five year period following the date of adoption of the Final Finding. Potential Replacement Land may be transferred to the Trust up to an additional three years following the conveyance of Replacement Land, assuming that a need for these parcels can be justified under the standards of the Replacement Land Process. To accommodate this requirement, the Final Finding and Decision will be effective for eight years, starting from the date of adoption of the FFD.

The FFD will identify those parcels that are to be conveyed to replace those parcels known to have been conveyed in error or are likely to contain hazardous materials. Parcels with a total value of 5.272 million dollars are to be identified for probable conveyance. This listing will be prioritized by the TLO and DNR, with those parcels being conveyed first, ones that both parties agree meet the adjudication tests in the Replacement Land Process or that are confirmed to contain hazardous materials in

¹⁵ Although the intent in the Replacement Land Process is to allow the selection of the mineral estate to compensate for areas of the mineral estate that were conveyed in error to the Trust, because of the concerns expressed by DOA on the conveyance of the fee estate for parcels F33024 and F33027, the DNR and TLO agreed, in this one instance, to use the fee estate values as an estimate of parcel value. Other valuation approaches than that identified in the Replacement Land Process can be used if both parties agree to their use.

¹⁶ Replacement Land Process, VI, Conveyance of Replacement Land.

analyses designed to identify hazardous substances. The FFD, in addition, will identify a prioritized listing of those parcels, totaling 1.152 million dollars, to be identified as Potential Replacement Land. These parcels may not be conveyed to the Trust until the need for these parcels can be established through the normal DNR/TLO adjudication process and all Replacement Land parcels have been conveyed. These parcels will be held by DNR for use as Replacement Land and will be managed pursuant to the requirements of Department Order 142¹⁷.

Alternatives Considered

- A -- Do-nothing Alternative. The state is required under the Settlement Agreement to replace land that was conveyed in error (or was missed during the settlement process) or that contains hazardous substances with land of equal value and generally similar characteristics. The 'do-nothing' alternative cannot therefore be pursued.
- B -- Convey only that land necessary to satisfy the known obligation to the Trust. This alternative assumes that some of the land that is identified in this PFD will be dropped as a result of agency or public review and that DNR should only convey a sufficient number of parcels to satisfy the currently known replacement land value of 4.413 million dollars.

Conveying only those parcels considered appropriate for conveyance and that satisfy the state's current obligation is not considered prudent. Since the last Final Finding dealing with Replacement Land in 1998, additional parcels that were conveyed in error, were missed, or that contain hazardous substances have been found and continue to be found. This usually results from more detailed title research associated with the potential disposal or use of a parcel of Trust land. It can be expected that additional such problems will be discovered over the next five years, especially when parcels are proposed for disposal or development by the TLO.

- C -- Convey state land and pre-identify additional land for possible conveyance up to a value of 6.42 million dollars. This alternative would also require the MHT to prioritize prospective replacement land parcels in the Final Finding – creating one list of parcels to be immediately conveyed to the Trust and another that is to be used as a back-up list in the event that additional parcels are determined to have been conveyed in error or contain hazardous materials and for which the state must provide replacement value. Under this alternative parcels can be conveyed over an eight year period.

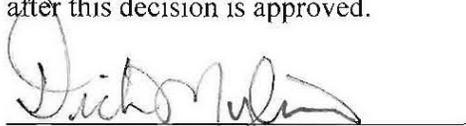
This alternative satisfies the probable replacement land value of \$5.272 million (includes value expansion factors) while also providing an additional \$01.152 million for parcels that may be determined to be needed as Replacement Land

¹⁷ DNR is required to manage these parcels so that permanent encumbrances are not created and disposals of interests in land are precluded.

over the next eight years from the date of adoption of the Final Finding. This approach recognizes the probability that additional parcels with problems related to conveyance and hazardous materials will be found over the next five to eight years. It also allows the state to convey land to the Trust in a systematic manner and without the need for an additional PFD/FFD process.

Preferred Alternative. Alternative C is the preferred alternative. The state is obligated to compensate the Trust when errors and omissions have been discovered, and it is prudent to pre-identify parcels for possible conveyance at a later time. The period of time that is considered appropriate for the conveyance of parcels of Replacement Land is five years from the date of the Final Finding and Decision and up to eight years for Potential Replacement Land. Prioritized lists of Replacement Land and Potential Replacement Land parcels will be identified in the FFD. A Land Classification Order will be included in the FFD that classifies unclassified state land to Settlement and reclassifies state land that is now classified Wildlife Habitat Minerals to, similarly, Settlement. A Mineral Order will also be included in the FFD that closes Replacement Land and Potential Replacement Land to mineral entry and location.

Finding and Preliminary Decision. I find that it is in the best interest of the state to proceed with the recommendations of Alternative C and as further described under 'Preferred Alternative'. The Final Finding and Decision will identify those parcels to be immediately conveyed to the Trust and those that may need to be conveyed to the Trust up to eight years from the date of adoption of the FFD if the state needs to replace Trust land determined to have been conveyed in error or that contain hazardous substances after this decision is approved.



Dick Mylius, Acting Director
Division of Mining, Land, and Water

12-07-05

Date

Public Notice, Decision, and Appeal Procedures

Public notice, required under AS 38.05.945, is now being conducted. Notice will be sent to newspapers (Anchorage Daily News, Juneau Empire, Fairbanks Daily News-Miner, Wrangell Sentinel, Ketchikan Daily News, Cordova Times, Chilkat Valley News, Skagway News, and Island News), post offices, agencies, local governments, and Native organizations. Public notice on the Internet will be posted on the State's web page under *Online Public Notice* and under DNR's public notice site at <http://www.dnr.state.ak.us/pic/pubnotfrm.htm>.

The public is invited to comment on the Preliminary Finding and Decision to convey 66 parcels of state land comprising 16,040 acres to the Mental Health Trust Authority. Any comments must be received in writing or e-mail by the Division of Mining, Land and Water, Attention: Bettie West, 550 W. 7th Avenue, Suite 1050, Anchorage, AK 99501-3579 on or before 5:00 p.m., **January 27, 2005** in order to ensure consideration. If you have any questions concerning this proposed action, please contact Bettie West at 1-907-269-8593 or email bettiew@dnr.state.ak.us

Following the comment deadline, all written responses will be considered and this decision may be modified to incorporate public and agency comments. Subsequently a Final Finding and Decision (FFD) will be issued that evaluates the agency and public comments and that identifies the final recommendations of the Department. The FFD will identify the specific parcels to be conveyed to the Trust and pre-identify those parcels that the state may need to convey to the Trust, if found necessary. Only persons who comment during the public comment period will be eligible to file an administrative appeal of the Final Finding and Decision. A copy of the final decision will be sent to any person who comments on the preliminary decision. The final decision will include appeal instructions.

The Department of Natural Resources is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the department's Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday-Friday, at TDD# 1-907-269-8411.

Attachments:

Attachment A: Parcels Under Consideration for Conveyance

Attachment B: Description of Parcels Under Consideration for Conveyance