

401 F Street
Douglas, Alaska 99824

October 22, 2016

Representative Mike Hawker, Chair
Legislative Budget and Audit Committee
716 W 4th Ave #610
Anchorage, AK 99501

Dear Representative Hawker:

We urge the Legislative Budget and Audit Committee to direct the Division of Legislative Audit to conduct a special audit of the Alaska Mental Health Trust Authority (Trust) board of trustees and its circumvention of AS 37.14.033 which provides that "the mental health trust fund shall be managed by the Alaska Permanent Fund Corporation". Specific authority for such an audit is found at AS 24.20.271(3) which authorizes the division, "at the direction of the Legislative Budget and Audit Committee, [to] conduct performance post-audits on any agency of state government."

Our interest in writing you stems from our leading roles in creating the Trust in 1994. Both of us were extensively involved in the negotiations with the parties and the legislature during both regular and special sessions convened to bring the then-longstanding litigation to a successful conclusion. Harry served as commissioner of natural resources and Bruce as attorney general at the time. Between 2007 and 2010 Harry served as the Executive Director of the Trust Land Office (TLO).

There are three concerns that cause us to make this extraordinary request:

1. Use of principal funds.

The Mental Health Trust settlement legislation specifically required the cash assets of the trust, including principal derived from revenues generated by the Trust land base, be managed by contracting with the Alaska Permanent Fund Corporation (APFC). This provision was specifically placed in the legislation to guard how the funds were to be managed.

In the last two years the Trust board has taken \$ 32.5 million of principal funds and diverted that money away from the APFC and instead purchased real estate mainly outside of Alaska. Further, the board has encumbered the Trust with \$35 million dollars of debt by mortgaging many of those properties. . The Trust is investing in commercial real estate parallel to the APFC and is simply duplicating what the APFC is doing without the same level of expertise.

To our knowledge the Trust board has not provided for any external or internal audit of these purchases and it is extremely hard, from the public record, to determine the actual income and risk associated with these purchases

2. Mine Exploration.

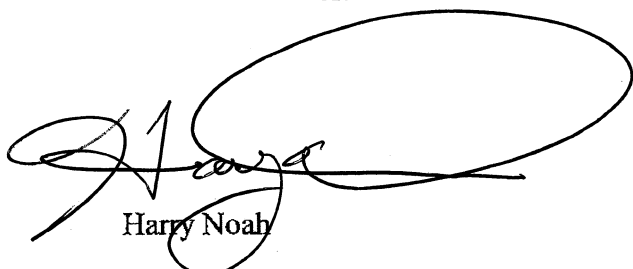
The TLO is apparently in the process of requesting that the board of trustees invest principal funds in an advanced mine exploration program at Icy Cape with little or no understanding of what is involved in development of a mine. Again, if these principal funds are spent on such a high risk program there is a high likelihood that the money will never be recovered and the Trust will lose the long term revenue that could be derived from those funds. The amount that is being discussed is \$2.0 million.

3. Arm's Length Transactions.

Because of the unusual nature of the real estate transactions and little transparency in what has taken place, it is difficult to determine whether each of the purchases have been arm's length in nature.

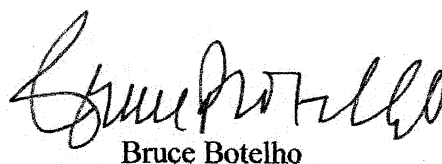
These actions highlight the fact that significant monetary resources are tied up in state-created corporations and those corporations each have boards that decide how large sums of money can be spent, without effective oversight by the legislature. This means that at times, using the Mental Health Trust Authority board as an example, four board members can decide how significant public funds are spent without independent review.

If, after the audit is completed, the conclusion is that the board should be free to make its own investment decisions—a dubious proposition in our view—then the authorizing legislation should be amended accordingly. For our part, we believe that the statutory framework that relies on the investment expertise of the Permanent Fund Corporation is in the state's and the beneficiaries' best interest.



Harry Noah

copies to:



Bruce Botelho

Jim Whitaker, Chief of Staff
Alaska Office of the Governor

Andy Mack, Commissioner
Alaska Department of Natural Resources

Russ Webb, Chair, Board of Trustees
Alaska Mental Health Trust Authority

Jeff Jessee, Chief Executive Officer
Alaska Mental Health Trust Authority

November 1, 2016

Mr. Harry Noah
Mr. Bruce Botelho
401 F Street
Douglas, Alaska 99824

Mr. Noah and Mr. Botelho:

I am writing in response to your recent letters to Sen. Gary Stevens and Rep. Mike Hawker in which you raised a number of issues of concern and requested that a legislative audit of the Trust and Trust Land Office (TLO) be ordered (and to your email messages to me inviting a discussion.)

The text of the letters and the content of a subsequent telephone conversation between trustee Larry Norene and Mr. Noah indicate you have been the recipients of misinformation. It also seems that you may well have been purposely misled regarding the actions of the Trust and the Trust Land Office.

No issues have arisen in the annual third party audits of the Trust and TLO identifying or supporting the issues of concern to you. However, neither trustees nor staff of the Trust Land Office would object to an additional audit should the Budget and Audit Committee wish to undertake one - with a single caveat. Such audits are time-consuming, divert staff from engaging in their normal duties, and both delay and detract from the work of any organization subject to such an audit. We believe it would be more efficient and far less costly (to the Trust and the State) to resolve any issues of concern by simply providing information and explanation.

We invite you, Senator Stevens, and Representative Hawker (or their staff if they prefer) to meet with us at a convenient time to discuss your concerns. We will happily provide and fully explain any information we have that will assist you in understanding the purpose, direction and activities of the TLO and the Trust, so long as the information is not confidential or proprietary.

We will, of course provide confidential information to any State official legally entitled to receive it and legally bound to hold it in confidence. With your assurance that you are not associated with competing mining interests, we would, because of your prior roles as State officials and subject to advice of counsel, consider providing proprietary and confidential information to you as well should you be willing to sign a binding agreement to hold the information in complete confidence.

We are confident any objective review or audit would validate the Trust's prudent investment decisions and disclose remarkable success. However, we understand that the direction trustees

and staff of the TLO have taken is apparently neither well nor widely understood and, has recently been purposely misrepresented.

Our efforts have been directed toward transforming the Trust Land Office from its historical role as a static bureaucracy focused primarily on selling a few parcels of subdivision or remote land each year and otherwise waiting passively for private sector proposals to identify and develop resources on Trust land. Our goal is the creation of a sophisticated and dynamic organization capable of not only managing but developing a diversified fixed asset portfolio that produces exponentially greater revenue from Trust resources than has been true during the first 20 years of the Trust's existence, but does so with low and acceptable levels of risk.

We believe this vision better fits the purpose for which the Trust and the TLO were created and will be essential to enabling the Trust to meet its responsibilities to our beneficiaries. The State's stark fiscal outlook and a growing beneficiary population will place an ever greater demand on the Trust to generate and apply its funding to protect the interests and meet the needs of its beneficiaries. We believe we must act to substantially increase the Trust's revenue - both principal and spendable income to meet the challenges facing our beneficiaries. We believe failing to do so would be a breach of our trust duty and the reason for which the land was placed in the Trust.

Mr. Noah, I feel obliged to comment on a concern of trustees regarding the focus of your concerns and the timing of your letters to legislators. Coincidentally, your letters arrived during the week your friend and former colleague, Jeff Jessee, was negotiating the terms of his resignation as CEO of the Trust - something he initiated based on his understanding that he had lost the trust and confidence of a majority of the board.

Your email to me (and Mr. Jessee) transmitting your letter to Sen. Stevens and inviting me to contact you to discuss the reasons for your audit request was received October 20 - five days before Mr. Jessee's planned announcement of his resignation and while he was actively negotiating the terms of his continued employment at the Trust. I was on a wilderness hunting trip and completely without electronic communication capabilities so was unaware of it.

Your "revised" letter to Rep. Hawker was received in my email account the night before my scheduled return from the hunting trip and two nights before Mr. Jessee planned to announce his resignation. It too invited me to contact you to discuss the reasons for your request.

Remarkably, during the meeting at which Mr. Jessee's resignation was announced and accepted yet another coincidental communication occurred. While reviewing Mr. Jessee's proposed letter of resignation (presented to me on his Trust iPad as a draft email message to be sent to staff for printing in final form) I witnessed the arrival of an email message from you to Mr. Jessee.

Of concern is that, with or without a legislative audit, these matters have already become visible as matters of public discourse because Mr. Jessee shared your letters widely in the media. You may not be aware of trustees' decision, made approximately 18 months ago, to rescind all authority and responsibility that had been previously delegated to Mr. Jessee regarding the Trust Land Office. This change in authority and responsibilities, too, has been previously made public and is likely to become a part of the growing discourse regarding the Trust, your letters,

and Mr. Jessee's resignation. These coincidental facts and events may well place us all in awkward and uncomfortable positions.

Because we believe you have been misinformed and misled, and potentially manipulated to advance personal not public interests, we would like to resolve your concerns as quickly and efficiently as possible. We welcome discussion of genuine concerns based on legitimate interests. We believe they can be readily resolved and hope to do so soon.

Given the level of public attention to these issues we would, reasonably I think, expect that if your concerns were resolved (through a personal briefing or an audit) you would acknowledge that in some way. We would also ask that you do us the courtesy of providing the source of any misinformation you may have received so we may address it appropriately to preclude it from being perpetuated.

I have excluded Mr. Jessee from among those receiving my response because he has no role in these matters as a result of the decision of trustees mentioned previously.

I look forward to a productive dialogue on these issues.

Respectfully,

Russ Webb

A handwritten signature in blue ink that reads "Russ Webb". The signature is cursive and fluid.

Chair

Sent via email

Copies to:

Jim Whitaker, Chief of Staff
Office of the Governor

Andy Mack, Commissioner
Department of Natural Resources

Honorable Mike Hawker, Chair
Legislative Budget and Audit Committee

Honorable Gary Stevens, Chair
Legislative Council

Larry Norene, Chair
Finance Committee
Alaska Mental Health Trust Authority

Carlton Smith, Chair
Resource Management Committee
Alaska Mental Health Trust Authority



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Department of Health and Social Services

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM
AND DRUG ABUSE

431 North Franklin Street, Suite 200

Juneau, Alaska 99801

Main: 907.465.8920

Fax: 907.465.4410

November 4, 2016

Representative Mike Hawker, Chair
Legislative Budget & Audit Committee
716 West 4th Avenue, Suite 610
Anchorage, Alaska 995010

BY FIRST CLASS & ELECTRONIC MAIL

Senator Anna MacKinnon, Vice-Chair
Legislative Budget & Audit Committee
12641 Old Glenn Highway, Suite 201
Eagle River, Alaska 99577

Re: Support for Legislative Audit - Alaska Mental Health Trust Authority

Dear Representative Hawker and Senator MacKinnon,

On behalf of the Alaska Mental Health Board (AMHB) and Advisory Board on Alcoholism and Drug Abuse (ABADA), we express the boards' support for the request made by former Attorney General Bruce Botelho and former Commissioner of Natural Resources Harry Noah for a special legislative audit of the Alaska Mental Health Trust Authority's transactions, especially those involving the use of principal funds.

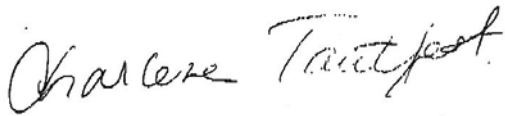
As you know, AMHB and ABADA are the statutory state planning councils for behavioral health, specifically tasked with advising the executive and legislative branches on matters related to mental health and substance abuse. The boards are also specifically tasked with providing AMHTA with recommendations concerning the integrated comprehensive mental health program and the use of money from the mental health trust settlement income account. We also have a statutory responsibility to advocate on behalf of Alaskans experiencing behavioral health disorders. On behalf of trust beneficiaries, particularly Alaskans experiencing mental illness and chronic substance use disorders and their families, the Boards echo the concerns about the lack of transparency and meaningful public process related to land management and property acquisition by AMHTA.

The Alaska Mental Health Trust was established by Congress to ensure that Alaskans experiencing mental illness and chronic alcoholism, developmental disabilities, and dementias had access to a comprehensive program of services. The Alaska Mental Health Trust Authority was established by state law to ensure that an integrated comprehensive mental health program is provided to beneficiaries (AS 47.30.011). The Board of Trustees, by law, "shall preserve and protect the trust corpus" (AS 47.30.036(1)). Use of trust income is permitted to provide for the

integrated comprehensive mental health program, administrative expenses of the Authority, and inflation-proofing. (AS 37.14.041, AS 37.30.056). The concerns presented to you indicate that certain actions by the Board of Trustees may fall outside of these statutory powers, which in turn may have caused or created a risk of loss to beneficiaries.

The separation of powers is designed to check and balance the authority of each of the three branches of government. Given the possible impact to thousands of Alaskans who are beneficiaries of the Alaska Mental Health Trust, we encourage the Legislature to use its audit authority to assure that beneficiaries' interests are protected and reinforce the importance of public processes in the management and use of public resources.

Sincerely,



Charlene Tautfest, Chairperson
Alaska Mental Health Board



Philip Licht, Chairperson
Advisory Board on Alcoholism and Drug Abuse

cc: Trustees, Alaska Mental Health Trust Authority
Jim Whitaker, Chief of Staff, Governor's Office
Bruce Botelho
Harry Noah
Jeff Jessee, AMHTA
John Morrison, AMHTA – Land Office

October 27, 2016

Rep. Mike Hawker
Chair
Legislative Budget & Audit Committee
716 W. 4th Ave. #610
Anchorage, AK 99501

Re: Audit of Mental Health Trust Authority

Dear Representative Hawker,

I am aware that former DNR Commissioner Harry Noah and former Attorney General Bruce Botelho have asked that the Legislative Budget and Audit Committee conduct an audit of recent actions of the Mental Health Trust Authority Board of Trustees. I write this letter in support of their request.

You may recognize my name from my thirteen years on the Superior Court in Anchorage as the Deputy Presiding Judge for the Third Judicial District for Criminal Affairs. You may not know that I recently retired from the bench. I do not write this letter in my judicial capacity.

Prior to my service on the Superior Court I worked for more than twenty-five years in a small private law firm. Among all the work that I did as a lawyer, I am most proud of my settlement of the Mental Health Trust Lands case, *Weiss v State*, in 1994, in which I represented a subclass of plaintiff-intervenors. The settlement I negotiated became law, benefitted all plaintiffs, and was approved by the Superior Court in Fairbanks. The Court's decision to accept the settlement was successfully upheld on appeal and the original legislation enacting the settlement remains on the books today. Over the years since, including while sitting on the bench in the Superior Court in Anchorage, I've watched in quiet satisfaction as the Trust met its intended purpose, funding not only innovative criminal justice programs such as therapeutic courts but also supporting underfunded traditional substance abuse and mental health programs.

Harry Noah and Bruce Botelho will certainly tell you that negotiations settling the *Weiss* litigation and writing the legislation to embody the trust's intended purpose and protections were difficult, prolonged and involved many parties beyond those directly involved in the litigation. But they, like me, were the architects of the settlement and they will tell you that there were certain principles

that were written into law by common agreement to protect against another trust failure in the future and its potentially disastrous implications.

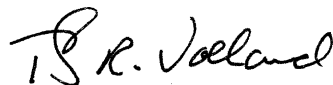
AS 37.14.033 and 034 are among the prophylactic measures. These two provisions mandate that trust earnings be placed in the Alaska Permanent Fund and managed by the Fund until distribution to trust beneficiaries. I have become aware that a majority of the current Mental Health Trust Authority Board has bypassed this provision of law in favor of more aggressive real estate investments. To be sure, I favor a high return to the beneficiaries of the trust. But as someone who fought for eight years to re-establish the trust, I fear more the actions of trustees of a public trust who think they know better than what the law demands that they do.

The Mental Health Lands Trust has established itself as one of the crown jewels of Alaska's social programs. As I hoped it would years ago when the settlement of *Weiss* case was approved, I want the Trust to continue to glitter as a priceless gift to Alaska's future. If the current trustees believe they have a better vision on how to invest the principal of the Trust than what AS 37.014.033-034 demands, then they must seek a Legislative change. Otherwise, all Alaskans risk the loss of one of their most distinctive and distinguished successes.

For these reasons I support Mr. Noah's and Mr. Botelho's request for an audit.

Thank you for listening to my concerns.

Sincerely,



Philip R. Volland
2544 Foraker Drive
Anchorage, AK 99517
philipvolland@gmail.com

cc: Jim Whitaker
Russ Webb
Andy Mack
Jeff Jessee
Harry Noah
Bruce Botelho