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FILE #1

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 21, 1985

The Honorable Richard Shultz  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

Re: HB 128 (Mental Health Trust Lands)

Dear Representative Shultz:

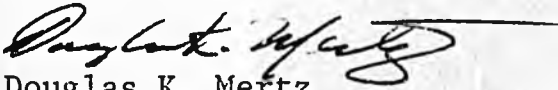
At the House Resources hearing yesterday on HB 128, relating to mental health trust lands, some interest was expressed by committee members in seeing the results of DNR appraisals on the lands. Last week DNR completed the preliminary appraisals, for the mental health lands in state ownership as of their redesignation as general grant lands in 1978. By May 15, DNR will have a final appraisal, including mental health lands on which third party interests were created before 1978.

The appraisal documents are court-ordered discovery requested by the plaintiffs' attorney, Stephen Cowper of Fairbanks. We are willing to release the documents to the committee, but since they are still privileged attorney/client materials not yet filed with the court, we must ask that Mr. Cowper's agreement be secured first. As soon as that agreement is received, we will be happy to deliver to the committee the appraisal summaries to date.

We regret that because of time constraints we were not able to present our position on HB 128 to the committee yesterday. We are available to discuss it with any member who wishes to hear our views.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Douglas K. Mertz  
Assistant Attorney General

DKM:d1m  
cc: Stephen Cowper, Esq.



Alaska State Legislature  
 HOUSE OF REPRESENTATIVES  
 COMMITTEE ON RESOURCES

POUCH V  
 JUNEAU, ALASKA 99811  
 (907) 465-3715

MEMORANDUM

March 21, 1985

TO: Representative Mike Miller  
 Chairman, House Judiciary

FROM: Representative Dick Shultz *DS*  
 Co-Chair, House Resources

SUBJ: HB 128: Mental Health Lands

The Resources Committee has had under consideration HB 128 and has reported the bill out of committee. This legislation which deals with the topic of mental health lands is fairly straight forward, however, there was one question raised by Representative Thompson that DNR has promised to try and answer. In the interest of time Resources members decided to move this bill on to your committee after DNR indicated they would provide, if possible, the total value of the mental health lands in question. Deputy Commissioner Bob Arnold from DNR stated that the Department has calculated the value, however, he was not sure that it could be released to the legislature because of the present litigation of this issue. I would encourage you as Chairman to follow through and obtain the mental health land values if at all possible. It is a question that needs to be answered before it goes to the floor and it is one that both Representative Thompson and other members of the Resources Committee feel is relevant to this difficult issue.

*Dick Shultz*  
 Rep. Dick Shultz, Co-Chair

Rep. Adelheid Herrmann, Co-Chair

Rep. Kay Wallace, Vice-Chair

*Bette Cato*  
 Rep. Bette Cato

*Michael W. Miller*  
 Rep. Mike Miller

*David W. Thompson*  
 Rep. David Thompson

*John Sund*  
 Rep. John Sund

*Roger L. Jenkins*  
 Rep. Roger Jenkins

Rep. Drue Pearce

TESTIMONY

Representative Marco A. Pignalberi

House Resources Committee

HB 128 Mental Health Trust

March 20, 1985

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Testimony by Representative Marco A. Pignalberi  
House Resources Committee on HB 128  
March 20, 1985

Mr. Chairman, members of the Committee, let me repeat the last provision of the Supreme Court ruling: the Trust is entitled to be reimbursed by the state of Alaska for the fair market value of the mental health trust lands.

WHAT DOES THIS MEAN TO THE STATE OF ALASKA?

What this means to the State is that Alaska is facing a potential liability of immense proportions. Several estimates of reimbursement have ranged upwards of five billion dollars! Unlike other states which received mental health lands from the Federal Government by each section 16 & 32 in every township, Alaska was able to select whatever million acres it wanted in whatever part of the state it wanted.

Accordingly, the state selected prime real estate in most of the major population areas of the state. No mountain tops or barren tundra was selected. Examples of lands that were selected and are now subject to fair market appraisal for reimbursement to the Trust include valuable acreage in the Swanson River oil and gas field, Beluga Coal field, Trans Alaska Gasline System project, Eklutna water project and the Kachemak Bay State Park. Additionally, other mental health lands have already been conveyed to municipalities in fulfillment of their entitlement programs. You can look at the map I've brought and see exactly where the impacted areas are located.

What this means is the state is faced with a staggering liability. If a negotiated settlement is not reached between the parties of the suit, it is possible that the court will mandate a settlement. If this occurs, the state may be required to establish a mental health trust account and deposit a specific amount of money to be maintained as a trust fund exclusively for mental health purposes. It could be the equivalent of transferring the amount in the Alaska Permanent Fund to the mental health trust account.

Is this a possibility? Yes. There are many who believe it is a distinct possibility due to the dismal performance of the state in funding mental health programs. Although there is no clear definition of just what constitutes a "mental health program", the Department of Health & Social Services budget for Alaska Psychiatric Institute, Community Mental Health Centers and all administrative services total only just over 22 million dollars.

Testimony Rep. Marco Pignalberi  
March 20, 1985

According to testimony by the Commissioner of Health & Social services, Alaska is serving only a third of the people with mental health needs. A study by the U.S. Dept. of Health & Human Services, 1983 found that Alaska ranks last among the fifty states in a number of mental health service areas. Not only is our state the poorest in the nation in funding mental health programs, but we spend less than one-half as much as the next poorest state, and less than one-sixth of the national average.

Alaska has such a poor track record in funding mental health programs that if the court steps in to establish a trust fund settlement, Alaska may be required to substantially increase these program funds as well as transfer billions of dollars into a special trust account.

This bill would prevent the state from making a bad situation worse by stopping the disposition of any more trust lands.

The background files on this issue are voluminous. Attached are summary papers prepared by parties with different viewpoints. I think they are good chronological synopsis of the issues. Thank you

Historical perspective:

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act which transferred the fiscal and functional responsibility for activities in the field of mental health from the Federal Government to the Territory.

To ensure that the Territory had adequate financial resources to discharge the responsibilities in the mental health field, the Congress granted Alaska one million acres of federal lands. These lands are located in Interior, Southcentral and Southeastern Alaska. The enabling Act stated:

"...all lands granted to the Territory under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the legislature of Alaska may provide..."

The state did not establish and maintain a separate account into which income or proceeds derived from mental health lands were deposited. Then in 1978, the State redesignated mental health lands as general grant lands and changed the record method of accounting for income from public lands.

Superior Court Class Action Suit

In 1982 a class action court suit was filed by the Alaska Mental Health Association. It filed the suit for "all persons who are residents of the State of Alaska and who will require mental health services in the future which are not available in the state.

The Superior Court entered a partial summary judgement in June 1983 which found that the state was not required to invalidate prior legislative action but was required to compensate the trust for fair market value of the lands in question. A year later, in September 1984, the Superior Court ruled in Final Summary Judgement that:

- 1) the Alaska Mental Health Enabling Act "established a public trust for the benefit of the mentally ill in Alaska;"
- 2) "the approximately one million acres of land granted to the state was dedicated for the use and benefit of the mentally ill in Alaska;"
- 3) Chapters 181 and 182, SLA 1978, effectively removed lands from the trust established by the federal Act;
- 4) invalidation of the state legislation was an improper remedy; and
- 5) "the trust is entitled to be reimbursed by the State of Alaska for the fair market value of the mental health trust lands."

Introduced: 1/25/85  
Referred: Resources, Judiciary  
and Finance

BY PIGNALBERI, GRUENBERG, BOUCHER,  
JENKINS, KOPONEN AND TAYLOR

1 IN THE HOUSE

2

HOUSE BILL NO. 128

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to mental health trust lands; and  
7 providing for an effective date."

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

9 \* Section 1. AS 38.05 is amended by adding a new section to read:

10 Sec. 38.05.880. DISPOSITION OF STATE MENTAL HEALTH TRUST LANDS.

11 The state may not convey or otherwise dispose of land owned in fee by  
12 the state that was received from the federal government under sec. 202  
13 of the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830).

14 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
15 10.070(c).

**DEPT. OF HEALTH AND SOCIAL SERVICES**

**OFFICE OF THE COMMISSIONER**

POUCH H 01  
JUNEAU, ALASKA 99811  
PHONE: 465-3030

March 19, 1985

The Honorable Marco Pignalberi  
Alaska State House  
Pouch V  
Juneau, Alaska 99811

Dear Representative Pignalberi:

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, provides core services for mentally ill persons through a grant-funded network of community mental health centers and the State-operated Alaska Psychiatric Institute (API). Alaska statutes which give authority to the Department to provide mental health services do not define these services in explicit, all inclusive language. They speak in terms of "carrying out a comprehensive mental health program" and "treatment of the mentally ill." Mental illness is defined in AS 47.30.915 and related words and processes also are defined which apply to the delivery of mental health care, but we are left uninformed about when a service, such as is delivered by a public school counselor, becomes a mental health service.

The Alaska Administrative Code 7 AAC 71.135 defines the populations which will be served by grant-funded community mental health centers, and establishes the prioritized order in which these populations are to receive service:

- 1) acutely disturbed persons,
- 2) chronically, severely disturbed persons,
- 3) children and adolescents,
- 4) other persons or agencies requiring direct mental health intervention, and
- 5) other persons or agencies requiring non-direct mental health intervention.

In addition to these populations the centers are, in priority, to provide evaluation services and treatment services which emphasize a brief therapy

March 19, 1985

and crisis intervention model including the following:

- a) 24-hour inpatient voluntary and involuntary psychiatric treatment; and
- b) outpatient care including crisis and 24-hour emergency services, individual counseling/psychotherapy, group counseling/psychotherapy, case management and supportive care for chronic patients, referral services to other agencies, and consultation and education services.

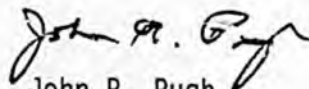
The services just cited are basic core mental health services which the State is now providing and they can be financially quantified, i.e., appropriations are made each year for these specific services. We will furnish dollar amounts for any period in which you may have an interest.

The issue of what to include in the expanded, all inclusive scope of mental health services and the calculation of the costs of these services is very complex. As an example, services to persons who are developmentally disabled were included as a mental health type service and continue to be included in some presentations, as are counseling services available to substance and alcohol abuse clients. Dollar descriptions of these services are relatively easy to capture. Another more bothersome dimension to the problem is the school counselor or social worker, public health nurse, etc., who may spend part of their time doing "mental health work" but do not record this fact in any logical format. The vocational training efforts and the special education programs sponsored by State and local school systems likewise present a similar dilemma. Is theirs a mental health service and if so, what percent of the total cost is captured as the mental health effort?

In the utilization of mental health land trust funds the statute states that the income of the fund will not be appropriated for a purpose other than the support of the State mental health program (AS 47.14.040). There is no definition of the "the State mental health program". Consequently, there is no clear legislative direction as to what should be funded if the appropriation was made from the trust income.

Please let me know if there are any specific programs for which you need cost data.

Sincerely,



John R. Pugh  
Commissioner

## MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act  
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
  - a. - Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
  - b. - Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was \$25,110,430 from 1959 thru 1977.

DEPARTMENT OF  
NATIONAL RESOURCES

DEC 21 1984

CONFIDENTIAL

In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
  - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
  - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (166-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
  - b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
  - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
  - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
  - e. There existed three alternative courses of legislative action:
    - 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

- a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
- b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
- c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by D&WM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

- a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
- b. Appraisals shall be complete by 3/15/85;
- c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
- d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
- e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 185 parcels (81 tracts) is valued at \$14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.



Alaska Department of  
**NATURAL  
RESOURCES**

Mental Health Land Grant Fact Sheet  
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was \$25,110,430. Mental health expenditures in Alaska by the state for the same period of time were \$115,364,054, with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

It has been reported that Mr. Cowper and the Mental Health Association do not agree over the direction of the case. Accordingly, attorney Jim Gottstein of the association board has attempted to intervene in the case. To date the intervention has not been allowed, and Mr. Gottstein has announced that the association will file a separate suit in federal court.

#### State Compliance

In the spring of 1984, at the direction of the court, the state produced a report which accounted, by acre, for the mental health grant land as of the date of redesignation. The legislature then appropriated \$250,000 for the department to continue the compliance with the discovery request. Stipulations for discovery were agreed to in September 1984, and the state is now in the process of complying with them. These stipulations provide:

1. The state will describe all mental health grant land selected by the state and provide current acquisition status of same by March 15, 1985: The Division of Technical Services within DNR is currently auditing all pertinent selection files. The Bureau of Land Management is auditing corresponding federal title files. Although the audit of state files will be completed by March, further adjudication by the BLM is expected to take another year to bring federal and state records into agreement.
2. By March 15, 1985 the state must estimate the fair market value of all land in state ownership as of the 1978 redesignation. Approximately 4,600 individual parcels are being evaluated by a panel consisting of three independent senior designated appraisers: Mr. Stephen J. MacSwain (representing the northcentral area), Mr. Frank King (representing the southcentral area) and Mr. Barry Thompson (representing the southeastern area). To bring the appraisals current, a simple interest of 10.5% per year will be added to the valuation figure.
3. By May 15, 1985 the state must identify and account for all mental health land alienated or conveyed prior to the 1978 redesignation. An audit and accounting will begin in February.

The remaining issues involved in this litigation are whether the mental health fund is dedicated solely to support mental health programs; whether the state breached the public trust in its management of the mental health grant land prior to 1978 and whether the state should be ordered to reimburse the public trust the full value of the mental health land. There is tremendous potential liability to the State of Alaska as a result of this lawsuit. It has been speculated that these lands may be worth over 1 billion dollars.

For further information contact Salli Slaughter, Pouch 7-005, Anchorage, Alaska 99510, (907) 265-4375.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION

REGARDING

ADMINISTRATION OF MENTAL HEALTH TRUST LANDS

## SUMMARY

On July 28, 1956, the "Alaska Mental Health Enabling Act" (P.L. 83-830, 70 Stat. 709) was enacted providing for selection and conveyance of one million acres of public lands into state ownership to be held and dealt with as a "public trust" to permanently serve the needs of the mental health program of Alaska.

### PUBLIC LAW 83-830 July 28, 1956

#### Sec. 202

- (a) The Territory of Alaska is hereby granted and shall be entitled to select...one million acres from the public lands of the United States in Alaska...All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.
- (b) ... The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved...
- (c) All grants made or confirmed under this section shall include mineral deposits: ...
- (d) Following the selections of lands by the Territory pursuant to subsection (b) but prior to the issuance of final patent, the Territory shall be authorized to lease and make conditional sales of such selected lands.
- (e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner

compatible with the conditions and requirements imposed by other provisions of this Act.

(Emphasis Added)

The grants and selections made under this Act were confirmed by the Statehood Act and the responsibility for managing the lands as a Trust was accepted by the State of Alaska.

#### INTENT

The Act as written and passed by the U.S. Congress clearly intended for these lands to be used to serve the needs of the mental health program of Alaska for all time. It established a permanent "Trust" whose assets were a million acres of land. This "Trust" was to be administered so that the Mental Health Lands would provide a permanent source of revenues to meet the needs of the mental health program of Alaska.

#### STATE MANAGEMENT OF MENTAL HEALTH LANDS

As set forth previously, subsection (e) of the Alaska Mental Health Enabling Act provides that the Mental Health Lands,

...proceeds and income therefrom shall be administered as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska...

and that

... The authority of the Legislature of Alaska under this subsection be exercised in a manner compatible with the conditions and requirements imposed by other provisions of the Act.

Even a cursory examination reveals that the state has knowingly flaunted its trust obligations regarding the administration of Mental Health Lands.<sup>1</sup> The Mental Health Lands have been and are being dealt with as if they are no different than any other state lands and, in fact, are sometimes given away more freely

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James B. Gottstein, attorney for the Alaska Mental Health Association, has available upon request documentation of the state's knowledge of its illegal actions. Mr. Gottstein can be contacted at 564-2424, 6401 A Street, Anchorage, Alaska 99502.

than other state lands with inadequate or no compensation. The Legislature has passed laws that have transferred Mental Health Lands into non-revenue producing uses such as State Parks and Wildlife Withdrawals and finally, in 1978, purported to abolish the Mental Health Lands designation altogether with no compensation given to the Mental Health Trust. As a result the Trust has lost a great deal of its original assets and revenue-generating potential. Since 1978, the state has illegally purported to convey to third parties tremendous amounts of Mental Health Lands, again with inadequate or no compensation to the state and no compensation at all to the Mental Health Trust.

#### DESCRIPTION OF MENTAL HEALTH LANDS

The lands in question here are those lands selected by Alaska under the authority of the Act of 1956. They are described in 155 casefiles which are maintained by the Bureau of Land Management, part of the United States Department of the Interior. These descriptions of the selections made by Alaska in these casefiles describe lands in the following resource areas:

Kenai Peninsula	67 Casefiles
McGrath	47 Casefiles
Glennallen	7 Casefiles
Yukon	32 Casefiles
Fortymile	2 Casefiles

The numbers above describe casefiles only. In many cases, the selections were very small while other selections were for very large tracts of land.

The lands are located in 186 townships across the state. Appendix I has a complete listing of all townships statewide that have Mental Health Lands within them. The following list describes the number of townships affected in the various geographical areas:

1) Copper River Meridian (Gulf of Alaska & Southeast)	60 Townships
2) Northeast Seward Meridian	15 Townships
Southeast Seward Meridian	1 Township
Northwest Seward Meridian	55 Townships
Southwest Seward Meridian	12 Townships
3) Northeast Fairbanks Meridian	9 Townships
Southeast Fairbanks Meridian	10 Townships
Northwest Fairbanks Meridian	4 Townships
Southwest Fairbanks Meridian	20 Townships

The following figures approximate the total conveyance from federal to state holdings of Mental Health Lands:

Patented Lands	719,703.83 Acres
Tentatively Approved Lands	219,655.92 Acres
Selected and Not Yet Conveyed	357,986.18 Acres

It is clear that the state has not yet received its full entitlement of Mental Health Lands from the federal government.

Mental Health Lands contain a great deal of resources. The Mental Health Lands grant includes both surface and subsurface title. Many of the lands lie on or near producing oil and gas fields; others lie within high potential coal and other mineral areas; and much of the others were selected for their surface value. Millions of dollars have been collected in purchases, rentals, and royalties on oil and mineral exploration leases, while untold other millions of dollars have been foregone by the state. A detailed inventory is needed to determine the extent of these resources on Mental Health Lands.

#### POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION

It is clear from the language of the Alaska Mental Health Enabling Act that: (a) the state is obligated to manage Mental Health Lands, and proceeds and income from those lands as a public trust; and (b) the mental health program of the state is to be the primary beneficiary of this Trust. This position is reinforced by the specific language used in testimony presented in the Congressional Record (Senate, page 9760, June 1956):

... This million-acre grant is in exactly the same category, and has the same legal status as the grants of public lands which have been made to all of our Western States for public schools and other public purposes. It is to be administered by the Territory of Alaska as a public trust, and the mental health program will have first call on the income and proceeds from it.

Over the years, the state has recognized its illegal management of the Mental Health Trust but has failed to correct the situation (see footnote 1, page 2).

#### NECESSARY ACTIONS

In order to remedy the situation created by mismanagement of the Mental Health Trust the Alaska Mental Health Association recommends that the following actions be undertaken immediately:

- 1) Alaska must fulfill the purpose for which the Mental Health Lands were originally granted.

- 2) The state must differentiate between Mental Health Lands and state public domain lands by providing separate and distinct land management to ensure the future management of Mental Health Lands in accordance with recognized trust principles and applicable law.
- 3) A permanent Mental Health Trust should be created. Allocated to this fund should be all funds collected from transactions involving Mental Health Lands.
- 4) Steps must be taken to resolve conflicts resulting from the past management of all lands granted to the state under the Alaska Mental Health Enabling Act. This must include an equal-value exchange of all lands on which irreversible encumbrances have been created which preclude the management of those lands as Mental Health Lands.
- 5) A method should be established to calculate the dollar amount due, with interest, to the Mental Health Trust from the state with regard to the management and disposal of Mental Health Lands, and the dollar amount due, with interest, for Mental Health Lands and resources therefrom which have been disposed of at less than then-current fair market value.
- 6) An independent Mental Health Lands Managing Agency must be created and staffed. This agency will be charged with the responsibility of administering the Mental Health Trust in accordance with law. This agency will be governed by these rules:
  - a) The Mental Health Lands shall be administered as a permanent public trust.
  - b) The purpose of the Mental Health Lands is to generate revenues to be used first to meet the necessary expenses of the mental health program of Alaska.

The Mental Health Lands Managing Agency must have sufficient safeguards to prevent future abuses of Mental Health Lands.

- 7) A legitimate, impartial and objective method be established for determining the necessary expenses of the mental health program of Alaska must be established with sufficient safeguards to prevent future abuses.

STATE MENTAL HEALTH PROGRAM

SUMMARY FACT SHEET

Prepared December 14, 1984

ALASKA PROVIDES THE LOWEST PERCENTAGE OF STATE REVENUES TO MENTAL HEALTH PROGRAMS OF ALL 50 STATES. On average, the other 49 states provide a percentage of state revenues to mental health programs that is more than six times larger than Alaska provides (0.3%). More than half of the states provide at least five times larger percentages than does Alaska. The 49th state in the ranking provides double that of Alaska, while the first state in the ranking provides a percentage that is more than 11 times greater than Alaska provides (Reference: The Final Report - Funding Sources and Expenditures for State Mental Health Agencies, NASMHPD, 1984).

ON A PER CAPITA BASIS, ALASKANS HAVE RECEIVED ONLY 27 PERCENT OF THE LEVEL OF FEDERALLY SUPPORTED COMMUNITY MENTAL HEALTH CENTER SERVICES RECEIVED BY THE CITIZENS OF THE OTHER STATES. Based on a survey of all federally supported community mental health centers, Alaskan centers provided less than 27% of the episodes of care per 100,000 population per year than did centers in all other states (Reference: Provisional Data on Federally Funded Community Mental Health Centers, NIMH, 1981).

SERVICES FOR THE CHRONICALLY MENTALLY ILL IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) SUFFER FROM INEQUITABLE DISTRIBUTION OF PROGRAM FUNDS. As one example, a State DMHDD Request for Proposal last month announced \$403,000 for vocational services to developmentally disabled persons and only \$30,000 for vocational services to mentally ill persons. The chronically mentally ill also suffer from a lack of other rehabilitation services, residential facilities, continuity of care, and support services available to the chronically mentally ill in other parts of the nation. Clinical staffing for aftercare services for the chronically mentally ill in Anchorage is only 37% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook on Numerical Indicators for Performance Evaluation of Community Mental Health Centers, Medical College of Pennsylvania, 1982).

SERVICES FOR CHILDREN AND ADOLESCENTS IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) HAVE BEEN HARDEST HIT BY STATE AND LOCAL MENTAL HEALTH FUNDING REDUCTIONS. Based on the National Institute of Mental Health standards of service for community mental health programs, children have been consistently underserved every year by the Alaska Community Mental Health Program. To make matters even worse, in 1984 a 76% cutback in staffing for children and adolescent services occurred at the Southcentral Counseling Center, which has a service area covering half of the State's population, due to public program funding cuts. These program cuts have resulted in a 42% reduction in children and adolescent caseload since November, 1983. Currently State Community Mental Health Program funds only provide for one-half of one full-time position to deliver mental health services to children and adolescents for all of Anchorage! Total clinical staffing for children and adolescent mental health center services in Anchorage is only 14% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook listed above). The Southcentral Counseling Center currently has a long waiting list for outpatient services.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES  
STANDING COMMITTEE  
February 26, 1985  
4:30 p.m.

Members Present: Co-Chairman Max Gruenberg  
Rep. Robin Taylor  
Rep. Alyce Hanley  
Rep. Fritz Pettyjohn  
Rep. Katie Hurley

Members Absent: Co-Chairman Niilo Koponen  
Rep. David Thompson

COMMITTEE CALENDAR

Testimony from the Mental Health Planning  
and Needs Assistance Committee

WITNESS REGISTER

Beth Trawick  
Committee for Mental Health Planning in Fairbanks  
503 7th Avenue  
Fairbanks, AK  
(907) 452-4148  
Position Statement: Supports mental health services

Kathy Whitzell  
Committee for SB 520  
P.O. Box 10081  
Fairbanks, AK  
(907) 457-7223  
Position Statement: Supports SB 520 and mental health services

Mark Mattaini  
Committee for SB 520  
1302 21st  
Fairbanks, AK  
(907) 452-2446  
Position Statement: Supports SB 520 and mental health services

Glade Birch  
Southcentral Counseling Center  
Mental Health Dir. Assoc.  
4020 Folker St.  
Anchorage, AK 99508  
(907) 563-1000  
Position Statement: Supports mental health services

Vince VanDerHyde  
Division of M.H. & D.D.

3470 Meadow Way  
Juneau, AK  
(907) 465-3370

Position Statement: Supports mental health services

Tom Koeset  
Department of Law  
Pouch K  
Juneau, AK 99811  
(907) 465-3600

Position Statement: To provide information on mental health  
lands litigation

Commissioner John Pugh  
Department of Health and Social Services  
Pouch H-01  
Juneau, AK 99811  
(907) 465-3030

Position Statement: To provide information on mental health

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #32, SIDE ONE  
Recording  
Number 000

Co-Chairman Gruenberg called the meeting to order at 4:37 p.m. to discuss mental health planning and needs. Reps. Koponen and Thompson were absent.

Number 029

Co-Chairman Gruenberg announced the arrival of Rep. Taylor.

Number 064

Beth Trawick, a private psychiatrist in Fairbanks, representing the Mental Health Committee, testified. She said when it came time to discharge a chronically ill patient from the hospital to a halfway house, there were no accommodations, thus leaving them out on the street, only to return to the hospital later.

On the subject of children, she said they didn't have facilities for intensive out-patient psycho-therapy for them and their families. If the family was wealthy or had good insurance coverage they could afford private care. She said children end up "drifting" through the system, becoming non-

functional or progressing towards chronic mental illness, which sometimes, early treatment could have prevented.

In summary, she supported more treatment facilities such as vocational rehabilitation, halfway homes, and community based facilities, which would help patients more and cost less.

Number 277

Kathy Whitzell, representing the Resource Committee for SB 520, and the Fairbanks Memorial Hospital, testified. She spoke for the mentally ill adults whose illness often begins in early adulthood: a gradual withdrawal from others, losing touch with reality and inability to function. She said lack of facilities for these adults, including "road people" who have no shelter and are often ill, resulted in an overcrowded API.

Ms. Whitzell said most evening and weekend emergencies for families are dealt with by phone with no personal interventions, although the hospitals are available. If an adult won't voluntarily commit himself, and a relative won't involuntarily commit them, they wander the street, get into trouble, and often end up in jail until evaluation. Families attempting to maintain the ill individual at home have problems within the family and the neighborhood. In summary, Ms. Whitzell supported a care facility where such adults would be receive services and function in a safe environment.

Number 450

Mark Mattaini, Director of Mental Health Programs for Tanana Chiefs Conference, and Chairman of the Children's Subcommittee for the Resource Committee for SB 520 testified. He said in developing their plan for children, they looked at the most serious cases (suicidal, severe depression, personality problems, etc.). He emphasized the need for out-patient treatment, a diagnostic and crisis unit with residential capacities, individualized foster homes, small group homes, day treatment programs, facilities for young adults (halfway houses), and a family hostel operation for rural and bush areas.

Number 582

Glade Birch, Executive Director of the

Southcentral Counseling Center in Anchorage, and a representative of the Alaska Mental Health Program Director's Association testified. He said the turnover at centers is 170% per year. He said the suicide explosion could be predicted when they failed to give mental health care. He mentioned 7 days before he arrived in Juneau, he knew of 22 serious attempts by school kids (2 successful). He knows of a village without mental health care due to funding that average 2 attempts per month with a population of 350.

Mr. Birch said in the initiative to identify child abuse victims, there was a problem of not doing anything after this is done. He supported a community based setting which would cost far less than jail or API.

He said there would be a problem of an accredited institution such as API running into problems of overcrowding, and being able to keep their accreditation.

CHANGE TAPE TO SIDE TWO

Number 000

Mr. Birch continues his discussion in support of community based mental health care facilities versus cost of jail or API.

Number 077

Rep. Hanley asked Mr. Birch what is covered in API for accreditation; the physical plant, program, or methods of treatment. He said everything.

Number 091

Rep. Taylor asked Mr. Birch if in the requested increment for treatment of children, have they included in it cost that child abuse legislation would incur. Mr. Birch said no. He said they were only funded for 3 1/2 people for their mental health needs. Rep. Taylor said he shared Mr. Birch's concerns but he was informed it was appropriate to keep the budget where it's at and spend \$32 million on asbestos removal. Rep. Taylor said he had a hard time prioritizing between the risk from asbestos exposure versus risk of suicide, though he supported mental health needs.

Number 140

Vincent VanDerHyde, Research Analyst for Division of Mental Health distributed to the committee a paper presented in May of last

year at the American Association of Sociotology meetings in Anchorage concerning suicide. He said the Division wanted to further research suicide by working with the Alaska Native Health Board who had research money to look at suicide attempts, village public safety officer logs, state trooper logs, emergency treatment logs, etc.

Number 178

Mr. VanDerHyde showed a set of 8 slides to the committee. The slides look at the trend in mental health service delivery across the state of Alaska.

Slide 1 shows the need for mental health services in Alaska by showing the population growth rate. Between 1980 and 1984 the growth rate was around 30%. In 1984, Alaska led the nation in population growth at 5-1/2%. The growth rate will then decline slightly.

Slide 2 shows the number of admissions to the community centers. From 1974 through 1984, there was a 285% increase. In 1984, there was a 15% increase. The projections based on the data, shows there will be around a 23% increase over the next 5 years.

Slide 3 shows the expansion of services. From 1975, the admissions were 42 per 10,000 population. By 1984, it increased to 120 per 10,000 population (9.4% increase).

Slide 4 shows comparisons between admissions, end-of-year caseloads and clients seen for the period 1979 through 1984, while in the past 5 years, the population has increased 30%, admissions over 100%, and case-loads 105%. He said during fiscal year 1984, a little over 8,000 clients were served (1.5% of Alaska's population).

Slide 5 shows admissions to the Alaska Psychiatric Institute. Between 1970 and 1982 admissions increased by 175%. In 1983, there was a slight decline due to changes in delivery of services. In 1984, admissions increased by another 5% due to the population growth.

Slide 6 shows a count of in-patient days (beds available, . For 1983, the API

utilized 95% of in-patient days. For 1984, they utilized 98%.

Slide 7 shows discharge data. A little over 50% of patients are released in 4 to 5 weeks. 5 or 6% are in API around 6 months.

Slide 8 shows as population pressures occur, shows over the years the populations which become re-admissions in the system, for example, FY83's admissions drop off and FY84's length of stay goes down and the re-admissions increase. He said there were two things driving the API's population: the state population as it increases and the maximum utilization of the facility driving re-admission rates up.

Number 436

Tom Koester, Attorney General's Office, Department of Law, testified regarding the mental health lands litigation. He said the mental health enabling act, a federal statute passed in 1956 by the U.S. Congress, was passed because mental health services in Alaska were unacceptable. In the 1911 Organic Act, Congress precluded the Alaska Territorial Legislature from dealing with mental health problems in Alaska and retained the sole responsibility for the federal government.

In territorial days, the federal government's program for dealing with a person believed to be insane was for the U.S. Attorney to bring an indictment against them, try them before a jury, and if found insane, would be sent to Morningside Portland hospital in Oregon. If not, they'd be released without follow-up, etc. The Congress saw as a way to economize during a budget crunch, to transfer this responsibility to Alaska. The problem was there was no means to raise revenue, which was costing \$1.2 million per year. Congress came up with a phased 10-year grant program of funds to Alaska in a declining revenue set-up, plus a cash grant to build API. To provide a source of funds, Congress authorized the territory to select 1 million acres of land (from vacant and unappropriated federal lands in Alaska).

Mr. Koester said because Congress didn't know the program cost in Alaska or the worth

of Alaska-selected lands, they declined to earmark all proceeds from the lands to the mental health program. Its rationale was they didn't know the cost of the programs or how much money would be generated from the lands. They didn't want Alaska to think they had to use all the money for mental health programs.

Mr. Koester said language from the bill said proceeds and income from the land shall first be used for expenses from the mental health programs. Additional funds can be used for other purposes. In 1978, there was pressure for Alaska lands to be made available to Alaskans and municipalities. Since Alaska could select its lands, it began to build on them: U of A, Juneau, Hillside and some of the Chugach State Park, Swanson River oil fields, many intersections between the Alaska Railroad, and the highway between Anchorage and Fairbanks, etc.

Mr. Koester said the 1978 legislature converted statutorily mental health lands to general grant lands, in effect, directing the Department of Natural Resources to deal with the lands as if they were already received. The alternative was a statutory dedicated fund of 1-1/2% of general funds revenues and because the language of the statute is subject to appropriation, the legislature has never appropriated the 1-1/2%.

Number 530

Co-Chairman Gruenberg said in 1978 the legislature passed 2 bills, and 1 mandated 1-1/2% and the other made it discretionary. He said the Governor signed the discretionary bill after he signed the mandatory bill, thereby making the operative law discretionary.

Number 543

Mr. Koester said the lawsuit was brought by Alaskan citizens who needed mental health services that weren't available. The object was to regain title to equivalent land. Judge Taylor in Fairbanks ruled it was an exclusive trust. Mr. Koester said most attorneys agree with the analysis that they are not dedicated exclusively ("shall first be used"). The Attorney General's office has appealed the entire judgement made by Mr. Taylor, which was that the 1978

redesignation was a breach of the trust, which is currently pending before the Alaska Supreme Court.

Mr. Koester stated Judge Taylor ruled it was permissible for the Legislature to redesignate the lands, however, if they make the decision to treat them as general grant lands, it must compensate the trust with the fair market value. He said the cross-appeal is of Judge Taylor's determination that the legislature has the power to exchange land for money, it has not funded it, so if the case proceeds, the final judgement is Judge Taylor ruled the state will have a liability of a significant amount of money. He said they've attempted to communicate to the plaintiffs that they may be able to settle the lawsuit by coming forward with a proposal.

Mr. Kester said the proposal is on file, and in brief, the concept proposed is a way to develop a process which would satisfy the expectation of the U. S. Congress in 1956. The process is to continue with an accounting effort to identify the value of the land, converts it to an unfunded liability and then identifies proceeds from that liability (or what they would have been had it been funded) and then have the necessary expenses for the mental health needs first, and the rest for other expenses. Rep. Taylor asked Commissioner Pugh what the present mental health budget was. He said around \$20 million for mental health only.

CHANGE TO TAPE #33, SIDE ONE

Number 000

Mr. Koester's testimony on the lands issue continues. Rep. Taylor asked why they couldn't take care of mental health needs the way it was intended. Mr. Koester said the problem was they are trying not to go beyond what Congress contemplated. He said the lands were not dedicated exclusively to mental health. Rep. Taylor said that the first use for mental health. Mr. Koester said the point was that Congress contemplated the territorial legislature making the mental health needs determination. When it made the determination, it would appropriate the

necessary revenues from the lands to fulfill that program. The 1956 law did not specify what the mental health program was to look like. Since then, Alaska has funded a mental health program. The problems with putting together a settlement proposal is the Attorney General's office does not feel free, given the 1978 law which governs the performance of the AG's duties and obligations, that they have the latitude to propose a settlement which would require the legislature to undo what it did in 1978. He said the position they have always held was no legislature can bind a subsequent legislature, but a previous legislature could bind the administration, and that's what happened.

Number 336

Co-Chairman Gruenberg adjourned the meeting at 6:27 p.m.

MENTAL HEALTH SERVICES IN THE STATE OF ALASKA  
TREND ANALYSIS THROUGH FISCAL YEAR 1984

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
RESEARCH AND DATA SUPPORT SECTION

(FOR INCLUSION IN THE FY1984 ANNUAL REPORT)

## Trend Analysis

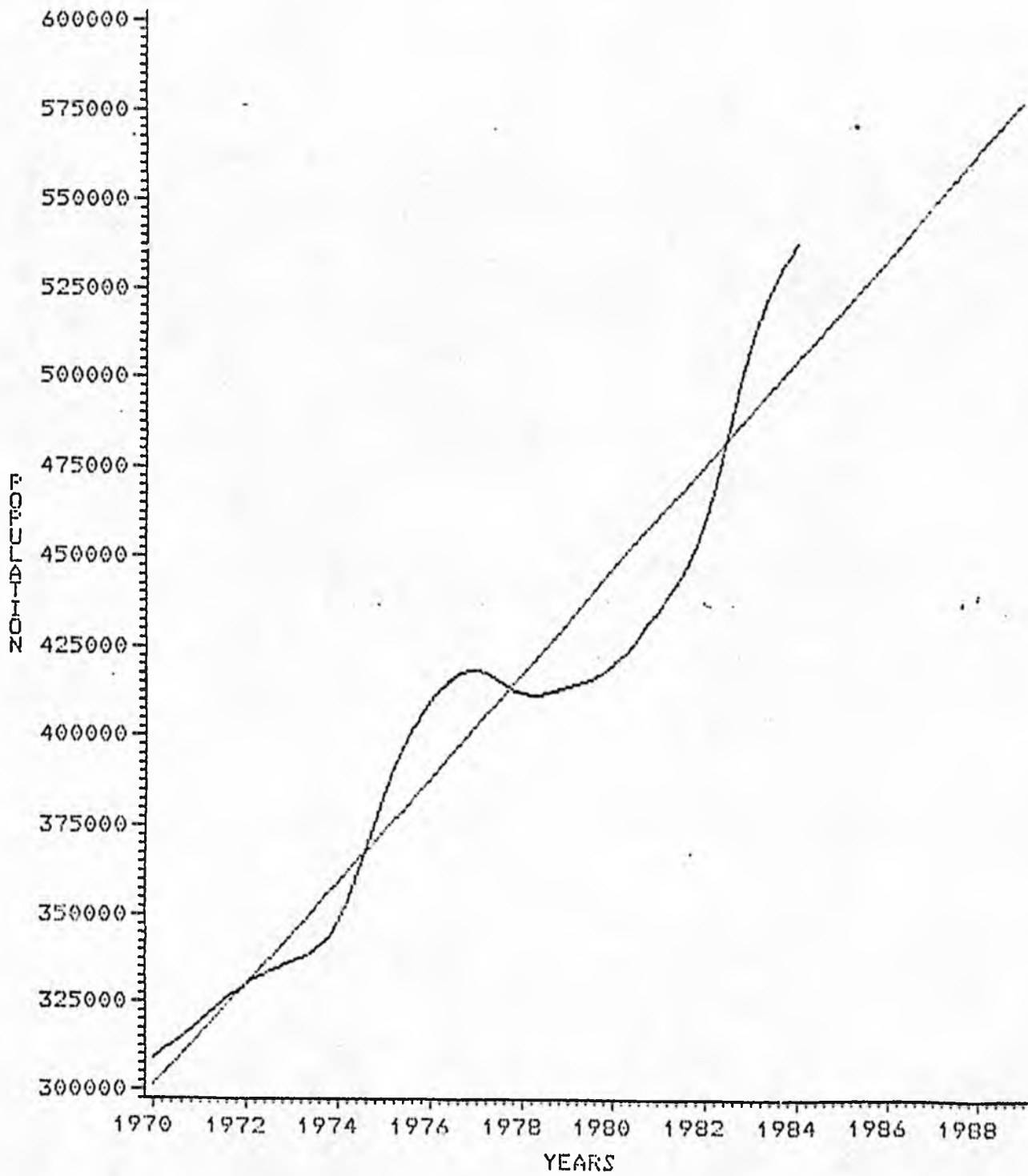
This section presents a discussion of a series of graphs based on data for the past several years showing the growth in mental health services in the state of Alaska. Taken collectively, these data reflect the publically funded portion of the state's mental health system, the impact of population growth, and the expanding need for services in both the inpatient and community mental health center systems.

Graph 1 on the following page shows Alaska state population estimates from 1970 through 1989. Actual population figures form the curved lines while projected and estimated figures are shown as a straight line.\* The states' population increased rapidly during the period of oil pipeline construction and development in 1974-1976, then leveled off and declined during 1977-1979. A second increase began in 1980 and appears to be increasing, though projections indicate that the rate of growth may decrease somewhat.

Since 1980 the state population has grown by 28.2%. In 1984 alone population increased by 5.4%. This rapid increase in growth should be kept in mind while reviewing the following trend data on mental health services in Alaska.

\*Population projections for the years 1985-1989 are based on the ordinary least squares regression estimates using prior years data for 1970-1984. The five years projected data is thus an estimate based on the straight line which best fits the actual population data for prior years. The population figure for 1984 is a Dept. of Labor estimate.

# ALASKA STATE POPULATION

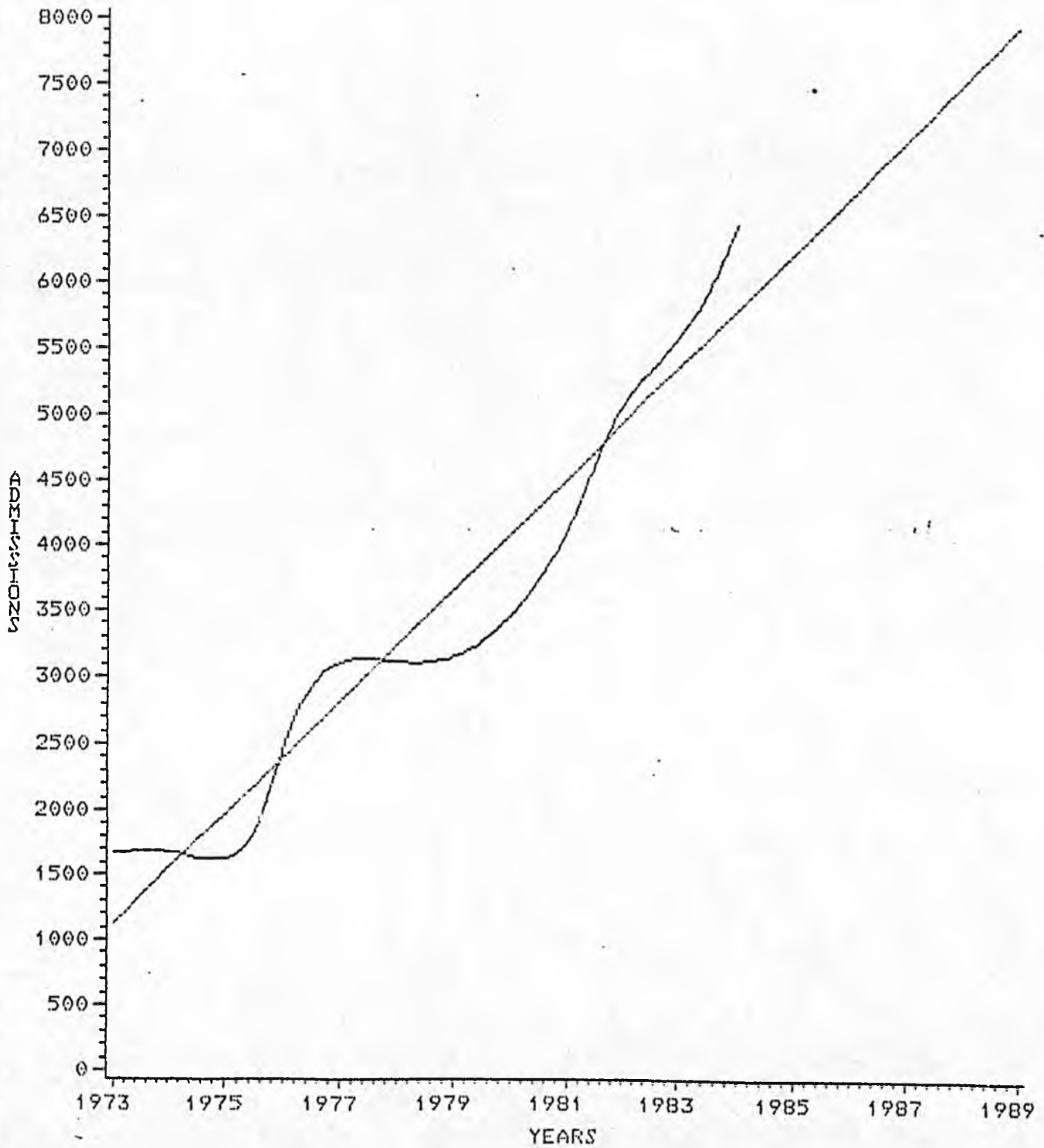


POPULATION WITH FIVE YEAR PROJECTIONS

Graph 2 presents data on the admission of new cases to the community mental health center's caseload. A total of 26 such centers are funded across the state, located in major population areas and in a number of rural or bush communities. They provide essential mental health services in their catchment areas, and are often the only source of such services in the more rural areas. From 1974 through 1984 admissions to this system have gone from 1,678 to 6,456, a 285% increase. During fiscal year 1984 alone admissions increased 15.2%.

Comparing Graph 1 with its population data, and Graph 2 on CMHC admissions, it is evident that admissions closely followed population growth. With the continued growth of the states' population an increase of 23% in admissions is expected over the next five years due to this fact alone.

# COMMUNITY MENTAL HEALTH CENTERS ADMISSIONS

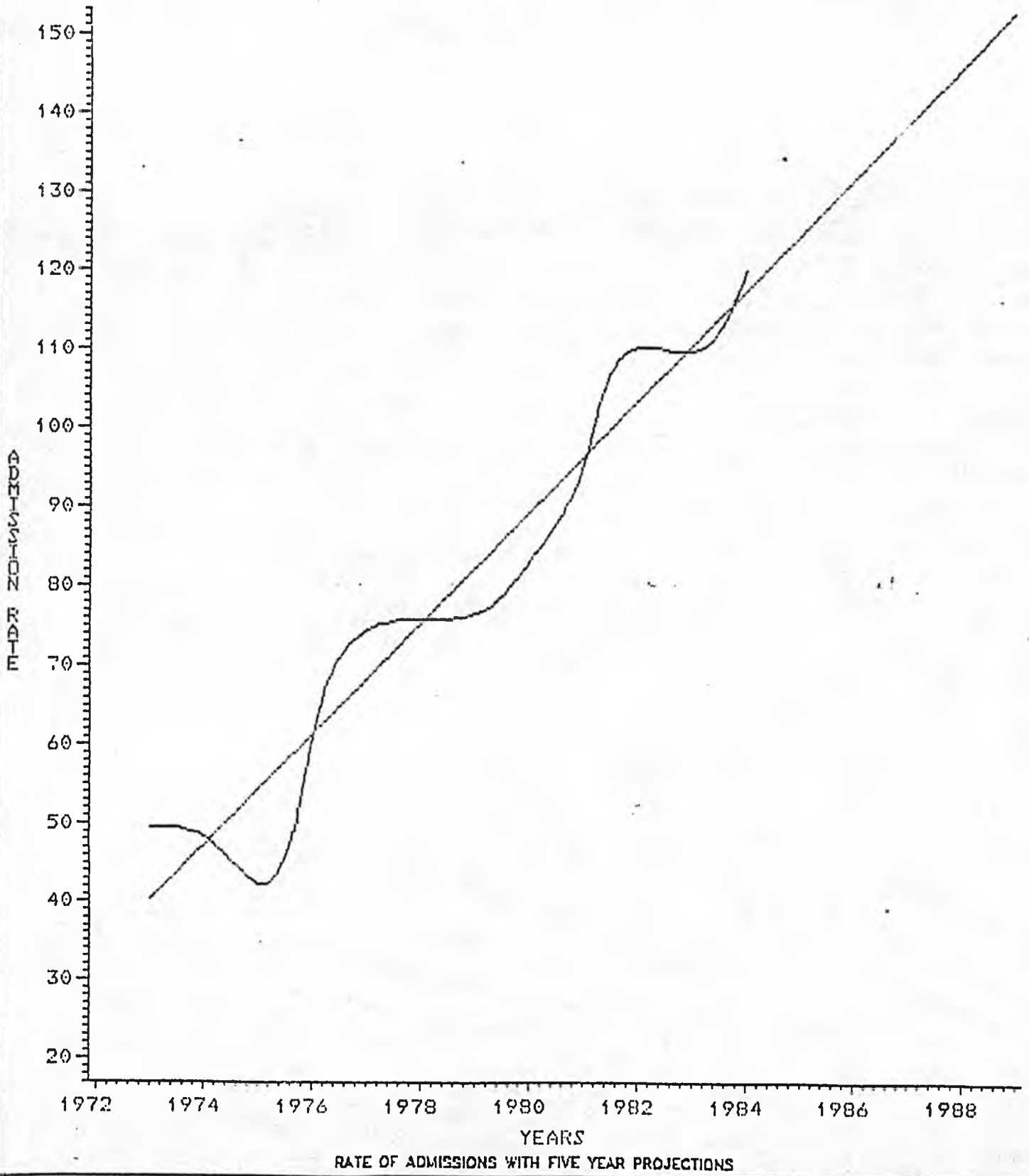


ADMISSIONS WITH FIVE YEAR PROJECTIONS

Rates of admission to the community mental health center system per 10,000 state population is one measure of the workload of those who deliver mental health services throughout the state. During the period from 1975 through 1984 this rate has increased from 42 per 10,000 population to 120 per 10,000 population, an increase of 185%. During fiscal year 1984 the admission rate increased 9.4% compared to the population growth rate of 5.4%. It is evident from this graph and the preceding one taken together that the growth in community mental health center admissions is a function of both population growth and of their providing services to a greater proportion of the state population.

Still, there remains an unknown fraction of the state population which does not receive the minimum level of essential mental health services. To some degree this is reflected in the continuing increase in the rate of admissions to the community programs. It is expected that these programs will continue to expand their service delivery to the extent that they are able to do so based on the availability of staff and funds, and that one result of this will be a continuing increase in admission rates. This will, of course, further increase the number of admissions and the size of caseloads in the system.

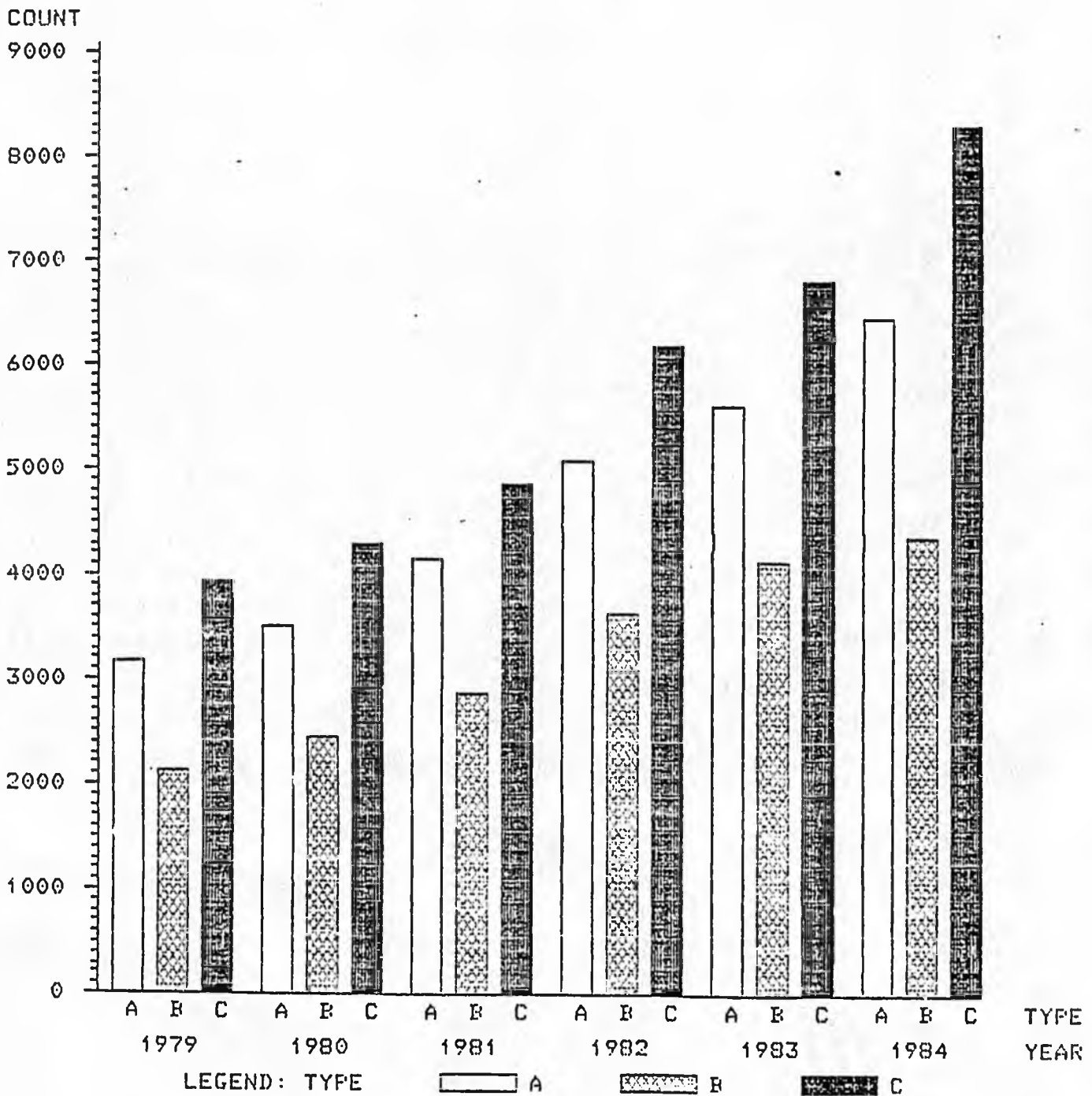
# COMMUNITY MENTAL HEALTH CENTERS RATE OF ADMISSIONS PER 10,000 POPULATION



.The graph on the following page presents three different measures of the services provided by the community mental health center system; admissions, caseloads, and the unduplicated client count. Admissions represent new clients coming into the system for treatment. The caseload represents unique individuals receiving services during the last 90 days of the fiscal year and are considered as the "open cases" in the system. The unduplicated count of clients reflects the total number of specific individuals who received service at any time during the fiscal year.

During the past five years there has been a consistent increase in growth in all three of these indicators. Admissions increased 104%, the caseload increased 105%, and the unduplicated count of cases increased 111 percent. During the same five years population increased 30%.

# COMMUNITY MENTAL HEALTH CENTERS ADMISSIONS, CASELOADS, AND CLIENTS SERVED

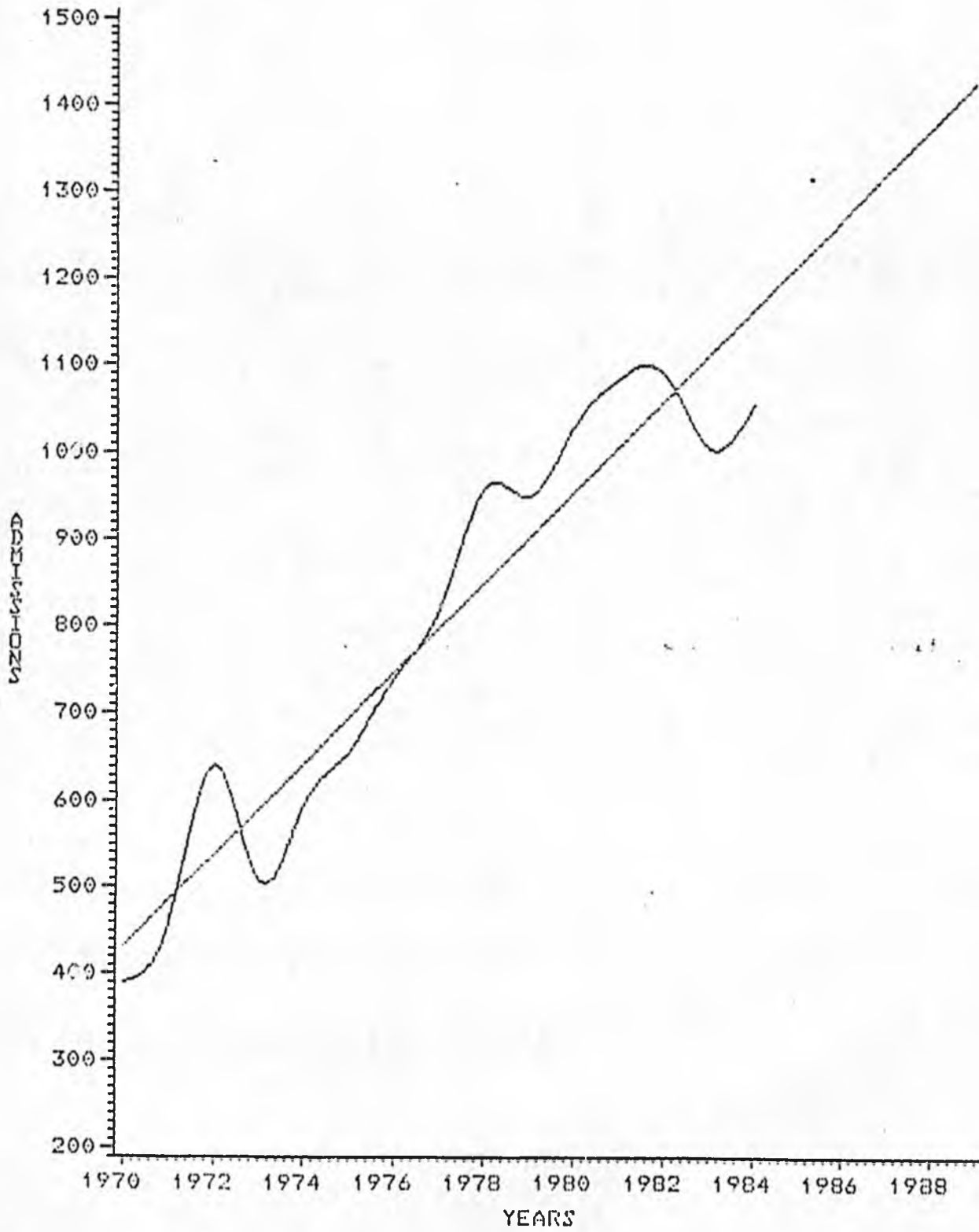


A=ADMISSIONS B=CASES C=CLIENTS  
 FOOTNOTE 1: OPEN CASES RECEIVING SERVICES  
 IN LAST 90 DAYS OF FISCAL YEAR  
 FOOTNOTE 2: UNDUPLICATED COUNT OF OPEN CASES  
 RECEIVING SERVICES DURING FISCAL YEAR

The Division of Mental Health and Developmental Disabilities operates the state's sole public psychiatric hospital, the Alaska Psychiatric Institute, in Anchorage. This facility receives both voluntary and involuntary admissions from accross the state and also provides forensic services to the Department of Corrections. Graph 5 shows admissions from 1970 through 1984.

During the period 1970-1982 admissions rose from just under 400 to almost 1100, and increase of 175%. The decline in admissions in fiscal year 1983 was largely due to the provision of mental health services in correctional facilities in place of the transfer of the incarcerated patient to the psychiatric hospital in an effort both to provide better services to forensic patients as well as more security during treatment and in an effort to control population growth at the hospital. Population pressures were again felt in fiscal 1984 however, as admissions kept pace with population growth by rising almost 5%. It is very likely that pressures on the Alaska Psychiatric Institute are similiar to those in the community outpatient system, a combination of population growch and the need to expand services to a greater proportion of the population.

# ALASKA PSYCHIATRIC INSTITUTE ADMISSIONS

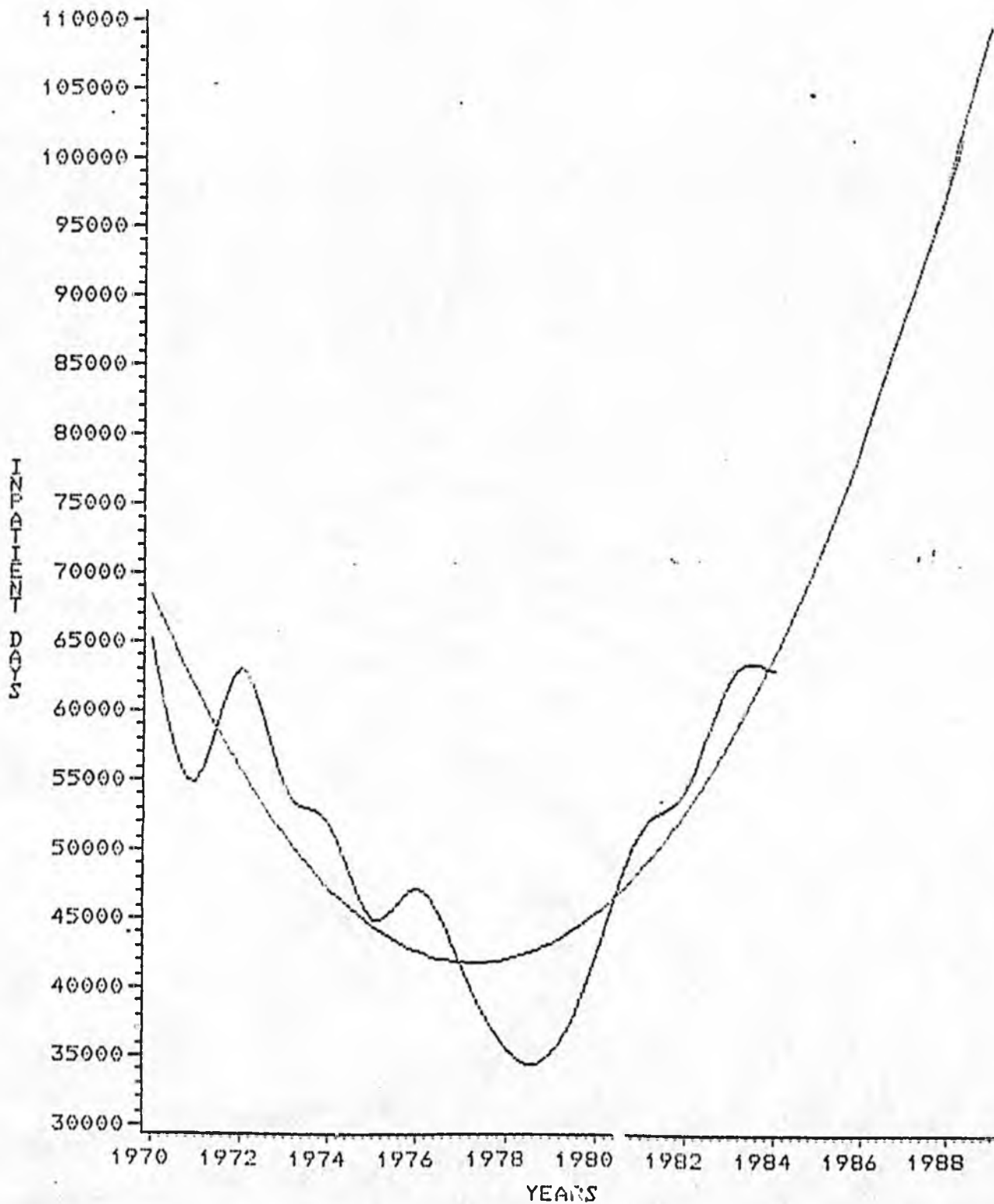


ADMISSIONS WITH FIVE YEAR PROJECTIONS

.The Alaska Psychiatric Institute has one restriction that the community mental health center outpatient system does not face, and that is the limitation of the number of beds available for patients. Currently the hospital is an accredited 176 bed facility. In terms of inpatient days this means a maximum of  $365 \times 176$  or 64,240 inpatient days are available for service delivery. In fiscal year 1984, 62,904 inpatient days were delivered, or 98% of the total available. This is an increase from the previous years 95%, and represents an ever thinner operating margin.

Given the maximum use of available bedspace that these figures represent, the ceiling on the number of beds available, and the population growth which pushes the number of potential admissions higher each year, the only systems constraint which can change is that of length-of-stay in the facility. Essentially, it becomes necessary to shorten the period of treatment at the hospital, on the average, in order to make beds available for further admissions. This is, of course, the solution of last resort, and the hospital, whenever possible, attempts to increase the efficient utilization of existing resources rather than decrease treatment time.

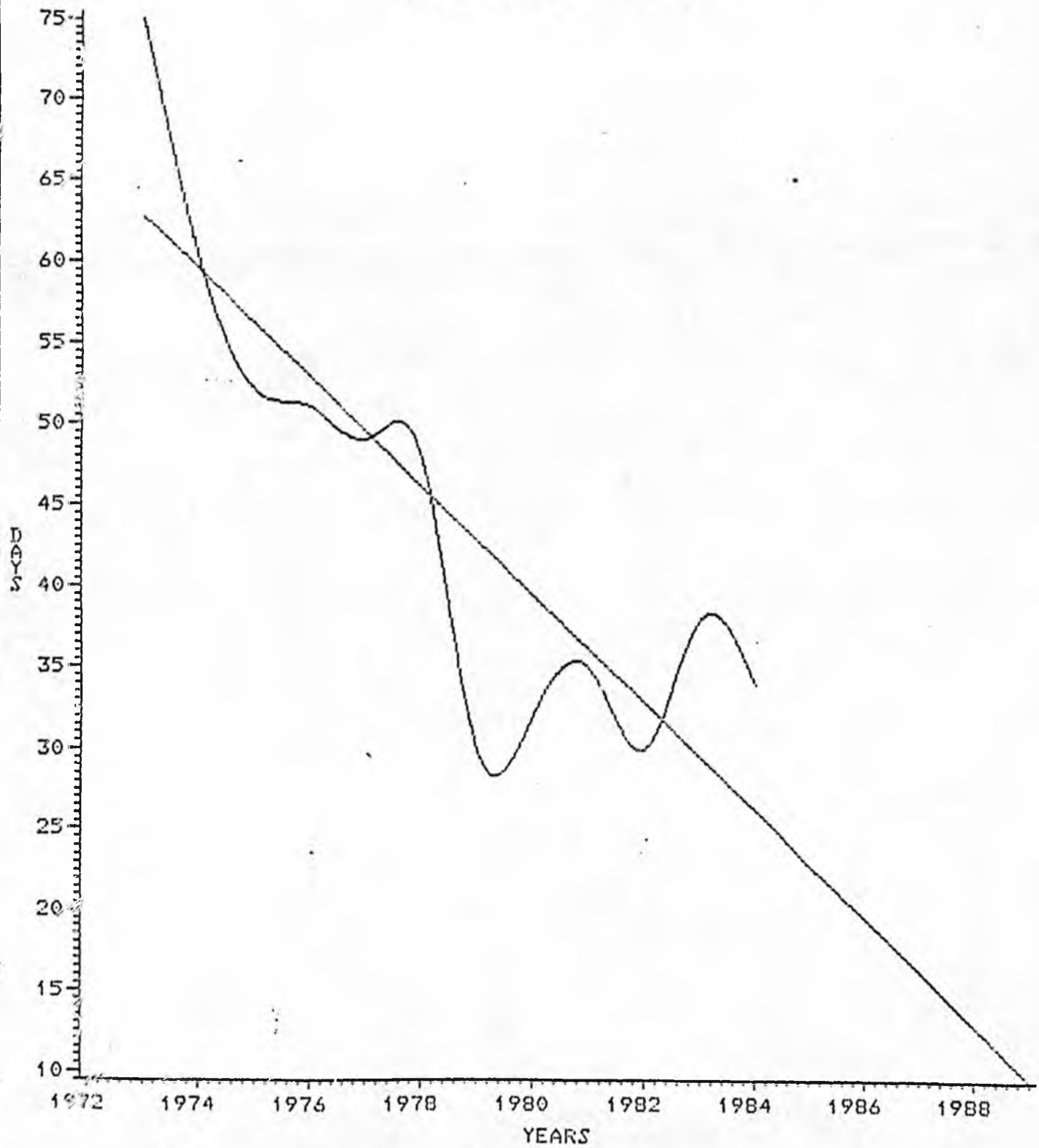
# ALASKA PSYCHIATRIC INSTITUTE INPATIENT DAYS



INPATIENT DAYS WITH FIVE YEAR PROJECTIONS

Graph 7 on the following page presents data on the length-of-stay at the Alaska Psychiatric Institute. In 1983 when admissions decreased slightly the length-of-stay increased; in 1984 when admissions increased the length-of-stay decreased. This relationship between length-of-stay and admissions is a reflection of the fact that the resources of the API, as shown by the 78% utilization of inpatient days, is at its maximum effective limit. The basic problem for the facility is to balance pressures from further admissions with the need for completion of a course of treatment for patients. If population pressures continue to mount and no alternative to admission to the hospital is found, length-of-stay is predicted to further fall as patients are released with fewer days under treatment.

# ALASKA PSYCHIATRIC INSTITUTE LENGTH-OF-STAY

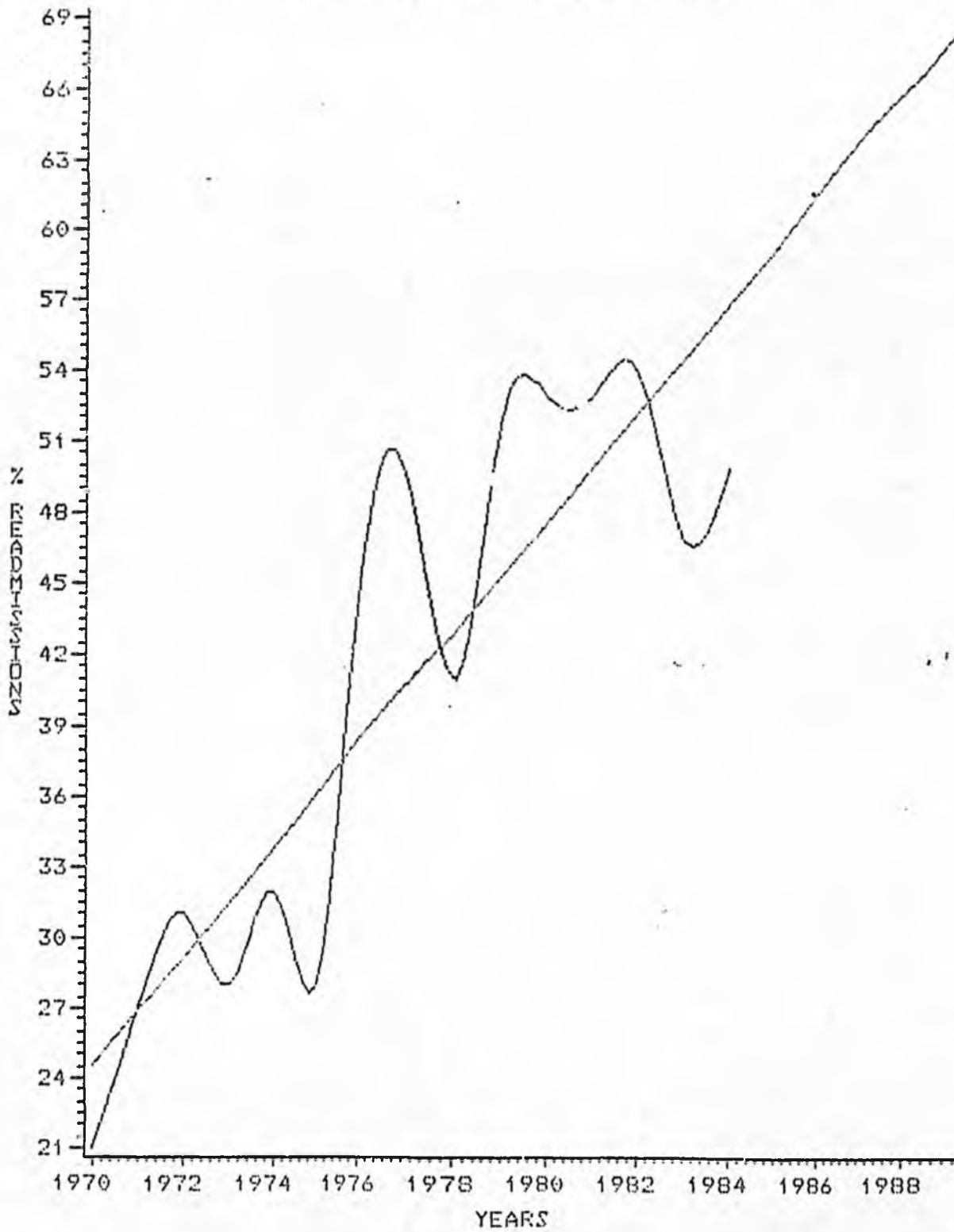


LENGTH-OF-STAY WITH FIVE YEAR PROJECTIONS

Graph 8, on the percent readmissions to the Alaska Psychiatric Institute, shows the results of decreasing length-of-stay on readmission rates. As length-of-stay decreases the readmission rate for former hospital patients tends to increase. There are thus two driving forces at work to raise the number of admissions to the hospital; the growing Alaska state population and the revolving door of readmissions.

The data represented in these graphs depicts a mental health delivery system under considerable stress and likely very near to operating at the extremes of its capacity. If the predicted trends continue over the next very few years some hard choices are going to have to be faced. Expansion of costly services, new construction, expanded community support systems, alternative hospital and community placements, the prioritization of service delivery, the designation of target populations, and the reduction in the overall availability of services are all possible outcomes.

# ALASKA PSYCHIATRIC INSTITUTE PERCENT READMISSIONS



PERCENT READMISSIONS WITH FIVE YEAR PROJECTIONS

EXCERPTS  
of  
TWO DECADES OF UNANIMOUS STATE LEGAL OPINION  
SUPPORTING  
THE POSITION OF  
THE ALASKA MENTAL HEALTH ASSOCIATION  
REGARDING THE ADMINISTRATION OF MENTAL HEALTH LANDS

In 1964 Opinions of the Attorney General No. 7, September 14, 1964, Re: Selection of Mental Health L, I School and University Lands by Boroughs Attorney General Warren C. Colver wrote in part:

Mental Health lands in Alaska were established under a Federal grant which directed that the lands be administered as a public trust and the income therefrom "be applied to meet the necessary expenses of the mental Health program of Alaska." . . .

The grants by the Federal Government of School and University lands and Mental Health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under Section 6K of the Alaska Statehood Act (72 Stat. 339), with the express proviso that they be used for the purposes for which they were reserved. (emphasis added)

Since Statehood, the State of Alaska has continued to use these lands and the proceeds derived therefrom for the special purposes for which the Federal Government originally granted these lands to the Territory of Alaska. The Director of the Division of Lands is authorized by As. 38.05.035 to select, administer and dispose of Mental Health lands for the support of the Mental Health program. As 38.05.035(a)(13) provides as follows:

"select, administer, and dispose of mental health lands for the support of the mental health program (emphasis added in Colver letter)

The Legislature has clearly established a policy that the Mental Health lands continue to be dedicated for the support of the Mental Health program.

In conclusion, it is our opinion that the Mental Health School and University lands of the State are not unappropriated, unreserved State lands within the meaning of As 07.10.150 and are not subject to selection by a borough under that Act.

---

However, in the actual administration of Mental Health Lands the State:

-- Transferred Mental Health Lands to various State of Alaska agencies with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

— Transferred Mental Health Lands into State Parks or

other non-revenue producing categories with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

-- Took public rights-of-ways from Mental Health Lands with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

\_\_ Took gravel and other valuable materials from Mental Health Lands with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

-- Purportedly sold, leased, exchanged, or otherwise purported to convey Mental Health Lands or interests therein to third parties with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

\_\_ Otherwise violated its trust responsibilities in the management of Mental Health Lands;

all in violation of clearly established legal requirements for the administration of federal trust lands.

By 1975 there had been enough questions raised with regard to the administration of Mental Health Lands and other trust lands by the State of Alaska (University and School) that a paper on the subject was written by a State of Alaska, Division of Lands Summer Law Clerk, Ronald L. McGowan entitled A Report On Alaska's School, University And Mental Health Lands (The McGowan Report). See Exhibit A.

Among other things the McGowan Report states:

... Some State of Alaska agencies are currently using these lands without making any compensation.

This practice appears to be in violation of law. (p.12)

...The Attorney General held that such [Mental Health] lands could be exchanged for general grant lands under certain contingencies; specifically: 1. such exchange will further a legitimate state purpose; 2. the integrity of the mental health trust be preserved; and, 3. the exchange, at least in part, supports the mental health program. (p.8)

... In the final analysis Alaska must see to it that its school, university and mental health lands continue to be in support of the purposes for which they were granted. (p.14)

... To assure that these lands continue to support the purposes for which they were granted, any proceeds, income, or other funds derived from them must go to the support of the appropriate program. (p.15)

(Emphasis Added)

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By 1976 there had been general recognition within the State of Alaska's Division of Lands, that the Alaska Mental Health Enabling Act was being violated by the State of Alaska in its administration of Mental Health Lands.

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On January 28, 1976 Dale P. Tubbs, Deputy Director, Division of Lands, Department of Natural Resources, State of Alaska wrote to George E. Utermohle, Legislative Intern, Legislative Affairs Agency in response to a series of written questions in part:

The criteria used in selecting mental health grant lands was to create money for the fund from the management and disposal of the lands and resources involved. Lands were picked adjacent to communities knowing that the expansion would involve the land and be needed for economic reasons. Also large blocks of land were picked where known resources were involved that would create revenue.

. . . In many instances recommendation by any of these agencies [various State agencies] may have an adverse impact on the production of revenue.

. . . It can be estimated however that not more than 5000 acres of mental health lands have been sold.

. . . Also past legislation and state use has appropriated some of the lands without generating revenue.

. . . It would be recommended that any legislation that tends to appropriate mental health lands require a fiscal note determining the land value that is being taken from the mental health grant to the benefit of the legislation. To compensate the loss by putting the lands into a non-revenue producing category it could be suggested that the Legislature be required to put into the mental health fund account the market value of the lands appropriated.

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On April 27, 1976 Michael C. T. Smith, Director, Division of Lands, Department of Natural Resources, State of Alaska wrote to Guy R. Martin, Commissioner, Department of Natural Resources on School, University, and Mental Health Grant Lands - Lack of Effective Programs in part:

The primary purpose for the existence of these lands is to generate revenues from their lease or sale, the revenues then to be used in furtherance of the respective program.

At this time there is no trust fund for the Mental Health Land revenues, although a strict accounting of revenues received from Mental Health Lands is kept as these monies enter the General Fund.

. . . However, it is unfair to the university program, as well as technically flaunting the purposes for which lands were given to University, for these lands to be permanently tied up in a nonrevenue producing classification. Other examples include considerable acreages of Mental Health, School and University lands presently withdrawn within Chugach State Park and Palmer Hay Flats Wildlife Refuge.

---

On February 8, 1977, Assistant Attorney General Thomas E. Meacham, wrote a "Brief Synopsis of School, University and Mental Health Land Statutes" (Meacham Synopsis). Portions of the Meacham Synopsis are:

State courts in other states have discussed the trust responsibilities of states regarding lands granted them under the terms of a particular federal act, and have generally held that the administration of the lands must

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 128  
Title: Mental Health Trust Lands

Sponsor: Pignaiberi, et al.  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Natural Resources  
Program Category Affected: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: Land and Water Management

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>						
<b>REVENUE</b>		(1,500)	(1,500)	(1,500)	(1,500)	(1,500)

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary

Projected lost revenue is based on an average income from state land sales of \$15,000,000 annually, 10 percent of which is from mental health land.

Prepared By: Michael E. Vediner Phone: 465-2400  
Division: Land and Water Management Date: March 20, 1985

Approved by Commissioner: Mms D Arnold, Deputy Date: March 20, 1985  
Agency: Dept. Natural Resources

**Distribution (by Agency preparing fiscal note):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Introduced: 1/25/85  
Referred: Resources, Judiciary  
and Finance

BY PIGNALBERI, GRUENBERG, BOUCHER,  
JENKINS, KOPONEN AND TAYLOR

1 IN THE HOUSE

2 HOUSE BILL NO. 128

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mental health trust lands; and  
7 providing for an effective date."

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

9 \* Section 1. AS 38.05 is amended by adding a new section to read:

10 Sec. 38.05.880. DISPOSITION OF STATE MENTAL HEALTH TRUST LANDS.

11 The state may not convey or otherwise dispose of land owned in fee by  
12 the state that was received from the federal government under sec. 202  
13 of the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830).

14 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
15 10.070(c).

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: 907-465-2400

March 8, 1985

The Honorable Richard Shultz  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative *Shultz* Shultz:

I am writing each member of the Legislature to provide current information on two issues of rising concern to Alaskans: the management of the state's mental health lands and progress in negotiations between the state and Seldovia Native Association, Inc. (SNA) regarding a possible land exchange in Kachemak Bay State Park. These two issues are largely unrelated, but they are summarized in this letter owing to the broad interest that has been exhibited in them.

### Mental Health Lands Status

I am enclosing a briefing packet on the mental health lands issue, but let me also provide a summary progress report.

The current issue regarding mental health land management arises from a class action lawsuit that has reached the Alaska Supreme Court, in which plaintiffs contest 1978 legislation that redesignated mental health lands for general use and provided for a mental health trust fund to which appropriations have not been made (AS 37.14.010-.050).

The mental health lands include valuable acreage in the Swanson River oil and gas field, Beluga coal field, Trans Alaska Gasline System project, and Eklutna water project. Pursuant to the 1978 legislation, other mental health lands have been conveyed to municipalities in fulfillment of their entitlements and to individuals under land disposal programs. At the Court's direction we are conducting an audit and inventory of mental health lands that will produce preliminary results in mid-March and will be complete in mid-May. The audit will indicate more clearly what is at stake, but we are already aware that the mental health lands could be very valuable

March 8, 1985

because of their location and resources. I will keep you informed as this information becomes available.

The state has expressed to the sponsors of HB 128 (providing for a moratorium on conveyances of mental health lands) its interest in discussing settlement of the litigation that is pending in the State Supreme Court or of possible litigation in federal court (as threatened by the Alaska Mental Health Association). Our attorney, Tom Koester of the Department of Law, has been designated by the administration to serve as the point of contact in these negotiations. Either Tom or members of my staff remain available to brief you further.

I believe that passage of legislation such as HB 128 could have an adverse effect on the state's management of these lands without corresponding benefits for the plaintiffs in the suit. I want to be sure that you are aware of our interest in constructive resolution of the litigation.

#### Kachemak Park Land Exchange

A 1978 agreement between the state and the Seldovia Native Association, Inc., (SNA) provides for a full trade-out of the corporation's land within Kachemak Bay State Park for an equal-value amount of state land outside the park. This exchange has been under way for several years, during which time the state has exchanged for about 3,500 acres of SNA land within the park. At present, there are another 23,000 acres of SNA land within the park.

To the frustration of both parties, completion of the trade has been delayed by several factors. Foremost is the difficulty of identifying a sufficient amount of state land of interest to SNA which can be made available for the trade. Our experience indicates that Seldovia is primarily interested in developable state land with road access or water frontage. Obviously, this type of state land is in short supply and in high demand from other competing interests (particularly on the Kenai Peninsula).

In an attempt to complete this trade as soon as possible in a single action (rather than in phases), I have instructed my staff to identify a large inventory of potential trade land, including land outside the Kenai Peninsula area. We will identify a pool of land well in excess of that needed to complete an equal value exchange, so as to afford Seldovia and the state the flexibility to refine the land pool as needed. Mr. Fred Elvsaas,

March 8, 1985

President of the SNA, has received a preliminary list of some available state land, and I've explained to him that our statutes require our preliminary agreement to undergo public and legislative review. The department cannot unilaterally commit state land to the trade without this review.

In recent correspondence copied to members of the Legislature, the president of SNA signalled a lack of confidence in the department's approach to the exchange. I have met with Mr. Elvsaas on numerous occasions and each time I have reiterated my interest in and commitment to the trade -- but I also have tried to clarify that land exchanges are subject to a public process and that no agreement can be considered final unless it passes through the required process. I want you also to be aware of this process and my interest in the trade.

As you will see in the enclosed briefing paper on land exchanges, an exchange of such magnitude is subject to legislative approval. AS 38.05.020(a) requires legislative approval if an exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000, or is for other than equal appraised fair market value. The department will continue attempts to negotiate the trade this spring and summer with SNA. Assuming we reach an agreement, I expect to hold public hearings on the trade this fall and submit the exchange for legislative review under AS 38.50.140 at the beginning of the 1986 session.

I will do my best to keep you advised as we continue to negotiate with SNA. I would be pleased to arrange a briefing on the trade for you if you are interested.

Sincerely,



Esther C. Wunnicke  
Commissioner

Enclosures

cc: Governor Bill Sheffield  
John Shively, Office of the Governor  
Attorney General Norm Gorsuch  
Tom Koester, Department of Law  
Tom Hawkins, Division of Land  
and Water Management  
Fred Elvsaas, Seldovia Native Association, Inc.



Alaska Department of  
**NATURAL  
RESOURCES**

Mental Health Land Grant Fact Sheet  
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was \$25,110,430. Mental health expenditures in Alaska by the state for the same period of time were \$115,364,054, with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

## MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act  
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
  - a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
  - b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was \$25,110,430 from 1959 thru 1977.

DEPARTMENT OF  
NATIONAL RESOURCES

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COMMISSIONER OF  
NATIONAL RESOURCES

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

- a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
- b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
- c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

## MENTAL HEALTH ANNOTATED CHRONOLOGY

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DEPARTMENT OF  
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CON. OF SE. ALASKA

In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
  - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
  - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
  - b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
  - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
  - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
  - e. There existed three alternative courses of legislative action:
    - 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
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(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

- a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
- b. Appraisals shall be complete by 3/15/85;
- c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
- d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
- e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 183 parcels (81 tracts) is valued at \$14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.



### LAND EXCHANGE FACT SHEET

The disposal of state land or interests in state land by exchange is governed by Alaska Statutes - Title 38.50 and Alaska Administrative Code - 11 AAC 67.200 to 11 AAC 67.280. These statutes and regulations ensure that the commissioner may exchange state land or interests only to achieve public purposes, after proper consideration of alternatives, agency coordination, public notice and public hearing(s). Unless the land or interests which the state receives in an exchange equals, or exceeds, the appraised fair market value of the land or interests exchanged by the state, the Alaska legislature must approve the exchange. Legislative review is also necessary if a exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000.

The land exchange process is usually detailed and time consuming. The department must adhere to the following chronological regulatory steps in order to complete a land exchange:

1. Initial pre-application discussions.
2. Application filed with department.
3. Department reviews application and responds within 60 days.
4. Land status checked.
5. Preliminary exchange agreement signed.
6. Notation of state title records to segregate land from third-party interests.
7. Fair market value appraisal report initiated.
8. Mineral closing order.
9. Land classification action.
10. Land survey completed, if necessary.
11. State agency coordination.
12. Appraisal report completed, reviewed and approved.
13. Preparation of alternative findings and exchange report.
14. Public notice.
15. Public hearing(s) and comment period.
16. Final exchange agreement signed.
17. Deed preparation and review.
18. Execution of exchange.

In addition, if the exchange requires legislative approval, the governor must transmit the proposal to the legislature within ten days of the convening of a regular legislative session. The department is authorized to conclude the exchange upon approval by the legislature of the proposed exchange agreement.

The commissioner may also revise a proposed land exchange to reflect comments or other information provided through the agency and public comment period [AS 38.50.130(b)].

Land Exchange Fact Sheet

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Land exchange application forms may be obtained and submitted at any of the Division of Land and Water's Regional Offices located in Anchorage, Fairbanks or Juneau. If the exchange proposal involves a small tract of state land it will usually be negotiated directly by the applicable regional office. If, however, the exchange proposal involves either a large tract of state land, a federal government agency or Native corporation, or is considered by the department to be unusually complex or sensitive, the exchange will be negotiated by the division's Central Office Land Management Section.