HB

61

HOUSE COMMITTEE REPORT

(9) 2/11

Date referred: 1/22/87 FURTHER REFERRALS: Judiciary

DATE: 2/9/87

The Resources Committee has considered HB 61

"An Act relating to the renewal of permits for the use of mental health land of the state; and providing for an effective date."

RECOMMENDS:

[✓] replace with CS HB 61 (Res) [ ] the same title

[✓] a new title

[ ] attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ________ Committee

ADOPTS: [ ] ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[✓] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ________

[ ] same as previous zero fiscal note published ________

SIGNING DO PASS:

Fernich Springs

Cliff Davidson

[signature]

Wayne Pearce

Mike Navarre

Samuel R. Cotten

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz No Rec.

Samuel R. Cotten

Chairman's signature

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

"Timely" fashion in Nov.

1-7-87

February 5, 1987

The Honorable Sam Cotten
The Honorable Adleheid Herrmann
Co-Chairs, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives Cotten and Herrmann:

Subject: HB 61, which provides for the extension of permits until the Mental Health Commission has had the opportunity to determine that such action is consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

Response: The department supports this legislation. It provides a more orderly process for conducting business on mental health lands. Additionally, we think its coverage should be expanded to include other actions provided in AS 38.05.850 and 38.05.110.

Commentary: The meeting schedule of the Mental Health Commission does not always coincide with the termination date of permits and other land use authorizations. Thus a gravel sale contract, for instance, could be terminated before the commission was able to consider its consistency with trust purposes and approve its extension. The bill would remedy this problem.

Sincerely,

BrV Brady

for Judith M. Brady
Commissioner

cc: Committee Members
Governor's Legislative Liaison

10-J9LH

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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Commissioner

cc: Committee Members
Governor's Legislative Liaison

10-J9 LH

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : HB 61
Publish Date :

Revision Date: February 5, 1987
Title : Permits for Use of Mental Health Land
Sponsor : Representative Sund
Requestor : House Resources

Agency Affected: Natural Resources
BRU : Land and Water Management
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Tom Hawkins
Phone : 465-2400
Division : Land and Water Management
Date : February 5, 1987

Approved by Commissioner : Norm D Sund Deputy
Date : 2/6/87
Agency : Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

HB 61

JOHN SUND, REPRESENTATIVE
2505 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

January 23, 1987

MEMORANDUM

TO: Honorable Adelheid Herrmman
Honorable Sam Cotten

FROM: Representative John Sund

RE: HB61 "An Act relating to the renewal of premits for the use of mental health land of the state; and providing for an effective date."

.....

I would appreciate it if you would schedule HB61 at your earliest convenience.

The renewal of permits on mental health lands is becoming a serious problem due to policies adopted by the Department of Natural Resources, the attorneys for the plaintiffs and interveners in the Weis lawsuit, and the Mental Health Review Commission.

A contractor in my district received a letter from DNR requesting an application for permit renewal on 11/13/86. He reapplied to DNR within the week, and his application was passed along to the attorneys for the plaintiffs and interveners. Under Department order, the attorneys are allowed 30-60 days to review each permit before it can be reviewed by the Commission.

In this case the permit expired on 1/7/87 while under review and it is not scheduled to go before the Mental Health Review Commission until 1/23/87. In the meantime the contractor can't operate and is facing possible bankruptcy. Attornies have requested a thirty day extension to appraise resourse value, enenthough DNR and the Commission have each apraised the permit within the last year.

Under Sec. 2. (g) of this bill, If a person files a timely application for the renewal of a permit for the use of mental health land of the state and the commission fails to reject it before the termination of the permit, the commissioner may extend the permit until the commission has acted on the application for the renewal.

Introduced: 1/22/87
Referred: Resources and Judiciary

IN THE HOUSE BY SUND

HOUSE BILL NO. 61

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the renewal of permits for the use of mental health land of the state; and providing for an effective date."

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

* Section 1. Section 2(d), ch. 132, SLA 1986, is amended to read:

(d) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709. Except as provided in [(e) OF] this section, the commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. In reviewing a proposal for the sale, lease, or exchange of mental health trust land from the commissioner of natural resources, the commission may approve the proposal of the commissioner on its determination that the proposal is consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

* Sec. 2. Section 2, ch. 132, SLA 1986, is amended by adding a new subsection to read:

(g) If a person files a timely application for the renewal of a permit or contract for the use of mental health land of the state and the commission fails to reject it before the termination of the permit, the commissioner may extend the permit until the commission has acted on the application for the renewal.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

under 38.05.850

a contract under 38.05.110

Introduced: 1/22/87
Referred: Resources and Judiciary

IN THE HOUSE BY SUND

HOUSE BILL NO. 61

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

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THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

INTERIM MENTAL HEALTH TRUST COMMISSION

SECOND SESSION

14TH ALASKA LEGISLATURE

George Rogers, PhD., Chairman
Judith M. Brady, Commissioner, ADNR
Robert D. Arnold, Deputy Commissioner, ADNR
Sharron Lobaugh, Governor's Mental Health Advisory Council
Myra M. Munson, Commissioner, ADHSS
Karen Perdue, Deputy Commissioner, ADHSS
Lidia Selkregg, PhD., Representing the Intervenors
K.J. Metcalf, Alternate
Dr. Dennis Scholl, Alternate
Barbara Wihlborg, Alternate

REPORT TO THE LEGISLATURE

February 1987

This report is issued pursuant to Chapter 132, SLA 1986.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 20, 1987

The Honorable Jan Faiks
President of the Senate
Fifteenth Alaska Legislature

The Honorable Ben Grussendorf
Speaker of the House of Representatives
Fifteenth Alaska Legislature

Dear Senator Faiks and Representative Grussendorf:

Passage of SB 472 (Chapter 132, SLA 1986) created the Interim Mental Health Trust Commission and charged it with the following:

- oversight of management of the trust lands
- oversight of appraisals and audits related to reconstitution of the trust
- recommendations related to mental health program
- recommendations related to future trust management
- recommendations related to resolution of the mental health trust litigation
- and a report to the legislature on these and other issues of concern to the commisssion

The commission concurs with many of the conclusions contained in the January 1986 report of the Joint Special Committee on Mental Health Trust Land. In particular, the land issue is complex and will not go away, and funding for mental health programs is inadequate. A negotiated resolution of the litigation is in the public interest and will require action by the legislature.

The commission's discussions and deliberations were aided by the participation, suggestions, and assistance of numerous individuals. These include public alternates K.J. Metcalf, Dr. Dennis Scholl, and Barbara Wihlborg; G. Thomas Koester, Attorney for the commission; David T. Walker, Esq., Attorney for the plaintiffs; and James B. Gottstein, Esq., Attorney for the intervenors; Gary Gustafson, Tony Braden, Salli Slaughter, Mary Kluis, Sue Putnam and other personnel of the Division of Land & Water Management and the staff of the Commissioner's Office, ADNR; Dr. Mel Henry, Director, and staff of the Division of Mental Health; Pat Ryan-Clasby, of the Governor's Advisory Council on Mental Health; Keith Busch and other staff of the Division of Legislative Audit; and Sandra Schubert, staff to the Joint Special Committee on Mental Health.

George Rogers, PhD.
Chairman, Interim Mental Health Trust Commission

Judith M. Brady
Commissioner, ADNR

Myra M. Munson
Commissioner, ADHSS

Robert D. Arnold,
Deputy Commissioner, ADNR

Karen Perdue
Deputy Commissioner, ADHSS

Sharron Lobaugh
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Lidia Selkregg, PhD.
Representing Intervenors

K.J. Metcalf
The Plaintiff's Alternate

Dr. Dennis Scholl
The Intervenor's Alternate

Barbara Wihlborg
Governor's Advisory Council on Mental Health Alternate

TABLE OF CONTENTS

APPENDICES

Appendix A: The Seriously Mentally Ill

Appendix B: Text of the 1956 Alaska Mental Health Enabling Act
Congressional Intent Documents
Legislation Creating Interim Mental Health Trust Commission (SB 472, 1986)

Appendix C: History of the Mental Health Land Trust
- The 1956 Enabling Acts
- Trust Lands Selection
- Trust Lands Management
- The 1978 Redesignation of Trust Lands

Appendix D: Other Public Land Trusts
- University of Alaska Settlement
- Trusts in Other States

Appendix E: The Weiss Decision

Appendix F. DHSS Offset Report to Legislative Committee

Appendix G. Summary of DNR Inventory of Land Activities Report

I. EXECUTIVE SUMMARY

Background

The Alaska Supreme Court's 1985 Weiss Opinion invalidated the 1978 legislative redesignation of mental health trust land as general grant land. The Court ordered the State to reconstitute the trust to its status on the effective date of the 1978 Redesignation Act (Chapters 181-182, SLA 1978). The Court ordered that the trust should be compensated for any lands which had been sold, but that the state should receive a credit for mental health program expenditures between the effective date of the 1978 legislation and the court's opinion.

Because of the importance of the issues and the diversity of opinion between the litigants about how to reconstitute the trust, the legislature created the Joint Special Committee on Mental Health Trust Lands (committee) (SCR 36, 1986) and the Interim Mental Health Trust Commission (commission) (SB 472, 1986) to avoid another round of prolonged litigation and the legal, financial, political, and administrative repercussions associated with a wholesale restoration of mental health trust lands and/or a large cash award.

Chapter 132, 1986 directed the commission to oversee the reconstitution process and interim management of trust lands, develop recommendations to improve trust management and mental health programs, propose a resolution to the litigation, and report back to the legislature. The following summarizes the commission's findings to date.

The Status of the Mental Health Program

The commission's review of relevant statistics and historical material establishes the current and long-standing inadequacy of the state mental health system. The commission determined that mental health program expenditures from July 19, 1978 through September 30, 1985 total $197 million. Therefore, the commission recommends that the legislature increase appropriations for mental health programs and projects in order to rectify the inadequacies of the present system.

The Current Status of Trust Lands

The Department of Natural resources has determined that 51,286 acres of the original 1 million acres have been conveyed out of both trust and state ownership by sales, 34,269 by exchanges, and

litigation settlements, and 43,088 acres were patented or approved for patent to municipalities. Another 372, 268 acres conveyed from the trust remain in state ownership but have been legislatively designated for non-trust purposes. Approximately 281,791 acres encumbered and 212,300 unencumbered acres are immediately returnable to the trust.

It should be noted, however, that the state retains mineral rights on all former trust lands, except on the 36,275 acres conveyed to Native corporations.

Table 2 in Chapter II of this report presents a more detailed description and accounting of the acreages in each category. As charged by Chapter 132, 1986, DNR today submits its complete report to the co-chairmen of the committee. Copies of Inventory of Land Activities on Mental Health Lands, July 19, 1978 - October 4, 1985 are available for inspection at the Department of Natural Resources in Juneau and Anchorage.

Value of and Credit for Lands Sold from the Trust

The court ordered that "to the extent that former mental health lands have been sold since the date of the conveyance (July 19, 1978) the trust must be reimbursed for the fair market value at the time of sale." The legislature anticipating that other lands might be involved in reimbursement authorized the commissioner of natural resources to appraise all or part of the former mental health trust lands. Given the lack of funding this effort has focused on municipal conveyances and using estimates. The process is still in progress.

The court instructions allow a credit or offset to cash reimbursement for the state for expenditures for mental health programs since the 1978 redesignations. From an audit for the period, the commission concluded that qualifying expenditures total $197 million.

Elements for an Acceptable Settlement

One interpretation of the court's instructions would lead to essentially an all-land trust. Although legally possible, this approach does not appear desirable or politically feasible. Both the commission and the committee, therefore, have explored alternative forms of reconstitution which would satisfy the court and be acceptable to all parties to the litigation. To guide the committee in its deliberations, the commission submitted a progress report on November 21, 1986, and a letter from the chairman on January 14, 1987, which included the necessary general conditions necessary for a satisfactory negotiated

alternative to continued litigation. These are revised to address all settlement options currently known:

An adequate process must be established for determining the necessary expenses for the mental health program. The program was the purpose for which the trust was originally created. A clearly defined program and the accompanying funding commitment are central to any non-land or partial land alternative.

Trust reconstitution or replacement is central to any acceptable response to the court's order. Absent restoring all of the original trust lands, the reconstitution and/or replacement must be clearly identifiable and quantifiable and of equivalent value, whether it be land, cash (lump sum or guaranteed income stream) or some combination thereof.

The trust corpus or its replacement must be protected permanently. The conversion of any portion of the trust lands into cash, either through a settlement or subsequent sale of trust land, must be dedicated to the corpus, inflation-proofed, and managed in a manner similar to the Alaska Permanent Fund. This would require legislation creating a monetary trust and providing means for protecting its corpus and first dedicating its proceeds to the purposes for which the trust was originally established. Similarly a commitment to increasing support for programs must be secured by assets and/or some sort of mechanism to guarantee its permanence.

If the settlement recreates a trust, trust management must provide both for the realization of maximum income yield and protection and preservation of the corpus. Any land in the Trust must be managed actively for maximum income. To maximize income from any monetary portion of the trust consistent with protection of the corpus, investment strategy must obey the "prudent investor" rule as practiced by the Alaska Permanent Fund. This requires that the Trustee (a division in an existing Department, a special board, a corporation, etc.) be clearly designated and empowered for and capable of operating as an active managing Trustee.

Income generated by Trust management or revenue streams must be first applied to fund the necessary expenses, including capital construction costs, of mental health programs--as required in the federal law. Means must be provided to assure such dedication. In the event of a cash trust, means must also be found for inflation-proofing the corpus, just as the corpus of the permanent fund is inflation-proofed.

Absent a complete reconstitution of the mental health trust, a process must be established for assuring a level of appropriation adequate to provide sufficient funding for the mental health program.

Accommodation of other interests in Mental Health Trust Land can be considered after sufficient provision is made to meet present and future needs of the mentally ill. A return of former mental health lands to trust status could be very disruptive. The potential disruption should be reflected in decisions regarding the trust reconstitution or substitution.

Trust Reconstruction Alternatives

Chapter III of this report discusses at length trust reconstruction options in the context of the above requirements. Any single approach, whether it be land, cash, or a guaranteed revenue stream could be fashioned in such a manner that would satisfy both the court's instructions. Each approach presents legal and political problems which while difficult are not insurmountable and pale in comparison to the problems which could arise in the event of renewed litigation.

After dismissing the other alternatives as too complex or controversial, the Joint Special Committee on Mental Health Trust Lands focused on the revenue stream option and introduced legislation based upon it (HB 92/SB 96). With major modifications (e.g. an identifiable trust, a means of guaranteeing appropriations, etc.) the revenue stream approach might be acceptable to the Weiss litigation parties. The Interim Mental Health Trust Commission is continuing to consider this option. However, should those modifications prove politically unfeasible, or if the negotiations should bog down, then the legislature will have to reconsider the other alternatives presented above.

II. CHARGE TO THE COMMISSION: PROGRESS REPORT & FINDINGS

In October 1985, the Supreme Court invalidated the state's 1978 redesignation of federally granted mental health trust lands to general grant lands and ordered that the trust be reconstituted as nearly as possible to its 1978 status with reimbursement for lands sold from the trust. In response, the legislature in 1986 found that:

> "the funding level for the mental health programs in the state is one of the lowest in the nation on a per capita basis....
> the legislature, the administration, and mental health advocates agree that the state must comply with the intent of the Congress that mental health programs in the state receive sufficient funding....
> it is not in the public interest that continued litigation over the mental health land trust divert attention from the underlying goal of increased funding for mental health programs....
> present state statutes do not explicitly provide for maximum revenue production....
> and the return of mental health trust land to trust status precludes management of mental health trust lands for its highest and best use...." [SCR 36, 1986]

As a result, the legislature created the Joint Special Committee on Mental Health Trust Land to develop a proposal for resolving the litigation. The committee released its final report on January 20, 1987 and, based upon its recommendations to the legislature, introduced draft legislation (HB 92/SB 96) on January 26, 1987.

The legislature also created the Interim Mental Health Trust Commission (commission) and charged it with overseeing and setting guidelines for the interim management of trust lands, providing data analysis for determining the state's liability to the trust, and submitting a report to the legislature "on matters of concern to the commission" including its "recommendations for amendment of the laws relating to the management of the mental health trust, the mental health trust land, and the mental health program of the state." (Chapter 132, SLA 1986)

This following chapter presents a progress report on the specific charges to the commission; the balance of the report deals with "matters of concern to the commission," including approaches for reconstituting the trust, the necessary conditions for a satisfactory negotiated settlement of the litigation, and recommendations related to the management of the trust, trust lands, and the mental health program.

Status of Former Mental Health Trust Lands

The legislature's first charge to the commission and the commissioner of natural resources was to establish the current status of mental health lands through a process of inventorying, cataloging, and auditing of each transaction involving lands which had been a part of the trust. This task was substantially completed and the results released in a report in January 1987. Because of the size of the report and the resultant reproduction costs, the report was given only limited distribution; instead, several reference copies are available for inspection at DNR field offices. Table 1 on the page following summarizes the determination of the current status of the mental health trust lands.

Table 1 - MENTAL HEALTH TRUST LANDS
Inventory by status as of October 4, 1985

	Acres	Acres Remaining
1. Trust Land Base (as corrected 1/23/87)		
Patented to state	845,838.84	
Approved for patent	159,872.00	
Possible overconveyance	(5,710.84)	1,000,000[a]
2. Conveyed Out of Trust and State Ownership		
Land sales to individuals	46,137.49[b]	
Condemned for Chena River Lakes Project (1978)	5,148.86	
Total Out of Trust and State Ownership	51,286.35	948,713.65
3. Conveyed Out of Trust & State, by Exchange and Settlement of Litigation[c]		
Native Corporation land exchanges		
- CIRI/USA (1979)	34,507.70	
- Seldovia (1979)	1,768.11	
U of A Settlement (1982)	2,993.37	
Total Out Of Trust & State	39,269.08	909,446.27
4. Conveyed Out of Trust to Municipalities[d]		
- Patented to municipalities	22,680.73	
- Approved for patent	20,407.01	
Total Conveyed to Municipalities, Ownership in Question	43,087.74	866,358.53
5. Conveyed Out of Trust, In State Ownership for Non-trust Purposes		
State Refuge & Habitat Areas	85,709.61	
State Forests	131,955.00	
State Parks	150,576.35	
Interagency Land Management/Transfer Agreements (ILMA's & ILMT's)	4,027.27	
Total former M.H. Lands Designated For Non-trust Purposes	372,268.23	494,090.30
6. Immediately Returnable to Trust, Encumbered with Lease & Sale Contracts		
Land Leases	1,913.74	
Mining Claims[e]	61,825.71	
Coal Leases	54,563.22	
Oil & Gas Leases	131,904.40	
Material & Timber Sale Contracts	29,815.63	
Permits	1,767.87	
Total Returnable with Encumbrances	281,790.57	212,299.73
6. Immediately Returnable Unencumbered[f]	212,299.73	

[a] The state--and therefore the trust-- retains all mineral rights on former mental health trust lands, except the 36,275 acres conveyed to Native corporations.

[b] Includes 19,797.52 acres conveyed prior to 7/19/78. Includes patented lands and lands under sales contracts in which vested interests exist.

[c] Lands received by state in exchange not readily identifiable.

[d] State may have legal authority to rescind, in which case title uncertain.

[e] Not tied to revenue production for trust. Holders required only to perform $200 of "annual labor."

[f] Includes 12,552.33 acres selected by municipalities but not yet approved for patent.

SOURCE: Alaska Department of Natural Resources, Inventory of Land Activities On Mental Health Lands, July 19, 1978 - October 4, 1985.

The trust land base was determined as of January 23, 1987 to consist of 845,838.84 acres patented to the state and 159,872.00 acres approved for patent, indicating a possible 5,710.84 acres of overconveyance. For purposes of determining the status classification, the statutorily designated one million acres is taken as the land base.

Lands conveyed out of trust and state ownership by sale total 51,286.35 acres (46,138.49 acres by sale to individuals and 5,148.86 acres by condemnation for the Chena River Lakes federal flood control project for which the state received monetary compensation). This includes lands upon which patent has been issued by the state and lands under sales contract in which DNR has determined a vested right for full conveyance exists. The inventory shows that 26,339,97 acres were conveyed out of the trust by sale after July 19, 1978.

According to the court's reconstitution instructions, the trust is to be reimbursed for the fair market value at the time of sale for all lands sold since the date of the 1978 redesignation (July 19, 1978). The court is silent on what reimbursement, if any, should be made for prior conveyances. Although sales by auction and lottery are generally based upon appraised values, existing statutes permit sales for less than fair market value in a number of cases (refer to discussion in Appendix C). In calculating the amount of cash owed, the court allowed an offset for mental health expenditures made during the period (July 1, 1978 - September 30, 1985), as discussed more fully below.

According to the court's instructions, lands conveyed out of the trust by exchanges are to be replaced by the lands which can be traced to the exchange. Complicated three-way exchanges between Native corporations and the state and federal governments agreed upon in 1979 involved substantial acreages of mental health lands as an economic land base for the corporations and for expanding the state park system. In 1982 mental health lands were used in settling the University of Alaska land case. This was in effect a form of exchange as the state retained the former University lands in exchange for mental health lands. The inventory indicates that a total of 39,269.18 acres were conveyed from the trust by exchange and settlement of litigation. Although according to the Supreme Court order lands received in exchanges are automatically returned to the trust, the DNR audit of transactions indicates that they "are not readily identifiable." Identifying them would require considerable effort and expense.

Municipal conveyances, patented and approved for patent total 43,087.74 acres. Although the attorney general has advised that if certain circumstances exist (i.e. private trust law applies to this public trust), then municipalities which have received title

to mental health trust lands could be compelled to return them to the trust. Most municipalities are on record as opposing this and intending to press their selection of an additional 12,552.23 acres awaiting action at the time of the court decision.

Former trust lands legislatively designated for non-trust purposes (state parks, forests, refuge and habitat areas and interagency land management transfers) total 372,268.23 acres. These lands are still in state ownership and could arguably be restored to the trust. Trust management for maximum revenue production, however, would be incompatible with the purposes for which they were redesignated.

Lands immediately returnable to the trust encumbered with leases and sales contracts total 281,790.57 acres. Although many of these encumbrances return revenues at or close to those which would have realized under active trust management (e.g. oil and gas leases), 61,825.71 acres of mining claims involve only affidavits of annual labor and others were made available at special discounts (refer to Appendix C).

Of the original million acre land base, only 212,299.73 acres are immediately returnable without encumbrances.

Determining Land Values

Although the court's reconstitution instructions only require the determination of the fair market value of the land sold from the trust after July 19, 1978 (26,339.97 acres), the legislature recognized that an actual reconstitution would involve much more than simply ordering the return of the remaining land base. Accordingly, it instructed the commissioner of natural resources and the commission to "retain an appraiser or appraisers to appraise all or a portion of land that, at any time, was part of the mental health trust land"--leaving the extent of the appraisals to the commission's discretion.

To date, there have been three land valuation efforts. In 1985, an opinion of value panel evaluated the 779,835 acres remaining in the trust on July 19, 1978 and assigned a 1985 value of $567 million, or $727 per acre. In January 1987, DNR released a compilation based on appraisals of fair market value mental health land transactions. This summary shows that since July 1, 1978, 28,888 acres were sold for approximately $13.8 million, or $478 per acre. In both cases, the plaintiffs consider the resultant per acre average not representative of their true value.

The commission recognized that appraisals of all lands affected by the Redesignation Act would be prohibitively expensive. Given the limited funds available for the task (approximately $65,000), the commission opted for opinion of value process to evaluate all municipally selected, approved, and patented mental health lands. The opinion of value showed that those lands had a value slightly in excess of $100 million. To check those values, 15 of these parcels in Anchorage, Fairbanks, and Juneau were appraised. (Patented and approved municipal selections were thought to be those lands most likely to be involved in some form of monetary settlement.) There have been some difficulties in evaluating the two processes of valuation, and questions have been raised by the litigants concerning the appropriateness of the methods used for valuing income-production potential. This project is still in progress, and its results will be reported when they become available.

Calculating the State's Credit

The court's reconstitution instructions allow the state to offset the fair market value at the time of sale of the lands sold from the trust by the mental health program expenditures between July 1, 1978 and September 30, 1985. With the participation and overview of the commissioner of health and social services and a subcommittee of the commission, Division of Legislative Audit carried out an audit of a broad range of expenditures for that period. With further analysis reflecting acceptable definitions of the program during that period, it was determined that state expenditures totaled $197,792,060 (for completed discussion of the audit process and results refer to Appendix F).

The court instructions provide that "In the event that the expenditures exceeded the value of the lands sold, the state need not furnish cash as part of the reconstitution." However, the court did not supply a definition for the word "sold," although the standard definition means an exchange for money or its equivalent. Until the definition of sold can be agreed upon by the parties to the litigation, further discussion of net cash reimbursement to the trust is academic.

Interim Land Management Since October 5, 1985

The day the Weiss Opinion was issued, the Commissioner of DNR ordered a moratorium on all activities on mental health land and later adopted emergency regulations closing all mental health lands to mineral entry. However, because the resolution of the remaining details would not occur for some time, the state had to provide for interim management.

In December 1985, DNR issued Order 121, "Mental Health Land Interim Management." That order established criteria for interim management of mental health land based on receipt of fair market value for all transactions or full reimbursement for the trust in land or money for other transactions executed for the general public good. To enable the state to account for revenue generated from management of these lands, two mental health fund collocation codes were established within the department: a "corpus account" to hold funds obtained from the sale of mental health land, and an "earnings account" to hold funds earned from mental health land other than through land sale.

In May 1986, Department Order 121 was substantially revised. These revisions required: (1) Notice to and approval by the Interim Mental Health Trust Commission of proposed sales, leases and exchanges; (2) Special notice to the attorneys for the plaintiffs and the intervenors in Weiss. This notice was for a period of 30 days with an additional 30 days upon request and; (3) A method for implementation of vested rights.

The legislature directed the commissioner of natural resources to manage trust lands as a public trust. With the exception of A.S. 38.05.035(b)(9), land reconveyances to the federal government under provision of CSSB 427, the Commissioner of Natural Resources could no longer sell, lease, or exchange mental health land or interest thereof, without the approval of the Interim Mental Health Trust Commission. In turn, the commission could approve only those proposals determined to be consistent with the terms of the trust established by the 1956 Alaska Mental Health Enabling Act.

Accordingly, the commission has functioned as trustee for the Mental Health lands since its first meeting on August 5, 1986. Proposed land management actions brought before the commission fall into three categories: (1) sale or lease of resources; (2) the sale of land; and (3) the implementation of vested rights. For each category the commission applied sets of criteria to determine whether the proposal "is consistent with the terms of the trust."

Sales and leases of resources such as timber, gravel, oil and gas were approved when it could be shown that the transaction was generating the highest revenue possible for the trust. The acceptable methods for determining the amount to be charged are: auction, appraisal, DNR fee schedule, or a combination thereof. Between July 1, 1986 and January 11, 1987, this resource sale/lease category included the following proposed actions: three material sales; four timber sales; two tracts for oil and gas leasing; one land use permit; one land lease; and one right-of-way permit.

Land sales, other than to implement vested rights, have all been denied. On August 20, 1986 the commission adopted the following resolution:

> "The Interim Mental Health Trust Commission adopts as a policy that future fee title sales of mental health lands to third parties (rights to purchase not vested on or before October 4, 1985) be suspended until the monetary proceeds of such sales, as trust corpus, can be preserved in perpetuity."

This policy cancelled or suspended two (2) FY 1987 Lottery Disposals and twenty-five (25) Lease Preference Sales totalling 300.162 acres at a projected income of $2,611,300.

Implementation of vested rights is the third category of land actions upon which the commission has acted. The commission's criteria for action are: (1) had the right to the use or ownership of the land vested prior to the Supreme Court Opinion in Weiss and (2) did it involve a bona fide purchaser? The rationale behind these criteria is two-fold; first is that pre-Weiss, the purchaser may have been relying on the 1978 redesignation or may not have been knowledgeable of the trust status of the land; and secondly if the disposal had taken place pre-Weiss the state is liable to the trust for the fair market-value of the disposal. It was in this category that the commission approved the issuance of 51 patents, 5 sales contracts for remote parcel and OTE lease conversions, 4 sales contracts for lottery, auction and over-the counter applicants, and 1 right-of-way permit.

III. TRUST RECONSTITUTION & SETTLEMENT ALTERNATIVES

Creation and Redesignation of the Mental Health Trust

In 1956, Congress vested in the Territory of Alaska authority and responsibility for establishment and operation of an "integrated mental health program for the Territory," provided transitional funding for the first ten years of operation and construction of needed facilities, and granted one million acres to be selected from "vacant, unappropriated, and unreserved" federal lands to be managed as a "public trust [from which the] proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska."

Unlike most other federal land grants, the proceeds from this grant were not for the exclusive use of the designated purpose; instead, mental health was given priority use only, anything beyond that amount needed for necessary expenses being available for other purposes. This condition appears to have been made to avoid the problems associated with previous exclusive grants which had generated income far in excess of the needs of the specified purpose. During the transitional period, these "necessary expenses" were to be determined by a program implementation plan reviewed by the Surgeon General. (For text of the statute and the legislative reports and debates, refer to Appendix B).

Because income generation was the trust's purpose, the selections made between 1956 and 1966 targeted lands surrounding the principle urban centers and on known petroleum, coal, timber, and other commercially-valuable natural resource lands. (Refer to Table 1 and Figure 1 in Appendix C. The legislature, however, did not provide any statutory framework for trust management which would have assured realization of the lands' maximum income potential. Absent such direction, the Department of Natural Resources managed all public lands in accordance with existing statutes for the highest and best use, which sometimes included less than fair-market-value disposal of lands and resources. In accordance with the "highest and best use" principle of management, between 1964 and 1978 some 164,385.64 acres of mental health trust lands were legislatively designated for non-trust purposes (state parks, forests, and habitat areas). (Appendix C contains a fuller discussion of the 1956-78 management experience.)

The legislature redesignated all trust lands as general grant lands in 1978, in order to make permanent the results of past management and make trust lands available to accommodate competing interests. To compensate the mental health trust for

this action, a trust fund for mental health programs was established into which the legislature was to annually deposit 1.5% of all receipts from state lands (Chapters 181-182, SLA 1978). No appropriation was ever made.

As a result of the Redesignation Act, an additional 70,758.01 acres were conveyed out of the former mental health trust (26,339.97 by sale, 5,148.86 acres by condemnation, and 39,269.18 by exchange). Trust acreage dedicated to non-trust purposes (parks, forests, habitat protection, and administration) increased to a total of 372,268.23 acres and 43,087.74 acres were conveyed to municipalities. By October, 4, 1985 less than half of the original trust acreage remained available for trust purposes and of those, 281,790.57 were encumbered with leases, contracts, and permits. (Refer to Appendix C. and Table 1, above).

The Supreme Court Order to Reconstruct the Trust, 1985

That the 1978 redesignation was possible probably reflected the lack of effective political advocacy on behalf of the mentally ill. However, partly as a result of the redesignation, the advocacy broadened from its earlier base of mental health practitioners to include concerned citizens and the families of the mentally ill. This growing advocacy formed the membership of the Governor's Mental Health Advisory Council, the Alaska Mental Health Association, the Alaska Mental Health Program Director's Association, and the Alaska Alliance for the Mentally Ill. In November 1982, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court seeking to (1) void the 1978 redesignation as illegal, (2) establish a trust for the receipt of funds generated by trust lands, and (3) direct the state to administer the lands in accordance with trust principles.

On October 4, 1985, the Supreme Court concluded that the redesignation was invalid and ordered that the "trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective." The Supreme Court then remanded the case to the Superior Court with the following instructions to guide the reconstitution of the trust to its July 19, 1978 status:

> "Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of

sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.' (emphasis added)

One interpretation of these instructions is that the court intends that all former trust lands are automatically returned "to the their former trust status" except those lands exchanged or sold from the trust following the redesignation. In the case of exchanges, properties received for lands exchanged from the trust would be added to the trust. Assuming the exchanges were on an equal value acreage basis, the trust would have contained 948,856.91 acres, as of July 19, 1978--and as of today, according to Weiss. In the case of lands sold, as discussed in Chapter II, it appears that the amount expended upon mental health programs probably exceeds the fair market value of the 26,339.97 acres conveyed from state ownership after that date. If this assumption is correct, no further cash reimbursement is likely and an all-land reconstruction of the trust is required.

Although an all-land reconstruction might be possible, both the commission and the committee recognized the political realities arguing against it. Such a reconstitution would alienate the mental health community from the rest of the state and disrupt programs established in the name of the "highest and best use." For example, most of the municipalities involved have indicated, individually and/or through the Alaska Municipal League, their opposition. Miners and other lease and permit holders might oppose trust reconstitution. Return of mental health land presently incorporated in state parks, forests, and habitat areas would compromise those areas and also could arouse vigorous opposition.

Alternate Forms of Trust Reconstruction

In effect, the Weiss Opinion calls for a reconstitution of the trust which would be a combination of land and cash for lands which have been sold less expenditures for a mental health program. The court and all parties to the litigation probably would consider favorably other options which achieve the same results as the court approach if they would:

- create an identifiable, quantifiable, and equitable trust;
- benefit all Alaskans;
- and maintain legislative prerogatives.

Both the commission and the committee have explored alternative forms of reconstitution which probably would satisfy the court and be acceptable to all parties to the litigation. To guide the committee in its deliberations, the commission submitted a progress report on November 21, 1986, and a letter from the chairman on January 14, 1987, which included the general conditions necessary for a satisfactory negotiated settlement. The options considered include an all-land or all-cash trust, a combination land-and-cash trust, or a guaranteed revenue stream.

All Land Trust

Although occasionally subject to cataclysms, nothing is more permanent than land. Land values may diminish during economic declines, but they generally recover, and unlike cash, land assets rarely evaporate. A land corpus meets the identifiable and quantifiable criteria mentioned above, and good land--which is what the mental health trust selections mostly were--provides a long term revenue source. Two approaches may be feasible for reconstituting an all-land trust.

Million-Acre Trust

Means are available to fully reconstitute the trust to 1 million-acres (minus those lands which have been sold) with lands in addition to original trust acreage immediately recoverable. One potential source is the state's 219,198 acre entitlement on National Forest lands. These lands must be within 25 miles of existing or planned communities and must be appropriate for residential or recreational use. Because of their urban or suburban nature, they probably would satisfy the "equivalent value" requirement of trust reconstitution. These lands could increase the land trust to 724,749 acres.

Finding replacement acreage of equal value for the remaining land, however, could be difficult. The original trust selections were potentially high-value lands, and the available equivalent value acreage suitable for trust purpose and in state ownership is relatively small.

Managing land trusts can be an expensive proposition, especially when trust assets are distributed over such a large area. A study of the management of public land trusts in other states and the University of Alaska indicates that, under the best of circumstances, management is extremely labor intensive, consuming as much as a quarter of trust income. (Refer to Appendix D.)

Furthermore, Alaska's history reveals a citizenry with an unrelenting hunger for public land, and there is never enough

available land near major communities and transportation corridors. If one were to reconstitute the trust exactly as it was in 1978, the pressure to dispose of the land would continue.

Finally, at present, the sale of non-renewable commodities results in a diminution of the corpus, because with Alaska's constitutional prohibition on dedicated funds, sale proceeds are not treated as part of the corpus. Unless the proceeds were immediately re-invested in land purchases, one could not have a pure land trust without having a cash account governed by cash trust principles, i.e. inflation-proofing and corpus protection.

Small, High-Value Land Trust

Arizona and Colorado have exchanged remote parcels from their land trust for high value urban and suburban acreage more suitable for active management and intensive development--either residential or commercial. In order for such a program to work in Alaska, the mental health trust would have to exchange most of its original acreage for a lesser amount of high-value, state-owned acreage around or in existing communities. The high-value acreage approach has the advantage of a much more favorable revenue-generation to management-cost ratio--assuming such acreage could be found.

Management Requirements of an All-Land Trust

In the event of any type of land trust, the legislature would also have to adopt new statutory language allowing for active management, preservation of land and cash corpus, and dedication of revenues to mental health programs--as a quid pro quo for the plaintiffs agreeing not to assert the trust's rights to lands which have left the trust but whose ownership remains in question (e.g. municipal selections and legislative designations. This is more fully discussed below.

All Cash Trust

In lieu of a land trust, the court would probably accept a cash trust. However, the legislative committee identified several factors which render this option impractical. First, the litigants disagree as to the value of the trust lands. DNR estimates that the value of the original one million acres of mental health lands exceeds $587 million in 1985 dollars, or roughly $727 per acre. Plaintiffs place the value of the original trust land at several times that figure--or several billion dollars. Resolving this issue through appraisals and/or litigation would be extremely difficult and expensive.

Secondly, a court-ordered, cash settlement award ranging from hundreds of million to several billion dollars would have serious implications for existing state programs and the state economy. Litigation costs could run into the millions of dollars, and while the courts were resolving the issues, the status of the lands in question would be indeterminate--a situation which would frustrate land management and hobble economic development.

Assuming an all cash trust reconstitution were feasible, however, cash trusts are much easier than land trusts to manage. Management costs are lower, predictable, and identifiable. Cash trusts avoid land management conflicts. Although they require inflation-proofing, under normal economic conditions, cash trusts can generate dependable revenue streams. On the other hand, cash trusts are subject to economic dislocations. Untimely, unwise, or unlucky investments could diminish the corpus' value, and catastrophic events such as depressions could render a cash trust worthless.

In order to work, a cash trust would have to be large enough to annually generate revenues sufficient to cover the necessary expenses of the mental health program and inflation-proof the corpus. As the present necessary expenses of the mental health programs are estimated to be approximately $100 million, the cash trust would probably need to be at least $2 billion. In addition to enabling legislation and appropriations, such a solution would require new statutes allowing for preservation of trust corpus and dedication of revenues (see below).

Permanent Fund Option

One cash trust option which was discussed informally was to identify part of the Alaska Permanent Fund as the mental health trust corpus. The "trust" would remain as part of the Permanent Fund corpus and continue under that fund's management. After inflation-proofing, revenues from that portion of the Permanent Fund corpus would be made available through the Undistributed Income Account to first fund the necessary expenses of the mental health program. Revenues in excess of program needs would either remain in the Undistributed Income Account or return to the Permanent Fund in order to build the corpus. By avoiding management costs and minimizing the potential for land use conflicts, such an approach returns the focus to mental health programs.

In answer to other interests seeking similar arrangements for their programs, the legislature could argue that the arrangement is based upon four conditions which must be met:

1) resolution of litigation which has the potential to disrupt the state economy and management of all state

lands
2) satisfaction federal obligations
3) of benefit to many constituencies (mental health advocates, municipalities, miners, environmentalists, recreationists, and all others having an economic interest in state lands)
4) is payment for a major contribution (one million acres) to the state general grant land base

Revenue-Stream Option

The purpose of the mental health land trust was to assure adequate funding for a comprehensive mental health program. In lieu of either a cash or land or combination land/cash trust, it might be possible to negotiate a settlement with a guaranteed revenue stream which would achieve the purpose of the original trust. In effect, such a solution would guarantee that a certain percentage of state revenues would be made available to first meet the necessary expenses of the mental health program.

As with other options, there would be difficulties, but the approach could avoid continuation of land use conflicts, management expenses, and drain upon the state's treasury.

To satisfy mental health advocates, the legislation enacting a revenue stream resolution would have to define which expenses and and services will be considered part of the mental health program. Program definition presents some thorny political problems, but without it, the restricted revenue stream has little meaning--and these political problems pale in comparison to those which might result from renewed litigation or from invading the Permanent Fund.

Furthermore, the enabling legislation should be very clear that the legislature intends to fully fund an adequate mental health program in perpetuity. To satisfy the court-ordered reconstitution, such an arrangement would have to include collateral--an identifiable, quantifiable entity--which could be redeemed by the trust in the event that the promised revenue stream failed to materialize or was somehow diverted. This might consist of a dedication of a portion of the Alaska Permanent Fund as security or some other identifiable and quantifiable state assets (real property such as buildings, lands, and transportation systems). While falling short of binding the hands of future legislatures, such a surety bond would make them always cognizant of the revenue stream legislation's original intent.

Other interests seeking similar terms from the legislature for their programs could be reminded that the revenue stream is

essentially a form of rent paid by the state to the mental health trust for the state's use of one million acres of federally granted mental health trust land.

Preferred Option: Guaranteed Revenue Stream

The recent negotiated reconstitution of the University land trust provides an example of a mixed cash and land settlement and suggests how complex a complete accounting can be--and how costly the final settlement could be for the state. The 1978 Redesignation Act also reclassified University Grant Lands as general grant lands. Although less complicated and extensive than the mental health case, a study of the University settlement is informative. (Refer to Appendix D.)

After dismissing the other alternatives as too complex or controversial, the committee focused on the revenue stream option and introduced legislation based upon it (HB 92/SB 96). With major modifications (e.g. an identifiable trust, a means of guaranteeing appropriations, etc.) the revenue stream approach might be acceptable to the Weiss litigation parties. The commission is continuing to consider this option. However, should those modifications prove politically unfeasible, or if the negotiations should bog down, then the legislature will have to reconsider all the alternatives presented above.

Negotiated/Legislated vs. Litigated Resolution

The number, complexity, and importance of the questions raised by the Weiss Opinion's trust reconstitution instructions urges a negotiated settlement.

Foremost of the issues related to trust reconstitution which the Supreme Court did not address, is the question of how to compensate the trust for actions prior to the 1978 Redesignation Act. These actions include less than fair market value transactions for the use of the lands and their resources. The Weiss decision ignored the question of lands which had not been "sold" but the legislature had designated for other purposes such as parks.

A host of trust management questions remain unresolved. Is active management to maximize trust revenue production for mental health programs required? Should the trust be compensated for "opportunity costs" as was done in the University settlement? (Refer to Appendix D.) These would include the income that the trust lands and their resources could, should, and would have produced had they been actively managed--and the income that a

trust account created from receipts from the sale of trust assets.

The inadequacy of the mental health program motivated the Weiss litigation, but programs were not an element in the litigation and the resultant decision. Although not addressed by the court, such issues will have an impact on the final resolution, and their existence underscores the necessity of pursuing a negotiated resolution. The subject of the Alaska mental health program is more fully discussed in Chapter IV, below.

A litigated approach would involve raising and litigating each of these issues in their turn. As some of these issues could take years to litigate, taken as a whole, a litigated resolution might consume more than a decade, clog the courts, paralyze state land management, and divert state resources from more useful applications--such as funding state programs.

Despite--or perhaps because of--the range of disagreement on nearly every issue, the representatives of all the parties to the case currently appear to be willing to attempt to reach a mutually-acceptable resolution through negotiation.

Long Term Management Recommendations

In the event that the negotiated settlement either preserves some form of a land trust or fails to materialize during the 1987 legislative session, the legislature should still act to authorize DNR to actively manage trust lands and revenues. The legislature also requested the commission to make management recommendations both for mental health trust lands and trust accounts.

Trust Land Management

DNR is the agency presently responsible for managing the vast majority of the state's land entitlement. The Alaska Statehood Act either granted, or confirmed the prior grant of, approximately 105 million acres to the State of Alaska. Section 6(k) of the Statehood act specifically confirmed and transferred to the state the 1,000,000 acre mental health land grant established pursuant to the 1956 Mental Health Enabling Act.

The department manages state land consistent with the statutory land management provisions embodied in Alaska Statue Titles 38, 41, 29 and other applicable laws. Title 38 of the Alaska Statutes is the principal land management authority guiding the state's policy for use and administration of most state land.

Title 38 has evolved since statehood to represent a collection of authorities which allow use authorizations while ensuring that the overall public interest is addressed and protected. Land disposal authorizations usually require both prior public notice and a state's "best interest" determination.

Since statehood, the legislature has enacted many AS 38 provisions which constrain the department's ability to actively manage trust lands for maximum revenue production. For example, AS 38 contains allowance for leases at no cost, veteran's discounts, senior citizen discounts, preference rights, etc. Land conveyances have been at fair market value as well as no cost conveyance for nonprofit groups and "sweat equity" (no cost) transfers under the homesite and homestead programs.

While Title 38 provides an umbrella for public and private use of state land and resources, it does not generally allow for active management of trust lands. "Active management" is defined as the administration of land and resources in a manner intended to maximize the revenue derived from land use authorizations and conveyances as well as to enhance the value of the land and resource base assets. If land is all or part of the reconstitution, it will be essential to manage trust lands in accord with revenue maximization objectives. Because the existing AS 38 statutory framework simply precludes meeting this objective, a mental health trust land management authority should be established, emphasizing active management.

The commission has obtained information related to statutory trust land management programs in several other states. In addition, the National Conference of State Legislatures has briefed the commission on alternative trust management programs. Other states with trust land management programs generally employ a dedicated trust fund to protect revenue and assets. In some cases, revenue is placed in a principal or permanent fund, with income from management of the invested fund distributed to the beneficiaries. In other states, land management revenues are used to directly programs.

Trust land management programs vary. Some states administer land through their natural resources department, or equivalent, while others use a Board of Commissioners, usually appointed by the governor. Some states employ a combination of both systems. Several western states do administer large trust bases in accord with maximum revenue yields as is implied by the public trust nature of the Alaska lands. An urban lands program has been successfully employed in Arizona, Washington and Colorado to enhance trust land revenue production.

New legislation should be enacted to allow mental health trust lands to be managed in accord with the following general principles:

1. A separate trust management regime for mental health trust lands needs to be established to assure active management;

2. Long-term revenue enhancement should be emphasized over short-term revenue production;

3. Urban lands, possessing development potential, should be retained or acquired and then development plans should be generated and implemented to enhance revenue production;

4. Long-term leasing is preferred over land sales, unless there are overriding revenue production or other trust considerations;

5. Land use authorizations shall occur at, or be based upon, fair market value appraisals, unless there are significant trust benefits otherwise unavailable (e.g. enhancement of other trust lands through the use authorization;

6. If mental health trust lands are managed by DNR, such management should be in accordance with policies and procedures approved by an independent commission or board acting as trustee;

7. The cost of trust management administration should be recovered from revenue from management.

Trust Account Management

Although the 1956 AMHEA did not specify that a mental health trust account be maintained, most other state and the University of Alaska are required by statute to maintain a permanent fund type account for investment of proceeds from management of federally granted trust lands. In establishing this commission, the legislature also created an interim special account in the general fund into which proceeds from the management of trust lands shall be deposited and from which appropriation might be made to be first applied to the necessary expenses of the mental health program. The additional responsibilities of the commission, therefore, include recommendations "relating to the management of the mental health trust account."

All of this supports the commission's recommendation that a permanent mental health trust fund be established consisting of (1) a corpus account into which would be deposited proceeds from any cash resolution of the Weiss litigation, sale of trust lands, and "inflation-proofing" from the investment management of the

corpus account; and (2) an income account into which would be deposited income (other than that from the sale of land) generated from management of the trust lands and the investment income from management of the trust fund corpus account (after retention of enough income for inflation-proofing) and from which appropriations would be made to first meet the necessary expenses of the the mental health program.

The concept of a permanent trust fund is to provide a means of preserving the corpus from being diminished. Although this is in accord with accepted trust management principles, the Attorney General and the Legislative Counsel have opined that because this constitutes a dedication of funds which is not required by federal law, it is prohibited by the Alaska Constitution and would require a constitutional amendment. Attorneys for the plaintiffs and intervenors disagree.

The provision of a means of inflation-proofing the corpus of the fund, through transfer of a portion of income, as done in the Alaska Permanent Fund, is also an important means of protecting the corpus from diminution. Active management of a money fund also requires investment strategies which will generate the highest returns (as in the case of active land trust management) consistent with observation of the "prudent investor" rule (as in the case of the Alaska Permanent Fund). In providing for the active management of the monetary trust fund, the commission recommends consideration of a management agreement with the Alaska Permanent Fund Corporation.

IV. ALASKA'S MENTAL HEALTH PROGRAM

While the Weiss litigation and subsequent Opinion of October 5, 1985, focused on reconstituting the trust, program inadequacies were the basis for the litigation in the first place. Although the status of the trust and program funding have been considered distinct issues, any negotiated settlement to the litigation involving permanent abandonment of all or part of the land trust will likely involve a reciprocal permanent commitment from the legislature to increase funding for mental health programs. In SCR 36, 1986, the legislature specifically directed the Joint Special Committee to recommend a level of appropriation adequate to provide sufficient funding for the mental health program in the future. Similarly, SB 472 (Chapter 132, SLA 1986) directed the Interim Mental Health Trust Commission to "make recommendations for amendments of the laws relating to the management of the mental health program."

Origins of the Current Program

Prior to 1956, the U.S. Department of the Interior was esponsible for the territory's mental health program. The Department of Interior provided no out-patient services, and those needing hospitalization were sent to Morningside Sanitorium in Portland, Oregon. Even then, treatment was minimal: the program basically amounted to incarceration. According to the General Accounting Office's 1955 investigation, per-patient costs at Morningside were as little as one-quarter that of other states.

Early Studies

The Interior Department's program for the Territory of Alaska was one of the last to reflect the growing nationwide understanding of mental illness and its treatment. As a result, mental health professionals repeatedly criticized it. The Interior Department's own study, the 1948 Overholser Report, concluded that "there is no mental health program in Alaska." The 1954 University of Pittsburgh Graduate School of Public Health study corroborated the earlier report's findings, and the 1956 Western Interstate Commission For Higher Education (WICHE) report found that Alaska offered "practically no psychiatric care." These analyses called attention to the barbaric and archaic nature of the Alaska-Morningside approach and helped rally congressional support for reform.

The Alaska Mental Health Enabling Act

Alaska's current mental health program grew directly out of the 1956 Mental Health Enabling Act (AMHEA) which transferred responsibility for mental health care from the federal government to the territory. AMHEA provided $6.5 million for the construction of hospital facilities, and another $6 million spread over a ten year period for program start up. The Act anticipated a "comprehensive" mental health program, by which was meant both in- and out-patient care.

Although AHMEA's sponsors had originally anticipated hospitals in Southeast, Southcentral, and Interior Alaska, funds sufficed for but one--Alaska Psychiatric Institute (API)--which opened in in 1961. Unfortunately, operating funds were also grossly inadequate-- barely sufficient to cover the costs of transporting and hospitalizing patients in Morningside Sanitorium while Alaska Psychiatric Institute (API) was being constructed.

The present program basically consists of API, the in-patient facility, and a system of community mental health centers.

Alaska Psychiatric Institute

When it opened in 1961, API was considered an up-to-date mental hospital, but a quarter-century's advances in psychiatry have rendered much of the facility obsolete. In addition, in 1981 part of API was converted to a maximum security forensic unit for Alaskan prisoners formerly sent to institutions in California. This new use exacerbated crowding and compromised the treatment environment by creating a more restrictive facility than was necessary for most of the other patient populations.

The quality and quantity of services at API have varied markedly over the years. As a consequence of having to accommodate the diverse patient populations and increased demand in an inefficient facility, patients were prematurely released and the the rate of readmissions rose dramatically. While this situation has improved, the basic ingredients of past crises--diverse patient populations with conflicting needs, antiquated facilities, and shortage and turnover of qualified staff--remain.

De-institutionalization

The 1964 National Community Mental Health Centers Act reflected a growing trend toward de-institutionalization. The federal legislation eventually funded mental health centers in Ketchikan, Juneau, Anchorage, Kodiak, and Fairbanks. However, the federal legislation failed to sufficiently solicit and respond to local needs and desires.

The Alaska Community Mental Health Center Enabling Act of 1975 made great strides towards providing mental health services at the local level statewide. Within ten years it funded an additional 23 clinics within ten years. However, geographic and cultural barriers and inadequate funding continue to frustrate attempts to adequately assess and respond to local needs. As a result, many community mental health centers have long waiting lists for clients services, and many lack the resources and staff to provide a full range of out-patient services.

Status of The Current Program

Despite the significant strides since 1956, and even since 1975, Alaska's current mental health program has been judged deficient by a host of experts from both within and outside the state.

According to the National Council of State Legislatures (NCSL), the proportion of mental health program operating expenditures compared to other state operating expenditures is one fifth that of the U.S. as a whole. The NCSL has identified three particularly deficient programs (children's care, community care, and forensic (criminals) and noted that Alaska relies on hospitalization to a much greater extent than do other states. [Hospitalization is extremely costly, and this over-reliance may contribute to Alaska's high per capita expenditure ($45--nearly double that of the states whose programs NCSL rated best) for mental health.]

The 1986 State Comprehensive Mental Health Plan also notes deficiencies in services for Alaska Natives, the elderly, the seriously mentally ill, and a need for better coordination in transitioning patients between API and the community mental health centers.

It is not yet clear how much it would cost to fully address the needs of Alaska's mentally ill, but an efficient, coordinated system of mental health care might create some economies (e.g. by reducing reliance on API and reducing the current 50% rate of readmission at API. The 1986 Mental Health Plan calls for increases in annual operating expenditures of $80 million over current levels to $106.9 million, and one-time capital expenditures of $100 million over the next five years.

Although these figures amount to more than four-fold increase in funding for operational costs alone, the Alaska Alliance For The Mentally Ill has testified that even this increase may not be enough to develop the comprehensive mental health system contemplated by the Division. As the Joint Special Committee notes, actual state funding--after inflation--on mental health

has declined over the past few years--even before the 20% cutbacks of the past nine months.

Mental Health Planning

Program deficiencies partly result from an inadequate data base and management information system. Problems with the management information system stem in part from lack of resources at the community and state level. Although efforts have been made to improve data gathering, funding should be made available to fully implement improvements. Without accurate data, there's little reason to go through a prolonged planning process, and an effective and efficient mental health program depends on a good plan.

While Alaska's statutes provided for mental health program planning, planning has been infrequent and inadequate. Since 1956, there have been several studies of the state mental health program. However, the last comprehensive plan was the 1977 Five Year Plan. The purpose of program planning is to determine the needs and how to best meet them. Yet, even the needs of Alaska's seriously mentally ill can only be estimated. The nature of mental illness complicates the task of quantifying its prevalence and the corresponding need for care. The afflicted, their families and friends, may be reluctant or unable to discuss their problems. Furthermore, mental illness definitions vary significantly which adds an additional complication to the task of censusing the mentally ill. Nonetheless, some determination of mental health need must be made, if planners are going to develop a system capable of efficiently responding to that need.

The Unmet Need

The following discussion is intended to shed light on the immensity of the problems facing mental health care providers throughout the state. The data helps explain the frustration and desperation experienced by providers, clients, and mental health care advocates.

According to "Adult Mental Health In Oregon," a 1986 League of Women Voters report, 1.5% of the residents of Oregon have serious mental disorders, and 60% of those are actively in treatment. If these percentages were applicable, approximately 7,500 Alaskans are seriously mentally ill.

The incidence of serious mental illness in Alaska is almost certainly several times higher than the national average. In common with other northern areas, Alaska's incidences of suicide,

alcoholism, drug abuse, divorce, child abuse and other problems correlated with the incidence of emotional disorders and mental illness are well-quantified and run several times the national average. This observation is supported by special local and regional surveys and studies. For example, a University of Alaska 1984 report, the "Estimate of Six Months Prevalence Rates of The Northern Region," revealed that 4.6% of the residents of northern Alaska suffered from serious mental illness.

As the result of a planning effort begun in 1984 and an analysis called the "Boston Study" (by The Human Services Research Institute, Cambridge, Massachussetts) the Division set the number of seriously mentally ill at 1,259. The "Boston Study" predicts that only 34 seriously mentally ill in Juneau will want or seek services in any six month period. However, a report by Dr. Gary Anders which used NIMH statistics corrected for local geographic factors and population characteristics project 33 times that number in need of services, or an estimated 980 seriously mentally ill.

On the basis of the above estimates, the number of seriously mentally ill Alaskans could range from 7,500 to 25,000. In 1986, Alaska's Community Mental Health Centers served 613 clients diagnosed as seriously mentally ill. Regardless of the estimate used, only a small percentage of those in need are being served.

Recommendations

The commission has not yet had the time to make a detailed review of the Division of Mental Health and Developmental Disabilities 1986 Comprehensive Mental Health Plan. That plan's mission statement concludes:

> "Given the fact that the State of Alaska leads the nation in many of the social indicators and environmental factors which highly correlate with the presence of mental and emotional illnesses, and that Alaska still lacks an effective comprehensive mental health delivery system, the task facing the Division is indeed formidable".

In general, the commission agrees with that conclusion and with DMH&DD's call for a major increase in mental health care funding. The commission also supports the committee's findings and recommendations relative to Alaska's Mental Health Program. In particular:

The Comprehensive Mental Health Plan should guide the legislature in program development and spending decisions. The plan should be based upon accurate data generated by a management information

system. The funding resources necessary improve the present data system should be appropriated.

As required by statute, the plan should be continually updated to meet the changing needs of Alaskans and to reflect changing treatment philosophies.

The state benefits tremendously from public involvement in the planning process, and all measures should be taken to maximize public participation in it.

The state should refine, update, and make consistent statutory definitions of mental illness.

Whether or not funds exist in a mental health trust, Alaskans' mental health needs should be met. For FY 88, the commission recommends a minimum of $27,392,200, consisting of:

a) Continued funding of $22,533,200, the Division of Mental Health and Developmental Disabilities for mental health services and administration, Community Mental Health grants, and contract services provided by native corporations. In light of the Weiss lawsuit and the unmet mental health program needs, existing mental health programs should be protected from further budget cuts.

b) Reinstatement of the $4 million cut by executive action in July, 1986: restore $550,000 to API; allocate $272,000 for adult residential care for the chronically mentally ill to restore 13 beds and add 27 new ones; restore $151,800 to the Division of Mental Health for staff to plan and deliver mental health services; restore $223,200 to the Fairbanks community mental health program; and allocate $2,828,500 to community services for the chronically mentally ill.

c) Restore the $859,000 provided to the Department in FY 87 as legislative "add-ons". This includes funds for designated beds, emergency services for the chronically mentally ill, and suicide prevention.

HB 92 should be passed; an additional $2.2 million should be appropriated to implement it.

Future funding increases must provide for significant progress toward meeting the goals of the state's comprehensive mental health plan through financing of programs and projects.

* * *

The 1986 Comprehensive Mental Health Plan for the State Of Alaska is available from the Division of Mental Health and provides a detailed analysis of the present program and unmet needs.

APPENDIX A presents a paper on program needs and mental illness definitions by commission-member Sharron Lobaugh.

The Commission contemplates presenting more specific program-related recommendations in its final report.

APPENDIX A

APPENDIX A:

POSITION PAPER
NECESSARY NEEDS OF THE MENTALLY ILL

February 21, 1987

prepared for the
Mental Health Trust Lands Commission

Sharron Lobaugh

"Will Everyone in the Class Please Rise?"

INTRODUCTION

As member of the Alliance for the mentally ill, I have long been concerned about the lack of appropriations for the seriously mentally ill. Congress' 1956 Alaska Mental Health Enabling Act transferred responsibility for mental health programs to the territory. Prior to that time, the program served only those requiring hospitalization. Before being sent to Oregon for hospitalization, these individuals were adjudicated "insane." They were considered "hopeless" then because society believed that all they could ever do was provide indefinite asylum. Today, we now know that with medication, adequate support systems, and enough help they can lead nearly normal, productive lives. I know that community support works because I have a son who suffers from schizophrenia and is doing quite well in our community.

Although Congress clearly intended that the mental health trust lands would be used to provide programs for the most seriously mentally ill, subsequent funding always fell far short of need. Lacking an organized advocacy, the needs of the seriously mentally ill were never adequately considered and consequently during the period of 1978 through 1985 for example, only .01 % of the total capitol and operating budget of the state of Alaska was spent on mental health programs. Even within this allocation, less than 10% of those receiving services from Community Mental Health Centers were those with major mental illness. This is not to lay blame on the service providers who have long recognized the need to expand services to this population but have had to meet a wide range of expectations of their community.

The following paper discusses a number of steps that should be taken to insure that the needs of the seriously mentally are better addressed without shortchanging groups with other needs. Recognizing that the state's resources are finite there must be a means of validating the numbers to be served, describing in clinically defensable terms those who are most seriously ill, and establishing a priority of service to those in greatest need.

Once these are established in law and a mechanism is developed to assure the necessary needs of the priority population are met, the State will have fulfilled its obligation to the mentally ill.

Section I

DEFINITION OF MENTAL ILLNESS

The purpose of this section is to provide persons with definitions as to what should or should not be included in the Mental Health Program. In order to do this, one must examine the definitions in present statutes, compare them with other states, and research provided by present medical evidence. The thrust of the material discussed will be to demonstrate the wide variation that exists presently in our statutes, to recommend language that will clarify the population to be served and to suggest where changes might be made to provide a statutory framework for a mental health program.

The assumptions on which this chapter rests are that: the public burden in mental health are the seriously mentally ill; this population has historically been underserved in Alaska; the intent of Congress was to provide the resources to insure that the needs of this population are served over time; and that the proceeds of the mental health trust shall primarily be used for this purpose.

The public generally has difficulty understanding mental illness. Even among professionals the issue is not clear. A good discussion of the national dilemma is contained in a publication entitled "The Seriously Mentally Ill, A Comparison of State Programs" by E.Fuller Torrey, 1986: "There are some groups for which there is good agreement that they should be included among the seriously mentally ill. Foremost among these are those persons affected with schizophrenia, a group of brain diseases which are very common and which cause symptoms such as hearing voices, delusional and fragmented thinking, social withdrawl, changes in emotion, and occasionally bizarre behavior. A related group are persons which have manic depressive psychosis, now officially called bipolar disorder, which is often similar to schizophrenia except that changes in emotion are more prominent.....between the two are persons with intermediate symptoms or schizoaffective disorders... When the person's symptoms are predominantly delusions of persecution, the diagnosis may be a paranoid disorder. Other psychotic disorders which are less common include schizophreniform disorders, postpartum psychosis, brief reactive psychosis, atypical psychosis, and psychosis due to known diseases such as severe thyroid disease or brain tumors."

There are no standard agreed upon definitions of mental health, mental illness, or the mental health program. Each state must make its own determination. As a beginning step the Mental Health Trust Lands Commission examined the court order which provided an offset for the expenses of the mental health program. This task considered the time between 1978 and 1985 but still leaves undecided the program for the future.

The definition of the mental health program continues to plague the Commission. The Commission for purposes of the "setoff audit of mental health programs", used three differing sources of definition: the Alaska Statutes, DSM III, and the 1978 Mental Health Plan. Similarly, the Alaska Statutes contain a variety of conflicting and sometimes inaccurate definitions.

The program became the focus and it was determined that a mental health service or program is one that is delivered by a qualified mental health professional to prevent or relieve a disabling mental/emotional condition experienced by a child, adolescent, or an adult. For further clarification, a definition of who is considered a "disabled person due to the mental/emotional condition" is necessary.

ALASKA STATUTES:

AS 47.30.915 (12) "Mental illness means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(in reference to criminals:)
AS 12.47.130 (3) "Mental disease or defect means a disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; 'mental disease or defect' also includes mental retardation, which means a significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life."

AS 12.47.090 (j) (1)"Mental illness means any mental condition that increases the propensity of the defendant to be dangerous to the public peace or safety; however, it is not required that the mental illness presently suffered by the defendant be the same one the defendant suffered at the time of the criminal conduct."

Alaska Compiled Laws, Annotated Cumulative supplement (3), 1958 (51-4-20a)

"'Mentally ill individual' means an individual having a psychiatric or other disease or senile changes which substantially impair his mental health or who is mentally deficient."

(51-4-20b) "The Department...is hereby authorized and directed to administer a complete and comprehensive program for the prevention of mental illness and the care and treatment of persons who are mentally ill, including in-patient and out-patient care and treatment of such persons, and to take such actions and undertake such obligations as may be necessary to participate in any Federal grant-in-aid program and to accept Federal or other financial aid...for the study, examination, care, and treatment of the mentally ill..."

As noted in the October 24,1986 legislative audit report, (page 2) "there is not a quantifiable definition of mental health nor is there a definition of the State's Mental Health Program that is widely accepted by all professionals, or State and Federal officials."

Compared to other states, some Alaska Statutes reflect more reliance on recent medical information. The 1984 revision of the commitment law AS 47.30.915 - 47.30.915, which broadened the statute to include a category: "gravely disabled" has enabled many more persons needing treatment to be helped.

However statutes containing outdated assumptions should be changed. For example, in reference to the statute outlined on page 5 which refers to criminals states: "mental illness....increases the propensity of the defendant to be dangerous to the public peace or safety." Research exists that the mentally ill are no more dangerous than the general population. "Mental Illness" should be defined by cross referencing a statute which does conform to diagnostic criteria. Also, this same statute includes the "mentally deficient" as "mental ill" which is inconsistent with other statutes which exclude developmentally disabled persons from the class of mentally ill and unnecessarily stigmatizes this population.

Because it is important that the laws reflect the most recent information available for program implementation, there are a number of areas which should be strengthened in order to assure that state supported programs meet the needs of the most seriously ill.

RECOMMENDED STATUTORY CHANGES:

a. Terms such as "acute", "seriously mentally ill", "mentally ill children" and "mental health program should be defined. and functional descriptors added to appropriate codes.

b. Priorities of populations to be served should be set into statute.

FUNCTIONAL DEFINITIONS OF MENTAL ILLNESS:

The American Psychiatric Glossary defines: "Mental Illness or Disorder" as "an illness with psychologic or behavioral manifestations and/or impairment in functioning due to a social, psychologic, genetic, physical/chemical or biologic disturbance. The disorder is not limited to relations between the person and society. The illness is characterized by symptoms and/or impairment in functioning."
A functional definition which is now the standard for eligibility for social security benefits is included in the Federal Register of August 28, 1985. (See Appendix)

Ms. Patricia Owens, director of the National Social Security System explained the rationale behind the development of these new regulations for social security eligibility in an address before the National Alliance for the Mentally ill in March 1985 in Washington D.C. "Early in the Reagan Administration, we had a tendency to take a 'snap shot' picture of recipients and if they looked 'O.K.' they were disallowed, now we know they look their best when they are functioning because of medications and appropriate program support...Medical evidence needed to be established to determine who was too sick to work and we prepared these regulations based on objective medical findings which are described as 'listings' and if medical evidence shows they are clinically within these categories, they are automatically within the entitlements."

Finally, eligibility criteria for community support programs by the National Institute of Mental Health contains the following definition:

NIMH OPERATIONAL DEFINITION OF THE COMMUNITY SUPPORT PROGRAM POPULATION:

1. Severe disability resulting from mental illness

   Client typically meets at least one of the following criteria:

   has undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (emergency services, alternative home care, partial hospitalization).

   has experienced a single episode of continuous, structured supportive residential care other than hospitalization for a duration of at least two months.

2. Impaired Role Functioning:

   In addition such individuals typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

   Is unemployed, or is employed in sheltered setting;

   Has markedly limited skills and a poor work history;

   Requires public financial assistance for out-of-hospital maintenance and may be unable to procure such assistance without help;

   Shows severe inability to establish or maintain a personal social support system;

Requires help in basic living skills;

Exhibits inappropriate social behavior which results in demand for intervention by the mental health and/or judicial system.

"People who meet these program criteria and who do not appropriately require long term full-time, skilled or semi-skilled care in a medical or nursing facility should be conceptually included regardless of where they may be residing at a particular time."

One might assume that there are subtle but insignificant differences between the functional definitions and Alaska's present statutes or that a change in statute is not warrented. However, if one examines the regulations implementing the Community Mental Health Center Act: [AS 47.30.530 and AS 47.30.540]-[7AAC 71.135.] the following are listed as undefined priorities:

TYPES OF SERVICES AND POPULATIONS TO BE SERVED. (A) A center must serve, to the extent that mental health services are not available to them from other providers, the following populations in prioritized order:

(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 services such as consultation or education.

(1) Acute

As a result of a lack of specific definition, most resources are devoted to whatever any clinician deems as "acute."

Persons presently in the system under long term care are considered 'acute' and persons whose situation is a result of substance or family abuse are often seen as psychiatric emergencies. There is no question the latter are crisis situations which must be handled within the social service delivery system, but they are not due to mental illnesses as such and should not be the responsibility of the mental health program.

A means to clarify this would be to define 'acute' as the State of Washington has:

"a condition which is limited to a short-term severe crisis episode of (a) A mental disorder as defined in RCW 71.05.020(2); (b) being gravely disabled as defined in RCW 71.05.020(1); or presenting a likelihood of serious harm as defined in RCW 71.05.020 (3)."

A clearer and narrower definition of "acute" will allow for the wisest use of limited public money, is necessary for determining priorities, and conforms to the intent of Congress for purposes of trust benefits.

(2) Chronically, severely disturbed persons;

Although the regulations as noted above give persons in the chronically (severely) disturbed persons category the second highest priority, addicional information would clarify this statement. Mental illness when narrowly defined as it is in the Alaska Standards for Community Support Systems has the effect of limiting the number of persons to specific diagnosis. This standard has the advantage of transcending age and cultural distinctions. This standard should be adopted in statute. A separate piece of legislation addressing the program needs of this population is needed. The standard reads:

"A severely mentally ill person means a person who is 18 years of age or older and who satisfies both of the following criteria:

Must be diagnosed as having a Schizophrenic, Major Affective or Paranoid Disorder (DSM III diagnosis of 295.1,2,3,4,6,7,9; 296.2,3,4,5,6,;or 297.1.3) or other severe mental disorder with a documented history of persistent psychotic symptoms other than those caused by substance abuse; and

Impaired role functioning, consisting of at least two of the following:

a. social role: an inability to function independently in the role of worker, student, or homemaker.

b. daily living skills: an inability to engage independently in personal care (grooming, personal hygiene, etc.) or community living activities (handling money, using community resources, performing household chores etc.,): or

c. social acceptability; an inability to exhibit appropriate social behavior, which results in demand for intervention by the mental health and/or judicial system.

A more problematic situation exists in defining children who are severely emotionally disturbed. The term severely emotionally disturbed is a Federal NIMH descriptor that includes youngsters whose problems are severe and persistent and based on functional disabilities.

The Federal guidelines do not establish as precise a definition for emotionally disturbed children as for adults but provide parameters such as:

1. Target population includes children under 18 years of age.

2. Children should have a multiagency need based on social functioning criteria.

3. Children should have a mental illness diagnosable under DSM III or state criteria.

4. A disability of at least one year or substantial disability of long term duration.

Many states have adopted behavioral indicators in their definitions because they are more meaningful for laymen and persons from other agencies than standard DSM III diagnostic categories.

The most recent State Plan, contains a definition which could be adopted in statute:

"A severely emotionally disturbed child or adolescent is one who:

1. Is under the age of 18, or under the age of 21 and has been receiving services prior to the age of 18 that must be continued for maximum therapeutic benefits;

2. Exhibits severe behavioral, emotional, or social disabilities that consequently disrupt the child's or adolescent's academic and developmental progress, family and or interpersonal relationships, often to the point that the child or adolescent is at risk for out-of-home placement or is placed out-of-home.

3. Has disabilities that have continued for an extended period of time, or on the basis of specific diagnosis by a qualified mental health professional is judged likely to continue for an extended period;

4. Frequently requires intensive well coordinated treatment delivered by an interdisciplinary team involving the family, courts, education, mental health, and other family service agencies.

5. The behaviors have been judged sufficiently disruptive to lead to exclusion from home, school or therapeutic setting.

6. The behaviors shall be sufficiently intense or severe or be considered seriously detrimental to the child's growth or safety and welfare of others.

As funds diminish States are moving toward inclusion of more specific or functional definitions in their statutes.

Washington State statute describes catagories on a continuum of severity:

1. Acute dysfunctional,
2. Prolonged dysfunctional(more than one year)
3. Disturbed functioning,
4. Vulnerable and independent.

Other States use multiple catagories. Some states cross categories with other disabilities providing for multiple handicapped functional disabilities.

By statutorily defining mental illness for both adults and children, Alaska would follow many other states in clarifying the target population.

A discussion of what is considered seriously mentally ill should also include what is generally "not" considered "SMI." A clear comparison is given by Dr. Jerrold S. Maxmen in The New Psychiatry: "Psychiatrist often hear people claim that what's called mental illness isn't really an illness, but a 'problem in living'...to equate them is false and naive, and in my view an inadvertent insult to the mentally ill.....Problems in living usually connotes things like dealing with a lousy boss, overcoming feelings of inferiority, fearing parental criticism, keeping ahead of the bill collector, and being lonely...mental illness involves symptoms, problems in living do not. A mentally ill patient may be certain a television is 'zapping' his spleen with x-rays or that skeletons are dancing in his closet, his dead grandmother's voice may be telling him to kill himself, or he may think he's Christ."

"These are delusions and hallucinations....symptoms, and to equate the diseases that provoke these symptoms with problems in living is to err in categorization and to trivialize the experience of the mentally ill...Patients with problems in living are symptom free; they seek therapy to deal with issues: 'I can't get along with authority figures' or 'I'm bored with my job.' Patients with mental disorders have symptoms and issues."

Other categories within DSM III are not included in the definition of seriously mentally ill. All categories in the "V" codes of DSM III which refers to adjustment disorders and are referred to as "maladaptive reactions to psychosocial stressors" are not considered serious mental illness. Persons suffering from these disorders would not have been adjudicated "insane" under the conditions described in the 1956 Mental Health Enabeling Act nor sent to Morningside. Persons with conditions in these categories are more likely: 1) to be able to be served in the private sector, 2) have health insurance, 3) have a greater recovery rate, 4) are most likely to return to productive employment. Similarly, the developmentally disabled and persons suffering from alcoholism do not constitute seriously mentally ill.

Section II

PRIORITY POPULATION

In addition to problems with lack of definitions, the Division has had difficulty implementing services for the priority population. This problem was identified by the Division of Legislative Audit in the June 20, 1985 "Special report on the Department of Health and Social Services Division of Mental Health and Developmental Disabilities":

Recommendation No.1
The Division of Mental Health and Developmental Disabilities (MHDD) should assert their authority over and take more responsibility for the effective use of State Funds.

As long as the Division views the system as being decentralized with the State playing a limited role, the system cannot change. The report further identifies problems in data gathering, monitoring, evaluation, planning, and lack of equitable system for allocating funds as barriers to improving service delivery.

One problem which the Division has identified is that of the Mission Statement of the Mental Health Program. According to a statute which has existed since 1958, the mission of the division has not changed from one of a "general" and "all encompasing" nature. There needs to be a reexamination of this statute to enable the division in times of limited resources to prioritize its services and assist those in greatest need.

Finally in considering, what, if any, changes in statute are needed to assure that the mentally ill receive priority, examination of the Omnibus Reconciliation Act of Oregon serves as a good model. Passed in 1981, (HB 2404) was the result of two years of study by a specially appointed Governor's task force essentially establishing treatment for the mentally ill according to a priority system. The three priorities were defined as providing these services:

> Priority #1
> For those persons who are in immediate risk of hospitalization...or in need of continuing services to avoid hospitalization...or pose a hazard to the health and safety of themselves or others
>
> Priority #2
> For those persons who are least capable of obtaining assistance from the public sector;
>
> Priority #3
> For those persons who are experiencing mental or emotional disturbances but will not require hospitalization in the foreseeable future.

[In addition, the services to be provided by the community mental health programs were changed and provided 100% State funding for these programs. Another feature of this act requires persons committed to the care of the Division should be appropriately tested and evaluated to identify any organic diseases or conditions that could cause or exacerbate the psychiatric symptoms.]

The benefits of restructuring the priorities in this way are:

1. serious mental illness occurs in all age groups and a change would eliminate arbitrary categories such as "youth", "elderly," and "native":

2. serious mental illness has both residual and acute phases a change would allow services to be provided to these persons in a supportive way to reduce the number of times the acute phase develops.

3. Persons who are experiencing problems with 'living' or under situational distress would be referred unless there are no other private providers in their service area or they do not have the capacity to pay for their treatment.

4. Community mental health centers will be encouraged to restructure their programs to meet the needs of the most seriously ill.

5. There would be greater incentive to develop community programs and subsequently reduce hospitalization costs.

6. The greatest benefit would be to the client who would be provided better local services, more complete diagnosis, and have a greater likelihood of maximizing their potential.

Section III

DETERMINATION OF NEED

At the present time, the Division has produced five complete and separate drafts of a 1986 Comprehensive Mental Health Plan. As the plan has developed, there has been some public input but a minimum of public involvement. The process for public involvement should be clarified in statutes. The most obvious means of assuring public involvement is to restructure the Governor's Advisory Board giving it the authority and responsibility to approve the annual plan of service. A primary change would be in title: to Alaska Mental Health Board (or Board of Trustees). Seats on the board should be designated in such a way that assures a balance between professionals and members of the public who represent the mentally ill. Persons with financial conflicts of interest should be restricted.

None of the drafts to date (Jan. 21, 1987) has produced an implementation plan phased over time with incremental funding based on the priorities set forth in statute. Such a format is essential in order to objectively determine need and prioritize funding. Mental Health care providers would be encouraged to redirect their programs to serve the needs of the seriously ill if the plan were implemented in a sequential manner; funding were tied to a formula which weighted services to the target population; and program eligibility were based on objective medical diagnosis. A formula would have the added benefit of preventing legislative "end runs" by certain communities to obtain services without going through the process established by law. More importantly, this would benefit the clients because of increased requirements for adequate evaluation, testing, and diagnosis.

Without additional statutory safeguards, accurate data regarding numbers to be served, or clear programatic priorities, the plan in its present form lacks sufficient information for the legislature to determine what the "necessary needs" of the mentally ill are or will be in the near future.

The original date for completion of the Mental Health Plan was January 1986. A fifth, final draft was released in January 1987. Reasons for the delay include: 1)there has been a lack of personnel in the Division of Mental Health 2) continual pressure of budget reduction exercizes, 3) inadequate time necessary for developing accurate data, and 4) the responsibility for development was divided among existing staff rather than contracting a mental health planner. The Division received a National Institute of Mental Health Planning grant of $125,000 for this task. A system of care as presented in the mental health plan will significantly improve mental health care especially for the seriously mentally ill of all ages, however, it may take up to ten years to accomplish and cost 80 million annually.

The Division must be commended in moving forward to describe a mental health system which will guide the state to achieving a quality mental health program.

Section IV

INCIDENCE OF MENTAL ILLNESS

The Legislative Affairs Agency report of 1985, outlines the Division of Mental Health's data gathering shortcomings. Some of these shortcomings were uncovered in preparation of this report. Additionally, the recommended administrative changes from the Legislative Affairs Agency report should be implemented in order to improve the validity of the management information system.

The Division recently completed its first statewide study of the incidence of serious mental illness which is entitled; "Alaska Resource Allocation Modeling Project," more popularly known as the "Boston Study." The Human Services Research Institute of Cambridge,

Massachusettes contracted this service and developed a computerized model for service delivery based on functional levels. An Alaskan task force working with the consultants included representatives of several agencies: Alaska Psychiatric Institute, Southcentral Counseling Center, the Division of Mental Health and Division of Family and Youth Services. Unfortunately, there were no public members on the task force and the report has never been subject to public review.

The definition of seriously mentally ill persons which is the program standard used by the Division (pg 9) was used as the criteria for eligibility in this study. The number of clients was determined by a survey of providers in the public sector plus a sampling technique of new clients who arrived for service at local community mental health centers over a two week period.

The task force identified the services which are required for a system of care, grouping 24 specific mental health services into four major categories: residential services, treatment services, support services, and rehabilitative services.

The task force determined the amount of service individuals with specific functional levels would need. Although there are inherent weaknesses, this methodology serves as a beginning for a model of service delivery for the State of Alaska. A goal of the program would be to assure a quality of care leading to a better quality of life for the mentally ill with specific concern for relevant cultural placement in a theraputic environment.

When the system is in place, the revolving door of repeated commitments to A.P.I. can be broken and thus reduce the long term hospitalization costs.

The task force on the Boston study provided for client movement between various levels of functioning and determined probabilities which can be used to predict over time the financial impacts of such movement. The Division of Mental Health's report: "Boston Study Summary and Comparison to Dann API Study" (The Dann Associates Study is a facilities expansion and need assessment for improvement of Alaska Psychiatric Institute completed in 1986) discusses the variables and how an increase in community programs would reduce the need for hospitalized care.

This conclusion assumes however, that a <u>total system</u> would be implemented all at once rather than a more practical approach which would be to implement comprehensive service packages to selective sites and expand the program in subsequent years.

Of particular importance, this report notes that "<u>if the present system continues, the current level of services will result in a regression of the clients' functional level</u>". The report also notes that Alaska's system relies more its institution than other systems do. For example, Alaska is using hospital bed days at 46 times the rate of Denver, Colorado.

Because of many considerations (such as the need for confidentiality of records, the resistance of some persons with mental illness to seek treatment, and the problems of the Management Information System,) the methodology and assumptions used to determine the incidence of mental illness in Alaska are questionable in the Boston Study. Even though the Division has indicated repeatedly in its plans, that there is a higher probability of mental illness in Alaska due to a number of variables such as higher incidence of abuse and neglect, suicide, and lower economic status of Alaskan Native people, and greater social service demands in related areas, the Division projects less than one-third as many seriously mentally ill as Oregon.

The Boston Study used a figure of incidence at .5% of the total population. This figure is regarded as the number of persons who are likely to want and utilize the services as opposed to the more global incidence of true need. There are many reasons persons do not seek service and one of the most obvious is that there have never been many programs. Given that there are 500,000 persons in Alaska, the number in need was determined to be 2,500.

In 1977 NIMH began the most extensive study ever, involving 10,000 persons who were interviewed over a several year period and another 10,000 who were included in a follow up sample. This study revealed that 19% of all adults in the United States suffer from at least one mental disorder during a six month period. About 8% suffer from anxiety disorders; 6% from alcohol disorders, 6% from major depression or manic depressive disorders and about 1% suffer from schizophrenia.

A 1984 NIMH study determined that the incidence of schizophrenia alone in three major population centers to be: 1.9% in New Haven, 1.65% in Baltimore, and 1.0% in St. Louis."

Dr. Gary Anders of the University of Alaska recently analyzed the socioeconomic factors of Juneau as they related to the NIMH studies of Baltimore, New Haven and St. Louis. Dr. Anders determined that in Juneau, the incidence of schizophrenia would be about 260 persons. When persons suffering from other serious disorders are added to this number, the probable number of seriously mentally ill raises to 980. This number indicates an average of lifetime prevalance at the rate of 4.6%. (this number compares favorably with the Northern Region Study of 1984) A survey of Bartlett Memorial Hospital psychiatric emergencies that same at year yielded 220 patients. The Department of Law reported 55 involuntary commitments to API for the same period. From the Division of Mental Health's "Report of Community Mental Health Center Caseloads for year end 1985 by Diagnosis," the Juneau clinic reported 38 of 483 cases in categories of serious mental illness. By comparison, however, the Boston Study estimates the number seeking services in Juneau of all seriously mentally ill at only 34.

The Juneau example clearly demonstrate the variation of numbers resulting from a range of .015% as determined the Boston Study to the 1% factor who actually received emergency psychiatric services in the local hospital, to a probable number based on national data of 4.6%.

Additional information is needed from the private sector. In Anchorage, Providence Hospital opened an 11 bed psychiatric unit in 1978. Since that time, annual admissions have grown from 325 to 450. In 1984 they began emergency room service with diagnostic and treatment backup. In the first year of this program 260 patients were seen; 101 were discharged with follow-up, 85 were admitted to the Psychiatric unit, 51 were discharged to the South Central Counseling Center or other agencies; and 23 were admitted to A.P.I.

In the State of Oregon, 1.5% of the population have been identified as seriously mentally ill. In a report from the League of Women Voters of Oregon entitled; "Adult Mental Health in Oregon," a determination was made that of the nearly 2 million Oregonians there are 29,433 who are classified as seriously mentally ill. Almost 60 percent of those persons are presently receiving services. According to their priority system, additional data reveals that no more than 10% who were receiving services are considered moderately ill (priority #2) and only 1% considered mildly ill (priority #3).

Considering Alaska's more Northern location and younger population, there is further evidence that the projections in the Boston Study are too low. Dr. E.Fuller Torrey in "Surviving Schizophrenia, A Family Manual", discusses research from other countries showing that there are higher percentages of mental illness in Northern countries.

In a study of the Northern Alaska region, "Estimate of Six Months Prevelance Rates of the Northern Region," conducted by the University of Alaska and reported to the Legislature in 1984, the incidence of serious mental illness is 4.6%.

Applying the Oregon percentage of 1.5% to the Alaskan population yields a potential of 7,500 seriously mentally ill persons. Presently identified in Alaska according to the "Boston Study" are 1,259 Alaskans. During 1985 Community Mental Health centers in Alaska reported persons served with serious mental illness represented 613 (adults) of the 6,255 persons receiving care according to calculations from "Admissions to CMHC Fiscal Year 1985 by Principal Diagnosis" from the Division of Mental Health. A different picture emerges in the Mental Health Plan, (page 22 draft four) as the number reported seen by Community Mental Health Centers in 1985 is 8,286 clients. This is between 8 to 10% of the population served in CMHC's. (There is no explanation for the variation between reports of 2,000 persons, however, if the larger number is the accurate number, there is a probability that they are not seriously mentally ill.)

Although programs for the seriously mentally ill are few and scattered throughout the state, they are far more costly than present out-patient care. In Anchorage, for example these programs account

for over half of the funds spent by South Central Counseling Center. The majority of mental health clinics are limited to outpatient counseling which while it serves to monitor medication, does little to prevent recidivism.

Programs that are effective in reducing recidivism exist in Ketchikan and the Transitional Living Center in Anchorage. When completed, the programs in Fairbanks and Juneau can be expected to have a significant impact and reduce the reliance on Alaska Psychiatric Institute from these areas. A report from the Transitional Living Center issued Dec. 1984 demonstrates the relationship of the Respite Care Progam and the Rehabilitation progam on hospitalization care. For the Respite program in 1984, a projected reduction of 1320 hospital days was reported. Even more dramatic results can be expected as full systems become operational. As reported in the December, 1984, issue of Hospital and Community Psychiatry: "The data shows that programs must continue for a period of several years before the real impact becomes evident."

Clearly then, the division must reexamine its data gathering mechanisms and establish a more valid method of determining persons in need. Attention must be given to a variety of indicators. For example: In 1984, King County Mental Health Center of Seattle, Washington, received a grant to aggressively find young adult chronic mental patients, and begin a program of intensive outreach and treatment. "To identify the most severely mentally ill was the most difficult of tasks," according to Gary Johnson, a presentor at the University of Washington Medical School CSP conference in summer of 1985. "Emergency room visits were found to be the most reliable source for outreach to seriously mentally ill persons, and the success of the program was measured primarily by the lack of, or reduction in, emergency room visits."

In Arizona, the department of health and social services is required to compile and submit a report on its chronically mentally ill to the governor, the president of the senate and speaker of the house each year which includes:

the total number of requests for publicly funded mental health services.

the number of requests for involuntary commitments;

the number of court ordered inpatient treatments;

the number of court-ordered outpatient treatments;

the number of requests for publicly funded screening and evaluation;

the number of voluntary commitments to publicly funded mental health service facilities;

the total number of persons treated in publicly funded mental health services facilities;

the number of persons treated per month in publicly funded mental health service facilities,

the length of stay in a publicly funded mental health services facility from the date of admission to the date of contact.

B. INCIDENCE OF MENTAL ILLNESS AMONG CHILDREN:

Alaska participates in the Federal CCASP project for childrens services and has determined a prevalence rate for service ten times greater than the level of need for the adult population or 20,000 children. The reasons for this greater number are due to a broader definition of childhood mental illness and the probability that the adult number is far too low. There is a need for some further clarification in order to focus the major attention on the most seriously ill children.

According to a recent study by Gould, Wunsch-Hitzig, and Dohrenwend, 1981, the national incidence of emotionally disturbed children is 1.8% of the general population or 11.8% of all children. Within this population, only 2% of all children who are emotionally disturbed manifest psychosis (excluding autism) or .023% of the general population Rutter, Tizard, Whitmore, and Longman (1970). Anxiety/affective disorders accounted for 40% of the 11.8%, (4.5% of all children); 30% of the 11.8% had conduct disorders or about 3.5% of the general population and multiple handicaps accounted for 1.%

Without complete information, there is a likelihood that the incidence in Alaska would be underestimated using national information again because of high rates for related problems such as child sexual assault and abuse. There is general agreement that the most seriously underserved in Alaska are the adolescents and teenage group. However, there have been no studies which indicate that major mental illness, such as schizophrenia can be prevented by intervention in childhood or conversely that emotionally disturbed children become mentally ill adults (except autism and childhood schizophrenia). Applying a 11.8% (all emotionally disturbed youth) incidence figure to the 130,000 plus children in Alaska under the age of 18, yields about 15,000 in need of care. Only 2,500 children received services in Community Mental Health Centers in 1984.

According to a 1986 CASSP Technical Assistance Center Report; "A System of Care of Severely Emotionally Disturbed Children and Youth" B.A. Stroul, the subset nationally that are considered seriously mentally ill children represent 5% of all children. Applying this criteria would yield 7,500 youth in need in Alaska.

It becomes apparent that it is essential to define the seriously mentally ill children in statute in order that they become part of the population to be served. The Department of Education has a mandate under P.L. 94-142 to provide an appropriate educational program in the least restrictive environment. Alaska has built in a

factor in the foundation formula for increased services for children who are receiving special education services. Emotionally disturbed children are not clearly identified in the data available and the exact number cannot be determined unless a system of data collection is developed and implemented by interagency cooperation betweem the Department of Education and the Division of Mental Health.

The most likely group to receive highest priority are those that are presently being sent out-of-State by the Departments of Health and Social Services or Division of Mental Health. According to data collected by the Division for the "Alaska Youth Initiative," a new program aimed at returning out-of-State placements, there are presently over 200 out-of-State placements at the present time. It is reasonable to assume that at least that many more are at risk without appropriate in-state services.

Unless some precise guidelines exist, all of the Mental Health Trust funds could be used for childrens services. There is no question that the type of program outlined in the State Plan is needed, however, the adults and children should not be competing for funds. Adopting the priority system used by Oregon and precisely defining those with serious mental illness regardless of age would avoid such a situation.

Section V

MENTAL HEALTH FUNDING

Since Statehood, there has been very little offered for the seriously mentally ill. The 1977 State Plan did not even discuss services to this population. This oversite is in part due to the fact that diagnosis and treatment has changed over time. Considering the same definition of "mental health program" that the commission used to determine the offset between 1978 and 1985, there was approximately $200,000,000 spent on the mental health program compared to a general operating budget during that period of time of $ 12,785,000,000.

In a report to the Legislative Committee on Mental Health Trust Lands delivered in October 1986, by the National Conference of State Legislators, Alaska was the lowest of the Western States in expenditures as a percentage of the total operating budgets, although Alaska spent the most per capita.

In Alaska, .4% of the operating budget went to mental health services compared to 2% of the U.S. States as a whole, or five times as great as Alaska's expenditure. The States rated highest by Torrey and Wolfe in the Care of the Seriously Mentally Ill, a Comparison of State Programs, (Wisconsin, Rhode Island, Colorado, Maine, and Oregon) are spending per capita over $25.00 and they depend far less on the use of hospitals than other States. According to this rating, Alaska's program was rated as 28th among States. Using seven of twelve variables, Alaska scored well on a number of conditions such as the number of highly qualified psychiatrists per population, but were adjudged as having "Major Problems Impeding Progress."

According to a study of the 1984 Final Report of Funding Sources and Expenditures NASMHPH, Alaska provided the lowest percentage of State Revenues to Mental Health programs of all States.

Even services within the Division of Mental Health are not equitable. In 1984 $403,000 were distributed to vocational programs for the developmentally disabled and only $30,000 for vocational services for the seriously mentally ill. Last year programs for the mentally ill were reduced by 12.5% while those for developmentally disabled were only reduced by 5%.

The Community Mental Health Center Directors were surveyed by the Governors Advisory Board in 1984 to determine the perception of unmet needs. According to a summary by Dr. David Samson, "The major mental disorders were felt fairly commonly to be untreatable in our mental health centers....such as acute psychosis, major affective disorders, and chronically mentally ill.....the same themes I think tend to be occurring from the various sources and this is that there are inadequate mental health services available within the community mental health centers throughout the State of Alaska. Resources are felt to be inadequate for outpatient services, high level professional services which would allow centers to treat a larger proportion of the severely acutely mentally ill and the chronically mentally ill."

Specific responses reveal the desperation resulting from inadequate funding:

"The commitment to providing even bare minimum services is appalling....There is no continuity in over all planning, prevention, and evaluation of services."

"The biggest need for the Bush areas seem to be improved continuum of mental health services to persons with acute and chronic-serious mental health problems requiring hospitalization. Post hospitalization care is lacking..."

"Expanded programs in the rural areas have been more a result of politics than program planning in a coordinated effort."

SUMMARY:

The members of the mental health trust commission have agreed that a thorough public debate should be encouraged on the mental health program, the mental health plan, and other concerns as expressed in this paper. It is hoped by bringing forth the debate on definitions concerned publics will examine the alternatives and assist in the process of forming legislation to improve existing statutes and to formulate laws to clarify what the mental health program should be for the State of Alaska. The commission will be making recommendations on these issues before its charge is complete this June.

Section VI

RECOMMENDATIONS:

Clarification in Statute the definitions of: acute, mental illness, childrens mental illness, seriously mentally ill, mental health program, and other terms which are based on current medical thinking.

Clarification by statute that priority populations be served first from funds of the mental health trust. That priorities be based on the seriousness of the illness with consideration for appropriate services to persons withoutt private care or ability to pay.

Pass H.B. 92 which establishes a program for the seriously mentally ill with 100% State funding for such services as: case management, medication monitoring, crisis care, vocational and residential services and other psychosocial programs.

Base Alaska's mental health program on an objective collection of data and establish a specific process of public involvement.

Determine the necessary needs of the mentally ill annually based in the mental health plan following the process of data gathering and public involvement by the Mental Health Board.

The Board should be authorized to: make specific funding level recommendations to the legislature, have authority to evaluate whether or not the necessary needs are met through trust assets, and responsibility to enforce what ever mechanisms exist for assuring that adequate funding be provided.

The Board should be composed of persons who represent the interests of the mentally ill.

Establish a mechanism for assuring that the dollars follow the client into the community and procedures for monitoring and evaluating programs to more accurately assess numbers of persons in need.

Restore cuts in funding for the mental health program and provide for program growth in services for the seriously mentally ill.

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APPENDIX B

Public Law 830 CHAPTER 772

AN ACT

July 28, 1956
[H. R. 6376]

To confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental patients, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Mental Health Enabling Act".

Alaska Mental Health Enabling Act.

TITLE I—AUTHORITY OF THE TERRITORY OF ALASKA IN THE FIELD OF MENTAL HEALTH

POWERS OF THE TERRITORIAL GOVERNMENT

SEC. 101. For the purpose of vesting in the Territory of Alaska authority comparable in scope to that of the States and other Territories of the United States in the field of mental health, the Territorial legislature is hereby authorized to enact such laws on the subject of mental health as it may deem appropriate, and such legislation may supersede any of the Acts cited in section 301.

FUNCTIONS OF COURTS

SEC. 102. In carrying out section 101, the Territorial legislature is authorized to confer upon United States commissioners, as ex officio probate judges, and upon the United States District Court for the Territory of Alaska, such jurisdiction, functions, and duties as it may deem appropriate for such purpose.

EFFECTIVE DATE

SEC. 103. This title shall become effective on the date of enactment of this Act.

TITLE II—GRANTS

SPECIAL GRANTS TO ALASKA FOR MENTAL HEALTH

SEC. 201. Title III of the Public Health Service Act, as amended, is hereby amended by adding thereto a new part as follows:

58 Stat. 691.
42 USC 201 note.

"PART H—GRANTS TO ALASKA FOR MENTAL HEALTH

"GRANTS FOR ALASKA MENTAL HEALTH PROGRAM

"SEC. 371. (a) There are hereby authorized to be appropriated the following sums to be available to the Surgeon General of the Public Health Service for the purpose of making grants to the Territory of Alaska to assist it to carry out plans, submitted by the Governor of the Territory or his designee and approved by the Surgeon General, for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment: For each of the fiscal years ending June 30, 1958, and June 30, 1959, the sum of $1,000,000; for each of the fiscal years ending June 30, 1960, and June 30, 1961, the sum of $800,000; for each of the fiscal years ending June 30, 1962, and June 30, 1963, the sum of $600,000; for each of the fiscal years ending June 30, 1964, and June 30, 1965, the sum of $400,000; and for each of the years ending June 30, 1966, and June 30, 1967, the sum of $200,000.

Appropriations.

Estimates; payments.

"(b) The Surgeon General shall, prior to the beginning of each calendar quarter or such shorter period as the Surgeon General may find necessary, estimate the cost of carrying out the approved plan, on the basis of estimates furnished by the Territory, including estimates of the amount of contractual obligations for hospitalization, and on the basis of such further investigations as he may find necessary. From the amounts appropriated for any fiscal year, the Surgeon General shall pay to the Territory the amount requested by it but not to exceed the amount so estimated by the Surgeon General for each such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that the amount paid for any prior period was greater or less than the amount which should have been paid. The amount of any balance of payments made to the Territory under this section and remaining unobligated on July 1, 1967, shall be repaid to the Treasury of the United States.

"(c) Whenever the Surgeon General finds, after affording opportunity for hearing, that the Territory has failed to comply substantially with any provisions of the approved plan, he shall notify the Governor that no further payments will be made under this section (or that further payments will not be made for parts of the plan affected by such failure) until he is satisfied that there will no longer be any such failure.

"(d) For the purpose of facilitating the administration of the Territory's mental health program, the Surgeon General is authorized to enter into arrangements with the Territorial government to provide for the care and treatment, in hospitals operated by the Service, of patients requiring hospitalization. Such arrangements shall be subject to the availability of suitable facilities therefor and shall provide for charges to the Territorial government in amounts determined by the Surgeon General which shall be sufficient to cover the full cost of such care and treatment. Upon payment by the Territory the amount of such charges shall be credited to the appropriation from which such costs were incurred: *Provided*, That, during the period of grants under this section, payment may be effected by deductions from the amount of such grants otherwise payable to the Territory, with such deductions to be credited to the appropriation from which such costs were incurred.

"PAYMENTS FOR CONSTRUCTION OF HOSPITAL FACILITIES

"SEC. 372. (a) There is hereby authorized to be appropriated an amount not exceeding the total sum of $6,500,000, to remain available until expended, to enable the Surgeon General to make payments to the Territory of Alaska as the total contribution of the Federal Government to be used in defraying the cost of construction of hospital and other facilities in Alaska needed for the carrying out of a comprehensive mental health program.

"(b) Such facilities shall be scheduled for construction in accordance with a comprehensive construction program, developed by the Territory in consultation with the Public Health Service and approved by the Surgeon General. Projects shall be constructed in accordance with such approved program and in accordance with plans and specifications for the project approved by the Surgeon General.

"(c) Upon certification by the Territory, based upon inspection by it, that work has been performed upon a project, or purchases have been made in accordance with approved plans and specifications, and that payment of an installment is due, the Surgeon General shall certify such installment for payment: *Provided, however,*

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That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

"(d) The term 'cost of construction' means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects' and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

Recovery of value of facility.

"(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory's mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof."

LAND GRANT

SEC. 202. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. 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 lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. 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. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

Mineral deposits.

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 82 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Leases; sales.

(d) Following the selection 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 to 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.

EFFECTIVE DATE

SEC. 203. This title shall become effective on the date of enactment of this Act.

TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

AMENDMENTS AND REPEALS

SEC. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (35 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat 852: see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 322), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

48 USC 46c, 47a, 47b, 47c, 48, 48a.

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783–785; 46 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are, pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively; (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "'Governor' means the Governor of Alaska or his designee;": *Provided*, That the words "United States" where

they appear as a part of the term "United States Veterans' Bureau facility" in section 6 of the Act of October 14, 1942, shall not be struck.

(2) The amendment, by this subsection, of any Act or part of Act specified in subsection (a) shall take effect on the two hundred and tenth day after the date of enactment of this Act and shall cease to be effective upon the repeal of the Act or part of Act which it amends, as provided in subsection (a). Effective date.

(c) Effective upon the date of enactment of this Act, section 3 of the Act approved August 24, 1912 (37 Stat. 512; see 48 U. S. C. 24), entitled "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes", is amended by inserting the following at the end of the first sentence of such section, immediately before the period: "or to prevent the legislature from altering, amending, modifying, or repealing section 8 (relating to commitment of insane persons) of the aforesaid Act approved January twenty-seventh, nineteen hundred and five".

(d) (1) Any vested rights or liabilities existing, and any commitment proceeding commenced, under any Act or part thereof prior to the effective date of the amendment or repeal of such Act or part thereof by this section shall not be affected by such amendment or repeal. Prior rights, etc.

(2) With respect to the money or property of any patient who has died or eloped prior to the enactment of this Act, or who will have died or eloped prior to the two hundred and tenth day following such enactment, the functions of the Secretary of the Interior under the Act of April 24, 1926, as amended (48 U. S. C. 50, 50a), and the requirement of certification of the claim to Congress if established more than five years after such death or elopement, shall remain in effect notwithstanding the amendment or repeal of such Act by this section.

EXISTING CONTRACT AND APPROPRIATIONS

SEC. 302. (a) Within two hundred and ten days after the date of enactment of this Act, the Secretary of the Interior, with the concurrence of the Governor of Alaska, may either (i) assign all of his rights and duties under contract numbered 14-04-001-81, entered into on June 18, 1953, between the Secretary of the Interior on behalf of the United States, and the Sanitarium Company of Portland, Oregon, to the Territory of Alaska, such assignment to become effective on the two hundred and tenth day after the date of enactment of this Act, or (ii) terminate the said contract in accordance with the terms thereof. Upon the effective date of any such assignment, such contract shall have the same binding effect upon the Territory as it had upon the United States prior to such assignment.

(b) On the two hundred and tenth day after the date of enactment of this Act, so much of all unexpended balances of appropriations as are available to the Department of the Interior for the care of the Alaska insane shall be transferred to the Governor of Alaska to be available for expenditure by him for the administration of the Acts specified in, and in part amended by, section 301 and for the administration of the laws of the Territory of Alaska enacted pursuant to section 101 of this Act, and the Secretary of the Interior shall, upon such transfer or as soon as practicable thereafter, transfer to the Governor of Alaska all papers and documents used primarily in the administration of all laws pertaining to the Alaska insane. For the remainder of the fiscal year ending June 30, 1957, there are hereby authorized to be appropriated to the Secretary of the Interior for transfer to the Governor of Alaska such additional sums as may be necessary for the care of the Alaska insane during that fiscal year. Appropriation.

(c) Until July 1, 1957, expenses for the transportation to a mental institution outside of Alaska of all patients to be hospitalized pursuant to a commitment under section 8 of the Act of January 27, 1905 (33 Stat. 616, 619, 48 U. S. C. 47), or to be hospitalized in such a mental institution pursuant to a commitment under a law of the Territorial legislature superseding such Act of January 27, 1905, shall be paid by the Department of Justice.

Approved July 28, 1956.

Public Law 831 — CHAPTER 773

July 28, 1956
[H. R. 10111]

AN ACT

To amend sections 657 and 1006 of title 18 of the United States Code in order to include certain savings and loan associations within its provisions.

Savings and loan associations.
Embezzlement, etc.
62 Stat. 729.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 657 of title 18 of the United States Code is amended as follows: After the words "United States" where they first appear in section 657, strike the comma immediately after the word "States" and insert in lieu thereof "or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation,".

62 Stat. 750.

SEC. 2. Section 1006 of title 18 is amended as follows: After the words "United States" where they first appear, strike the comma immediately after the word "States" and insert in lieu thereof "or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation,".

Approved July 28, 1956.

Public Law 832 — CHAPTER 776

July 30, 1956
[S. J. Res. 183]

JOINT RESOLUTION

Authorizing an appropriation to enable the United States to extend an invitation to the World Health Organization to hold the Eleventh World Health Assembly in the United States in 1958.

Whereas the Eleventh World Health Assembly is scheduled to be held in 1958; and

Whereas the year 1958 is considered particularly appropriate for holding the assembly in the United States since that year will mark the decennial anniversary of the entry into force of the constitution of the World Health Organization, which was originally drawn up and signed in New York City; and

Whereas the assembly and related functions will provide outstanding opportunities for the Ministers and Directors of Health of the World Health Organization's eighty-eight member countries to view American health and medical methods in practice, and to make and renew friendships among American health and medical leaders; and

Whereas the assembly will focus public attention in the United States on the important work of the World Health Organization as an integral part of the economic and social program of the United Nations and as a constructive work contributing to better international appreciation and world peace; and

Whereas American health and medical groups and certain urban organizations have suggested arrangements to make the World Health Assembly in the United States a particularly useful professional occasion through related seminars, field trips, and social activities; and

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Alcohol, Drug Abuse, and
Mental Health Administration
Rockville MD 20857

DEC 17 1986

The Honorable Pat Pourchot
Alaska House of Representatives
1024 W. 6th Avenue, Suite 201E
Anchorage, Alaska 99501

Dear Mr. Pourchot:

I want to follow up on the meetings we had November 21-22 in Anchorage on the Alaska Mental Health Enabling Act and the legal issues now surrounding as a result of Alaska v. Weiss.

I hope you felt the information on the State of Alaska's mental health system provided by Robert Glover, Ph.D., through the National Conference of State Legislatures, was useful. I believe the suggestions and recommendations he made were pertinent as Alaska strives to develop a more effective and efficient mental health system of care.

I also wanted to inform you that at the meeting, and subsequent to it, Mr. Jim Gottstein asked whether the National Institute of Mental Health (NIMH) could locate a specific document that was referenced in a letter from Assistant Secretary Roswell B. Perkins to Senator Barry Goldwater, dated April 16, 1956, (see enclosure, page 3657). I believe that Mr. Gottstein is seeking the document as an indication that those persons with mental retardation should be part of the final decision that is rendered or developed.

While NIMH is attempting to locate that document in the Federal Records Center, I want to make it clear that this should not be construed as the National Institute of Mental Health taking a position with the plaintiffs, just as we would not take a position with the defendants. We are simply responding to a request from the public to obtain public information.

However, let me add that I have reviewed the Senate legislative materials in the National Archives, and it appears that not including the mentally retarded in the definition of mental illness was probably deliberate on the part of the Congress.

1. As passed by the House of Representatives, H.R. 6376 contained within Title I a definition of mental illness.

"Section 101(i)--The term mentally ill individual means an individual having a psychiatric or other disease which substantially impairs his mental health or an individual who is mentally defective or mentally retarded."

2. On January 19, 1956, H.R. 6376 was introduced into the Senate with the above section and referred to the Senate Committee on Interior and Insular Affairs.

3. In a printed Senate committee markup of H.R. 6376, dated April 10, 1956, Section 101(i) was amended to read:

"The term mentally ill individual means an individual having a psychiatric disease which might be the cause of injury to that individual or others."

4. In a subsequent printed Senate committee markup of H.R. 6376, dated April 19, 1956, and labeled Committee Print No. 3, Section 101(i) was marked up further. The committee print contains printed comments from the Department of Health, Education, and Welfare. Specifically it reads:

"The term mentally ill individual means an individual having a psychiatric disease which might be the cause of injury to that individual or others."

Following this there is a printed note from the American Association of Physicians and Surgeons (AAPS) which reads:

"AAPS Proposal-HEW suggests...The change in the definition would have the effect of excluding the mentally defective or retarded from provisions for institutional care or the benefits of the programs aided by grants under Title II."

5. Senate Committee Print No. 4 of H.R. 6376 is dated April 20, 1956. The committee print is characterized as the HEW proposed amendments to the legislative proposal submitted by Senator Goldwater. (This may be the staff document or the result of the staff document referred to in the letter of April 16.)

Committee Print No. 4 does not contain a Section 101(i) but does contain a Section 105 entitled "Right to Humane Care and Treatment" and reads as follows:

"Every mentally ill or mentally defective or retarded person of Alaska who is hospitalized under the laws of the Territor of Alaska, shall be entitled to humane care and treatment, and to medical care and treatment in accordance with the highest standards accepted in medical practice."

With regard to the above-underscored parts, which I have done for illustration, it is noted in the committee print that HEW recommended adding the reference concerning the mentally retarded and recommended deleting the concluding phrase as being vague.

6. Committee Print No. 5 of H.R. 6376 is dated April 26, 1956. It no longer contains a Section 105, nor does it contain any definitions. These have all been deleted. It is similar to the final Act.

7. Committee Print No. 6 of H.R. 6376 dated May 4, 1956, continues to have Section 101(i), Section 105 and all other definitions are deleted.

I believe the legislative history speaks for itself on this issue.

In closing, while I do not know what progress has been made to resolve the mental health land grant issue, I do recall there being the potential for this issue to continue for a prolonged period. Certainly beyond January 10, at which time the legislative authority for the Special Joint Committee on Mental Health Trust expires and perhaps even beyond a 6-month extension of the committee authorization. I understand that Governor Steve Cowper was once associated with the plaintiffs in Alaska v. Weiss. He now could be considered the ultimate representative of the defendants. As such he has credibility and standing with both sides on the issue and therefore may be able to exercise leadership in resolving the issue. My personal suggestion would be that the legislature consider recommending to the Governor the appointment of an independent person, not currently associated with the plaintiffs, defendents, or State government to mediate a solution that could then be presented to the court as a proposal which all sides have agreed upon. It appears that a decisive, perhaps even bold, step needs to be taken to break the logjam or else it will be up to the court to decide and State government will have to live with that solution. Again, these suggestions are mine personally and are offered to assist the State legislature, State government, and those in need of mental health services in Alaska.

Sincerely yours,

Lee Dixon
Chief, Intergovernmental Affairs
and Public Liaison Branch
National Institute of Mental Health

Enclosure

cc: Ms. Rebecca Craig, NCSL

joyment of the natural, scenic, recreational, and other aspects of the national forests.

DEPARTMENTAL VIEWS

DEPARTMENT OF AGRICULTURE,
Washington, D. C., August 5, 1955.

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
United States Senate.

DEAR SENATOR ELLENDER: Reference is made to your request of June 15 for a report on S. 2216, a bill to amend the act of March 4, 1915 (38 Stat. 1086, 1101; 16 U.S.C. 497). The purpose of this bill is to facilitate and simplify some of this Department's problems relating to the issuance of permits for use of national-forest lands.

We recommend enactment of S. 2216.

S. 2216 is identical to H.R. 2762 as passed by the House in the 83d Congress. It would authorize the Secretary of Agriculture, under such regulations as he may make and upon such terms and conditions as he may deem proper, to permit the use and occupancy of not to exceed 80 acres of national-forest land for periods not exceeding 30 years, for the following purposes: (1) Constructing or maintaining hotels, resorts, and any other structures or facilities necessary or desirable for recreation, public convenience, or safety; (2) constructing or maintaining buildings, structures, and facilities for industrial or commercial purposes whenever such use is related to or consistent with other uses on the national forests; (3) construction or maintenance, by any State, political subdivision thereof, or any public or nonprofit agency, of buildings, structures, or facilities necessary or desirable for education or for any public use or in connection with any public activity. This bill would also authorize the Secretary to permit the use and occupancy of not to exceed 5 acres of national-forest land, for periods not exceeding 30 years, for the construction or maintenance of summer homes and stores.

Under existing laws this Department has adequate authority to issue revocable permits for uses for which long-term tenure is unnecessary or undesirable. Also, the authority to issue leases and term permits is adequate for communication and television purposes, for the use of Government-owned structures, for permits and leases to States, political subdivisions thereof and public agencies for public purposes, and for all types of uses in Alaska.

The act of March 4, 1915, however, is inadequate to meet other needs for term permits on the national forests because it limits use and occupancy to summer homes, hotels, stores, or other structures needed for recreation or public convenience, and the permit area to a maximum of 5 acres. It is frequently found that term permits would be desirable for uses not specified in the act of March 4, 1915, and permittees often need more than 5 acres for their authorized operations.

S. 2216 would meet needs to grant term permits up to 80 acres for such public and semipublic uses as landing fields, resorts, campgrounds, picnic areas, organization camps and ski lifts, and to industrial and commercial enterprises such as sawmills, mining camps, wharves, and warehouses, which would contribute to the general welfare and which could be located so as not to interfere with the proper utilization of national-forest resources. In numerous instances individuals cannot finance prospective commercial ventures on national forest lands because banks and commercial credit companies are unwilling to make loans to applicants who cannot obtain term permits or leases.

The act of September 3, 1954 (68 Stat. 1146) provides somewhat similar, but in some respects more restrictive, authority to issue term permits to States, counties, and other public agencies for public buildings and other public works. That act and S. 2216 are the same as to length of permit, differ as to acreage allowances, the kind of lessees

which would be eligible, requirements for consideration and land to which the authority would apply.

The passage of this bill would not require additional appropriations. Receipts from national forests would be somewhat increased since leases could be issued for developments which are not undertaken now because of the insecurity of a revocable permit.

The Bureau of the Budget advises that, from the standpoint of the program of the President, there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE,
Acting Secretary.

ALASKA MENTAL HEALTH ENABLING ACT

For text of Act see p. 825

Senate Report No. 2053, May 25, 1956 [To accompany H.R. 6376]

House Report No. 1399, July 25, 1955 [To accompany H.R. 6376]

Conference Report No. 2735, July 17, 1956 [To accompany H.R. 6376]

The Senate Report and the Conference Report are set out.

Senate Report No. 2053 May 25, 1956

THE Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6376) to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The committee held public hearings on the measure, which are available in printed form, and carefully considered all of the views expressed at the hearings and in the many hundreds of written communications received.

Committee action was unanimous.

PURPOSE AND GENERAL STATEMENT

As passed by the House, H.R. 6376 contained in title I detailed provisions for commitment, hospitalization, and care of the mentally ill of Alaska. The committee amendment, however, strikes all of these controversial provisions from the bill, leaving it up to the people of Alaska to enact their own mental-health program.

In the form reported by the committee, H.R. 6376 would merely—

(1) Vest in the people of Alaska responsibility in the field of mental health comparable to that of the several States and the other Territories of the United States; and

(2) Authorize certain grants-in-aid to the Territory to enable it to assume full financial responsibility for such a program.

The legislation is needed for two reasons:

First, because a Federal statute, section 3 of the act of August 24, 1912 (37 Stat. 512; found in 48 U.S.C. 24), which is the Organic Act of Alaska, specifically prohibits the Territorial legislature from changing the existing law respecting commitment of the insane of Alaska. At present, commit-

ment is und[illegible] Federal law, enacted more than half a century ago, subjecting perso[illegible]ccused of being insane to procedures similar to those of a criminal trial (33 Stat. 619; 48 U.S.C. 47).

Secondly, the legislation is needed to divest the Federal Government of its fiscal and functional responsibility for hospitalization and care of the mentally ill of Alaska. Responsibility for such care now is vested in the Secretary of the Interior in Washington. There are no facilities in Alaska for care of the mentally ill, and for more than 50 years the Secretary has contracted with a private institution in Portland, Oreg., for hospitalization, care, and treatment. Under this procedure, Alaskans adjudicated insane must be sent long distances from their home environment in the Territory to Oregon for hospitalization. This contract between the Secretary of the Interior and the Oregon institution is authorized by the act of February 6, 1909, as amended (48 U.S.C. 46).

All costs of such commitment and care, as well as transportation to and from Portland, are at the expense of the Federal Government. Currently appropriations for such purposes amount to nearly $1 million a year, the committee is informed.

Under H.R. 6376, the Territory would assume full responsibility for enactment of commitment, hospitalization, and care procedures, and gradually assume full responsibility for all costs, except for the limited grants-in-aid provided in the measure.

THE COMMITTEE AMENDMENT

The committee's substitute, with certain clarifying changes, is the amendment proposed originally by Senator Barry Goldwater, of Arizona. The text of the amendment is set forth in full in the appendix. As stated, H.R. 6376 as it came from the House contained detailed commitment, hospitalization, and care provisions to replace the present procedures which were described in the Senate hearings by technical experts as "barbaric." (See testimony of Dr. Winfred Overholser, Superintendent of St. Elizabeths Hospital, Washington, p. 98 of hearings on H.R. 6376 and related bills, Senate Interior Committee, 84th Cong.)

The proposed new procedures were patterned after the Draft Act Governing Hospitalization of the Mentally Ill, published by the United States Public Health Service. The text of this draft act is set forth in the appendix to the hearings, beginning at page 289. The language of the House bill was carefully worked out to meet conditions in Alaska after extensive hearings by the House Territories Subcommittee in Alaska and in Portland, Oreg., where the mentally ill of Alaska presently are hospitalized, and in Washington, D. C.

The provisions of H.R. 6376 were approved by technical experts in the Department of Health, Education, and Welfare, and by the Alaskan public health authorities. They also were approved by the leading private organizations qualified to express technical opinions, such as the American Medical Association, the American Psychiatric Association, and the National Association for Mental Health. The House-passed bill also had the approval of the Department of the Interior, which has general administrative responsibility for Alaska, and that of the Bureau of the Budget, which speaks generally for the administration.

Highly significant to the committee was the all but unanimous endorsement of the people of Alaska, including the Alaska Territ[illegible] Medical Association, the Alaska Hospital Association, and a large nu[illegible]of other organizations and private citizens. Only one resident of Alas[illegible]is on record with the Committee as opposing the provisions.

Under the House bill, the Territorial Legislature of Alaska could have annulled or amended any of the sections relative to commitment, hospitalization, and care at any time.

However, the proposed provisions were misunderstood by many persons in parts of the country other than Alaska. Partly as a result of this misunderstanding, but more because the members of the committee are convinced that the people of Alaska are fully capable of drafting their own laws for a mental health program for Alaska, the committee concluded that authority should be vested in them in this field comparable to that of the States and other Territories.

Hence, Senator Goldwater's amendment was adopted, the substance of which is the striking of the commitment procedures in title I of the House bill. In so doing, the committee wishes to go on record as stating emphatically that its action is in no way a repudiation or disapproval of the provisions approved by the House of Representatives and endorsed by such a large number of qualified experts.

THE GRANTS-IN-AID PROVISION

Under the Senate amendment, the grants-in-aid are identical, in substance, to those approved by the House. That is, three different grants for different purposes are provided:

(1) $6½ million is authorized to be appropriated for construction of mental health facilities in Alaska. At present, there are none of any kind. Persons "convicted" by the mandatory jury trial are held in jail until arrangements can be made for transporting them away from Alaska to the private institution in Oregon.

(2) $6 million is authorized to be appropriated over a 10-year period to assist the Territory in developing a rounded mental health program for its people until it can itself assume full financial responsibility. This amount would be available, subject to approval of appropriations bills for the purpose, as follows:

Fiscal year—		Fiscal year—Continued	
1958	$1,000,000	1963	$600,000
1959	1,000,000	1964	400,000
1960	800,000	1965	400,000
1961	800,000	1966	200,000
1962	600,000	1967	200,000

(3) One million acres of the "vacant, unappropriated, and unreserved" public lands of Alaska, to be selected by the Territory within a 10-year period. The income and proceeds from disposition of these lands must be administered as a public trust, with the expenses of the mental health program having first call on such funds. Amounts not needed for the mental health program can be used for other public purposes as the legislature may determine.

THE LAND GRANT

Perhaps no provision of H.R. 6376 has been more widely misunderstood than the facts and circumstances of this land grant.

The Territory of Alaska comprises some 375 million acres. More than 99 percent of this vast area is now owned by the Federal Government. The resources of by far the greater part are wholly undeveloped, and now are of no benefit to either the people of the Territory or to the Federal Government.

Even when the Territory has exercised its right of selection to the full million acres, the Federal Government still will own approximately 99 percent of Alaska. It is hoped that the local government may be able to devise policies and take action that will lead to getting at least a part of the area granted by H.R. 6376 on the tax rolls, and to the development of its natural resources for the direct benefit of the people of Alaska and indirectly for that of all of the people of the United States.

Public land grants for public purposes in the Territory of the United States are, of course, older than the Constitution itself, dating from at least the Northwest Ordinance of the Continental Congress in 1787. (See 1 Stat. 50, 51.) In all of the public land States of the West the Federal Government has made grants of the public lands in order to provide funds for schools or other public purposes. In five States, namely, Idaho, Oklahoma, South Dakota, Utah, and Wyoming, grants of public lands have been made specifically to provide means for the care of the insane. (See p. 182 of the hearings.)

"Siberia, U. S. A."

A number of persons communicating with the committee expressed the fear that this million-acre land grant would be used for a Siberia-like concentration camp in Alaska, to which political opponents of those in power in the several States and the Federal Government would be sent. The bill affords no reasonable basis for this fear, which was based on a complete misunderstanding of a section of the House measure that has been stricken by the committee amendment.

While there is nothing in the bill to prevent the construction of a mental hospital on a fractional part of the lands granted to the Territory, the committee points out that such hospitals usually are built near centers of population where other facilities are available, and where patients are accessible to their families and friends. Therefore, it is unlikely that any part of the grant will itself be used for physical facilities for the mentally ill of Alaska.

The purpose of the grant is to afford revenues to the Territory for support of its mental-health program. If such revenues are in excess of needs for the program, they may be used, as a public trust, for other public purposes.

SECTIONAL ANALYSIS OF THE BILL AS AMENDED

Title I

Section 101 vests authority in the Territory of Alaska comparable in scope to that of the States and other Territories in the field of mental health, and authorizes the Territory to enact legislation to supersede the existing Federal law governing commitment and care of the insane of Alaska. As above explained, the Territory is now prohibited from changing the present archaic commitment procedures. Section 101 would sweep aside this prohibition and remove any other possible uncertainties as to Alaska's right to deal with its own mental-health problem.

In view of some of the fears expressed at the hearings with respect to the provisions of the bill as passed by the House, it should be emphasized that Alaska is an incorporated Territory, and that the Constitution of the United States is in full force and effect there. The territorial legislature would have no power to enact any law that in any way violated the constitutional rights of any person, in Alaska or outside of it.

As is the case with all of the other Territories of the United States, under the Constitution inherent power remains in Congress to set aside any act of the territorial legislature, which was created by Congress.

Section 102 authorizes the legislature to confer upon the United States commissioners, as ex officio probate judges, and upon the United States district court such jurisdiction, functions, and duties as may be necessary for them to exercise in carrying out the mental-health program. Because the court was created by act of Congress, and because the commissioners are, technically, Federal officers, section 102 is designed to remove any doubt that Alaska's authority under section 101 will permit their utilization. Since there are only 4 Federal judges in the 550,000-odd square miles of the Territory, it will be necessary for the 15 commissioners to have certain judicial powers in the administration of the program. Under present law, the commissioners now serve as judges in the compulsory jury-trial commitment proceedings.

Section 103 provides that title I shall become effective on the date of enactment of the act.

Title II

Section 201 would amend the Public Health Service Act (42 U.S.C., chapter 6A) by adding to title III of such act a new part, part H, to authorize the money grants discussed above. Section 371 of the new part H of title III of the Public Health Act would authorize appropriations for grants aggregating $6 million over a 10-year period, to assist in the support of a comprehensive mental health program for the Territory. In order for the Territory to obtain any part of these funds, the Surgeon General of the United States would first have to approve plans submitted by the Territory for a mental health program, including outpatient and inpatient care.

As previously pointed out, these grants would be on a descending scale over a 10-year period. After 10 years, the Territory would have full financial as well as legal responsibility for its mental health program.

Since Alaska has been prevented from developing its own mental health program over the years, the committee is of the opinion that it would be inequitable to require the Territory to assume immediate financial responsibility for the present Federal program—a program in the making of which the people of Alaska had no voice. Furthermore, with Federal expenditures now approximating $1 million a year for the care of the Alaska insane, the proposed formula would result in a net savings to the F

with the steady increase in population.

The Surgeon General is charged with responsibility for verifying compliance by the Territory under the approved plan. Balances unobligated at the end of the 10-year period shall be repaid to the United States.

Section 371(a) of the amendment to the Public Health Service Act would authorize the Surgeon General to arrange with the Territory, on a reimbursement basis, for treatment and care of patients under the Alaska program in Public Health Service facilities, if such facilities are available.

Section 372 of the new part H addition to title III of the Public Health Service Act would authorize the appropriation of an aggregate of $6½ million in grants to aid the Territory in construction of hospital and other facilities in Alaska for carrying out its mental-health program. All such construction projects must be approved by the Surgeon General, who is charged with inspection responsibility.

Section 202 of H.R. 6376 is the land-grant section, giving the Territory the right to select, within 10 years from the date of enactment of the act, a million acres of public lands that are "vacant, unappropriated, and unreserved." National forest lands in Alaska, not being in the vacant, unappropriated, unreserved category, would not be subject to such selection. Neither, for example, would the oil and gas lands now withdrawn by Naval Petroleum Reserve No. 4.

When Federal reservations of public lands are revoked, the Territory would have a 90-day period in which to exercise its right of selection before the order of revocation otherwise becomes effective.

Mineral deposits in the lands selected go with the surface of the lands to the Territory.

Subsection (e) of section 202 provides that the income or proceeds from the lands selected shall be administered as a public trust, to be first applied to meet the necessary expenses of the mental-health program of Alaska.

Section 203 provides that title II also shall become effective on the effective date of the act.

Title III

Section 301(a) lists the Federal laws or parts of laws relating to mental health in Alaska which may be superseded by Territorial laws to be enacted by the legislature and proclaimed by the Governor. These cited laws are to be repealed either at a time specified in the Governor's proclamation as the effective date of the superseding Territorial law, or 210 days after enactment of H.R. 6376, whichever is later.

Subsection (b) makes provision for a possible interim period, in the event the Territorial legislature does not act promptly to pass Territorial legislation, by vesting in the Governor and Territorial Government, beginning with the 210th day after enactment of H.R. 6376, the authority and responsibility now exercised by the Secretary of the Interior and other officers of the Federal Government, with respect to the care of the insane of Alaska.

Section 302(a) deals with the problem presented by the existing contract between the Secretary of the Interior and the Sanitarium Co. of Portland, Oreg., proprietor of Morningside Hospital in which the mentally ill of Alaska now are being treated at Federal expense. The section provides

assign the contract to the Governor of Alaska with his concurrence, or terminate the contract in accordance with its terms. Assignment would take effect on the 210th day after the effective date of the act. The existing contract provides for termination upon 6 months' notice.

Subsection (b) provides that the unexpended balances of appropriations available to the Secretary of the Interior for the care of the Alaska insane shall be transferred to the Governor of Alaska on the 210th day after the date of enactment of H.R. 6376 and shall thereafter be available for the administration of the Territorial mental-health laws, or for the administration of the Territory of that part of the present Federal law that will remain in effect, on an interim basis, if the legislature has not acted to supersede it.

Subsection (b) also includes authorization for appropriation of funds to the Secretary of the Interior for the remainder of the fiscal year 1957 for transfer to the Territory if the balance of existing appropriations proves to be less than the amount necessary to care for Alaska's insane for fiscal 1957.

Transportation costs for the Alaska insane to and from Portland, now borne wholly by the Federal Government, have not been segregated from other portions of the applicable appropriation to the United States Department of Justice. As a result, transfer of funds for transportation for the remainder of fiscal 1957 is not feasible. Subsection (c) therefore provides that costs of transporting patients to a hospital outside of Alaska shall continue to be paid by the Department of Justice, which already has the appropriation, until July 1, 1957. There are no mental hospitals or related facilities in Alaska at present.

HISTORY OF LEGISLATION

Bills to amend the archaic laws for the commitment of the mentally ill of Alaska have been before successive Congresses for some years. In the 83d Congress, H.R. 8009, a measure similar in purpose to H.R. 6376, passed the House and was favorably reported by the Senate Interior Committee after hearings (S.Rept.No. 2486, 83d Cong.). No action was taken on H. R. 8009 by the Senate prior to the adjournment of the 83d Congress.

In the 84th Congress, a number of bills designed to accomplish the purposes of the previous measures were introduced in both the Senate and the House, including one by Delegate E. L. Bartlett, of Alaska. H.R. 6376 was sponsored by Congresswoman Edith Green, of Portland, Oreg., in whose district Morningside Hospital is located.

The provisions of Congresswoman Green's bill are based on draft legislation submitted by the administration in an executive communication.

CONCLUSION

At the hearings this year, virtually all witnesses who acquainted themselves with the facts concerning conditions in Alaska and the wishes of the people of Alaska agreed that reform was long overdue. In all of the States and all of the other Territories of America, responsibility for commitment and care of the mentally ill is a local matter, carried out under local law.

The committee is unanimously convinced that the people of Alaska, who have been American citizens for nearly half a century, should be permitted to stand on an equal footing with all other American citizens. Since Alaska would be starting from scratch, so to speak, with a caseload of mental illness equal, proportionately, to the national average, the committee is convinced that the grants-in-aid provided by H.R. 6376 are necessary and are equitable.

REPORTS OF EXECUTIVE AGENCIES

The attention of the Members of the Senate is directed to the testimony of the Assistant Secretary of the Department of Health, Education, and Welfare, and the Assistant Secretary of the Interior set forth in the hearings. In addition, the following written reports were received on H.R. 6376 and companion measures in the Senate. Also set forth is a report on the Goldwater amendment which was the substitute adopted, in substance, by the committee.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., January 3, 1956.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your request of August 11, 1955, for the views of the Bureau of the Budget on S. 2518, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

This bill would provide for a comprehensive mental health program in Alaska. Responsibility for the administration of the Territory's mental health program would be transferred from the Federal Government to the government of the Territory of Alaska. The new commitment procedures, as set forth in S. 2518, for mentally ill patients in Alaska would represent a major step forward in the care of such patients in that Territory. Special construction grants are provided for various facilities to care for the mentally ill. And lastly, the bill provides financial assistance and land grants by the Federal Government, not only to enable the Territory to establish a comprehensive mental health program, but also to assist it in assuming full financial responsibility for the care and treatment of all the Territory's mentally ill.

The Bureau of the Budget strongly endorses S. 2518, but urges your committee to favorably consider the amendments suggested by the Departments of Interior and Health, Education, and Welfare in their reports to you on this bill. We would like also to suggest for your committee's consideration two additional amendments.

Because the objectives of this bill are to transfer responsibility for care of the mentally ill from the Federal Government to the Territorial government and to enable it to care for its mentally ill patients in Alaska, it appears undesirable to authorize the care of the Territory's mentally ill in continental United States hospitals of the Public Health Service, as provided in section 201 of the bill. Pending the construction of mental health facilities in Alaska, it may be desirable to care for a small number of the Territory's mental patients in the Public Health Service hospitals in Alaska. However, authorizing the government of Alaska to contract with the Public Health Service hospitals in the continental United States would be contrary to the intent of the bill to place the responsibility for care of the mentally ill in Alaska on the Territory and would place the Territory on a different basis from other governmental units since the various States and other Territories cannot contract for the use of Public Health Service hospitals. It is therefore suggested that the bill be amended to restrict

mentally ill to those located in Alaska.

In order to insure that the Territory takes action at an early date to construct facilities in Alaska for the care of its mentally ill, the bill should contain time limits within which the Territory must obligate and expend the Federal construction grants authorized for this purpose in the bill. We, therefore, suggest amending section 201 of the bill to provide that the Federal construction payments be appropriated within a 10-year period, and remain available an additional 5 years for expenditure.

I am authorized to advise you that subject to consideration of the suggested amendments, S. 2518 would be in accord with the program of the President.

Sincerely yours,

(Signed) PERCY RAPPAPORT,
Assistant Director.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., January 9, 1956.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR MURRAY: This will refer further to your request for the views of the Department on S. 2518, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

I strongly recommend that S. 2518 be enacted.

S. 2518 would achieve three results which the Department strongly supports. It would, first, modernize procedures for the commitment and hospitalization of the mentally ill of Alaska. It would, secondly, transfer administrative and basic fiscal responsibility for the program to the Territorial government of Alaska. Finally, it would provide Federal financial aid to the Territory to assist Alaska in supporting an adequate program for the mentally ill.

As you know, the Department of the Interior has for over 50 years been engaged in the administration of certain laws pertaining to the mentally ill of Alaska. Although the commitment, care, and treatment of the mentally ill of the Territories is generally regarded as an inherent responsibility of the respective territorial governments, and although this responsibility has in fact been assumed by most such governments, it has not been assumed by the Territory of Alaska. Responsibility was initially assumed by the Federal Government because of the Territory's special circumstances at the turn of the century, and this function has continued as a Federal responsibility largely because of Alaska's limited financial resources. The Congress has specifically denied to the Territorial legislature authority to amend or repeal the existing Federal law pertaining to the commitment of the mentally ill (48 U.S.C., sec. 24). Alaskans have consequently been committed to a mental institution pursuant to a Federal statute (48 U.S.C., sec. 47), and they have been cared for and treated in a private hospital under contract with this Department (48 U.S.C., sec. 46). The Federal Government has borne the total cost of their commitment, transportation, care, and treatment.

This Department has long been concerned with the shortcomings of this program, particularly with regard to the commitment procedure which was established in 1905 and which has not since been modified. We have vigorously supported legislation to modernize this procedure, but such legislation has thus far failed of enactment. We are glad to have the opportunity again to endorse modern hospitalization procedures, such as those contained in title I of S. 2518. Title I of the bill appears in large part to parallel closely the provisions of the draft act governing the hospitalization of the mentally ill, which was prepared by the Public Health Service.

administration of the Territory's mental health program, including the hospitalization of the mentally ill. Such a transfer is consistent with the current [redacted], under which the States and Territories, rather than the Federal Government are responsible for the mentally ill.

S. 2518 also recognizes, however, that a transfer of such responsibility would place upon the Territorial government of Alaska a very sizable financial burden. In order, therefore, to assist the Territory in assuming responsibility for the hospitalization and care of the mentally ill, S. 2518 provides three kinds of Federal assistance. Under section 201 of the bill, the Surgeon General of the Public Health Service would be authorized to make special grants over a period of 10 years to the Territory for the development of a mental health program. For the first 2 fiscal years, the grants would total $1 million annually, and they would decrease at the rate of $200,000 every second year until terminated at the end of 10 years. Section 201 would also authorize the appropriation of a total of $6,500,000, to remain available until expended, to enable the Surgeon General to make payments to the Territory to be used in the construction of facilities for the care and treatment of the mentally ill.

Section 202 of title II would authorize the Territory to select 1 million acres of vacant, unappropriated, and unreserved public lands of the United States in Alaska, such selections to include mineral deposits. The Territory would be required to make selections within a period of 10 years from the effective date of the bill. The revenues obtained from this land grant shall materially assist the Territory in assuming full financial responsibility for the care and treatment of the mentally ill.

Title III of S. 2518 contains certain provisions relating to the repeal of existing laws, the disposition to be made of the current contract for the care of the mentally ill of Alaska, the transfer of appropriations, and the effective date of the legislation.

I should like, however, to suggest certain amendments for your committee's consideration. As you perhaps know, S. 2518 closely parallels H.R. 6376, which was in turn, when introduced, the bill proposed by this Department, in cooperation with the Department of Health, Education, and Welfare. H.R. 6376 was, however, amended by the House Committee on Interior and Insular Affairs, and S. 2518 carries the amendments recommended by that committee. Three of those amendments we regard as particularly undesirable, and I should like to suggest that your committee give consideration to the modification of S. 2518 in regard to them.

First, section 108 of the bill has been amended to provide for the use of juries in the judicial procedure for hospitalization. The use of a jury would not be mandatory, and to that extent the procedure would constitute a considerable improvement over that now required in Alaska by the act of January 27, 1905 (48 U.S.C., sec. 47). But we believe that the jury system is an undesirable method for determining mental illness, and we consequently believe that S. 2518 would be improved if the jury provisions were deleted. The adoption of our first proposed amendment, which is attached, would achieve that result.

Secondly, the section of this Department's proposed bill providing criminal penalties for unwarranted hospitalization or for the denial of rights has been deleted. We regard this provision as one of considerable importance, for it implements one of the primary purposes of the legislation, namely, the protection of individuals from wrongful confinement and from the deprivation of rights granted them by the bill. We therefore suggest that the criminal penalty provision be restored to the bill, a result which would be accomplished by the adoption of our second proposed amendment. Should your committee not adopt this amendment, you will wish to amend the table of contents on page 2 by deleting the reference to section 128 and the title thereof and by changing the section numbers 129 and 130 on that page to 128 and 129, respectively. The numbering of the sections within S. 2518 would, if our second amendment is not

adopted, then correspond to the suggested renumbering in the table of contents.

Finally, section 202 (e) was amended by the House committee to provide for the earmarking of funds derived from the land grant for the sole purpose of the hospitalization and care of the mentally ill. While it is, of course, anticipated that the land revenues will be used for this purpose, we are inclined to believe that it would be wiser not to restrict them in this manner. It is impossible at this time to predict accurately the cost to the Territory of the program envisaged by S. 2518. It is equally difficult to predict the amount of revenue that will accrue to the Territory under the land grant. It is possible that revenue resulting from the land grant will substantially exceed the costs of the program, in which case the Territory ought to be free to use such revenues for other purposes. It is also possible, however, that the land grant may be insufficient to sustain the Territory's financial responsibility under the program, and if that is so, the Territory should not be deterred from using funds from other sources to sustain it. We believe that it might be deterred if the earmarking requirement remains in the bill. I therefore suggest the adoption of the third proposed amendment.

The bill contains a typographical error on page 33, line 8. The title of the Public Health Service Act to be amended is title III, rather than title II.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WESLEY A. D'EWART,
Assistant Secretary of the Interior.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
January 12, 1956.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in response to your request of August 11, 1955, for a report on S. 2518, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

This bill—to be known as the Alaska Mental Health Act—is identical with H.R. 6376, in the form in which that bill was reported to the House (H.Rept. 1399). Subject to certain committee amendments shown in the House report, it incorporates proposals made jointly by the Department of the Interior and this Department to accomplish and facilitate the transfer from the Federal Government to the Territory of Alaska of basic responsibility for the hospitalization and care of the mentally ill of Alaska.

We believe that the objectives and, in the main, the specific features of the bill are sound and desirable, and recommend its enactment. For the committee's consideration, however, we propose the amendments discussed below.

As you know, this legislation has had a long history, beginning with the introduction of a number of bills and legislative action short of enactment during the 81st, 82d, and 84th Congresses, and culminating in the present bill. The history and principal features of the present bill, except as modified by the House committee amendments in certain particulars, are summarized in the Interior Department's reports of April 1, and May 17, 1955 (in connection with H.R. 610 and H.R. 3991), with which this Department fully concurred, and which are reprinted in House Report 1399 (pp. 8–14).

This bill would (a) transfer to the Territory the responsibility for the administration of the Alaska mental health program including the hospitalization of the mentally ill; (b) modernize procedures for the hospitalization of the mentally ill in Alaska; (c) provide a special grant-in-aid to

Alaska to aid in the establishment and maintenance of a comprehensive mental health program including hospitalization; (d) authorize appropriations totaling $6,500,000 to enable the Public Health Service to make special construction grants to the Territory for the construction of facilities for the care and treatment of the mentally ill; and (e) make a grant of land to the Territory of not to exceed 1 million acres to enable the Territory to gradually assume full financial responsibility for the care and treatment of the mentally ill of Alaska.

Upon the effective date of the bill, the basic responsibility and authority for the hospitalization, care, and treatment of the mentally ill of Alaska would be transferred to the Territory. Whatever may have been the justification for placement of this responsibility in the Federal Government, its continuation is inconsistent with home rule for the Territory and has long been an anachronism. Although this Department provides some financial aid through grant programs in support of the outpatient and community mental health programs of the various States and Territories, the administration and supervision of these programs remain with the States and Territories. Therefore, we endorse the provision of the bill which transfers to the Territory the same responsibility with regard to the mentally ill of Alaska as is now possessed by the other States and Territories.

Like earlier legislation, the present bill would establish a modernized procedure for the hospitalization of the mentally ill of Alaska, which is patterned in general after the provisions of the draft act for the hospitalization of the mentally ill prepared by the Public Health Service, but with certain modifications to take account of Alaskan conditions. We are thoroughly in accord with the objectives of this feature of the bill, and with the provision which would authorize the Territory to modify or supersede these provisions in the future, in consonance with the transfer of basic program responsibility to the Territory. There are however, some aspects of the hospitalization provisions of the bill which, we believe, should be changed in the interest of the mentally ill.

(a) Section 108, relating to judicial commitment of the mentally ill, departs from modern mental health commitment practices by providing for a jury trial (before a six-member jury) upon request of the proposed patient, his counsel, or any member of his immediate family. While this is an improvement over the provisions of existing Territorial law (48 U.S.C. 47) which would make a jury trial mandatory, we believe that a jury trial in judicial commitment proceedings is not consonant with the best modern practice and is likely to be harmful to the patient rather than protective of his interests. In the first place, though a commitment proceeding is civil in nature, such a proceeding, when cast in the atmosphere of a jury trial, is somehow associated in the minds of many with criminal proceedings. This may be due in major part to the history of commitment of the mentally ill. It would be especially true in Alaska, where the present commitment procedure is discredited. In the second place, the formalism necessarily attendant upon a jury trial is likely to be far more disturbing to the patient than a nonjury proceeding, and thus more harmful to his mental health. Finally, as said in the commentary accompanying the Public Health Service's draft act, "Equally important is the consideration that the jury is a questionable instrument for evaluating the preeminently medical ingredients of a determination in this field." These considerations are not overcome by the fact that a jury trial would be ordered only if requested. Under the bill, neither the patient's nor his counsel's consent would be necessary if a member of his family requests a jury trial. We, therefore, suggest deletion of the provisions relating to a jury trial. (Enclosed is a list of the relevant provisions.)

(b) We also believe that there should be inserted in the bill a provision, originally in the House version, but deleted in committee, which would penalize a person who willfully causes, or conspires with or assists another person to cause, either the unwarranted hospitalization of an individual under the act or the denial to an individual of any rights accorded to him under the act. (Appropriate language to accomplish this

is enclosed.) We believe that such a provision is desirable in order to fortify with appropriate sanctions two principal objectives of the hospitalization procedure; namely, the protection of persons from wrongful confinement and the protection of the mentally ill against improper treatment while in the hospital.

In order to assist the Territory, on a transitional basis, in establishing and maintaining the services which are essential to an integrated and comprehensive mental health program (including preventive services and outpatient care, as well as hospitalization), the bill would provide for special annual grants to the Territory on a descending scale over a 10-year period, beginning with $1 million for each of the first 2 fiscal years and decreasing at the rate of $200,000 every second year. These grants would be made by the Surgeon General of the Public Health Service, on the basis of a plan submitted by the Governor or his designee and approved by the Surgeon General.

It is estimated that at the outset these grants would exceed by about $100,000 the annual current appropriation for the hospitalization and transportation of committed patients from Alaska. However, such a grant would enable the Territory to establish a comprehensive mental health program, including and stressing preventive and outpatient services, and would in the long run reduce the number of hospitalized patients—both because the fiscal incentive for hospitalization (caused by earmarking of Federal funds therefor) would be removed and because outpatient methods of treatment as well as additional methods of prevention would be made available and encouraged. These grants, of course, should not diminish the other grants-in-aid under the Public Health Service Act (including a very small amount for mental health) otherwise available to the Territory.

Section 201 of the bill would add to the Public Health Service Act, section 372. This would authorize appropriations not exceeding a total of $6½ million to enable the Public Health Service to make special construction grants to the Territory for the construction of facilities for the treatment of the mentally ill and is of particular significance to the development of a realistic mental health program for Alaska and assumption by the Territory of responsibility for the care of its mentally ill.

At present, there are no mental-health facilities to speak of in the Territory. Patients must be transported by air thousands of miles to a hospital in Oregon causing them to be separated for long periods of time from their family and friends. Even under the best of circumstances, the Territory will have to depend upon contract care for hospitalized patients for some time, and the bill so authorizes. However, the making of construction grants to the Territory would help solve this problem by enabling the Territory to construct a number of facilities especially designed to provide the type of inpatient and outpatient care needed by the mentally ill of Alaska.

The House bill (H.R. 6376) as originally introduced provided for a land grant of 500,000 acres to the Territory in order further to assist the Territory in assuming full financial responsibility for the care and treatment of the mentally ill on a permanent basis. S. 2518, as well as H.R. 6376 as amended in committee, would double the quantity of land to be used for this purpose and would earmark the grant for the hospitalization and care of the mentally ill in Alaska. We are in accord with the concept of a land grant to provide long-range means of defraying a substantial portion of the cost of a permanent program. We defer, however, to the Secretary of the Interior on the question whether, under the conditions prevailing in Alaska, earmarking of the grant would be desirable, and on the question of the amount of land that would provide an adequate grant in the circumstances.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

[Signed] M. B. FOLSOM, [illegible].

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., February 17, 1956.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: This will acknowledge your request of February 6, 1956, for the views of the Bureau of the Budget on S. 2973, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

S. 2973 is substantially the same as S. 2518 on which the Bureau of the Budget reported to your committee on January 3, 1956. The views expressed in our report on S. 2518 are also applicable to S. 2973.

The major difference between the two bills is found in section 202 (e). S. 2518 provides for the complete earmarking of funds that are derived from the Federal land grants for the hospitalization and care of the mentally ill of Alaska. S. 2973 would permit these funds to be used in a less restrictive manner than that required by S. 2518. The Bureau of the Budget recommends the deletion of the provision relating to earmarking of funds for the reasons stated in the report of the Department of the Interior on S. 2518.

I am authorized to advise you that subject to consideration of the above comments and the amendments suggested in our report of January 3, 1956, the enactment of S. 2518 or S. 2973 would be in accord with the program of the President.

Sincerely yours,

(Signed) PERCY RAPPAPORT,
Assistant Director.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
February 20, 1956.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request of February 6, 1956, for a report on S. 2973, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

This bill—except for the earmarking provision in subsection 202 (e), relating to a land grant (and except for the correction of some typographical errors)—is identical with H.R. 6376 which, having passed the House, is now pending before your committee, and with S. 2518, also pending before your committee, on which we reported to you in our letter of January 12, 1956.

The provisions of these bills embody, with certain modifications, proposals made jointly by this Department and the Department of the Interior, on the subject of the hospitalization and care of the mentally ill of Alaska and of a comprehensive Alaska mental-health program. We urge its enactment, but in that connection suggest consideration of the amendments proposed in our report on S. 2518, and also invite attention to the amendments proposed by the Department of the Interior and by the Bureau of the Budget in their reports on that bill, which would be agreeable to us.

There are, however, two additional matters to which we should like to invite attention.

1. We recommend that, in view of the lapse of time since the drafting and initial introduction of this legislation, the bills be amended to postpone for 1 year each of the authorizations for transitional support grants provided for in subsection 201, and, similarly, to defer for 1 year the termination date for the payment of patients' transportation expenses to a stateside hospital by the Justice Department. (This would be accomplished, (*a*) by striking out—In the sentence beginning on page 33, line

22, and ending on page 34, line 4—the figures "1957", "1958", "1959", "1960", "1961", "1962", "1963", "1964", "1965", and "1966", and by inserting in lieu thereof, respectively, the figures "1958", "1959", "1960", "1961", "1962", "1963", "1964", "1965", "1966", and "1967"; and (*b*) by striking out "1956" in subsection 302 (c) and inserting in lieu thereof "1957".)

In the absence of these postponements, the 210-day deferred effective date of the legislation (subsec. 304) would come substantially later than the dates now fixed in the bills for the commencement of support grants and for the shift, to the Territory, of financial support for the transportation of patients to a hospital outside Alaska. The above-suggested postponements on the other hand should allow adequate time to the Territory to plan and prepare for ushering in the comprehensive mental-health program for the Territory envisioned by the bills. These postponements would not interfere with the operation of the 210-day effective-date provision with respect to other parts of the bill, such as the modernized hospitalization procedures and the assumption of basic and administrative responsibility by the Territory in this connection. The Department of the Interior will continue to carry responsibility for the hospitalization program until the legislation becomes effective, at which time the bill would transfer to the Governor any unexpended balances of appropriations available to the Interior Department for the care of the Alaska insane. The Justice Department, if our suggested postponement is adopted, would until July 1, 1957, continue to pay the expenses for the transportation of any patients that are sent from Alaska to a hospital outside the Territory.

2. As stated in our report on S. 2518, we defer to the views of the Secretary of the Interior on the question whether, under the conditions prevailing in Alaska, earmarking of the land grant would be desirable. If the Congress, in enacting the proposed legislation, deletes the earmarking provisions of the measure, no further question in this connection need be raised. If, however, your committee should decide to provide for some earmarking, and if our understanding of the differences in the provisions of the three bills is correct, we would prefer the version of S. 2973 which not only makes provision for the contingency that the land grant might turn out to be more than necessary to meet the expenses of the mental-health program in Alaska but also seems to permit the proceeds of the lands themselves to be currently expended for the program (or, in the event of a surplus, for other public purposes).

In addition, we would suggest that in the event of adoption of an earmarking provision, it be made explicit (in the legislation or at least committee report) that the income and proceeds of the land grant may be used for the purposes of the entire mental-health program for the Territory (not merely the hospitalization and care of the mentally ill), as envisioned by the provisions on page 33, lines 18–21, of the bills.

Subject to your committee's consideration of the suggestions and recommendations made and referred to above, we urge enactment of one of the bills as essential to the establishment of a modern mental health program in Alaska and of more enlightened procedures for the hospitalization and care of the mentally ill than those now provided for in the law, and further in order to transfer the basic program responsibility and the responsibility of the administration of the program to the Territory where it belongs, with such Federal assistance as is necessary to enable the Territory to assume this responsibility.

For the convenience of the committee, we enclose a copy of our report on S. 2518. (In the enclosed copy a typographical error in technical amendment 3.d. has been corrected. Also, technical amendments 3.b, c., and d. are not required for S. 2973 or for H.R. 6376.)

We are advised by the Bureau of the Budget that, subject to your committee's consideration of the above suggested amendments and of the amendments submitted by the Department of the Interior and the Bureau

of the Budget, enactment of the measure would be in accord with the program of the President.

Sincerely yours,

(Signed) M. B. FOLSOM, *Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
March 1, 1956.

Hon. HENRY M. JACKSON,
Chairman, Subcommittee on Territories and Insular Affairs,
Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: At the hearings before your subcommittee on H.R. 6376 and other measures relating to a mental health program for Alaska, a number of questions were raised concerning the procedures provided by title I for the hospitalization of the mentally ill.

These procedures were not outlined in detail either in Secretary Folsom's letters of January 12 and February 20 to Senator Murray or in the testimony presented by representatives of this Department in the hearings before the subcommittee. The enclosed statement has therefore been prepared to correct this omission and particularly to cover those aspects of title I concerning which questions were raised during the course of the hearing. I hope that it may prove helpful to the committee and that both the statement and this letter may be made a part of the record.

Statutes which, like title I, set out complete procedures with respect to hospitalization of the mentally ill are necessarily fairly complex. They must provide for all individuals, including those who may not be in a condition to make responsible decisions for themselves, protection against unwarranted limitations upon their personal liberty. They must also provide for the mentally ill ready access to medical care needed to restore them, wherever possible and as speedily as possible, to normal health and activity. H.R. 6376 has been carefully drawn with a view to both these objectives. While all its provisions should be considered closely, I wish to correct certain assertions made by witnesses with reference to specific provisions of the bill which reflected a careless reading of the text or unfamiliarity with provisions commonly found in statutes of this type.

Commitment under this bill, for an indefinite period or for a temporary observational period, may be made only by order of the United States commissioner following judicial procedure provided in section 108. (In Alaska the United States commissioners now conduct commitment proceedings and order commitments (48 U.S.C. 47).) Notice and opportunity to appear at the hearing must be given to the proposed patient in all cases (subsec. (f)). The provision for omission of notice to the patient, if the commissioner has reason to believe that notice would be injurious to the patient, applies only at the time the application is first filed (subsec. (b)) and before the medical examiners make their report, a report which may cause the application to be dismissed (subsec. (e)). The object is, of course, to spare the individual the needless (and possibly very damaging) shock of a notice of judicial proceeding which may never reach the hearing phase because the medical examiners' report finds the individual is not mentally ill.

Aside from judicial proceedings under section 108, provision for compulsory hospitalization is limited to emergency situations provided for in section 104 (a) and (b), when in the opinion of the certifying physician the individual is likely to injure himself or others if allowed to remain at liberty, or when a health, welfare, or police officer has reason to believe that the individual is likely to injure himself or others if not immediately restrained pending the medical certification and official endorsement generally required for taking an individual into custody and for application for emergency admission. The individual so hospitalized must be forthwith discharged from the hospital on his request unless

the head of the hospital, within 48 hours of the request, files a certification that in his opinion discharge of the patient would be unsafe to the patient or others. In such case the commissioner may allow postponement of the patient's discharge pending commencement of commitment proceedings but not for more than 5 days or, under special circumstances, 15 days.

Section 103 (b) gives the head of the hospital authority to admit an individual for care and treatment on application by others, accompanied by a certificate of a licensed physician. The physician must certify on the basis of examination not only that the individual is mentally ill but that he is either likely to injure himself or others if allowed to remain at liberty or, being in need of care or treatment in a hospital, lacks sufficient insight or capacity to make responsible application in his own behalf. This is not a commitment provision and authorizes no compulsory taking of the individual unless, in addition, there obtain the circumstances warranting emergency hospitalization under section 104.

Provisions which involve the transfer of patients to or from Alaska were cited at the hearing as threatening the unwarranted removal of residents from the States for compulsory confinement in Alaska. Section 118 (b) of the bill relates to the transfer of patients, for example veterans, who like those originally committed to an agency of the United States pursuant to section 109 (a) are eligible for hospital care or treatment at the expense of an agency of the United States. These provisions parallel closely the language of section 18 of the Uniform Veterans' Guardianship Act which was developed by the National Conference of Commissioners on Uniform Laws and which has been in satisfactory operation for years in most of the States.

Section 119 (a) provides for the transfer of any patient who has been hospitalized by the judicial procedure in Alaska but who is not a resident of Alaska to his State of residence. Subsection (b) provides for the return to Alaska of mentally ill residents of Alaska. Such transfers are made pursuant to reciprocal arrangements. The present law applicable to Alaska (48 U.S.C. 48) likewise provides for such transfers, and similar provisions are found in the laws of most States.

Subsection (c) of section 119, as to which certain speakers at the hearing expressed alarm, is not a transfer provision at all. It authorizes arrangements by which Alaska could reimburse a State for the care and treatment of mentally ill residents of Alaska by the State, or a State could reimburse Alaska for the care and treatment by Alaska of a mentally ill resident of the State. Such arrangements would obviate the need for transfer of the patient in those cases where return to the State of residence (or to Alaska in the case of a resident of Alaska) might be detrimental to the patient. The provision is by no means a vital part of the bill, and we would suggest that in any event its intent be made unmistakably clear by changing the period at the end of the subsection to a comma and adding the following: "when it appears that transfer of the patient as provided in subsections (a) and (b) would not be in the best interest of the patient."

I hope that these examples may serve to dispel some misapprehensions voiced by speakers who appeared in opposition to H.R. 6376. Fuller comment will be found in the detailed statement transmitted herewith. We shall be glad to be of further assistance to the committee in furnishing data or in the drafting of clarifying language where need for such may appear.

Sincerely yours,

ROSWELL B. PERKINS,
Assistant Secretary.

STATEMENT RE TITLE I, "HOSPITALIZATION OF THE MENTALLY ILL," H.R. 6376

This statement covers particularly those provisions of title I concerning which questions were raised in the hearings held before the subcom-

mittee of the Senate Committee on Interior and Insular Affairs February 20 and 21, may be grouped under the following headings:

I. The definition of mental illness—inclusion of the mentally retarded and deficient
II. Procedures for hospitalization
    Voluntary
    Compulsory
III. The rights of patients while hospitalized
    Right to discharge
    Other rights
IV. Provisions relating to the transfer of patients from or to Alaska

I. THE DEFINITION OF MENTAL ILLNESS—INCLUSION OF THE MENTALLY RETARDED AND DEFICIENT

Section 101(i)

The term "mentally ill individual" is defined as meaning: "An individual having a psychiatric or other disease which substantially impairs his mental health or an individual who is mentally defective or mentally retarded."

As will appear from the discussion of the substantive sections of this title, the fact that an individual is determined to be "mentally ill" as defined is not in itself sufficient to authorize his admission to a hospital except upon application made by the individual himself under section 103 (a). The additional factors necessary for hospitalization upon an application made by others are set forth in sections 103 (b), 104, and 108 as will be hereinafter noted.

At the present the mentally defective or mentally retarded in Alaska are hospitalized under the commitment procedure which relates to the "insane." Under this procedure, for example, there are reported to be a number of mentally retarded children who are hospitalized at Morningside. Since there is no provision in the statutes of Alaska for the hospitalization of the mentally retarded and deficient, where need for institutional treatment is indicated, this group has been included in the statutory definition. Again, however, the fact that an individual is mentally retarded is not ground in itself for hospitalization.

II. PROCEDURES FOR HOSPITALIZATION

Sections 103, 104, and 108 provide in effect four procedures by which an individual in Alaska may be hospitalized on account of "mental illness" as defined.

Section 103(a)

(1) Upon voluntary application by the patient (in the case of a minor under 16, by his guardian). An individual who is mentally ill or has symptoms of mental illness may apply for admission to a hospital and be admitted for observation, diagnosis, care, and treatment. Such application can be made, however, only by an individual "who has sufficient insight or capacity to make responsible application" in his own behalf. In the case of an individual under 16 years of age, the application must be made by the parent or legal guardian.

Such an admission is not in any sense a commitment, and unless the individual becomes dangerous while in the hospital, he must be discharged forthwith upon his request or, in the case of a person under 16, upon the request of his parent or guardian. The only exception to this is a case in which the head of the hospital considers that discharge would be unsafe to the patient or others, which must be certified to the United States commissioner within 48 hours from the request for discharge. In that event, the commissioner may postpone discharge for such period up to 6 days or, in exceptional cases, 15 days, as he may determine to be necessary for commencement of commitment proceedings (sec. 106).

Provisions for voluntary hospitalization are now found in the laws of most of the States. The compilation made by the Council of State Governments in 1949 showed 40 States having such provisions at that time.

Section 103(b)

(2) Admission for care and treatment on application by others. Section 103 (b) provides that an individual may be "admitted for care and treatment" in a hospital upon written application accompanied by a certificate of a licensed physician that the individual in his opinion is mentally ill and because of his illness "either (1) is likely to injure himself or others if allowed to remain at liberty or (2), being in need of care or treatment in a hospital, lacks sufficient insight or capacity to make responsible application" for himself.

This provision is an authorization for admission only and carries with it no authority to apprehend the individual and forcibly remove him to the hospital or to have the hospital detain him against his will after admission, except in the emergency cases, as described under point (3) below.

The provision is designed to facilitate access to medical care when needed for a mentally ill individual without submitting the individual to the shock of judicial procedures. The patient admitted on such an application must be forthwith discharged from the hospital upon his own request or upon the request of an interested party which is defined to include "the legal guardian, spouse, parent or parents, adult children, other close adult relatives, or an interested, responsible adult friend" of the patient (sec. 101 (g)). The only exception provided is the same as for the voluntary patient (sec. 106 (3)).

(3) Emergency hospitalization. Section 104 covers those situations in which it may be necessary to take an individual into custody and transport him to the hospital.

If the certificate issued by a licensed physician under section 103 (b) states a belief that the individual is likely to injure himself or others if allowed to remain at liberty, the certificate may be presented for endorsement by the governor or a United States commissioner and when endorsed it will authorize taking the individual into custody and transporting him to a designated hospital. Upon such endorsement any health, welfare, or police officer or any other person deputized for the purpose by a United States commissioner may exercise this authority. The category of persons who exercise such authority is not listed to police officers. This is in line with the purpose of the bill to take the handling of the sick out of the content of a strictly police action and to avoid unnecessary shock to an already disturbed person.

Section 104 (b) is designed for those more critical situations in which it appears that the individual is mentally ill and because of his illness is likely to injure himself or others if not immediately restrained pending the medical examination or certification or the endorsement provided by subsection (a). Any health, welfare, or police officer may act in such emergency situations but must state in the application for the individual's admission to the hospital the circumstances under which the individual was taken into custody and the reasons for the officer's belief.

However, a patient admitted to a hospital under the above-described emergency procedures cannot, if he or an interested person requests his release, be detained in the hospital unless commitment proceedings are instituted within the time limits prescribed in section 106.

According to the compilation made by the Council of State Governments in 1949, some 30 States had statutory provisions for "emergency commitment without court order." The person authorized to take into custody a mentally ill individual who is dangerous varies from "any person" (State of Washington) to designated officers as, in California, a peace or health officer. The common law, of course, recognizes that any person may take a dangerous insane person into custody and hold him temporarily until he can be safely released, arrested upon legal process, or committed under legal authority.

Section 108

(4) Commitment to a hospital. This means compulsory hospitalization upon an order which carries with it the power to hold for an indeterminate or a fixed observational period. Commitment is authorized by this bill only by judicial proceedings before a United States commissioner as provided by section 108.

Orders of commitment made be made only after a hearing of which the proposed patient, as well as other interested parties as determined by the commissioner, must be given notice with opportunity to hear, to testify, to present and cross-examine witnesses. Opportunity to be represented by counsel must be afforded to every proposed patient and if neither he nor other provide counsel, the commissioner must appoint one. These provisions are found in subsection (f) of section 108.

Proceedings for commitment are instituted by the filing of a petition, accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill and should be hospitalized. The medical certificate is required unless the applicant files a written statement that the individual has refused to submit to an examination by a licensed physician (subsec. (a)).

Upon the filing of the application, notice is given to the patient, to his legal guardian, if any, and to other interested parties (subsec. (b)). At this stage, however, the commissioner, if he has reason to believe that notice would be likely to be injurious to the proposed patient, may omit the notice to him and proceed to the appointment of 2 designated examiners (or 1 if he finds that 2 are not available) (subsec. (c)). If the examiners report that the proposed patient is not mentally ill, the commissioner is authorized to dismiss the application (subsec. (e)). Otherwise, the date for the hearing is fixed and notice is given to the patient, as indicated above, and to the interested parties, as provided in subsection (f).

The medical examination is held at a medical facility, at the home of the patient, or at any other suitable place not likely to have a harmful effect on his health. A patient cannot be required to submit to examination against his will unless the United States commissioner has given prior notice to the patient and has ordered him to submit to an examination (subsec. (d)).

The United States commissioner may order the individual's hospitalization based upon findings made upon completion of the hearing and consideration of the record. The finding must be not only that the individual is mentally ill but in addition that the individual is either because of his illness likely to injure himself or others if allowed to remain at liberty or is in need of custody, care, or treatment in a hospital, and, because of his illness, lacks sufficient insight or capacity to make responsible decisions concerning hospitalization.

Jury trial is provided for on an optional basis. Any party may appeal from the decision of the commissioner to the district court (sec. 112).

III. RIGHTS OF PATIENTS WHILE HOSPITALIZED

H.R. 6376 contains a number of provisions to assure the prompt discharge of patients whenever the circumstances warranting either voluntary or emergency hospitalization or judicial commitment have ceased to exist.

Section 106

Any individual admitted upon his own application, or that of others, including an individual admitted because likely to injure himself or others, "shall be forthwith discharged therefrom upon his request or upon the request in writing by an interested party" (sec. 106(a)). This is conditioned on his own agreement in the case of the patient admitted on his own application or the consent of the parent or guardian if the individual is under [illegible]rs of age. Exception is likewise made if the head of the hospital [illegible]ith the United States commissioner, within 48 hours after

receipt of the request, a certificate that in his opinion discharge of the patient would be unsafe to the patient or others; in such case discharge may be postponed for not over 5 days for the commencement of judicial proceedings (which the commissioner may extend for 15 days if proceedings cannot reasonably be instituted within the shorter period).

Section 105

The head of the hospital must in any event arrange for examination within 5 days after admission, by a designated examiner of every patient hospitalized upon application by others. The patient must be discharged if the conditions warranting admission are not found.

Section 107

Every patient, however hospitalized, is entitled to have the need for his hospitalization determined by judicial proceedings on his own petition or that of an interested party.

Section 111

Habeas corpus is provided.

Section 123

The head of the hospital must cause the condition of every patient to be reviewed as frequently as practicable, and at least every 6 months, and must discharge the patient whenever the conditions justifying hospitalization no longer obtain. Provision is also made for conditionally releasing improved patients in convalescent status and for the discharge of such patients.

Section 121

Other provisions provide for the protection of patients while in the hospital, and impose obligations upon the head of the hospital.

Section 115

Right to humane care and treatment.

Section 116

Application of mechanical restraints (limitation on).

Section 117

Right to communicate and visitation; exercise of civil rights.

Section 120

Contract care outside Alaska. This applies to those situations in which contract care outside of Alaska, as under the present Morningside contract, may still be provided for Alaska patients. Together with section 102 (b), it is designed to assure to individuals hospitalized outside the Territory protective safeguards under the law of the State where the individual is so hospitalized to the extent that such law applies, in addition to the safeguards embodied in the bill.

Section 127

Disclosure of information. Confidentiality of clinical records, etc.

IV. PROVISIONS RELATING TO THE TRANSFER OF PATIENTS FROM OR TO ALASKA

Outside of the provision for contract care of Alaska patients outside Alaska (sec. 102 (b)) these provisions relate to two groups.

1. Individuals, such as veterans, who may be entitled to hospitalization at the expense of the United States.
2. Residents of States who become mentally ill in Alaska and residents of Alaska who become mentally ill while in a State.

Sections 109 (a) and (b) and section 118 (b) relate to the first group of persons entitled to care by the United States. They are derived from section 18 of the Uniform Veterans Guardianship Act which was developed by the National Conference of Commissioners on Uniform Laws and which has been in satisfactory operation for years in most of the States.

The comm[illegible]ers have commented thus on section 18 of the Uniform Veterans [illegible]anship Act.

"Those provisions will facilitate the placing of patients in appropriate Federal institutions especially equipped to treat a particular type of mental trouble and save the patient distress and sometimes definite harm incident to a second adjudication experience in the State to which transferred. It will also save substantial expense to the various States, to the Federal Government, and to the patients."

Subsections (a) and (b) of section 119 resemble 48 U.S.C. 48 of the present law applicable to Alaska in that they authorize arrangements by which a patient hospitalized under the judicial procedure in Alaska but who is not a resident of Alaska may be returned to his State of legal residence. A nonresident patient not hospitalized under the judicial procedures may also be returned if the patient or his guardian consents. Also under reciprocal arrangement, residents of Alaska who have been hospitalized in a State may be transferred back to Alaska. Such provisions are commonly found in State laws relating to the mentally ill.

An added provision—subsection (c)—is designed to obviate the need for transfer in situations where the interest of the patient would be better served by allowing his care to be continued in the State where he is, the expense to be reimbursed by the State of legal residence. (Personal liability for the expense of hospitalization is provided for by section 128 (a) which is derived from the present law. 48 U.S.C. 48a.). It is suggested that this provision be amended to make clear that it is to apply only "when it appears that transfer of the patient as provided in subsections (a) and (b) of section 119 would not be in the best interest of the patient."

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
April 16, 1956.

Hon. BARRY GOLDWATER,
United States Senate,
Washington 25, D. C.

DEAR SENATOR GOLDWATER: This letter is in response to your request of March 23, 1956, for the Department's comments on a committee print of amendments (in the nature of a substitute) intended to be proposed to H. R. 6376, relating to the hospitalization and care of the mentally ill of Alaska.

The principal change which your proposed amendments would make in the bill would be to delete the hospitalization procedures included in title I, thus leaving in effect the present procedural law relating to the commitment, hospitalization, care, and treatment of the mentally ill of Alaska until the Territorial legislature has availed itself of the opportunity, afforded by the bill, to enact such legislation on the subject as it deems best.

The paramount purpose of the bill, as also of the committee print, is, of course, to effect the transfer of basic responsibility and authority in this field from the Federal Government to the Territory, where responsibility in the mental health field belongs. This—as provided in H.R. 6376—logically includes a grant of unfettered authority to the Territory to legislate in this field. It was considered, however, that if this responsibility was to be suddenly cast on the Territory, fairness demanded that the transfer be accompanied at the outset by a modernized legal base for hospitalization. This consideration is especially pertinent because a restriction in the organic act for the Territory has so far precluded the Territory from improving the present archaic commitment procedures.

The procedures contained in H.R. 6376, with the amendments suggested by us in our report on S. 2518, are consistent with modern concepts for the hospitalization and treatment of the mentally ill. At the same time, we believe, they combine an enlightened concern for the patient's health with full safeguards of his rights. For these reasons, and in view of the

widespread desire and support in Alaska for these provisi[illegible] the bill, we urge favorable consideration of the hospitalization p[illegible]res now included in title I, with the amendments we have recommended.

Your letter indicates that, basically, you share our view of the matter but that, because of opposition to, and misunderstanding of, these provisions evidenced before the committee, you consider it preferable to leave the entire matter of hospitalization procedure to the Territory from the very outset, rather than merely as a matter of future improvement. As we have indicated, we believe that complete transfer of basic responsibility and authority in this field to the Territory (together with the necessary fiscal and other economic aid provisions of the bill) is paramount. Hence, if in the judgment of the committee retention of the hospitalization procedures in the bill would jeopardize its passage, or if, in the event of retention of title I, substantial amendments contrary to the purpose of its key provisions were considered inevitable, we agree that it would be preferable to delete the entire hospitalization procedure and to rely upon the provisions of the bill authorizing the Territorial legislature to adopt desirable laws in this field.

There will be submitted to you separately a staff memorandum and marked-up copy of the committee print suggesting some revisions in the committee print which are believed necessary to carry out your purpose and provide for a smooth and timely transition from the Federal administration of the hospitalization program to administration by the Territory. In addition, the staff memorandum and markup suggest amendments to the committee print so as to make clear beyond doubt that the benefits of the bill could be made available to the mentally retarded and mentally deficient, as well as those who are in a strict sense mentally ill. Otherwise, those unfortunates who are mentally retarded or defective, and who are now as a matter of necessity dealt with under present commitment procedures, might find themselves without access to the benefits of the mental health program envisioned by the bill. For your consideration, the markup of the committee print also embodies the suggestions for amendments to title II submitted in our testimony before the subcommittee and in our report on S. 2973.

Sincerely yours,

ROSWELL B. PERKINS,
Assistant Secretary.

CONFERENCE REPORT NO. 2735

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on amendments of the Senate to the bill (H.R. 6376) to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report.

H.R. 6376, as reported by the House, contained three titles. Title I contained detailed hospitalization and commitment procedures, title II contained the land and monetary grants necessary to implement the act, and title III contained miscellaneous provisions pertaining to the existing contract and appropriation of funds.

H.R. 6376, in title I, as reported by the Senate, gives authority to the Territory of Alaska to enact such laws on the subject of mental health as it may deem appropriate. This action would vest in the people of Alaska re-

sponsibility in the field of mental health comparable to that of the several States and the other Territories of the United States. In conference, the Senate version of title I was accepted in the anticipation that the Legislature of the Territory of Alaska will act to modify existing commitment, hospitalization, and treatment procedures for Alaska's mentally ill.

Both versions of title II of H.R. 6376 are identical in substance but with a minor change in wording. The House-passed bill provided that the monetary returns realized from the land grants would be administered by the Territory of Alaska as a public trust for the hospitalization and care of the mentally ill in Alaska. The Senate-reported bill specifies that these returns shall be applied to meet the necessary expenses of the mental-health program in Alaska. The managers on the part of the House accepted this Senate amendment which broadens the use of the revenues for use of the Alaska mental-health program rather than for the hospitalization and care of the mentally ill in Alaska.

Title III of H.R. 6376, as reported by the House is considerably different in section 301(b), in wording, but not in context from the Senate-reported bill. The Senate language recognized the desirability of providing a limited transition period between the effective date of the act and the time when the Territory must assume full responsibility for the implementation of the Alaska mental-health program. In recognition of this possibility, and to allow time for the Alaska Legislature to amend existing law governing care and treatment of Alaska insane, the Senate version fixes the mandatory transfer date on the 210th day after enactment of H.R. 6376. The House managers—particularly in view of agreement to delete the commitment provisions—have agreed to this Senate amendment to the House-passed bill.

Section 302(a) of the Senate-passed bill deals with the existing contract between the Secretary of the Interior and the Sanitarium Co. of Portland, Oreg., in which the mentally ill of Alaska are now being treated at Federal expense. This section provided that the Secretary shall, within 30 days after the enactment of the bill, either assign the contract to the Governor of Alaska with his concurrence, or terminate the contract in accordance with its terms. Assignment would take effect on the 210th day after the effective date of the act. The existing contract provides for termination upon 6 months' notice. The conferees amended section 302(a) to extend the time that the Secretary shall assign the contract to the Governor of Alaska or to terminate it from 30 to 210 days. This extension of time will permit the arrangement of the necessary transfer details. Prior to the acceptance of this amendment, letters of approval were obtained from the Department of the Interior and Health, Education, and Welfare. These reports are included as appendixes to this statement of managers.

Section 302(b) of the Senate-reported bill provides that 210 days after the date of the enactment of this act the unexpended balances of appropriations available to the Department of the Interior for the care of the Alaska insane shall be transferred to the Governor of Alaska to be used primarily in the administration of all laws pertaining to the Alaska insane. It also provides that for the remainder of the fiscal year ending June 30, 1957, additional funds are authorized to be appropriated to the Secretary of the Interior to transfer to the Governor of Alaska as are necessary for the

care of the Alaska insane. Since the House conferees saw the importance of this amendment in order to be assured that the mentally ill would be properly cared for during fiscal 1957, they agreed to this Senate amendment.

Subsection 302(c) provides that costs of transporting patients to a hospital outside of Alaska shall continue to be paid by the Department of Justice until July 1, 1957. The House conferees agreed to accept subsection 302(c) which provides this transportation.

Finally, the House managers agreed to and accepted the amendment whereby the Senate substituted new language for the title of the bill as follows:

> An Act to confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental patients, and for other purposes.

In all other respects the conference committee agreed to the minor changes adopted in the Senate-passed bill.

LEO W. O'BRIEN,
ED EDMONDSON,
EDITH GREEN,
JOHN R. PILLION,
Managers on the Part of the House.

APPENDIX

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
July 11, 1956.

Hon. HENRY M. JACKSON,
Chairman, Territories Subcommittee,
Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your letter of July 2, 1956, advising us of the conference agreement on H.R. 6376, the Alaska mental health bill, subject to the concurrence of this Department and the Department of the Interior concerning two amendments to section 302 (a) of the bill agreed to by the conferees.

Section 302 (a) of the bill, which would be amended by the conference amendments, relates to the authority of the Secretary of the Interior to assign to the Territory or to terminate the existing contract with Morningside Hospital for the care and treatment of mental patients committed from Alaska. Inasmuch as this, so far as the Federal Government is concerned, is entrusted solely to the Secretary of the Interior, we would defer to the views of the Interior Department as to the acceptability and workability of the conference amendments. We understand that that Department has no objection to the amendments and we therefore likewise concur.

We are gratified to know that this will make unnecessary another meeting of the conferees and will thus expedite passage of the bill which is very much needed by the people of Alaska.

Time has not permitted us to obtain the advice of the Bureau of the Budget in connection with this report.

Sincerely yours,

M. B. Fo[illegible] *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 12, 1956.

Hon. HENRY M. JACKSON,
Chairman, Territories Subcommittee,
Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR SENATOR JACKSON: This will reply to your letter of July 2, in which you request the comments of this Department on the proposed action of the conferees with respect to H.R. 6376, the Alaska mental health bill. The conferees have agreed to the Senate amendment, except that section 302 (a), the section which as reported by the committee would have required the Secretary of this Department either to assign or terminate the current hospital contract within 30 days, would be amended to authorize such an assignment or termination within 210 days.

This Department has no objection to the proposed action of the conferees.

Sincerely yours,

WESLEY A. D'EWART,
Assistant Secretary of the Interior.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION—EMBEZZLEMENT AND FRAUD

For text of Act see p. 851

Senate Report No. 2730, July 20, 1956 [To accompany H.R. 10111]

House Report No. 2483, June 26, 1956 [To accompany H.R. 10111]

The Senate Report is set out.

Senate Report No. 2730

THE Committee on the Judiciary, to which was referred the bill (H.R. 10111) to amend sections 657 and 1006 of title 18 of the United States Code to include within the purview of such sections certain State savings and loan associations, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to bring State-chartered savings and loan institutions whose deposits are insured by the Federal Savings and Loan Insurance Corporation within the protection of section 657 of title 18, United States Code, which provides criminal penalties for embezzlement and other types of defalcation; and within the protection of section 1006 of title 18, United States Code, which provides criminal penalties for the making of false entries and other types of fraudulent or unauthorized conduct.

STATEMENT

Section 657 of title 18, United States Code, and section 1006 of title 18, United States Code, apply to persons connected with savings

and loan associations authorized or acting under the laws of the United States, but do not apply to persons connected with savings and loan associations chartered under State or local law and insured by the Federal Savings and Loan Insurance Corporation. The proposed legislation would amend these sections to make them apply to persons connected with such savings and loan associations.

The Federal Home Loan Bank Board favors the enactment of the proposed legislation; the Department of Justice advises that there appears to be no reason why the protection should not be extended; and the enactment of the proposed legislation is urged by the non-governmental organization, the United States Savings & Loan League.

The committee believes that the proposed legislation is meritorious and recommends its enactment.

Attached and made a part of this report are (1) a statement dated April 25, 1956, submitted by the nongovernmental organization, the United States Savings & Loan League, (2) a letter, dated April 26, 1956, from the Federal Home Loan Bank Board, and (3) a letter, dated June 13, 1956, from the Department of Justice.

STATEMENT OF THE UNITED STATES SAVINGS & LOAN LEAGUE IN FAVOR OF S. 3531, PRESENTED TO THE SENATE JUDICIARY COMMITTEE, APRIL 25, 1956

The United States Savings & Loan League, which represents 4,300 member savings and loan associations and cooperative banks, heartily endorses S. 3531, a bill by Senator Dirksen to make it a Federal offense for employees of State-chartered savings and loan associations insured by the Federal Savings & Loan Insurance Corporation to embezzle or misappropriate funds of these institutions.

The effect of this bill if enacted into legislation would be to give the Federal Bureau of Investigation jurisdiction over embezzlements in State-chartered institutions which are insured by the FSLIC. Under existing law the FBI does not have this jurisdiction. However, in the case of State-chartered banks which are insured by the FDIC, existing law does make embezzlements in these institutions a Federal offense and the FBI does have jurisdiction.

S. 3531 would make the criminal statutes governing these two types of institutions identical. It would also provide a psychological deterrent to prospective embezzlers since the strong arm of the FBI would be permitted to investigate and prosecute offenders.

Embezzlements have become a more pressing problem to all financial institutions in recent years. Any reasonable step that Congress can take to reduce them is both commendable and necessary. It has long been the feeling of public officials and law-enforcement officers, as well as of the general public, that offenses involving, or under the jurisdiction of, the Federal Bureau of Investigation are somewhat less likely to occur than similar offenses involving State authorities only. The modern up-to-date investigative methods and efficiency of the FBI are, undoubtedly, a detriment to would-be offenders. It is hoped that this bill if enacted will reduce losses to institutions insured by the FSLIC and, correspondingly, reduce the contingent liability of the Federal Savings and Loan Insurance Corporation.

STATE OF ALASKA

THE LEGISLATURE

1986

Source: HCS CSSCR 36(Fin)

Legislative Resolve No. 53

Establishing a joint special committee on mental health trust land.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the United States Congress granted 1,000,000 acres of land to the Territory of Alaska to be administered as a public trust for the necessary expenses and support of mental health in the territory; and

WHEREAS in October 1985, the Alaska Supreme Court determined that the 1978 decision of the Alaska Legislature to redesignate mental health trust land as general grant land had breached the trust established by the Congress; and

WHEREAS the funding level for the mental health programs in the state is one of the lowest in the nation on a per capita basis; and

WHEREAS the legislature, the administration, and mental health advocates agree that the state must comply with the intent of the Congress that mental health programs in the state receive sufficient funding; and

WHEREAS it is not in the public interest that continued litigation over the mental health land trust divert attention from the underlying goal of increased funding for mental health programs and care in the state; and

WHEREAS present state statutes do not explicitly provide for the management of mental health trust land for maximum revenue production; and

WHEREAS the return of mental health trust land to trust status precludes management of mental health trust land for its highest and best use;

BE IT RESOLVED by the Alaska State Legislature that a Joint Special Committee on Mental Health Trust Land is established under Uniform Rule 21; and be it

FURTHER RESOLVED that the Joint Special Committee on Mental Health Trust Land is composed of three members of the Senate appointed by the president of the Senate, three members of the House of Representatives appointed by the speaker of the House of Representatives, and two public members interested in the mental health trust land issue; the public members shall be selected by the other members of the Joint Special Committee on Mental Health Trust Land; and be it

FURTHER RESOLVED that one member appointed from the House of Representatives be from the membership of the House Finance Committee and one member appointed from the Senate be from the membership of the Senate Finance Committee; and be it

FURTHER RESOLVED that the Joint Special Committee on Mental Health Trust Land develop, after public hearings, a proposal to resolve the mental health trust litigation and recommend a level of appropriations adequate to provide sufficient funding for mental health programs in the future; and be it

FURTHER RESOLVED that the committee is authorized to meet during and between sessions of the legislature and is to report its recommendations and findings on the first day of the First Session of the Fifteenth State Legislature; and be it

FURTHER RESOLVED that the committee terminates on the 10th day of the First Session of the Fifteenth State Legislature.

LAWS OF ALASKA

1986

Source

HCS CSSB 472(Fin)

Chapter No.

132

AN ACT

Relating to the interim management of the mental health trust; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

Approved by the Governor: June 9, 1986
Actual Effective Date: June 10, 1986

AN ACT

Relating to the interim management of the mental health trust; and providing for an effective date.

* Section 1. INTERIM MENTAL HEALTH TRUST COMMISSION ESTABLISHED. (a) The interim mental health trust commission is established in the Department of Natural Resources.

(b) The commission established under (a) of this section consists of five members, including the commissioner of natural resources and the commissioner of health and social services, or their designees, and three members and three alternates appointed by the governor as follows:

(1) a member and an alternate representing the plaintiffs, appointed by the governor from a list of three names submitted to the governor by the plaintiffs in Weiss v. State, 4 FA 82-2208 Civil;

(2) a member and an alternate representing the intervenors, appointed by the governor from a list of three names submitted to the governor by the intervenors in Weiss v. State, 4 FA 82-2208 Civil; and

(3) a member and an alternate representing the Governor's Mental Health Advisory Council, appointed by the governor from a list of three names submitted to the governor by the Governor's Mental Health Advisory Council.

(c) The members of the commission shall elect a presiding officer. A majority of the commission constitutes a quorum. The affirmative vote of three members is required to take official action. A vacancy does not

impair the power of the remaining members to exercise the powers of the commission.

(d) In the absence of the member, an alternate appointed under (b) of this section may vote and has all the powers of a member.

(e) Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards under AS 39.20.180.

(f) The commission shall meet at least quarterly and may meet more frequently, either in person or by teleconference.

(g) The commission shall prepare a budget allocating the funds appropriated to it for the performance of its responsibilities and may contract with parties or individuals for the performance of functions it considers necessary, including the services of an executive director and staff.

* Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND THE COMMISSION. (a) The commissioner of natural resources shall inventory and catalog the mental health trust land of the state, shall audit and appraise each transaction involving land that has been part of the mental health trust land of the state, and determine the status of mental health trust land on October 4, 1985, under procedures and guidelines established by the commissioner of natural resources with the approval of the commission. In the exercise of the commission's responsibilities under this section, the commission and its staff may review the records of the Department of Natural Resources that are made confidential by law or regulation.

(b) An individual who acquires information made confidential by law or regulation in the performance of functions authorized by this Act and discloses it without proper authority violates AS 11.56.860.

(c) The commissioner of natural resources shall, with the approval of the commission, retain an appraiser or appraisers to appraise all or a portion of land that, at any time, was part of the mental health trust land

of the state. The commissioner shall provide an appraiser conducting an appraisal with written procedures and instructions that have been approved by the commission.

(d) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709. Except as provided in (e) of this section, the commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. In reviewing a proposal for the sale, lease, or exchange of mental health trust land from the commissioner of natural resources, the commission may approve the proposal of the commissioner on its determination that the proposal is consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

(e) The commissioner of natural resources may transfer trust land to the federal government under AS 38.05.035(b)(9) without approval of the commission. The commissioner of natural resources shall advise the commission of an intention to transfer trust land to the federal government and, after the transfer, shall make every effort to acquire replacement land to fulfill the state's remaining entitlement based on a prioritization, approved by the commission, of existing valid mental health selection.

(f) The proceeds from the management of the mental health trust land of the state shall be deposited in a special trust account in the general fund of the state and shall first be applied to meet the necessary expenses of the mental health program of the state.

* Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES AND THE COMMISSION. (a) The commissioner of health and social services, with the approval of the commission, shall

(1) establish the procedures and guidelines for the audit of the

state's mental health program; and

(2) propose the guidelines and procedures to be used in determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

(b) The legislative auditor shall audit the state's mental health program under the procedures and guidelines established in (a) of this section.

* Sec. 4. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commission shall submit a report to the legislature by the 10th day of the First Session of the Fifteenth State Legislature on matters of concern to the commission. The report shall include its recommendations for amendment of the laws relating to the management of the mental health trust account, the mental health trust land, and the mental health program of the state.

* Sec. 5. DEFINITION. In this Act "commission" means the interim mental health trust commission established in sec. 1 of this Act.

* Sec. 6. This Act is repealed July 1, 1987.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

APPENDIX C

APPENDIX C: THE MENTAL HEALTH LAND TRUST

Obtaining a workable solution to the mental health trust litigation requires an understanding of why the trust was created and why it was later dissolved. The following narrative provides the necessary background.

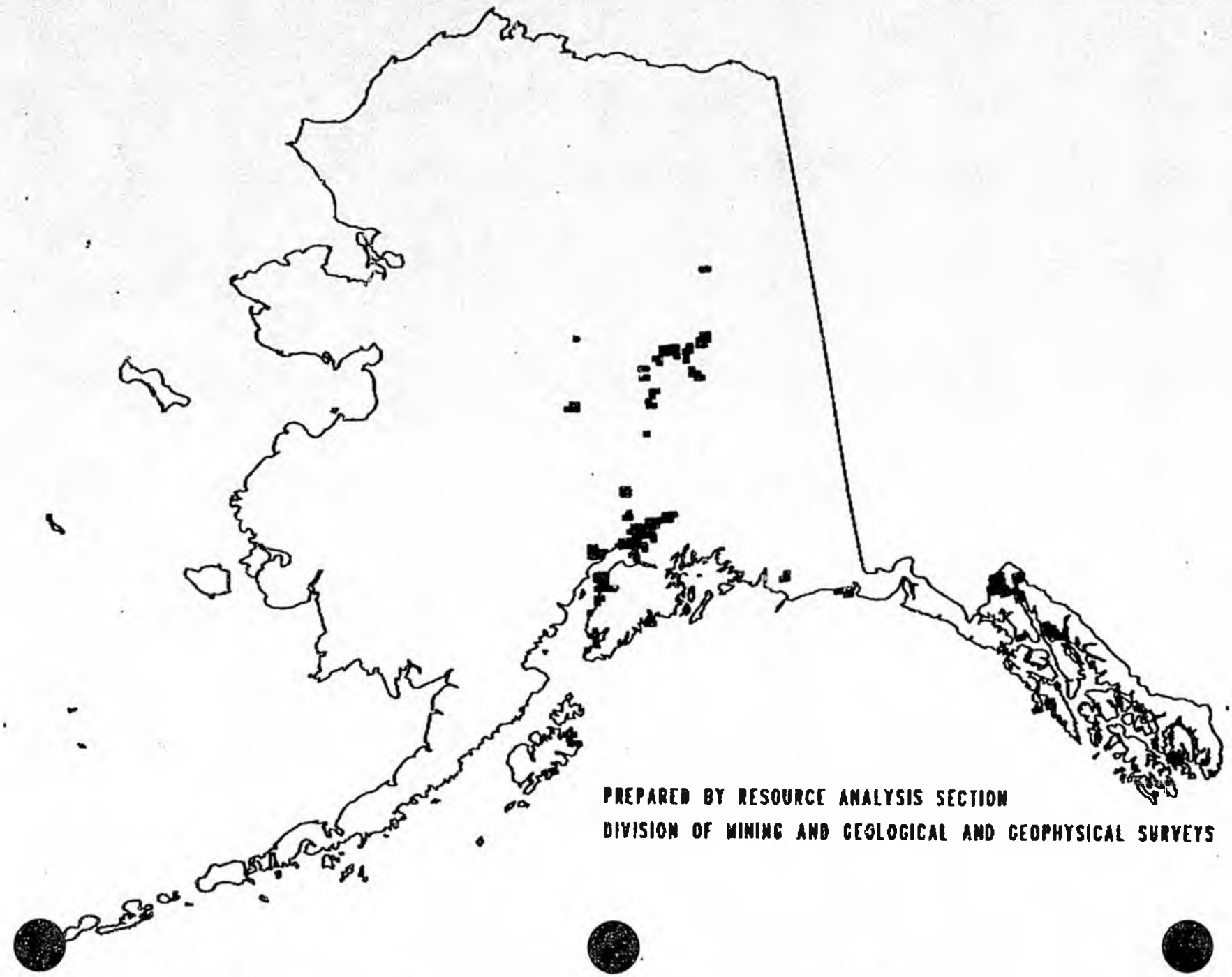
The 1956 Mental Health Enabling Act

In 1956, Congress passed Public Law 84-830, commonly known as the Alaska Mental Health Enabling Act (AMHEA), which put Alaska's mental health program on a par with other states' and territories' by turning over responsibility for the program to the territory. AMHEA granted the state the right to select and manage 1 million acres of land as a public trust to function as a long-term revenue source for the program.

Trust Land Selections

Congress allowed the territory to select "any vacant, unappropriated, and unreserved" federal land for the mental health trust. The territory quickly began selecting lands with the greatest promise for revenue generation in the near and/or not-too-distant future. Usually, these lands were close to communities or appeared to have commercially developable resources. The Alaska Statehood Act in January 1959, granted the new state the right to select 103,500,000 acres for settlement, economic development and revenue generation. Simultaneously selecting lands for two different entitlements presented state lands officers with a dilemma, and sometimes the choicest parcels went to the state instead of to the mental health trust.
Figure 1 maps the general location of the selections and Table 2 identifies the types of revenue potential they were believed to promise.

TRUST LANDS: MENTAL HEALTH GRANT (1956)



PREPARED BY RESOURCE ANALYSIS SECTION
DIVISION OF MINING AND GEOLOGICAL AND GEOPHYSICAL SURVEYS

Table 1

Mental Health Land Selections
by
Location and Anticipated Type of Income Generation

Area	Projected Source of Income
Anchorage Area (Proper)	Settlement*, commercial
Beluga River	Oil, gas, coal, and timber
Fairbanks	Settlement, timber
Haines	Timber, recreation**, minerals
Healy	Coal
Juneau	Settlement, recreation
Kenai Peninsula	Oil, gas, settlement, agriculture timber
Susitna Valley	Timber, agriculture, settlement, recreation
Yakutat-Icy Straits	Oil, gas, timber, recreation

* settlement probably means residential development
** recreation probably means commercial recreation development

Source: DNR records

Managing the Land Trust: 1956-78

AMHEA provided that all lands granted be administrated "as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program." Trust principles generally require preservation of the corpus from dissipation and active management of trust assets to maximize revenue generation. AMHEA left these matters to the state legislature's discretion, but the legislature enacted no legislation regarding these matters.

Instead, DNR managed all public lands in accordance with multiple use principles for the maximum benefit of all Alaskans (i.e. the highest and best use of the land, not necessarily the highest monetary yield).

Absent statutes mandating active management and corpus preservation, the trust was prey to various forces, beginning with a prolonged economic recession immediately after statehood. To meet the new government's immediate revenue needs, all state lands, including mental health trust lands, were subject to pressures to sell for quick cash return. Population growth increased the demand for using mental health lands to accommodate municipal expansion, public facilities, parks and recreation, utilities and charitable organizations. Active management would have been incompatible with DNR's multiple-use mandate. Finally, existing statutes provided for transactions inimical to trust principles. As a result of a combination of such forces, between 1960 and 1977 approximately 104,000 acres were disposed of from the trust corpus, most at less than fair market value.

Although land sales by lottery were tied to appraised values, statutes provided for less than fair market conveyance in certain cases: negotiated sales, discounted sales (preference rights, sales to charitable organizations, odd lot sales, etc.) and the substitute of "sweat equity" for monetary compensations (e.g. homesites and agricultural homesteads). Other statues which precluded active management and were applied to trust lands were related leases, rights of way, and resource sales (e.g. long term land leases for token annual payment and "mining claims" renewable on the basis of $200 of labor per year, special treatment for charitable and public agencies, etc.)

Between 1956 and 1977, mental health trust lands produced only $23,179,503 in revenues (from DNR records). This sum fell far short of matching the "necessary expenses of the mental health program" during that same period. For example, in FY 78 alone,

the Division of Mental Health expended approximately $10 million for Alaska's mental health program.

Competing Demands for Land and Uses, 1956-77

In the years immediately after the enactment of AMHEA, the Congress continued to use land to solve problems and transfer responsibilities for programs. The Alaska Statehood Act of 1958 granted the selection of 103,350,000 acres to assist the new state in directing its settlement, develop its economy, and generate revenues. At the same time, new constituencies were clamoring for public lands.

The 1960's and 1979's saw the rise of national and Alaskan movements to protect fish, wildlife, recreational, and wilderness resources from unbridled development. Substantial acreages of mental health trust lands were drawn upon to achieve these purposes. Habitat protection utilized 47,672 acres (90% of which were designated in 1976) and state parks took another 116,713 acres (68% of which were designated in 1975). Although the state retained titles to these lands, they were in effect removed from the mental health trust.

Environmentalists succeeded in obtaining moratoria of developmental activities on huge tracts of federal land in Alaska through special provisions in ANCSA. In accordance with these provisions and in anticipation of the 1980 passage of the Alaska National Interest Lands Conservation Act (ANILCA), the Secretary of Interior in 1978 reserved 132 million acres for wildlife refuges, parks, wilderness areas, etc., and under the Antiquities Act another 56 million acres.

A similar Alaska-based constituency for preservation of such areas emerged as a powerful local political force. For example, the Kachemak Bay oil and gas leases were purchased back by the state in response to fisheries and recreational pressures. Expansion of the state park system was launched in earnest and many of the mental health trust lands were looked upon as prime candidates for this program or for exchange with Native corporations for park areas within the corporations' region. Finally, changes in state land policies from disposal to reservation resulted in only 100 acres of state land being sold to the public in 1976-77, down considerably from prior years.

Countering forces propounded the accelerated disposal of state lands. The 1978 "Beirne Initiative" would have required the state to make 50,000 acres of land available per year for 50

years or until 30 percent of all state lands had passed into private ownership. Although the Initiative was declared unconstitutional in 1979, the 1978 vote which passed it into law indicated the popular support for such land transfers and identified a further threat to the trust. The Initiative also reflected the climate in which the 1978 redesignation legislation was passed.

To accommodate land selections by other recipients of federal grants during this period, arrangements for future conveyances from the mental health trust by exchange were made. In the early 1960's when municipalities began to look for 712,360 acres under the Municipal Entitlements Act, location and resources made mental health lands ideal candidates. The Attorney General ruled in 1964, however, that mental health, university, and school lands were "not unappropriated, unrestricted federal lands within the meaning of AS 07.10.150 and are not subject to selection by a borough under that Act." A legislative remedy was sought in the 1978 amendment to the 1972 municipal entitlement act. This lifted the previous prohibition on trust land selection so that qualifying communities could receive trust lands--provided equivalent lands were identified in advance of conveyance and transferred to the trust. Subsequently, mental health lands were conveyed to several communities although equivalent lands were not identified and returned to the trust.

The 1968 discovery of oil at Prudhoe Bay set in motion a sequence of events leading to additional conveyances from the trust. In order to allow construction of the Trans Alaska Pipeline to proceed, Congress first had to resolve outstanding Native land claims. The solution, the Alaska Native Claims Settlement Act (ANCSA) of 1971, granted 44 million acres of federal land and $1 billion to provide an economic base for Alaska's Natives.

The Native Corporation in the Cook Inlet region, CIRI found little commercial land remaining in their selection area. Negotiations between federal and state governments led to Land Consolidation and Management in the Cook Inlet Area, a complex, three-way exchange agreement designed to provide prime commercial acreage for the corporation and prime park land for the state. Although not implemented until 1979, the agreement's terms and conditions in 1975 earmarked 29,394.26 acres of mental health lands for CIRI with the lands received in exchange going into new state parks.

The 1978 Trust Lands Redesignation

The legislature, the Department of Natural Resources, and the federal trusts were caught in the cross-currents of desires both to develop and protect land. The checkerboard distribution of the mental health, schools and university trusts further complicated management. In an attempt to accommodate the competing interests, legitimize past management and redesignations, and simplify future land management, the legislature in 1978 redesignated all mental health, university, and public school lands as general grant lands.

To compensate the mental health trust, the Redesignation Act (Chapters 181-182, SLA 1978) called for depositing 1.5% of all revenues produced from state lands in a special trust account. A three member Mental Health Fund Advisory Board was created to oversee the investment and management of the Fund by the Commissioner of Revenue. However, beyond initial organizational meetings, the Board never met, and no deposits were ever made into this account. By January, 1987, $164,138,000 should have been deposited and, with 10.5% interest, would have grown to $271,068,000 (DNR figures). Had this been done, the suit might never have been brought against the state for breach of its trust responsibilities.

By dissolving the Trust, redesignation completed in dramatic fashion a piecemeal process of trust dissipation that had been in progress since 1960. Of the trust's original one million acres, only 194,672 acres of unencumbered land and an additional 291,034 acres encumbered with less-than-fee disposals remained in general grant land status as of October 4, 1985. Sales and condemnation conveyed 51,143 acres out of the trust and out of state ownership between 1960 and 1985. In many cases, the 39,269 acres received by the state as replacement for trust lands used in exchanges "cannot be readily identified." A total of 486,706 acres of formal mental health lands were designated for uses (habitat areas, parks, and forests) incompatible with trust purposes (maximum revenue generation). Conveyances and selections for mental health lands to municipalities total 55,640 acres, but no replacement lands were identified or produced as provided for by the 1978 amendment to the Municipal Entitlement Act.

The forces and conditions leading to the current status are still operative and promise to continue to exert a profound effect upon any future land trust and its management.

APPENDIX D

APPENDIX D: OTHER PUBLIC LAND TRUSTS

The following tables summarize public land trusts in other states. The data shows that every state land trust is accompanied by a state cash trust or permanent fund. In some states (e.g. Washington, where much of acreage is commercial timber land) management is extremely labor-intensive, consuming as much as 25% of the land trust's annual income.

Small, high-value land trusts generally show more favorable ratios between management costs and revenue production. The programs require that the trust manager compile a trust land portfolio of developable lands situated in urban areas. This sometimes requires that rural trust lands be sold or exchanged in order to acquire or upgrade the amount of available urban land in the trust. The urban lands are then platted, planned and zoned for their highest use, usually commercial or industrial. Finally, urban trust lands are leased or sold, depending upon market conditions and long-term revenue maximization objectives. In some cases, active management also entails construction and management by the trust manager of development projects on the land.

The University Trust Land Settlement

The recent negotiated reconstitution of the University land trust provides an example of a mixed cash and land settlement and suggests how complex a complete accounting can be--and how costly the final settlement could be for the state. The 1978 Redesignation Act also reclassified University Grant Lands as general grant lands. Although less complicated and extensive than the mental health case, a study of the University settlement is informative. The text of the settlement follows the tables on public land trusts in other states.

COMPARISON: LAND TRUST MANAGEMENT IN SELECTED STATES

State	Arizona	Colorado	Mississippi	Washington
Trust Name	School + 14 miscellaneous	School	School	School and other
Acres	9,500,000	3,000,000 (4,000,000 orig.)	650,000 (817,000 orig.)	3,000,000 (1.8 mil. school)
Date Established	1912	1876	1817	1889
Permanent Fund Amount	$200,000,000	$150,000,000	$44,000,000	$650,000,000 (5 funds)
Annual Earnings From Land	$62,000,000	$21,000,000	$21,500,000	$140,000,000
Annual Earnings From Fund	$22,000,000	$16,000,000	$5,000,000	$3,500,000
Distribution of Funds (dedication)	Revenue appropriated to particular funds.	State treasury - earnings only - (education)	Income only (direct to local school districts)	(school, universitys, mental inst., capitol bld.)
Land Management Structure	State Land Department	Appointed Board (3-6 year overlapping terms)	Local School Boards	Bd. of Natural Resources + Dept. of Natural Resource
Size of Staff	130	30	3 (central office)	1,038; 640 temporary
Pay for Own Management?	No	Yes	Yes	Yes
Cost of Management	$6,500,000	$1,800,000 (or 10% income)	Unknown (varies)	$42,200,000 (25% income)*
Sales Allowed?	Yes	Yes (cautious)	Yes (indust. dev. only)	No (may be exceptions)
Major Sources of Revenue	leasing: grazing, commercial, agricultrual, mineral and land sales	Oil and gas 60%	rents & leases, oil & gas royalties, timber sales	- timber sales - land leases
Special Programs?	Urban lands	Urban lands	No	Urban lands
Comments	$37 mil. from rights-of-way '85 (Central AZ Project)	Mineral estate retained	Reform act in 1978 due to previous abuse.	Must balance revenue production w/other public uses.

*Addition 25% income may be reinvested to enhance land values and productivity ($4.3 million FY '85).

COMPARISON: LAND TRUST MANAGEMENT IN SELECTED STATES

State	Louisiana	Louisiana	Texas	Texas
Trust Name	Education Quality Trust	Education Quality Support	Permanent University	Available University
Acres	N/A	N/A	2,100,000 (2,000,000 orig.)	See permanent fund
Date Established	1985/1986	1985/1986	1876	1876
Permanent Fund Amount	To reach $2 billion	N/A	$3.1 billion (market) $2.6 billion (book)	N/A
Annual Earnings From Land	25% of outer continental shelf recurring revenues	75% of outer continental shelf recurring revenues	$117.3 mil. (from non-renewable resources)	$3.75 mil. (surface income and investment income)
Annual Earnings From Fund	25% of earnings on investments	75% of trust fund earnings on investments	N/A	$214.5 mil. (cash) $216.1 mil. (total accrued)
Distribution of Funds (dedication)	N/A	Appropriation (higher education, elementary/sec.)	N/A	2/3 University of Texas 1/3 Texas A&M
Land Management Structure	N/A	N/A	See "Available University"	Bd. of Regents, Univ. of Texas - Bd. for Lease of University Land
Size of Staff	N/A	N/A	25± (fin. sup. personnel)	75 - 100±
Pay for Own Management?	N/A	N/A	Yes	Yes
Cost of Management	N/A	N/A	1 million	$6.5 million* (land proj.)
Sales Allowed?	N/A	N/A	No	N/A
Major Sources of Revenue	See above	See above	Oil & gas (90%) mineral, water, royalties & lease bonuses	grazing and surface income
Special Programs?	N/A	N/A	N/A	Urban lands
Comments	When trust fund at 2 bil., OCS $$$ go to general fund	Will receive 100% of rev. when trust fund at 2 bil.	School Land Bd. 1st option to purchase excess pub land	Often use pro. contract personnel rather than staff

*Includes cost of university legal system which largely supports oil and gas leasing (1.3 million).

COMPARISON: LAND TRUST MANAGEMENT IN SELECTED STATES

State	South Dakota	Alaska	Alaska
Trust Name	School and public land	University	School
Acres	840,000 (3,300,800 orig.)	139,500	-0- (orig. 101,500 acres)
Date Established	1889	1915	1915
Permanent Fund Amount	$84,000,000	$10,350,000	$63.5 million
Annual Earnings From Land	$4,000,000	$90,000	$7 mil. (.5% revenues from all state land)
Annual Earnings From Fund	$10,000,000	$1.2 million	$5.5 - 8 million
Distribution of Funds (dedication)	interest & income only (schools and institutions)	Board of Regents (University)	Appropriation (schools)
Land Management Structure	Dept. of School & State Land & Advisory Board	Statewide land mgmt. office w/in University (est. 1979)	Fund managed by board
Size of Staff	7	5	N/A (primarily contractors)
Pay for Own Management?	No (state budget, general funds)	Yes	Yes
Cost of Management	$300,000	$321,000*	$112,000
Sales Allowed?	Yes (currently suspended)	Yes	N/A
Major Sources of Revenue	surface & mineral leasing land sales	real estate oil and gas leases	government securities, stock, bonds
Special Programs?	No	No	No
Comments	land sale principal & 50% of oil & gas to perm. fund	Oil and gas leases are administered by state DNR	Fund was $8.5 million in 1978 (land replaced with $)

*It is estimated that approximately 20% or $64,200 are expended to manage other University lands.

STATE/UNIVERSITY SETTLEMENT AGREEMENT

The Settlement Agreement provides a method for calculating compensation due the University as a result of improper management of Univesrsity grant land. Compensation is provided for:

- easements and rights of way granted by the State without University approval or compensation
- residential, utility, commercial, agricultural, and private recreation leases let and administered at less than fair market value
- material (gravel/sand) removed for use by state agencies without payment to the University
- uncollected revenues from state sales of resources such as coal, oil and gas, and timber
- free use permits, land management transfers, reserved use requests, and special land use permits issued without University approval or compensation
- legislative withdrawals of University lands for parks and preserves without University approval or compensation
- land exchanges which have only been partially completed without the University receiving its share of the land to be exchanged

To compensate the University for these actions, the Settlement Agreement provides for the transfer of title, management, and control of University grant lands from the State to the University. The State and University agree that the University would more properly manage these lands to produce income and support the University. The Settlement Agreement also provides for the appropriation of funds and/or the conveyance of state "replacement" lands to equal the dollar value of the compensation owed the University. The Settlement Agreement provides a detailed method for calculating the compensation for items above and results in a total dollar amount.

BACKGROUND

The University of Alaska originally received its lands from the Federal Government by two Acts of Congress, in 1915 and 1929. These Acts were extensions into the Territory of Alaska of the Land Grant College concept pioneered by the Morrill Act of 1862 which established Land Grant Universities throughout the Continental United States. Under these two congressional Acts the University was granted 110,000 acres of land which were to be held in trust and were reserved for the exclusive use and benefit of the University of Alaska for the support of higher education in Alaska.

Upon statehood the new State of Alaska accepted the trustee responsibility for these "grant" lands. Since the purpose of the federal grant was to produce income to support the University the State should have actively

managed and developed these lands. Instead, the State treated the University Grant Lands as though they were State lands and made them available at less than fair market value. In addition, the legislature passed laws that transferred University lands into nonprofit making uses such as state parks and wildlife withdrwals without compensating the University. As a result of these legislative and administrative actions the University lost considerable acreage and income. During the twenty years of State management only $2.7 million in income was produced from the entire 110,000 acre federal land grant. These proceeds were deposited into the University of Alaska Permanent Fund and the interest earnings were used to support University programs.

In 1978 the University intervened in litigation between a private company and a State questioning the State's right to withdraw University grant land into state parks without compensating the University. While this lawsuit proceeded through the court system the University filed a second suit against the State in order to clarify the ownership and trustee responsibilities surrounding all University grant lands.

In 1981 the Alaska Supreme Court rendered a decision on the first lawsuit in which the University had intervened. The court reaffirmed that University grant lands are for "the exclusive use and benefit of the University, that such lands cannot be taken without compensation," and that the State is required by the federal legislation conveying the land grant "to manage said University lands to effect the purpose of the trust, which is the production of income for the benefit of the University."

Following the Supreme Court's ruling in favor of the University on the first lawsuit, the University entered into negotiations to settle all litigation with the State Departments of Natural Resources, Administration, and Revenue and, after 13 months of negotiation, reached an out-of-court settlement in the second lawsuit.

During the 1981 - 1982 legislative session the State and University sought the legislature's ratification of this out-of-court settlement. Although both the House and Senate passed the initial bill unanimously, other issues unrelated to the land settlement question were added to the final bill and it was consequently defeated in committee. The legislature did, however, appropriate $500,000 to the University and the State in order to implement the terms on the Agreement. The State and University again sought ratification of the Settlement Agreement during the 13th Alaska Legislature.

In 1983 the legislature enacted CSSB41 relating to the transfer of the ownership and management of University of Alaska trust land from DNR to the Board of Regents of the University of Alaska. In addition it passed SB40 making a special appropriation to the University of $4,200,000 for deposit in the fund established under AS 14.40.400 and additional funds to continue implementation of the settlement agreement. The settlement agreement called for the University to be compensated $26,746,354 with adjustments as provided in the agreement. The University received $4,200,000 as cash compensation with the remaining compensation consisting of replacement lands.

APPENDIX E

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, Appellant/Cross-Appellee, v. VERN T. WEISS, et al., Appellee/Cross-Appellant.	File Nos. S-653/678 OPINION [No. 2987 - October 4, 1985]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellant/Cross-Appellee. Stephen C. Cowper, Fairbanks, for Appellee/Cross-Appellant. Russ Winner, McGrath & Associates, Anchorage, for Amicus Curiae Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke, Matthews and Compton, Justices. [Moore, Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

position just prior to the conveyance effected by the redesignation legislation.[4]

AFFIRMED in part, REVERSED in part and REMANDED for further proceedings consistent with this opinion.

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4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

> It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in University of Alaska, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in University of Alaska, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in University of Alaska is not appropriate here. Because the state in passing the redesignation act went

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

and consequently breached its duty to preserve the corpus.[3] The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

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3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981). Both Lassen and University of Alaska involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." University of Alaska, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.[1]

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).[2] When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

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1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong. Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

> as having been removed from trust status by the State of Alaska on that date . . . .

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss et al. cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST CREATED BY CONGRESS WHEN IT REDESIGNATED PROPERTY IN THE TRUST AS "GENERAL GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to $19,555,582. The state's total expenditures to that point amounted to $66,726,176.

Weiss et al. filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant . . . ."

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

> [t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

> 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 state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

> REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND
>
> (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over $222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than $1,200,000 was expended in 1959, and slightly more than $29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

APPENDIX F

November 21, 1986

The Honorable Rick Halford
The Honorable Pat Pourchot
Co-Chairs
Interim Mental Health Lands Trust Committee

Dear Senator Halford and Representative Pourchot:

The Interim Mental Health Trust Commission has reviewed the special report produced by the Division of Legislative Audit on the State of Alaska's mental health program expenditures for the period from July 1, 1978, to September 30, 1985. The Commission has determined that expenditures on Alaska's mental health program during this period of time totaled $197,792,060 in general funds.

This amount represents the best thinking of the Commission as to the common definition of the Alaskan mental health program during the audit period of 1978 - 1985. This amount also reflects the Commission's decision that revenues such as federal funds should not be included in the total of the State of Alaska's effort to fund the mental health program.

Compilation of the costs proved to be an expansive and difficult task. The Commission wishes to commend the staff of the Division of Legislative Audit for its professionalism and timeliness in producing the data.

Compilation of these materials is a significant accomplishment because it marks the first time that such an accurate picture of expenditures for these programs has been collected. Where possible, detailed accounting methods were used to quantify expenditures. Mental health professionals and program managers spent many hours assisting the auditors in quantifying eligible costs.

In keeping with Legislative intent, the Interim Mental Health Trust Commission authorized the audit team to conduct a review that was broad in scope. Lack of time and limited resources were the only major constraints to the collection of more data. Then, the Commission conducted a second-tier review, applying previously developed criteria to make findings about what should be considered legitimate mental health expenditures for this period of time.

The two reports viewed together reflect the chronology of the process and the dual nature of the Commission's charge in overseeing the audit of mental health program expenditures. First, the Legislative Budget and Audit report clearly spells out the broadest universe of potential mental health expenditures. Second, the Commission's report makes a reasoned finding as to what can best be determined as constituting Alaska's mental health program from 1978 to 1985.

In embarking on this project, the Commissioner of Health and Social Services, with concurrence of the Commission, was charged with establishing guidelines for conducting the audit. This task proved difficult because no one measure was found suitable. No standard

definition of mental health or illness exists at the state or federal level. Additionally, Congress did not adequately define what the Alaska's mental health program was to entail in the 1956 legislation and of course, even if it had, treatment philosophies have changed dramatically from 1956 to the present. Diagnostic manuals exist to aid professionals in the treatment of mental disorders, but not to define program costs. Since the purpose of the audit was to tally the amount of funds spent by the State for the mental health program of Alaska for potential offset, the Commission decided to employ indices which would best recreate the common wisdom of what constituted the Alaska mental health program from 1978 to 1985. These indices were applied to each item in the audit report to come up with the Commission's findings. Tests applied to the costs were:

- Was the program an integral part of the 1977 Alaska Mental Health Plan?

- Does the program address a diagnosis of mental illness as defined by professionals through such indices as the DSM III?

- Do the Alaska statutes define the program in the context of a mental health program used in the delivery of treatment? Do the statutes specifically exclude the program from the mental health service model?

- Was the primary purpose of the program to provide mental health services?

In applying this methodology it is important to note that the Commission did not use any one of these indices alone to determine if the cost should be included. Instead, all factors were combined together and the Commission evaluated the weight of the evidence to make the best possible decision of whether the cost was eligible.

This methodology was necessary because there was not one simple way, in the Commission's opinion, to use existing indices for this purpose. For instance, the Diagnostic Statistical Manual Volume III (DSM III) was developed by the American Psychiatric Association to provide a broad range of diagnostic criteria for the mental health professional to use to code a condition. The manual warns against using it for purposes of administrative or policy information. Therefore, DSM III was used to define the universe of eligible costs and provide a rudimentary threshold as to whether a cost could be considered a mental health expenditure at all.

The 1977 plan most accurately represented the thinking of the mental community at the time. Even so, the plan was written to provide coordination with other systems. Simple inclusion or mention of a program in the 1977 plan did not prove that it was considered a mental health program, and conversely, some programs not included in the Division's mental health plan were delivering mental health services.

The Commission determined that the expenditures fell into four basic categories, or tiered levels of compliance with this methodology.

- For programs that clearly met all tests and the weight of the evidence was indisputable, all costs were considered eligible.

- For mixed client programs where adequate data and cost information existed, some costs were determined eligible.

- In some programs, a portion of costs were likely to be eligible, but no valid data existed. The Commission indicated that these expenditures for mental health purposes were "indeterminate". Further work would have to be done to make reasonable allocations of costs in these systems.

- Some costs were excluded altogether because the Commission felt they did not meet the clear test of the criteria set out.

Again, the Commission wishes to emphasize the difficulty of gathering valid information that is dated and in a profession that is complex. In cases where the Commission felt that more cost information could predictably be recovered, additional information was requested from Legislative Audit staff. Some indeterminate recommendations were changed to include costs.

In items listed by the Commission as indeterminate, validity of the existing data should not be compromised by educated guesses. The Commission recommends that no further costs programs be included unless substantially more data is gathered and evaluated. The cost of gathering this data and the time involved should be carefully weighed against the likely

result. The Commission does not consider further exploration cost-effective until it is clear that the offset will be utilized by the parties.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Mental Health and Developmental Disabilities:

Alaska Psychiatric Institute: ($62,562,885 p. 54)

The Commission agreed that all of the audited expenditures at API should be included as an expenditure of the mental health program. As the state's only designated psychiatric hospital, API is clearly mandated by the Alaska statutes dealing with mental health.

Community Mental Health Grants: ($30,270,529 p.54-55)

The Commission agrees that all the funds expended in Community Mental Health System should be included as expenditures of the mental health program. The Community Mental Health System is an integral part of the 1977 plan, and is mandated by statutes pertaining to mental health.

Capital Improvement Projects, Miscellaneous Programs, Mental Health and Mental Health Administration: ($16,284,971 p.55)

After receiving detailed backup from the auditors on capital accounts the Commission was satisfied that all funds were acceptable expenditures

for the mental health program. The costs related to repair and maintenance of API or construction of Community Mental Health Centers.

Harborview Developmental Center: ($6,306,514 p.56)

The Commission has included costs of operating the facility from FY 79-81. In 1978, the Legislature began to make a distinction between the care of mentally ill and developmentally disabled persons by passing AS 47.80 mandating a separate plan of care for mentally retarded clients. In 1981, the separation of the systems were made complete by the statutory removal of mental retardation from the definition of mental health.

Developmental Disabilities Contracts and Grants: ($9,456,000 p.56)

The Commission felt the same rationale should be used for these grants and contracts as was used for Harborview Developmental Center and would make the recommendation that the expenditures from July 1, 1978 to June 30, 1981 be included as expenditures of the mental health program.

Due to the statute change in 1981, excluding mental retardation from definition of mental health, all expenditures after July 1, 1981 would be excluded from expenditures.

Capital Improvement Projects, Miscellaneous Programs, Developmental Disabilities, and Mental Health Administration: ($1,295,401 p.57)

The Commission adopted the same rationale for this expenditure item as it did for Harborview Developmental Center and community developmental disabilities grants and contracts. The expenditures in this area should be included from July 1, 1978 to June 30, 1981. The costs related to repair and maintenance of Harborview and construction of community developmental disabilities facilities.

STATE OFFICE OF ALCOHOLISM AND DRUG ABUSE: (O p.58-62)

The Commission recommended all expenditures under the State Office of Alcoholism and Drug Abuse be excluded. Organizationally and programmatically, alcohol and drug abuse programs historically have not been regarded as part of the Alaska mental health system. In 1972, the Legislature formalized this distinction by establishing the State Office of Alcoholism and Drug Abuse and clearly delineated a separate program for prevention and intervention. The 1977 Mental Health plan recognized the statutory distinction between the systems. It stressed coordination between systems and acknowledged that many persons with alcohol and drug related problems are treated in the Community Mental Health System.

The Commission did discuss the possibility of allocating a percentage of the State Office of Alcoholism and Drug Abuse expenditures to mental health program on the basis that some individuals treated by this system possibly could be mentally ill. However, it was determined that the State Office of Alcoholism and Drug Abuse programs do not treat people who are primarily diagnosed with a mental illness. Clients who are identified as having mental health diagnoses are referred to community

mental health centers and therefore the expenditures are captured in under that category of the report.

DIVISION OF FAMILY AND YOUTH SERVICES

Family/Social Services:

The provision of social services are not mandated by Alaska's mental health statutes. However, virtually no mental health services for children existed during the audit period, therefore DFYS services became the system of care for mentally and emotionally disturbed youth. The FY 77 mental health plan recognized the need for the mental health system to treat these youth. The plan states that the Federal Community Mental Health Centers Act of 1975 (P.L. 95-63) requires that special attention be paid to the mental health needs of children. A full range of diagnostic, treatment, liaison, and follow-up services needed to be provided. However, no funds were available to accomplish this task.

Ongoing Social Services: ($2,135,161 p.66)

The Commission agreed with the methodology established by Legislative Audit in allocating a percentage of the cost of ongoing social services to the mental health system. The Commission felt that the estimated percentage of cases that were diagnosed as having various mental illness was fair and should be utilized. Therefore, the Commission accepted this allocation. However, they rejected the allocation of $2,581,815

which was identified as cases relating to alcohol and substance abuse problems. Treatment of alcohol and drug abuse problems were all within the statutory purview of the State Office of Alcoholism and Drug Abuse.

Adult Protective Services: ($19,178,873 p.68)

A detailed Department of Health and Social Services study of case files in 1985 showed that 80 percent of the clients of the adult protective services system have been identified as individuals with severe mental disorders or illness. Services for the chronically mentally ill adults are clearly a part of the FY 77 plan and a mandate under the Alaska state statutes. In 1986, the responsibility for those clients was transferred to the Division of Mental Health and Developmental Disabilities. The Commission accepts the audit allocation.

Residential Care: ($12,903,696 p.68-70)

The Commission felt that the FY 77 plan clearly identified the need for children's services in the mental health system. Yet, between the years of 1978 - 1985 there were very few mental health services for children. Therefore, the children who were placed in the more intensive levels of residential care, category three and four, had significant mental health problems. The Commission did not feel it was appropriate to allocate the expenditures by the use of the weighted average of 8.3 percent, as suggested in the report, because children who are in more intensive

residential care would normally have a higher than normal incidence of mental disorders.

The Commission recommended instead to utilize actual expenditures for the Alaska Children's Services programs (Jesse Lee Home, Rabbit Creek, and the Alaska Children's Services Intensive Care Unit) in order to fairly identify the experditures of the mental health program. As a result of this decision, the Commission recommends a higher level of inclusion than was originally proposed by mental health professionals.

Once again, the Commission rejects the rationale utilized by the audit team for including some of the residential care expenditures for children with alcohol and substance abuse problems. The Commission feels that these are responsibilities of the State Office of Alcoholism and Drug Abuse and should not be included as expenditures in the mental health system.

Contract/Purchase Services: ($3,704,849 p.70)

The Commission had difficulty determining if these contracts with community providers were actually providing some mental health services and so recommended that the audit staff review the list of providers who had received grants. As a result of this review, the Commission recommends that a portion of dollars be added to expenditures for the mental health program because these grants were made directly to community mental health centers for prevention and treatment of child abuse. The Commission does not feel that it is appropriate to include

any expenditures for alcohol and substance abuse problems. Contract services obtained to meet the mental health treatment needs of youth in foster care and residential care should be considered legitimate costs. The Commission requested these costs be developed and has included them in this category.

Out-of-State Residential Care: ($967,825 p.72)

The Commission recognizes that most of the children who are sent to out-of-state treatment facilities are severly mentally or emotionally disturbed and require specialized and intensive treatment. The Commission recommends that the entire $967,825 be included in the expenditures for the program.

Youth Services:

The provision of Youth Services for juveniles in delinquency are not mandated by mental health statutes, nor an integral part of the FY 77 plan. As with the social services programs, mental health programs to assist juveniles were only being developed during the period covered in the audit. The Commission has therefore determined that some costs within the youth services system were used to provide specific mental health treatment services to these youth. Costs for simply detaining or caring for juvenile delinquents have not been considered mental health expenditures, because they are non-discretionary responsibilities of the state.

Intake Probation Services: (0 p. 73)

Youth services are not identified in the FY 77 plan and are not a part of the statutory mandate for the program. Juvenile intake involves the preliminary assessment of delinquency behavior by juveniles and the Commission does not consider this to be an eligible mental health expenditure.

Formal Probation Services: ($952, 078 p.74)

Probation services are not a part of the FY 77 plan or the statutory mandates of mental health. However, the Commission recognizes that due to lack of alternative mental health care, some children who were emotionally and mentally disturbed were treated in the juvenile corrections/probation system. The Commission accepts a weighted average estimate of 8.3 percent of the caseload as having DMS III diagnosis.

Detention Program: (0 p. 75)

The FY 77 plan does not identify detention facilities as part of the mental health system, nor do the statutes mandate detention as part of a mental health program. The Commission recommends that these expenditures be rejected as part of the expenditures of the mental health system.

Long-Term Treatment Program: ($255,319 p. 76-77)

The FY 77 plan does not include the McLaughlin Youth Center treatment program as part of mental health program. Juvenile Corrections is a non-discretionary responsibility of the state. The system exists to serve youth ordered there by the Court. Costs of caring for these youth are not specifically mental health expenditures.

Professional mental health services are available to youth services clients by referral. The Commission recommends all costs for psychiatric and psychological services at the youth facilities be included as expenditures for the mental health program. Staff researched and identified these costs at the request of the Commission.

Residential Care: ($3,990,216 p.77-78)

The Commission recommends using the same rationale for residential care for Youth Services as it did for the Family Services section of the report. All expenditures relating to utilization of the Alaska Children Services Jesse Lee Home, Rabbit Creek and Intensive Care Unit would be included as expenditures for the mental health system. These facilities employ qualified mental health professionals who provide services to mentally and emotionally disturbed youth.

Foster Care: (0 p.79)

Foster care is not an identified program in the FY 77 plan. Foster Care is designed to provide a home-like environment for youth, and any specialized treatment or counseling services needed are provided through

contracts with qualified mental health professionals. The Commission instructed auditors to identify these costs and have included them as legitimate costs of the mental health program, these costs are accounted for in the contract/purchased services category.

DIVISION OF MEDICAL ASSISTANCE

Medicaid Nursing Homes: ($12,301,640 p.80-81)

The 1977 mental health plan anticipated that Medicaid would play a large part in delivery of mental health services. The Medicaid payment system makes it possible to determine what percentage of individuals utilizing Medicaid-funded nursing home beds have a primary diagnosis of a mental disorder as defined by DSM III. The Commission accepts all these costs except for patients with alcohol or drug related conditions, and those developmentally disabled clients who were served after 1981. The Commission did not feel it was appropriate to also include those individuals with a secondary diagnosis of a severe mental illness because the primary reason for their admission to the nursing home was for a physical condition.

Hope Cottage: ($2,255,760 p.81)

Hope Cottage is an intermediate care facility for developmentally disabled persons and therefore the Commission adopted the same rationale in allocating expenditures as it did for Harborview Developmental Center and community developmentally disabilities grants. Since mental

retardation was a part of the 1977 plan and was not removed from the statutes until July, 1981, the Commission recommended that expenditures from July 1, 1978 to June 30, 1981 be included as mental health expenditures.

Medicaid-Mental Health Clinics: ($2,186,080 p.82)

The 1977 plan recognized that the state's Medicaid law was expanded to include payment for clinic services in addition to physician services in 1976. These funds pay for indigent Alaskans who are being served in community mental health centers. All costs are eligible.

DEPARTMENT OF EDUCATION

Special Education/State Program: (Indeterminate p.83-84)

The 1977 plan does not specifically address special education as a part of the mental health program. Nor is there any statutory inclusion of special education in the mental health program. The State has a constitutional obligation to educate all children. Therefore, the Commission has determined that basic educational expenditures should not be included as expenditures of the mental health system. Costs for mental health services beyond those incurred to educate any child would be considered eligible.

Unfortunately, such costs are difficult to obtain. Total program expenditures recorded for special education are approximately $1.7

billion for the audit period. These costs are derived from adding $224 million in basic classroom expenditures, and $1.4 billion in support costs for all students in Alaska. Support costs include district administration, pupil transportation, and auxiliary services such as school psychologist and specialists. To obtain accurate eligible mental health costs from the support services category would require the auditors to sift through $1.4 billion in expenditures at the school district level. Examination of school districts records by audit staff did not reveal enough information to make this determination.

Special Education/Federal Program: (Indeterminate p.85-86)

The Commission has similar recommendations regarding this area as it did in the special education state program. The Commission recognizes that some of the students with multi-handicaps may well have severe mental disorders, but the costs presented make it impossible to determine how much of the expenditures should be allocated to the mental health program. The Commission does not recommend allocating any expenditures without further study of this area.

Providence Heights School : ($853,735 p.87) The Providence Heights School provides special education services for children who are residing at the Alaska Psychiatric Institute. The Commission feels that these children are in need of more intensive treatment and that therapy is such an integral part of the educational program for these youth that the entire amount should be allocated.

Alaska Resources for the Moderately/Severly Impaired: (Indeterminate p.87)

The Commission recognizes that some of the children served by Alaska Resources for the Moderately/Severly Impaired may indeed be mentally and emotionally disturbed, but the data available does not enable the Commission to recommend or allocate these expenditures to the mental health program.

McLaughlin Youth Center and Fairbanks Youth Facility: (0 p.88)

The McLaughlin Youth Center and Fairbanks Youth Facility school are not special education facilities for mentally and emotionally disturbed youth and therefore the Commission does not recommend that these expenditures be included as part of the expenditures of the mental health system. Special mental health costs at McLaughlin Youth Center and Fairbanks Youth Facility have been designated in the Youth Services portion of this report.

Out-of-District Transfers: ($1,565,234 p.89)

The Commission recognizes that the FY 77 plan requires services for children and that the majority of the out-of-district transfers are mentally and severely emotionally disturbed youth. The Commission recommends that the entire amount be included as an expenditure of mental health program.

DIVISION OF VOCATIONAL REHABILITATION/SERVICES TO CLIENTS

Vocation Rehabilitation Programs: ($5,062,184 p. 90-92)

The Commission accepted the allocation ratios presented in the audit report for all Division of Vocational Rehabilitation programs. However, in keeping with existing methodology, alcoholism expenditures and expenditures identified as targeted to the mentally retarded beyond 1981 were excluded.

DEPARTMENT OF CORRECTIONS

Adult Confinement - (Indeterminate p. 92)

The Commission finds that the primary reason for the confinement of adult offenders is their criminal behavior. Mental health services may be needed by some attendees, but these services are secondary to the need for confinement. The FY 77 Plan recognizes this secondary need by stating that "The Division of Corrections has, by the very nature of those persons in their custody, historically required the availability of mental health services. Those services have traditionally been provided by the state operated mental health clinics and the Alaska Psychiatric Institute." Presently, API provides services in the Not Guilty by Reason of Insanity (NGI), the Incompetent to Stand Trial, and correctional transfers. In addition, the Forensic team members at API visit the correctional facilities to provide evaluation and treatment for offenders requiring mental health services. These expenditures are captured in the Alaska Psychiatric Institute Category.

DEPARTMENT OF ADMINISTRATION

Division of Pioneer Benefits: (Indeterminate p. 94)

The Commission recognizes that there are some costs associated with the treatment of patients in Pioneer Homes who are suffering from mental illness. However, as concluded by the audit report, these costs cannot currently be identified. Further analysis would have to be done to determine the cost of mental health services actually delivered.

Older Alaskan's Commission: (Indeterminate p. 95)

The Commission acknowledges that some mental health costs were incurred in this program. However, it would be difficult to determine the amount spent on clients with specific mental disorders because client profiles are not maintained by the OAC. Time constraints prevented the auditors from breaking out the specific payments made for mental health services.

Municipal Grants: ($3,303,200 p.96-97)

Consistent with programmatic decisions made by the Commission, some grants were included in the Commission's determination. Expenditures for construction of community mental health facilities and other mental health programs such as a crisis line were included. Construction of domestic violence facilities and alcohol facilities were excluded.

DEPARTMENT OF PUBLIC SAFETY

Council on Domestic Violence and Sexual Assault (Indeterminate p.98)

The Commission was not able to determine what portion of the Council's program budget was specifically used to treat individuals with mental illness. To the extent that individuals receiving counseling from the system have identified mental disorders or are receiving treatment from qualified mental health professionals, the program would be incurring mental health expenditures. It is believed that the bulk of the costs in this system are for the treatment of the victim, who is not considered to be, in most cases, a mentally ill individual. Further analysis of expenditure records would have to be conducted before eligible costs could be determined.

The Commission recognizes that there are some mental health services in the Department of Corrections, but did not have the data to allocate a percentage of the overall budget or to provide actual expenditures for psychiatric and psychological services.

If you should have further questions regarding this audit report, I offer the services of myself and other Commission members. Please feel free to contact us.

Sincerely,

George Rogers

Chairman

Mental Health Interim

Trust Commission

APPENDIX G

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
LAND SALES

The following report identifies all mental health lands sold by October 4, 1985. Values for land sales made on or prior to the date of the legislative redesignation (July 19, 1978) are not shown in this report as it would interfere with the computation of the state's potential liability in Weiss. However, basic case information is provided to identify the total mental health acreage which was no longer in state ownership on October 4, 1985, the date of the Weiss opinion (some information, such as the subdivision name were generally not readily available for these sales and was therefore not included.) Information concerning these values can be found in the 1985 report prepared for Superior Court in the Weiss case.

The initial data for this report was obtained from the status plats and historical indices. A cross reference in case number sequence is also provided. Additional information was obtained in a review of case files located in the department's Contract Administration Unit.

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) of mental health lands within the case.

3. "Additional Legal" - further defines the area in which mental health land may be found (e.g. lot, block, tract, and/or U.S. Survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as discussed above.

4-5. "MH #" and "Additional MH#" - show the case number(s) assigned by the state to selections made under the Mental Health Enabling Act.

6. "ADL" - is the Alaska Division of Lands case file number assigned to the sale.

7. "Subtype" - shows the method of disposal and case subtype. The disposal method is given as a number in order to conserve space:
   1 = lottery = this method was authorized in 1978. Applicants must apply for a parcel, to be sold at fair market value; the winner of the parcel is chosen at a drawing.
   2 = over-the-counter (OTC) = parcels not purchased at the time of disposal, or later relinquished, are sold by this method.
   3 = auction = this was the first method of disposal authorized (AS 38.05.055). Until 1984, the lowest acceptable bid was the fair market value of the parcel. Under the 1984 revision of the statute, the lowest acceptable bid is 70 percent of appraised fair market value.

7. "Subtype" (continued)
4 = negotiated sale = the state is prevented from making privately negotiated (i.e. not offered to the citizenary at large) sales except under the preference right laws or AS 38.05.810.
case subtypes are:
°"PRFRT" (preference rights) = preference rights to purchase are obtained under AS 38.05.035 and AS 38.05.102.
°".810" (public and charitable use) = sales made under AS 38.05.810 (formerly AS 38.05.315). These sales are usually made for less than fair market value and are negotiated.
°"AG" = land sales in which only the agricultural rights are sold.
°"AGHMSTD" (agricultural homestead) = conveyances of agricultural rights under a "sweat equity" program.
°"HMSITE" (homesites) = subdivision parcels which can be acquired by "sweat equity" rather than monetary compensation.
°"SALE" = subdivision sales. May be made by auction or lottery.
°"HMSTD CO" (homestead conversion) = conversion of a remote parcel lease to a homestead under AS 38.09.100.
°"OTE" (open-to-entry) = land sales made under the provisions of the open-to-entry program (restructured to the remote parcel program in 1979).
°"QCD" (quit claim deeds) = these are not sales per se, but are issued to clarify title. Sales for which the final conveyance document is a QCD rather than a patent have a subtype of "sale", status of "conveyed", and the QCD number in the patent number column if available.
°"ODDLOT" = miscellaneous parcels sold at a single "odd lot" sale.

8. "Status" - shows the status of the land sale as of October 4, 1985, however, some cases may have subsequently changed. This change will be indicated by the inclusion of a conveyance number or closure date <u>after</u> October 4, 1985. The status codes used in this report are:
a) "active" - contract issued, final title document not yet issued.
b) "patented" - fee simple ownership of land is now passed to the purchaser by patent.
c) "default" - purchaser has not made a required payment. Once the applicant pays all past due payments and interest, the contract may be reinstated; reinstated contracts show as active.
d) "relinquished" - purchaser has surrendered right to purchase land.
e) "conveyed" - property title transferred under a quit claim deed.

9. "Patent Number" - shows the number assigned by the state to the final conveyance document (patent or quit claim deed).

10. "Issue Date" - shows the date the sale contract was issued.

11. "Closure date" - shows the date patent or deed was issued or date of default or relinquishment of contract;

12. "Total Acres" - shows the total amount of state land in this sale.

13. "MH Acres" - the acreage listed in this column for active cases is the mental health sale acreage as of October 4, 1985. Acreage figures for closed or transferred cases reflects the total mental health acreage as of the date of closure or transfer.

14. "% MH Acres" - shows the percentage of the total case area made up of mental health lands (decimal figures were rounded to the nearest whole number).

15. "Appraised Value" - appraised value of the land. (If only a percentage of the total acreage of a parcel is mental health then only that percentage of the appraised value of the land will be listed.) For lottery sales the amount in this column will be identical to the amount in the appraisal column; for auction sales the amount may be higher. This amount will not be shown for land sale contracts issued prior to July 19, 1978.

16. "Total MH Income" - the full amount of the sale is shown for all land sales under contract on or before October 4, 1985, whether discounted or fully paid. (However, only the amount of 'principal' actually received is shown for those cases in default as of October 4, 1985.) For lottery sales the amount in this column will be identical to the amount in the appraisal column; for auction sales the amount may be higher. This amount will not be shown for land sale contracts issued prior to July 19, 1978.

17. "Subdivision Name" - gives the name of the subdivision or disposal (when applicable and available).

LAND SALES SUMMARY CHART
Prior to 1978 Redesignation

	4 PREFRT		4 .810		3 SALE		3 OTE		3 ODDLOT	
STATUS	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage
Active	0	0	0	0	0	0	0	0	9	470.11
Conveyed	1	.03	1	2.60	0	0	0	0	0	0
Patented	11	228.69	11	358.51	17	69.29	0	0	0	0
Relinquished	0	0	0	0	0	0	0	0	0	0
Default	0	0	0	0	0	0	0	0	0	0

	3 PREFRT		LANDSALE		2 ODDLOT		SALE		QCD	
STATUS	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage
Active	0	0	0	0	0	0	0	0	36	37.24
Conveyed	0	0	1	78.90	0	0	0	0	22	515.72
Patented	8	23.67	2	360.00	1	5.00	2	12.14	0	0
Relinquished	0	0	0	0	0	0	0	0	0	0
Defaulted	0	0	0	0	0	0	0	0	0	0

No Subtype - 21 Active Cases with 285.60 Acres, 1,616 Patented Cases with 17,261.61 Acres, 1 Conveyed Case with 2.56 Acres and 15 Relinquished Cases with 85.85 Acres.

LAND SALES SUMMARY CHART
From 1978 Redesignation to Weiss Decision

	3 PREFRT		4 PREFRT		4 .810		1 SALE		2 SALE	
STATUS	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage
Active	0	0	1	.22	0	0	305	1758.76	62	206.17
Conveyed	0	0	0	0	0	0	0	0	0	0
Patented	4	4.90	0	0	12	451.06	45	297.61	5	3.37
Relinquished	0	0	0	0	0	0	3	20.10	0	0
Default	0	0	0	0	0	0	16	62.47	8	14.46

	3 SALE		1 HMSITE		2 HMSITE		3 ODDLOT		4 ODDLOT	
STATUS	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage
Active	36	37.24	76	228.40	14	13.11	0	0	1	11.88
Conveyed	0	0	0	0	0	0	0	0	0	0
Patented	4	4.97	0	0	0	0	0	0	0	0
Relinquished	1	61.51	0	0	0	0	1	4.54	0	0
Defaulted	3	2.05	0	0	0	0	0	0	0	0

LAND SALES SUMMARY CHART
From 1978 Redesignation to Weiss Decision (continued)

	1 AG		2 AG		3 AG		1 AG HMSTD		2 AG HMSTD	
STATUS	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage
Active	74	16975.75	64	215.46	16	2698.06	6	390.00	1	60.00
Conveyed	0	0	0	0	0	0	0	0	0	0
Patented	4	233.07	0	0	0	0	0	0	0	0
Relinquished	0	0	0	0	0	0	0	0	0	0
Defaulted	3	1147.48	0	0	0	0	0	0	0	0

	3 AG HMSTD		HMSTD CO		1 OTE		2 OTE		3 OTE	
STATUS	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage	# Cases	Acreage
Active	0	0	1	39.95	123	1019.28	0	0	0	0
Conveyed	0	0	0	0	0	0	0	0	0	0
Patented	0	0	0	0	49	542.14	0	0	1	.27
Relinquished	0	0	0	0	0	0	0	0	0	0
Defaulted	0	0	0	0	6	22.88	0	0	0	0

LAND SALES SUMMARY CHART
From 1978 Redesignation to Weiss Decision (continued)

	1 REMOTE		2 REMOTE	
STATUS	# Cases	Acreage	# Cases	Acreage
Active	0	0	0	0
Conveyed	0	0	0	0
Patented	0	0	0	0
Relinquished	0	0	0	0
Defaulted	0	0	0	0

SUMMARY:

Total Cases Conveyed/Patented: 1,818 cases, 20,456.11 acres

Total Active Cases: 846 cases, 24,407.28 acres

Total Defaulted Cases: 36 cases, 1,249.34 acres

Total Relinquished Cases: 20 cases, 172.00 acres

Total Mental Health Income - $13,545,014.41

Total Appraisal Value - 12,799,759.00

Total Cases with no Income: 1,783 cases, 20,321.96 acres

Total Cases with no Appraised Value: 1,786 cases, 20,309.99 acres

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
LAND LEASES

This report is part of the Department of Natural Resources' inventory of mental health lands which was produced following the Supreme Court decision of October 4, 1985 (Weiss v. Alaska) concerning mental health trust lands. It identifies those land leases located on mental health lands which were in effect between July 19, 1978 and October 4, 1985. The initial data was obtained from state status plats and historical indices. Additional information was obtained in a review of case files located within the Division of Land and Water Management.

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those land leases which lie within more than one township, complete information is listed in the initial township entry. Additional entries contain only the township and range, ADL number, and cross reference to the original entry.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) containing mental health lands within the case.

3. "Additional Legal" - further defines the area in which mental health land may be found (e.g. lot, block, tract, and/or U.S. Survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as discussed above.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

5. "ADL" - is the Alaska Division of Lands case file number assigned to the lease.

6. "Subtype" - various (sub)types of surface leases are included in this report:
   - "55 Year" - AS 38.05.070(c) allows leases to be issued for a period of up to 55 years, if made at public auction. Although some lease terms may be less, these leases are usually issued for 55 year terms.
   - "5 Year" - are negotiated leases issued under AS 38.05.070(b). Prior to 1984, the lease term could not exceed 5 years (with a renewal provision) and the appraised value of the transaction could not be more than $250 per year.
   - "Grazing" - these are leases issued for grazing purposes only. They may be negotiated (short term) obtained at auction (55 year), or transferred or reissued federal grazing leases.
   - ".810" - are public and charitable use leases made under AS 38.05.810 (formerly AS 38.05.315). These leases are usually made for less than fair market value.

6. "Subtypes" (continued)
   - "Ag" - a lease issued for agricultural rights only. May be short term negotiated or long term.
   - "OTE" - land leases made under the provisions of the open-to-entry program (restructured to the remote parcel program in 1979). Most of these leases have matured to sale under the terms of the program, and will therefore appear on the land sale report.
   - "Remote" - the OTE program was reorganized to become the Remote Parcel Program on July 1, 1979. Under this program the applicant may lease the parcel for two five year terms, and may purchase the parcel when survey is complete for its value as of the date of lease issuance.

7. "Status" - the status codes used for these cases are shown below.
   active: the lease was in effect as of October 4, 1985. Some of these leases may now be closed.
   closed: the lease term expired prior to October 4, 1985.
   transferred: cases transferred with land title (usually to municipalities). Land leases ADL #21550 and 39218 issued under AS 38.05.810 were conveyed to the City and Borough of Juneau under ADL 101081. These leases therefore show a status of "closed" rather than "transferred".

8. "Issue Date" - shows the date the lease was issued.

9. "Closure Date" - shows the date the lease terminated, expired or was relinquished, (for transferred cases, this reflects the date of transfer).

10. "Total Acres" - shows the total amount of state land in this lease.

11. "MH Acres" - the acreage listed in this column for active cases is the mental health lease acreage as of October 4, 1985. Acreage figures for closed or transferred cases reflects the total mental health acreage as of the date of closure or transfer.

12. "% MH Acres" - shows the percentage of the total case area made up of mental health lands (decimal figures were rounded to the nearest whole numbers).

13-18. (original appraised value, 1st and 2nd reappraised values and dates, next reappraisal date) - All appraisal amounts shown are fair annual rental amounts which are based on a percentage of the appraised fair market (sale) value. The reappraisal columns show the date of the completed or projected reappraisals. If the reappraisal has been executed, a reappraised value will be shown. The "Next Reappr. Date" shows when the next reappraisal of the property is due.

Prior to the revision of AS 38.05.085 in 1978, all 55 year leases were to be reappraised every five years; those leases issued after or converted under the 1978 revision are reappraised after the first 25 years and at ten year intervals thereafter. For leases issued prior to 1978 which did not convert, reappraisals have not been performed due to lack of funding for that task. The next reappraisal date shown for these cases is the next five year anniversary for these lease. Rental for OTE and Remote leases was set by statute (AS 38.05.077(c)(3) - $10 per acre), therefore the appraisal columns are inapplicable to these case types.

19. "Conv" (converted) - if 55 year leases issued were converted pursuant to Chapter 138, SLA 1977 and Chapter 182, SLA 1978 (the revision of AS 38.05.085) the column is marked "T" (true); if not the column is market "F" (false). The conversion allowed existing leases to convert to a new lease under the revised terms of AS 38.05.085 (leased for a fixed base annual rental for a 25 year period; controlled rental increases every 10 years thereafter). Qualifying (non-profit organization youth encampment) leases issued under AS 38.05.810 may have converted under AS 38.05.097 (also passed in 1978) which exempts the holder from lease rental payments. If so this column will be marked "T" (true).

20. "Total MH Income (1978-1985)" - The mental health income for land leases was determined using the following formula:

Leases entered into between the first and the 15th of the month were considered effective the first of the month. Leases entered into between the 16th and the last day of the month were considered effective on the first day of the following month.

If a lease was converted subsequent to August 1, 1978 then the following formula was used to determine income:

Example: Lease issue date June 1, 1970. Conversion date March 1, 1979; annual rental amount prior to conversion $150.000; converted lease amount $236.92.

1978-1979 Rental Payment

June 1, 1978	July 20, 1978	March 1, 1979 June 1, 1979
(not a part of this report)	$150.00/yr. (7 mo.)	$236.92/yr. (3 mo.)

$150 - 12 (months/years) x 7 (months) = $87.50

$236.92 - 12 (months/years) x 3 (months) = $59.23

78 / 79 rental amounts = $143.73

Please note that the "Total MH Income" column only reflects monies received from July, 1978, to October, 1985. It does not reflect income received outside that time frame.

****

LAND LEASE SUMMARY CHART

ACTIVE CASE				CLOSED/TRANSFERRED CASES		
Subtype	# of Cases	MH Acres	MH Income	# of Cases	MH Acres	MH Income
55 year	112	690.62	296,381.0	24	85.78	60,586.0
5 year	2	3.05	10,211.0	24	90.40	12,219.0
.810	9	153.87	50,591.0	11	432.64	44,572.0
AG	-	-	-	2	144.40	1,234.0
OTE	-	-	-	13	85.36	13,078.0
Remote	178	1,066.20	35,368.0	3	48.50	770.0
Grazing	-	-	-	1	1,700.00	10.0
TOTAL	301	1,913.74	392,551.0	78	2,687.43	132,469.0

ACTIVE 55 YEAR LEASES

	# Of Cases	MH Acres	MH Income
Converted	99	648.47	281,765.0
Not Converted	13	42.15	14,616.0
Total	112	690.62	296,381.0

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
PUBLIC AND CHARITABLE USE
(AS 38.05.810)

The following report shows sales and leases made under AS 38.05.810 for public or charitable uses. Some of these uses are for mental health purposes; others are not. This report is a subset of the reports showing land sales and land leases in existence on mental health land between July 19, 1978 and October 4, 1985. All of the cases listed in this report are also shown in the larger land sale and land lease reports. Because of the complexity and size of those reports, information specific to the public and charitable use case type could not be included in them necessitating this report. It shows the basic land and case information, additionally it shows the holder of the sale or lease, and the use for which the land was obtained. For complete land and case information, please refer to the land sale and land lease reports.

Several municipalities in southeast Alaska (Kupreanof, Petersburg and Wrangell) received no entitlement under the Municipal Entitlement Act (AS 29.65) because all lands within municipal boundaries were mental health lands. These municipalities sued to obtain their entitlement. In an out of court settlement these municipalities obtained the right to receive a certain amount of municipal land under AS 38.05.810. The City of Kupreanof received 180.82 acres (ADL 100503) with no selections remaining; the City of Petersburg has received 79.966 acres (ADL 100494) with 16.64 acres remaining; and the City of Wrangell has selected 310 acres (ADL 100553) none of which has been conveyed. Because these applicants may have acquired an equitable interest in mental health lands, the pending conveyances are identified below.

City of Petersburg:

ADL#	M-T-R-S	Survey	Acreage
100494	CRM, T58S, R79E, Sec. 35	(GLO Lots 8, 10, 11-13)	16.64
	TOTAL		16.64

City of Wrangell:

ADL#	M-T-R-S	Survey	Acreage
100553	CRM, T62S, R83E, Sec. 24	USS 3753	40.000
100553	CRM, T72S, R83E, Sec. 24	USS 3753	20.000
100553	CRM, T62S, R84E, Sec. 19	USS 3753	39.000
100553	CRM, T62S, R84E, Sec. 19	USS 3705	40.000
100553	CRM, T62S, R84E, Sec. 20	USS 3705	42.000
100553	CRM, T62S, R84E, Sec. 30	USS 3753	31.000
100553	CRM, T62S, R83E, Sec. 25	USS 3753	21.000
100553	CRM, T62S, R84E, Sec. 29	USS 3705	73.000
100553	CRM, T62S, R84E, Sec. 31	USS 3753	4.000
	TOTAL		310.000

Public and Charitable Use Summary

		Pre-1978 Redesignation	After Redesignation Prior to Weiss
Leases	# Cases	16	4
	Acres	513.28	55.22
Sales	# Cases	10	11
	Acres	379.61	432.56

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
LEGISLATIVELY DESIGNATED AREAS

This report is part of the Department of Natural Resources' inventory of mental health lands which was produced following the Supreme Court decision of October 4, 1985 (Weiss v. Alaska) concerning mental health trust lands. It consists of legislatively designated State Park Units, State Forests and State Fish and Game Units which were in effect on mental health land on October 4, 1985. Administrative designations (Interagency Land Management Assignments) for Parks, Forestry or Fish and Game purposes are addressed in a separate report. The data in this report was compiled from the Alaska statutes creating the units, agency publications and state status plats. In most cases the designated boundaries are unsurveyed and the acreages are approximate.

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those legislative designations which lie within more than one township, complete inform... is listed in the initial entry. Additional entries do not contain acreage amounts. A cross reference to the original township is found in the "Additional Legal" column.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section" - lists the section(s) of mental health land within the case.

3. "Additional Legal" - further defines the area where mental health land in the case may be found (i.e. lot, block, tract, and/or U.S. survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference to additional townships.

4. "MH #" - shows the case number(s) assigned by the state to selections made under the Mental Health Enabling Act.

5. "Additional MH #" - shows any additional case number(s) assigned by the state to selections made under the Mental Health Enabling Act.

6. "ADL" - shows the artificial Alaska Division of Lands (ADL) case file number assigned to the case for purposes of this report (ADL numbers are not assigned to legislative designations).

6. "Status" -shows the status of the case as of October 4, 1985. The only applicable status code for this report is "active".

7. "Total Acres" - shows the total number of acres of state land encumbered by this case.

8. "MH Acres" - shows the mental health acreage within the case. Lands selected under the Alaska Mental Health Enabling Act (MHEA), but not yet conveyed to the state are not included here.

   Please note that the legislative designations (in the Haines area) have overlapping boundaries. Mental health acreage within these overlapping areas is as follows: Chilkat Bald Eagle Preserve/Haines Forest 23,261.26 acres; Chilkat Bald Eagle Preserve/Haines Forest/Chilkat River/Critical Habitat area 2,480.48 acres; Chilkat Bald Eagle Preserve/Critical Habitat Area 974.64 acres. The acreage figures in the report are not adjusted for this overlap.

   Two land exchanges (Seldovia, Phases I (1983), and III (1985) resulted in conveyance of lands acquired under the MHEA to Seldovia Natives, Inc. in exchange for the state's acquisition of Seldovia lands within Kachemak Bay State Park. The mental health lands constituted a portion of the lands conveyed, and that portion of lands acquired within the park which may be considered mental health lands remain unidentified. (See also "Settlements", this Mental Health Inventory report for more information.)

9. "% MH Acres" - shows the percentage of the total unit made up of mental health lands.

10. "Designated MH Acres" - shows the mental health acreage designated on a particular date.

11. "Effective Date" - shows the date the legislation designating particular sections of mental health land became effective. Please note that Nancy Lake State Recreation area was legislatively designated in 1966. However, because the designation was made prior to the state's receipt of the land from the federal government the designation did not take effect until a later date (the land was received in 1967 and 1970).

12. "Managing Agency" - shows the agency primarily responsible for managing the unit.

13. "Unit Name" - shows the name of the legislative unit.

14. "Alaska Statute" - lists the reference number of the statute creating the unit.

SUMMARY CHARTS
MENTAL HEALTH LAND WITHIN LEGISLATIVE UNITS
PURPOSE/BY UNIT NAME

(FISH AND GAME UNITS)

ADL Number	Unit Name	MH Acres	% MH
999971	Goose Bay State Game Refuge	453.05	4
999972	Potter Point State Game Refuge	740.50	2
999973	Susitna Flats State Game Refuge	38,846.52	13
999974	Trading Bay State Game Refuge	3,840.00	2
999975	Matanuska Valley Moose Range	38,035.00	29
999976	Chilkat River Critical Habitat Area	3,647.21	76
999977	Mendenhall Wetlands State Game Refuge	144.83	4
999978	Creamer's Field State Game Refuge	2.50	1
TOTAL MENTAL HEALTH ACREAGE		85,709.61	

(FOREST UNITS)

ADL Number	Unit Name	MH Acres	% MH
999981	Tanana Valley State Forest	31,955.00	2
999982	Haines State Forest	100,000.00	40
TOTAL MENTAL HEALTH ACREAGE		131,955.00	

(PARK UNITS)

ADL Number	Unit Name	MH Acres	% MH
999991	Chugach State Park	14,028.00	3
999992	Kachemak Bay State Park	5,622.00	2
999993	Nancy Lake State Recreation Area	1,709.93	8
999994	Kenai River Special Management Area	806.66	30
999995	Chena River State Recreation Area	92,083.42	36
999996	Chilkat State Park	3,270.18	54
999997	Alaska Chilkat Bald Eagle Preserve	33,056.16	67
TOTAL MENTAL HEALTH ACREAGE		150,576.35	

SUMMARY CHART
LEGISLATIVELY DESIGNATED MENTAL HEALTH ACREAGE
By Year/Purpose .

Year	Fish and Game	Forest	Park	Total
1967	0	0	16,752.61	16,752.61
1970	0	0	20,426.28	20,426.28
1971	740.5	0	0	740.5
1972	3,647.21	0	0	3,647.21
1975	453.05	0	79,534.64	79,987.69
1976	42,831.35	0	0	42,831.35
1979	2.5	0	0	2.5
1982	0	100,000.0	33,056.16	133,056.16
1983	0	31,955.0	0	31,955.0
1984	38,035.0	0	806.66	38,841.66
TOTAL	85,709.61	131,955.0	150,576.35	368,240.96

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
MUNICIPAL CONVEYANCES

The following report identifies all municipal selections made on mental health lands under the Municipal Entitlement Act, AS 29.65, and the current status of such selections on October 4, 1985. (Municipalities may also obtain land under AS 38.05.810. Those conveyances are shown in a separate report.) The first state land entitlement law for boroughs was enacted in 1963 (AS 7.10.150). The purpose of the grant was "as assistance and incentive to exercise local government over broad areas" and was patterned after the grant of land to the state made by congress in the Alaska Statehood Act. Under Title 7, a borough could select up to 10 percent of vacant, unappropriate, unreserved state land within borough boundaries within five years of the date of availability (i.e. five years after selection by the state). A 1970 amendment deleted the five year limitation, and extended the grant to first and second class cities. Titles 7 and 29 were combined and substantially revised in 1972. The subsections dealing with grant of land to boroughs and cities (AS 7.10.150 and AS 7.05.040, respectively) were combined into AS 29.18 (now AS 29.65). The 1978 redesignation of mental health lands made this statute applicable to those lands.

The initial data was obtained from state status plats and was verified and augmented from the case files by the Division of Land and Water Management's regional offices. This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those municipal selections which lie within more than one township, complete information is listed in the initial entry. Additional entries contain only the township and range, ADL number, holder's name, and a cross reference to the original township in the "Additional Legal" column.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) of mental health lands within the case.

3. "Additional Legal" - further defines the area in which mental health land may be found (e.g. lot, block, tract, and/or U.S. Survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as noted above.

4. "ADL" - is the Alaska Division of Lands case file number of the initial selection. Many of the selections were made in broad areas which were later broken into discrete parcels for purposes of conveyance. Occasionally, selections overlapped or were combined, and a site will have two ADL numbers.

5. "MH Acres" - shows the mental health acreage within the case (the cases shown in this report are all 100% on mental health lands).

6. "Holder" - shows the municipality or borough making the selection.

7. "Status" - shows the status of the case as of October 4, 1985. The status codes used in this report are defined below:
   closed: Municipal selections denied or rejected by the state.
   relinquished: Municipal selections approved by the state (final approval issued) but subsequently relinquished by the municipality/borough, or selections relinquished by the municipality/borough.
   selected: Lands still under selection by the municipality/borough. Management of these lands still lies with the state.
   approved: Municipal selections which have received approval of selection by the state. Conditional management authority for these lands lies with the municipality/borough.
   patented: Lands patented to the municipality/borough. Ownership lies with the municipality/borough.

8. "Approval Date" - shows date of final approval by the state.

9. "Patent Date" - shows the date that patent (final title) was issued.

10. "Patent Number" - shows the number assigned to the final title document (patent) by the State of Alaska.

11. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

12. "Comments" - shows miscellaneous facts concerning these selections which were discovered in the course of our research. For example, certain municipal selections are located within legislatively designated units. These units are identified within the report and may have an affect on the state's ability to transfer these lands. Other encumbrances (e.g., mining claims, land leases, rights-of-way) have not been noted here as these encumbrances have been or may be transferred with the land and do not affect the state's ability to transfer the land. These encumbrances will be noted in other reports concerning mental health land cases.

Those municipalities/boroughs which made municipal selections on mental health lands are identified below. Also noted is the total entitlement acreage each receives under the Municipal Entitlement Act (AS 29.65); the total amount of acreage which has been patented as of January 1986; the selection acreage which has been approved for patent; and the remaining acreage (based on the assumption that approval vests title with the municipality/borough) which the municipality/borough is entitled to under AS 29.65. Municipalities may also obtain land under AS 38.05.810. Those conveyances are shown in a separate report.

MUNICIPAL CONVEYANCE SUMMARY CHART
(All State Lands)

Municipality/Borough	Total Entitlement Acreage	Patented Acreage	Approved Acreage	Remaining Entitlement
Municipality of Anchorage	44,893.0	17,480.0	3,196.1	24,221.9
Kenai Peninsula Borough	155,780.0	60,652.8	38,739.7	56,387.5
Fairbanks North Star Borough	112,000.0	66,624.8	23,947.3	21,427.9
Matanuska-Susitna Borough	355,210.0	193,452.0	162,250.7	492.7
Haines Borough	2,800.0	780.9	2,256.0	-0-
Sitka, City and Borough	10,500.0	6,152.0	9,776.5	-0-
Ketchikan Gateway Borough	11,593.0	1,855.8	9,546.4	190.8
Juneau, City and Borough	19,584.0	2,842.9	19,155.0	-0-

MUNICIPAL CONVEYANCES SUMMARY REPORT
MENTAL HEALTH ACREAGE

	BOROUGH/ MUNICIPALITY	SELECTED	APPROVED	PATENTED	TOTAL
COPPER	Haines	.70	530.35	640.14	1,171.19
RIVER	Juneau	111.87	3,846.65	1,495.67	5,454.19
MERIDIAN	Sitka	0	806.78	513.11	1,319.89
	Ketchikan	.20	4,440.06	1,183.44	5,623.67
Subtotal - Meridian Total		112.77	9,623.84	3,832.33	13,568.94

MUNICIPAL CONVEYANCES SUMMARY REPORT (continued)
MENTAL HEALTH ACREAGE

	BOROUGH/ MUNICIPALITY	SELECTED	APPROVED	PATENTED	TOTAL
SEWARD	Mat-Su	1,105.00	1,767.14	5,381.98	8,254.12
MERIDIAN	Houston	0	0	87.29	87.29
	Kenai	9,966.67	1,890.02	3,282.24	15,138.93
	Anchorage	1,367.89	0	752.96	2,120.85
Subtotal - Meridian Total		12,439.56	3,657.16	9,504.47	25,601.19

	BOROUGH/ MUNICIPALITY	SELECTED	APPROVED	PATENTED	TOTAL
FAIRBANKS					
MERIDIAN	Fairbanks	0	7,126.11	9,343.93	16,470.04
Subtotal - Meridian Total		0	7,126.11	9,343.93	16,470.04

	SELECTED	APPROVED	PATENTED	TOTAL
Total	12,552.33	20,407.11	22,680.73	55,640.17

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
SETTLEMENTS

This report is part of the Department of Natural Resources' inventory of mental health lands which was produced following the Supreme Court decision of October 4, 1985 (Weiss v. Alaska) concerning mental health trust lands. It identifies lands obtained by the state through the Mental Health Enabling Act which were affected by various agreements made to avoid continued litigation (e.g. University Settlement) or the initial data was obtained from state status plats. This information was verified and augmented from the agreements themselves.

This report is organized by location according to legal description. For those settlements which lie within more than one township but could not be separated by township, complete information is listed in the initial entry. Additional entries contain only the meridian, township, range and section, case number, mental health number, status and a cross reference to the original township in the "Comments" column. A cross reference report, organized by case number, is also provided.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section" - lists the section(s) of mental health land within the case.

3. "Additional Legal" - further defines the area that mental health land in the case may be found (i.e. lot, block, tract, and/or U.S. survey number). Detailed legal descriptions may be found in DNR case files.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

5. "ADL" - is the Alaska Division of Lands (ADL) case file number.

6. "Additional Case #" - shows other related cases (e.g. federal cases) or the number of the state conveyance document (i.e. QCD).

7. "Status" - shows the status of the parcel on October 4, 1985. The only applicable status for this report is "conveyed".

8. "Settlement Name" - shows the common name of the agreement.
   °Terms and Conditions ("T&C") - Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area dated December 10, 1975, as clarified by the United States (Department of the Interior), State and Cook Inlet Region, Inc. (CIRI) Memorandum of Understanding dated August 31, 1986. Clarified ANCSA selection legislation enacted for CIRI's benefit (Sec. 12 of P.L. 94-204) to settle conflicting claims and further conveyance of CIRI's outstanding selection claims in the Cook Inlet area.

8. "Settlement Name" (continued)

°1979 Memorandum of Understanding (MOU) - Agreement between the State, CIRI, Seldovia Native Association, Inc. (SNA) and Kenai Peninsula Borough for partial settlement of pending court litigation and administrative appeals affecting the parties respective land claims as a result of ANCSA and state law. A portion of this MOU identifies specific "surface" and "subsurface" acreage on the Kenai Peninsula to be conveyed to CIRI (see also "T&C" Appendix C).

°Seldovia Exchange (Phases I and III) - Partial implementation of 1979 MOU whereby the state and the Seldovia Native Association (SNA) agreed to a full exchange of "surface" estate interim conveyed or selected by SNA, located within the boundary of legislatively designated Kachemak Bay State Park.

°Lake Clark Trade Out Agreement - Conveyance of certain lands to ANCSA Native (village) corporations in lieu of potential litigation by virtue of Native selection in the Lake Clark area. CIRI, as the regional corporation, obtained "subsurface" rights under the village conveyances.

°Salamatof Agreement - Outgrowth of Lake Clark Trade Out action for Salamatof. The state intervened in the original litigation to protect its interests in Salamatof's outstanding mental health selections in the Lake Clark area which the state felt were not valid ANCSA selections (Tyonek is the only Native village remaining).

°University Settlement - In April of 1979 the University of Alaska filed litigation against the state alleging the state had breached its trust obligations with regard to the university grant lands. In March, 1982 the state and the University entered an out-of-court settlement agreement. The settlement agreement provided for the state to "convey title in fee to certain university grant lands and certain other state lands to the University ...." Eleven of the "other state lands" parcels contained lands which had been granted to the state under the Mental Health Enabling Act.

9. "Settlement Date" - shows the effective date of the settlement.

10. "Conveyance Date" - shows the date the land was actually conveyed under the terms of the settlement

11. "Grantee" - shows the party to whom the land was conveyed and if applicable, the ultimate beneficiary.

12. "Appraised Value" - shows the appraised value in those few instances when appraisals were done.

13. "Comments" - show other information regarding the conveyance such as cross references, known facilities, which estates were conveyed.

SUMMARY

Settlement Name	Acreage Conveyed	Recipient	Value
Terms and Conditions	29,394.26	CIRI	Unknown
Lake Clark Trade Out	2,242.22 437.24	**Chickaloon **Knik	Unknown
Salamatof Agreement	964.14	**Salamatof	Unknown
1979 MOU	1,469.84	CIRI	Unknown
1983 MOU (Phase I Seldovia Land Exchange)	1,098.11	Seldovia	$1,591,000*
1985 Final Exchange (Phase III - Seldovia)	670	Seldovia	$899,500*
University Settlement	2,993.37	U of A	$2,993,300
TOTAL	39,269.18		$5,484,300

*Other lands were received for these lands, however, the lands received by exchange are within Kachemak Bay State Park. Because the mental health lands conveyed by exchange are part of pools containing other types of state lands, the lands received for mental health lands cannot be readily identified. The conveyance to Seldovia included land estate only for the mental health lands. The mineral interests were retained by the state provision of the 1979 MOU requirement that conveyance of these mineral interests be mutually agreed to between the state and CIRI.

**CIRI received subsurface for these lands.

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
TIMBER SALES

The following report identifies all timber sales (including firewood, sawlogs and houselog sales) on mental health lands. Timber sales were identified from state status plats, status plat pending actions list, historical indices, additional information was obtained from the Division of Forestry's regional and central offices. This report includes all sales of timber on mental health lands regardless of the vehicle used to execute that sale (e.g. use permit or sale contract).

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those timber sales which lie within more than one township, complete information is listed in the initial entry. Additional entries contain only the meridian, township, range and section, case number, mental health number, status and a cross reference to the original township in the "Additional Legal" column.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) containing mental health land within the case.

3. "Additional Legal" - further defines the area in which mental health land is found (e.g. lot, block, tract, and/or U.S. survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as noted above.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

5. "Case Identifier" - is the Alaska Division of Lands (ADL) case file number (numeric only), or regional office case number (alpha/numeric) assigned to the case.

6. "Status" - shows the status of the case as of October 4, 1985. The status codes used in this report are active or closed .

7. "Total Acres" - the total number of acres of state land encumbered by this case.

8. "MH Acres" - shows the mental health acreage within the case.

9. "% MH Acres" - the percentage of the total case area made up of mental health lands (decimal figures were rounded to the nearest whole number).

10. "Appraised Value" - the appraised value of the timber resource. Usually timber sales larger than the 50 thousand board feet (MBF) are sold by competitive auction. Sale areas with larger volumes showing no appraisals are usually for personal use firewood areas for which no appraisal was done and the price is based on a fee schedule. In some instances, appraisals were believed to have been done, but we were unable to locate them.

11. "Penalty Income" - is income obtained through forfeiture of a performance bond because the purchaser failed to execute the contract, failed to perform, or damaged the land.

12. "Total MH Income" - is the total amount of income received that is attributable only to mental health land.

13-15. Refer to the volume of timber removed. These are reported in the following standards of measurement:
"Linear Feet" (houselogs, fence posts, cess pool logs) - under this standard, logs are measured in length.
"Cords" (firewood) - a cord is 128 cubic feet as arranged in a pile eight feet long, four feet high, and four feet wide.
"MBF" or thousand board feet (sawlogs, pulplogs) - a board foot is one foot square and one inch thick.

16. "Issue Date" - is the date the contract was issued or the area was opened for cutting.

17. "Closure Date" - is the date that the contract expired, was relinquished or terminated, or the area was closed to cutting.

18. "Comments" - notations and remarks regarding the sale.

The following timber sales which are included in this report are located within legislative designations: Tanana State Forest - ADL 408592, ADL 407148; Haines State Forest - ADL 100861, SE 420, PUP Church, PUP Pahl, PUP Harrington, PUP Ouderkirk, PUP Gilliam, PUP Scott, PUP Charrier, PUP Clayton, PUP Podskiki, PUP Scott, PUP Taverty, PUP Olerud, PUP Preserve #1, PUP Elserty. Timber sale ADL #60524 is partly located within Trading Bay State Game Refuge.

Summary Timber Sales

	Linear Feet	Cords	M B F	Acres	Income
Active	1,800	1,778.72	492,778.28	21,733.5	4,277,720.77
Closed	140,913	3,152.13	5,034.13	6,139.43	103,933.40
Total	142,713	4,930.85	497,812.49	27,872.93	4,381,704.17

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
USE PERMITS

The following report identifies all use permits (excluding those listed under material sales, timber sales, or rights-of-way) located on mental health lands between July 19, 1978 and October 4, 1985 and shown on state status plats. Permits are authorizations for the temporary use of state land or resources, are revocable, and convey no interest in the land. Permits issued for one year or less are not depicted on state status plats and are not part of this report (excepting one LUP: ADL 402552).

The initial data for this report was obtained from the state status plats and historical indices. Additional information was obtained from department casefiles. This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those permits which lie within more than one township, complete information is listed in the initial township entry. Additional entries contain only the township and range, ADL number, and cross reference to the original entry.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) of mental health lands within the case.

3. "Additional Legal" - further defines the area in which mental health land may be found (e.g. lot, block, tract, and/or U.S. Survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as discussed above.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

5. "ADL" - is the Alaska Division of Lands case file number assigned to the use permit.

6. "Subtype" - various (sub)types of use permits are included in this report:
   - "LUP" (Land Use Permit) - is a permit issued for the temporary surface use of state land for a period not to exceed one year.
   - "SLUP" (Special Land Use Permit) - is a permit issued for temporary surface use of state land for a period not to exceed five years.
   - "PER UP" (Personal Use Cabin Permit) - is a permit issued for the use of an existing cabin under 11 AAC 65.010-.900. Since these permits are issued for use of a site, no acreage is listed on the permit. Therefore, no acreage is shown on this report.

7. "Status" - the status codes used for these cases are shown below.
   active - lands currently under permit.
   closed - permit has expired.
   transferred - lands and case transferred to the Cook Inlet Region, Inc., the Municipality of Anchorage, or the University of Alaska.

8. "Total Acres" - shows the total amount of state land in this permit.

9. "MH Acres" - the acreage listed in this column for active cases is the mental health permit acreage as of October 4, 1985. Acreage figures for closed or transferred cases reflect the total mental health acreage as of the date of closure or transfer.

10. "% MH Acres" - shows the percentage of the total case area made up of mental health lands (decimal figures were rounded to the nearest whole numbers).

11. "Total MH Income" - shows proceeds attributable to the mental health acreage.

12. "Issue Date" - shows the date the permit was issued.

13. "Closure Date" - shows the date the permit terminated, expired or was relinquished for transferred cases. For open cases this reflects the date of transfer or the end of the permit term.

14. "Holder" - shows the holder of the permit. Acronyms used in this column are as follows:
   ADF&G = Alaska Department of Fish and Game
   DOT/PF = Alaska Department of Transportation and Public Facilities
   FAA = Federal Aviation Administration
   UAF = University of Alaska, Fairbanks

15. "Comments" - gives information regarding the use of the permit; may show additional holders of interest in the permit and other information.

PERMIT SUMMARY
(SLUP/LUP Only)

	# of Cases	MH Acres	MH Income
Active	4	287.43	-0-
Closed	13	1422.37	3564.00
Transferred	4	58.07	651.00
Total	21	1767.87	4215.00

There are eleven "personal use cabin permits" in this report. None show acreage; all have a status of active.

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
MATERIAL SALES

This report describes all material sales issued for the removal of material from mental health lands. These sales were identified from state status plats, status plat pending actions list, historical indices and by the retained lands sections of the Division of Land and Water Management's regional offices.

For audit purposes any type of action for the removal of material (e.g. gravel) from mental health lands are considered "material sales" regardless of the type of authorization issued (e.g. personal use permit [PUP], state land use permit [SLUP], free use permit [FUP] or material sale contract).

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those timber sales which lie within more than one township, complete information is listed in the initial entry. Additional entries contain only the meridian, township, range and section, case number, mental health number, status and a cross reference to the original township in the "Additional Legal" colum.

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) of mental health lands within the case.

3. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

4. "Case Identifier" - is the Alaska Division of Lands (ADL) case file number (numeric only), regional office case number (alpha/numeric), or federal BLM case number (alpha numeric beginning with "A", "AA", "F" or "FF") assigned to the case.

5. "Status" - shows the status of the case as of October 4, 1985. The status codes used in this report are active or closed .

6. "Total Acres" - shows the total amount of state land within this case.

7. "MH Acres" - shows the mental health acreage within the case.

8. "% MH Acres" - shows the percentage of the total case area which is made up of mental health lands (decimal figures were rounded to the nearest whole number).

9. "Appraised Value" - shows appraised value of material in cases where an appraisal was made. Other sales were made from a fee schedule.

10. "MH Penalty Income" - shows monies earned from the forfeiture of deposits resulting from the contractors failure to comply with the terms of the contract.

11. *"Total MH Income" - shows proceeds attributable to the mental health acreage. Final accounting figures are lacking on few material sales. These figures have been solicited.

12. *"MH Volume" - describes cubic yards of material attributable to the mental health acreage.

13. "Issue Date" - shows the date that the material sale contract was issued.

14. *"Closure Date" - shows the date of closure or future expiration of a material sale contract (cases issued to the Department of Transportation and Public Facilities [DOT/PF] for an indefinite period of time have no closure date).

15. "Holder" - person or agency holding the material sale contract.

16. "Comments" - provides additional information regarding the material sale including the type of authorizations.

*Closed cases showing no volume or income reflect contracts which were issued but had no materials removed.

The following material sales (issued as free use permits to DOT/PF) are situated within a legislative designation in Chena River State Recreation Area: ADL's #34129, 34131, 54484, 54486, 54503, 54485

MATERIAL SALES SUMMARY CHART

Meridian		# of Sales	Volume	Income
Fairbanks Meridian	Sales with no Income	22	290,070.0	0
	Sales with Income	8	341,805.0	61,279.0
Seward Meridian	Sales with no Income	6	138,500.0	0
	Sales with Income	2	32,596.76	3,372.12
Copper River Meridian	Sales with no Income	8	5,906.0	0
	Sales with Income	23	466,334.3	324,753.C
Subtotals	Sales with no Income	36	434,476.0	0
	Sales with Income	33	840,736.06	389,404.12
Total		69	1,275,212.06	389,404.12

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
COAL PROSPECTING PERMITS

This report is part of the Department of Natural Resources' inventory of mental health lands which was produced following the Supreme Court decision of October 4, 1985 (Weiss v. Alaska) concerning mental health trust lands. It identifies those coal prospecting permits issued under AS 38.05.150(c) which were in effect between July 19, 1978 and October 4, 1985 located on land acquired under the Mental Health Enabling Act. This data was obtained from the Division of Mining's case files. As can be seen from the report, all of the coal propsecting permits are closed.

These permits were issued for a two year period (with renewal options), and granted the holder the exclusive right to prospect for coal. If commercial quantities of coal are found, and a mining plan submitted, the holder is also entitled to a coal (extraction) lease. Except for an application fee, no compensation is received from these permits.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).
2. "Section(s)" - lists the section(s) of mental health lands within the case.
3. "MH #" - show the case number assigned by the state to selections made under the Mental Health Enabling Act.
4. "ADL" - is the Alaska Division of Lands case file number.
5. "Status" - shows the status of the case as of October 4, 1985 (closed).
6. "Total Acres" - shows the total acreage of state land within the permit.
7. "MH Acres" - shows the acreage acquired under the Mental Health Enabling Act contained in the permit.
8. "% MH Acres" - gives the percentage of the total acreage of the permit acquired under the Mental Health Enabling Act.
9. "Issue Date" - gives the date the permit was issued.
10. "Closure Date" - shows the date the permit was closed.

Summary: Number of Permits = 5 Number of Acres Under Permit = 10,319.99

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
COAL LEASES

This report is part of the Department of Natural Resources' inventory of mental health lands which was produced following the Supreme Court decision of October 4, 1985 (Weiss v. Alaska) concerning mental health trust lands. It identifies those coal leases located on mental health lands which were in effect between July 19, 1978 and October 4, 1985. Coal leases are issued for the "privilege of mining or extracting the coal in the land covered by the lease" under AS 38.05.150(d). Lease conditions are set in statute (AS 38.05.150) and regulation (11 AAC 85). The initial data for this report was obtained from state status plats and historical indices. Additional information was obtained through a review of case files.

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those coal leases which lie within more than one township, complete information is listed in the initial entry. Additional entries contain only the meridian, township, range and section, case number, mental health number, status and a cross reference to the original township in the "Additional Legal" column.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) of mental health land within the case.

3. "Additional Legal" - further defines the area that mental health land in the case may be found (e.g. lot, block, tract, and/or U.S. survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as noted above.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act. One case, ADL 59502, falls within two such cases, MH-58 and MH-71.

5. "ADL" - is the Alaska Division of Lands case file number assigned to the case.

6. "Status" - shows the status of the case as of October 4, 1985.
   active - lease was in effect of October 4, 1985 (some of these leases may now be closed).
   closed - lease term expired prior to October 4, 1985.

7. "Total Acres" - the total number of acres of state land encumbered by this case.

8. "MH Acres" - shows the mental health acreage within the case.

9. "% MH Acres" - the percentage of the total case area made up of mental health lands (decimal figures were rounded to the nearest whole number).

10. "Rental Income" - shows rental income received that is attributable to mental health land (rental income was determined using a pro-rata formula and was calculated for the period of July 19, 1978 to October 4, 1985). The formula for rental income is set in AS 38.05.150 and 11 AAC 85.235.

11. "Royalty Income" - shows revenue (royalties) gained from production. Royalties are based on the volume produced from the mine.

12. "Bonus Bid Income" - (included only if received after July 19, 1978) - these bids are the method by which a lessee is determined.

13. "Total Income" - rental income, bonus bid, and royalty income attributable to mental health land.

14. "Issue Date" - shows the date that the coal lease was issued. Some leases were transferred from the federal government and will show issue dates prior to statehood.

15. "Closure Date" - shows the date of closure or the future expiration of a coal lease. If no date is shown in this column the lease was let for an indefinite period conditioned on "diligent development and continued operation of the mine" (AS 38.05.150(e)).

	# of Cases	Acreage	Income 1978-1985
Issued Prior to July 19, 1978	32	49,750.5	717,613.0
Issued July 19, 1978 - October 4, 1985	4	1,812.72	6,665.0
Total	36	54,563.22	724,278.0

Mental Health Lands Inventory.
July 19, 1978 - October 4, 1985
MINING CLAIMS

The following report identifies all state mining claims in effect on mental health lands between July 19, 1978 and October 4, 1985. The initial data was obtained from state status plats, historical indices, and status plat pending actions lists. Further information was obtained from the Land Administration (computer) System or case files located within the Division of Mining and Geological and Geophysical Survey's Anchorage office.

Mining claims are acquired through the acts of discovery, location and filing. That is, a claimant must have discovered a "locatable" mineral such as gold, silver, copper, etc. in sufficient quantities that a prudent person would pursue development; must have set posts with a copy of a Notice of Location in the northeast corner and brushed and flagged the boundaries of the claim; and, must have filed a location certificate with the local recorder's office within 90 days from the date of posting the original notice. All state land is open to mineral entry unless closed by a mineral closing order, court order, or regulation. Claims are maintained through the performance of "annual labor": Holders of mining claims are required by state statute (AS 38.07.210) to perform a minimum $200 annual labor per claim in order to maintain the claim's validity and to file an affidavit attesting to the performance of that labor at the end of the assessment year.

The assessment year for annual labor begins at noon on September 1st and runs to noon on September 1st of the following year. The first assessment year begins on the first of September after a claim is filed. For example, the first assessment year for a claim filed on September 5, 1983 began on noon September 1, 1984. The first affidavit of annual labor was not due until the close of the 1985 assessment year. An affidavit of annual labor must be filed within 90 days following the end of the assessment year. Failure to do so constitutes abandonment of the claim under AS 38.05.265. For this report all mining claims which are closed by action of law for failure to file an affidavit of annual labor at the close of the 90 day period, show a closure date of September 1 (the end of the assessment year) rather than the 91st day (usually December 1 or 2).

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).
2. "Section(s)" - lists the section(s) of mental health land within the case.
3. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.
4. "ADL" - is the Alaska Division of Lands case file number assigned to the mining claim.

5. "Status" - shows the status of the case as of October 4, 1985. The status codes used in this report are defined as:
   active: Mining Claim is in effect
   closed: Mining Claim is relinquished, abandoned or closed for failure to properly file an affidavit of annual labor or location certificate.

6. "Total Acres" - shows the total case acreage. Note that the following mining claims fall into more than one township with acreage (and other) information listed only in the lowest numbered township: ADL 309959, and ADL 309960, 9 & 10S, 5W, F.M.; ADL 352792, and ADL 32793, 9S, 5 & 6W, F.M. No cross reference statement is provided in the report.

7. "MH Acres" - shows the case acreage which was acquired under the Mental Health Enabling Act.

8. "% MH Acres" - shows the percent of the total case file acreage which is mental health land (decimal figures were rounded to the nearest whole number).

   Since the state makes no attempt to adjudicate mining claim conflicts, many claims overlap. This report lists the full acreage for each mining claim even though it may overlap with other claims. This results in a total acreage figure greater than the amount of actual acreage covered by these claims.

9. "Posting Date" - shows the date that the Notice of Location was posted in the northeast corner of the claim (mining rights begin).

10. "Closure Date" - shows the date that the claim was closed, relinquished or abandoned.

11. "Annual Labor Years" - shows the number of years that affidavits of annual labor were due, filed by the claimant and accepted by the department.

12. "Holder" - shows the name of the mining claimant or holder of the claim as of October 4, 1985.

The state does not receive revenues from mining claims except through the mining license tax (AS 43.65.010-050). Therefore, no monetary receipts are shown.

The following (40 acre) mining claims are located within the Haines State Forest which may have been removed from the trust by its legislative designation.

ADL #	316273 (1980)	311033 (1970)	311031 (1970)	338934 (1980)
	311030 (1970)	338893 (1980)	311032 (1970)	359581 (1983)

However, the majority of these claims were filed prior to the establishment of the Haines State Forest in 1982 (AS 41.15.305).

SUMMARY CHART

	Posted On or Prior To July 19, 1978*		Posted July 19, 1978 Thru October 4, 1985	
	Number	Acres	Number	Acres
Number of Active Claims in Fairbanks Meridian	90	2,834.48	220	7,450.34
Number of Active Claims in Seward Meridian	0	0	962	38,440.00
Number of Active Claims in Copper River Meridian	3	48.00	142	4,570.07
TOTAL	93	2,882.48	1,324	50,460.41
Number of Closed Claims in Fairbanks Meridian	4	75.00	109	3,741.00
Number of Closed Claims in Seward Meridian	14	80.00	17	645.00
Number of Closed Claims in Copper River Meridian	0	0	133	3,941.82
TOTAL	18	155.00	259	8,327.82
Total Claims in Fairbanks Meridian	94	2,909.48	329	11,191.34
Total Claims in Seward Meridian	14	80.00	979	39,085.00
Total Claims in Copper River Meridian	3	48.00	275	8,511.89
TOTAL	111	3,037.48	1,583	58,788.23

*This report shows only those state mining claims which were still in effect on July 19, 1978. State claims which were posted and were closed prior to that time will not appear on this report.

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
OIL AND GAS LEASES

This report is part of the Department of Natural Resources' inventory of mental health lands which was produced following the Supreme Court decision of October 4, 1985 (Weiss v. Alaska) concerning mental health trust lands. It identifies those oil and gas leases located on mental health lands which were in effect between July 19, 1978 and October 4, 1985. The initial data was obtained from state status plats and historical indices. Additional information was obtained in a review of case files located within the Division of Oil and Gas.

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those oil and gas leases which lie within more than one township, complete information is listed in the initial township entry. Additional entries contain only the township and range, ADL number, and cross reference to the original entry.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) of mental health lands within the case.

3. "Additional Legal" - Further defines the area that mental health land may be found (e.g. lot, block, tract, and/or U.S. Survey number). Detailed legal descriptions may be found in DNR case files. This column also contains cross reference notations as discussed above.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

5. "Additional MH#" - shows the case number assigned by the state to selections made under the Mental Health Enabling act.. This column is only used if there is more than one selection within the oil and gas lease area.

6. "ADL" - is the Alaska Division of Lands case file number assigned to the lease.

7. "Cross Reference" - Some oil and gas leases have been segregated (separated) into more than one lease. These segregations were usually done to facilitate the transfer of a portion of a lease. The lower ADL number reflects the original case. The cross reference number indicates the associated casefile.

8. "Status" - the status codes used for these cases are shown below.
   active: the lease was in effect as of October 4, 1985. Some of these leases may now be closed.
   closed: the lease term expired prior to October 4, 1985.
   transferred: the lease was transferred with the mineral estate to Cook Inlet Region, Inc. (CIRI) under various agreements or settlements and authority of PL-94-204 (Terms and Conditions).

9. "Total Acres" - shows the total amount of state land in this lease.

10. "MH Acres" - the acreage listed in this column for active cases is the mental health lease acreage as of October 4, 1985. Acreage figures for closed or transferred cases reflects the total mental health acreage as of the date of closure or transfer.

11. "% MH Acres" - shows the percentage of the total case area made up of mental health lands (decimal figures were rounded to the nearest whole numbers).

12. "Rental Income" - shows rental income received that is attributable to mental health land (rental income was determined using a pro-rata formula and was calculated for the period of July 19, 1978 to October 4, 1985). The formula for rental income is set in AS 38.05.180-(n).

13. "Bonus Bid Income" (included only if received on or after July 20, 1978) - "Bonus" bids are established by AS 38.05.180-(f), and are the method by which a lessee is determined.

14. "Total Income" - shows the rental income and bonus bid attributable to mental health land. Note that no mental health lands are currently within royalty producing units, Therefore, no "Royalty Income" column is shown.

15. "Issue Date" - shows the date the lease was issued (for cases created by segregation this date reflects the date of segregation).

16. "Closure Date" - shows the date the lease terminated, expired, or was relinquished, (for transferred cases, this reflects the date of transfer).

17. "Lease Sale Number" - shows the number assigned to the formal sale offering by the state. ("NC" in the column denotes a non-competitive over the counter sale.)

MENTAL HEALTH LAND
OIL AND GAS LEASE SUMMARY CHART

	# Of Cases	MH Acres	MH Income
ACTIVE	56	107,882.08	1,607,008.0
TRANSFERRED	9	4,552.59	7,585.0
CLOSED	29	19,469.73	24,243.0
TOTAL	94	131,904.40	1,638,836.0

Total Rental Income: 690,326.0
Total Bonus Income: 948,603.0
Total Income: 1,638,836.0

Mental Health Lands Inventory
July 19, 1978 - October 4, 1985
INTERAGENCY LAND MANAGEMENT ASSIGNMENTS

The following report identifies all Interagency Land Management Assignments (ILMA's) on state mental health land in effect between the July 19, 1978 legislative redesignation and the October 4, 1985 Supreme Court decision on Weiss v. Alaska. An ILMA is used to assign management authority of state lands from the Department of Natural Resources to other state agencies. Only the Department of Natural Resources has general management authority over state land (under Title 38 of the Alaska statutes). These assignments are therefore made to ensure that other agencies have proper management authority for their needs, and are often prompted by the need for clear authority in order to obtain funding. Generally, these assignments involve improvements, but may occassionally be made to allow specific management practices (usually requiring the expenditure of state or federal funds) to be intensely applied. ILMA's shown in this report have been issued for public projects which range in scope from a small access road to a major correctional facility.

Earlier, these assignments were called Interagency Land Management Transfers (ILMT's) and were issued in perpetuity conditioned on use for its original purpose. Assignments are now made for a definite term, but are still conditioned on use. Whether issued as an ILMT or ILMA, all such cases are identified as ILMA's in this report.

These cases were identified from state status plats historical and indices. Additional information was gathered from a mental health land "Resume" created by the department in the spring of 1984. This information was verified and augment from case files by the division's regional offices. Agencies were also requested to provide information, such as the description and value of improvements, however, not all agencies responded.

This report is organized by location according to legal description. A cross reference report in case number sequence is also provided. For those ILMA's which lie within more than one township, complete information is listed in the initial entry. Additional entries contain only the meridian, township, range and section, case number, mental health number, status and a cross reference to the original township in the "Additional Legal" column.

The columns of the report show the following information:

1. "Township" - is the basic legal description (meridian, township, range).

2. "Section(s)" - lists the section(s) containing mental health lands within the case.

3. "Additional Legal" - further defines the area in which mental health land is found (e.g. lot, block, tract, and/or U.S. survey number). Detailed legal descriptions may be found in DNR case files.

4. "MH #" - shows the case number assigned by the state to selections made under the Mental Health Enabling Act.

5. "Add MH #" - shows the additional mental health selection file number in instances where more than one selection was filed for the lands encumbered by the case.

6. "ADL" - is the Alaska Division of Lands casefile number assigned to the case.

7. "Status" - shows the status of the case as of October 4, 1985. The status codes used in this report are defined as:
   active: ILMA is in effect (opened).
   closed: ILMA is expired or relinquished.

8. "Total Acres" - shows the total acreage of the case.

9. "MH Acres" - shows the acreage which was acquired under the Mental Health Enabling Act.

10. "% MH Acres" - shows the percent of the total casefile acreage which is mental health (decimal figures were rounded to the nearest whole number).

11. "Issue Date" - shows the date ILMA was issued.

12. "Closure Date" - is the date of closure or future expiration of ILMA (cases issued for an indefinite period of time show no closure date).

13 "Holder" - shows the agency to whom the ILMA was issued. Abbreviations are used as follows:

ADF&G - Alaska Department of Fish and Game
APA - Alaska Power Authority
DH&SS- Department of Health and Social Services
DMVA - Department of Military and Veterans Affairs
DOA - Department of Administration
DOC - Department of Corrections
DOT/PF - Department of Transportation and Public Facilities
Forestry - Department of Natural Resources, Division of Forestry
Parks - Department of Natural Resources, Division of Parks
U of A - University of Alaska

14 "Purpose" - shows the use for which the ILMA was issued.

15. "Improvements" - lists physical improvements constructed pursuant to the ILMA.

16. "Improvement value" - shows the dollar value of existing state improvements (these figures were obtained from the holding agency).

17. "Comments" - provides additional information regarding the ILMA.

ILMA SUMMARY CHARTS

	OPENED		CLOSED	
Holder	# of Cases	MH Acres	# of Cases	MH Acres
ADF&G	3	52.33	1	1.00
AG	0		1	103.16
APA	1	3.65	0	
DH&SS	2	03.00	0	
DMVA	2	23.70	0	
DOA	2	13.01	0	
DOC	1	67.78	0	
DOT/PF	26	3,058.34	4	120.61
Forestry	1	19.66	0	
Parks	7	705.80	2	198.89
U of A	0		1	21.71
TOTAL	45	4,027.27		445.37

	OPENED		CLOSED	
Use	# of Cases	MH Acres	# of Cases	MH Acres
Airport	5	2,663.74	0	
Boat Launch	2	4.42	2	3.95
Institutions	2	147.78	0	
Materials	4	180.23	3	117.66
Rec Site (way side)	5	681.42	1	197.84
Road/Bridge	11	174.57	0	
Schools	2	2.10	1	21.71
Support Facilities	5	96.28	0	
Miscellaneous	9	76.73	2	104.21
TOTAL	45	4,027.27	9	445.37

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