HB 201

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 5, 1993

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3/29/93

The RESOURCES Committee considered: HB 201

HOUSE BILL NO. 201 MENTAL HEALTH TRUST AMENDMENTS

"An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 201 (Res)

[ ] the same title
[X] a new title

[ ] have attached amendments(s)

[✓] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

✓ Attaches a position statement by Rep. James

~~ADOPTS~~: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

1 [✓] fiscal impact DNR

2 [✓] zero fiscal note Law & Fish & Game

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓			✓	
	✓			✓	
	✓			✓	
				✓	

CHAIRMAN'S SIGNATURE

8-LS0728\K
Chenoweth
3/27/93

CS FOR HOUSE BILL NO. 201(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; relating to survey requirements applicable to the land to be conveyed by the state to the Alaska Mental Health Trust Authority; relating to the jurisdiction of courts in the resolution of disputes arising under the reconstitution of the corpus of the mental health trust; and providing for an effective date."

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

* Section 1. AS 22.10.020 is amended by adding a new subsection to read:

(j) The superior court is the court of original jurisdiction to hear and determine any dispute arising under AS 37.14.036(c) - (e).

* Sec. 2. AS 37.14.009(a), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(a) <u>Except for land and minerals managed under AS 38.05.802 - 38.05.809,</u>

the [THE] Alaska Mental Health Trust Authority

(1) shall

(A) manage the assets of the trust in a fiduciary manner to fulfill the purposes of the trust; or

(B) contract for management of the assets of the trust under (4) or (5) of this subsection;

(2) may, consistent with (1) of this subsection and AS 47.30.036(1), sell, lease, exchange, or otherwise dispose of the land or minerals in the trust;

(3) may, consistent with (1) of this subsection, use land that is an asset of the trust directly for the integrated comprehensive mental health program;

(4) shall

(A) under AS 47.30.031, adopt regulations relating to management and disposal of the land and minerals of the trust; and

(B) [MAY] contract with the Department of Natural Resources to manage and dispose of the land and minerals [ASSETS] of the trust, unless the authority determines that the best interests of trust beneficiaries would be served by other arrangements; if, under this subparagraph, the Department of Natural Resources manages and disposes of the land and minerals of the trust, it shall do so

(i) in accordance with the regulations adopted by the Alaska Mental Health Trust Authority under (A) of this paragraph;

(ii) in a fiduciary manner to fulfill the purposes of the trust; and

(5) shall contract with the Alaska Permanent Fund Corporation for management of the trust's cash assets, unless the authority finds that the best interests of trust beneficiaries would be served by contracting with another entity.

* Sec. 3. AS 37.14.009(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(b) In exercising its power under (a)(1) - (3) [(a)(2) OR (3)] of this section, the authority, or the Department of Natural Resources to the extent it is managing or disposing of the land or minerals of the trust under (a)(4) of this section, is not required to comply with AS 38.04 or AS 38.05, except that the authority and the

department shall

(1) comply with AS 38.05.285; however, the authority and the department are excused from complying with the requirements of AS 38.05.285 if disposal or use of state land in conformity with that section would conflict with a power, duty, or responsibility of the trustee set out in AS 37.14.007 or 37.14.009;

(2) give public notice in the manner provided under AS 38.05.945(b) and (c)

(A) of a preliminary decision to dispose of trust land and consider any written comments submitted within 30 days of the giving of the public notice before making a final decision; and

(B) of a final decision to dispose of trust land [, BUT IS NOT OTHERWISE BOUND BY THE PROVISIONS OF AS 38.04 OR AS 38.05].

* Sec. 4. AS 37.14.009, added by sec. 10, ch. 66, SLA 1991, is amended by adding a new subsection to read:

(c) In exercising its power under (a)(1) - (4) and (b) of this section with respect to land or minerals where there is a protected interest under AS 38.05.802, the authority or, to the extent that it is managing or disposing of the land or minerals of the trust under (a)(4) of this section, the Department of Natural Resources shall comply with all statutes, regulations, and the common law applicable to conflicts between different owners of the land and mineral interests in the same land.

* Sec. 5. AS 37.14.036(c), added by sec. 11, ch. 66, SLA 1991, is repealed and reenacted to read:

(c) As compensation (1) for the land and minerals, or interests in them, that constituted the trust established by the enabling Act and that are not reconstituted as part of the mental health trust corpus established under AS 38.05.800, and (2) for any reduction in value to the trust resulting from the management or disposal of land or minerals under AS 38.05.802, the state shall make an annual payment of three percent of the unrestricted general fund revenue of the state during each fiscal year. The commissioner of revenue shall annually allocate that amount from the general fund to the mental health trust income account established in (a) of this section. In this subsection, "unrestricted general fund revenue of the state" means all the categories of

accounting for money accruing to the state general fund that, under the statewide accounting system as established on the effective date of ch. 66, SLA 1991, were identified as revenue that was not restricted by law to a specific use.

* Sec. 6. AS 37.14.036, added by sec. 11, ch. 66, SLA 1991, is amended by adding new subsections to read:

(d) To secure the allocation of amounts required under (c) of this section, except for land and minerals identified in AS 38.05.800(a)(1), land and minerals granted to the state under the enabling Act, and that are, on the effective date of ch. 66, SLA 1991, designated by law as a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range, are pledged as security to the mental health trust. Title to this land and minerals remains in the state and

(1) notwithstanding the grant of the land and minerals to the state under the enabling Act or the pledge of the land and minerals as security, the state may continue to conduct all activities on the land and minerals that are authorized by law; and

(2) so long as a default does not exist under (c) of this section, income from that land and minerals shall be deposited in the general fund and considered unrestricted general funds of the state.

(e) Upon default, the foreclosure of the land and minerals pledged as security under (d) of this section, including the parcels to be foreclosed and the manner of foreclosure, shall be determined by the superior court.

* Sec. 7. AS 38.04.045(b) is amended to read:

(b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent for state land, an official cadastral survey shall be accomplished, unless a comparable, approved survey exists that has been conducted by the federal Bureau of Land Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08, or AS 38.09, an official rectangular survey grid shall be established. The rectangular survey section corner positions shall be monumented and shown on a cadastral survey

plat approved by the state. For those areas where the state may wish to convey surface estate outside of an official rectangular survey grid, the commissioner may waive monumentation of individual section corner positions and substitute an official control survey with control points being monumented and shown on control survey plats approved by the state. The commissioner may not issue more than one conveyance for each section within a township outside of an official rectangular survey grid. No portion of land to be conveyed may be located more than two miles from an official survey control monument except that the commissioner may waive this requirement on a determination that a single purpose use does not justify the requirement if the existing status of the land is known with reasonable certainty. The lots and tracts in state subdivisions shall be monumented and the cadastral survey and plats for the subdivision shall be approved by the state. Where land is located within a municipality with planning, platting, and zoning powers, plats for state subdivisions shall comply with local ordinances and regulations in the same manner and to the same extent as plats for subdivisions by other landowners. State subdivisions shall be filed and recorded in the district recorder's office. The requirements of this section do not apply to **land that is to be conveyed to the Alaska Mental Health Trust Authority established by AS 47.30.011 or to** land made available through a cabin permit system, for material sales, for short-term leases, for parcels adjoining a surveyed right-of-way, or for land that has been open to random staking under the remote parcel program or homestead program in the past; however, for short-term leases, the lessee must comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance. In this subsection, "a single purpose use" includes a communication site, an aid to navigation, and a park site.

* **Sec. 8.** AS 38.05.800 is repealed and reenacted to read:

Sec. 38.05.800. RECONSTITUTION OF MENTAL HEALTH TRUST CORPUS. (a) The corpus of the mental health trust includes land and minerals granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that, on the effective date of ch. 66, SLA 1991, have not been conveyed by the state or reserved by law from the public domain. In this subsection,

(1) "conveyed" means that the land or minerals

(A) are subject to a contract for the sale of the land entered into by the state or a municipality of the state;

(B) are subject to a patent or deed executed in favor of a person, a municipality, or the University of Alaska;

(C) are subject to a selection by a municipality under AS 29.65 or under former AS 29.18.190 - 29.18.200 that has been approved by the director before the effective date of ch. 66, SLA 1991;

(D) were purchased by the state with federal, state, or joint federal and state funds in which the related program imposes restrictions on the management or use of the land or minerals purchased;

(E) have been selected by a Native corporation under 43 U.S.C. 1611;

(F) are subject to a claim of allotment under 43 U.S.C. 1634 or is land or minerals for which a certificate of allotment has been issued to a Native under applicable federal law;

(G) have been identified for conveyance as part of an exchange agreement between the state and a Native corporation or between the state and the University of Alaska, but the land or minerals were not, on the effective date of ch. 66, SLA 1991, subject to a patent or deed;

(H) are subject to an interagency land management agreement, interagency land management transfer, management agreement, or management right and the land or minerals are necessary to carry out the purpose of the interagency land management agreement, interagency land management transfer, management agreement, or management right;

(2) "reserved by law from the public domain" means that the land or minerals were, on the effective date of ch. 66, SLA 1991, designated by law as a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range.

(b) For purposes of reconstituting the corpus of the mental health trust, the

land and minerals described in (a)(1) of this section are includable in the trust corpus only if both the land and the minerals meet the requirements of (a)(1) of this section.

* **Sec. 9.** AS 38.05 is amended by adding new sections to read:

Sec. 38.05.802. MANAGEMENT OF EXISTING LAND AND MINERAL INTERESTS IN RECONSTITUTED MENTAL HEALTH TRUST CORPUS. (a) Land and minerals included in the corpus of the mental health trust under AS 38.05.800 are subject to the terms, conditions, and provisions, and all rights related thereto, of a lease, land right convertible to title, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, or other land or mineral interest issued by or acquired from the United States or the state before the effective date of ch. 66, SLA 1991.

(b) Land and minerals included in the corpus of the mental health trust under AS 38.05.800 are subject to a mining claim or mining leasehold location if the claim or location

(1) was acquired on or before the effective date of ch. 66, SLA 1991;

(2) was in compliance with applicable laws and regulations that were in effect on the effective date of ch. 66, SLA 1991; and

(3) continues in compliance with applicable laws and regulations at all times after the effective date of ch. 66, SLA 1991.

(c) The department shall manage an interest in land or minerals that is identified in (a) or (b) of this section as general grant land, subject only to the laws, including regulations and standards, applicable to general grant land of the state and without regard to any law that may be applicable to management of other land or minerals of the trust. However, the proceeds of the management of the land or minerals managed under this section shall be deposited into the mental health trust income account under AS 37.14.036(a)(1).

(d) The department shall manage an interest in land or minerals that is identified in (a) or (b) of this section for only as long as the lease, land right convertible to title, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, mining leasehold, or other land or mineral interest that qualifies the land or minerals for

management under this section continues in effect. When a lease, land right convertible to title, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, mining leasehold, or other land or mineral interest identified in (a) or (b) of this section expires, the land or minerals of the trust that were subject to that interest shall be managed under AS 37.14.009

(e) In the case of land subject to a land right convertible to title issued or obtained before the effective date of ch. 66, SLA 1991, the authority shall join in executing the patent or deed that is issued to consummate the issuance of title upon the conversion of the right. When a patent or deed issues under this paragraph,

(A) the land covered by the patent or deed and the minerals are no longer part of the corpus of the mental health trust; and

(B) the land and minerals are released from the mental health trust established by the enabling Act and from any claim of the authority or of the beneficiaries of the trust.

(f) For purposes of (b) of this section, unless closed by court order or by an order of the department, land and minerals obtained by the state under the enabling Act are considered to have been open to mineral entry.

Sec. 38.05.804. RIGHT OF INTEREST HOLDER TO WAIVE PROVISIONS. A person who holds an interest described in AS 38.05.802(a) or (b) may enter into an agreement with the authority and with the department to waive the provisions of AS 38.05.802(c) and have the interest managed as provided by AS 37.14.009.

Sec. 38.05.809. DEFINITIONS APPLICABLE TO MENTAL HEALTH TRUST LAND. In AS 38.05.800 - 38.05.809,

(1) "authority" means the Alaska Mental Health Trust Authority;

(2) "enabling Act" means the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709;

(3) "land right convertible to title" means a lease, entry program right, or homestead right that includes a right to obtain a patent or deed;

(4) "land use permit" means a permit issued by the state authorizing the use of land;

(5) "lease" means an oil and gas lease, coal lease, mining lease, land lease, and any other surface or mineral lease;

(6) "right-of-way" means

(A) a right-of-way permit or easement; or

(B) a road, utility, or other improvement constructed under an approved land use application, permit, or letter of entry issued by the department and for which a right-of-way permit or easement has not, on the effective date of ch. 66, SLA 1991, been issued;

(7) "trust" has the meaning given in AS 47.30.061.

* Sec. 10. AS 47.30.046(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(a) The board shall annually, not later than September 15, submit to the governor and the Legislative Budget and Audit Committee a budget for the next fiscal year and a proposed plan of implementation based on the integrated comprehensive mental health program plan prepared under AS 47.30.660(a)(1). The budget must include the authority's determination of the amount

(1) recommended for expenditure from the mental health trust income account during the next fiscal year to

(A) meet the administrative expenses of the authority, **including the funding for the Department of Natural Resources to manage and dispose of trust land and minerals under AS 37.14.009 and AS 38.05.809**;

(B) offset the effect of inflation on the value of the trust corpus; and

(C) meet the necessary operating and capital expenses of the integrated comprehensive mental health program;

(2) recommended for expenditure from the general fund, if any, during the next fiscal year to meet the necessary operating and capital expenses of the integrated comprehensive mental health program; and

(3) in the mental health trust income account, if any, that is not reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program that may be transferred into the general fund.

* Sec. 11. AS 47.30.056(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(a) If appropriated by law, the money in the mental health trust income account established in AS 37.14.036 shall be used to

(1) provide an integrated comprehensive mental health program as required by this section;

(2) meet the authority's annual administrative expenses, **including the costs incurred by the Department of Natural Resources in managing and disposing of trust land and minerals under AS 37.14.009 and AS 38.05.802 - 38.05.809**; and

(3) offset the effect of inflation on the corpus of the trust.

* Sec. 12. Section 49, ch. 66, SLA 1991, is amended to read:

Sec. 49. AS 37.14.011, 37.14.021, [AS 38.05.800,] AS 47.30.546, secs. 1, 2, 4, and 5, ch. 132, SLA 1986; and secs. 7 - 10, ch. 48, SLA 1987 are repealed.

* Sec. 13. Sections 54, 55, 56, and 57, ch. 66, SLA 1991, are repealed.

* Sec. 14. SPECIAL MASTER. The superior court may refer the proceedings under AS 22.10.020(j), added by sec. 1 of this Act, to a special master.

* Sec. 15. STATUS OF LAND GRANTED TO THE STATE UNDER THE ALASKA MENTAL HEALTH ENABLING ACT OF 1956 AND NOT INCLUDED WITHIN THE CORPUS OF THE RECONSTITUTED MENTAL HEALTH TRUST. On the effective date of ch. 66, SLA 1991, the land and minerals granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that are not includable within the corpus of the reconstituted mental health trust under AS 38.05.800(a), repealed and reenacted by sec. 8 of this Act, are released from the mental health trust established by that Act and from any claim of the Alaska Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, or the beneficiaries of the trust established by the Alaska Mental Health Enabling Act of 1956.

* Sec. 16. CONVEYANCE OF LAND TO TRUST. On and after the effective date of ch. 66, SLA 1991, after giving public notice in the manner provided under AS 38.05.945(b) and (c), the commissioner of natural resources shall convey by patent without survey to the Alaska Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, title to the land and minerals that are includable within the corpus of the reconstituted mental health trust under

AS 38.05.800(a), repealed and reenacted by sec. 8 of this Act.

* Sec. 17. CONDITIONAL RETROACTIVE APPLICATION. If ch. 66, SLA 1991, takes effect before this Act takes effect, this Act is retroactive to the actual effective date of ch. 66, SLA 1991.

* Sec. 18. This Act does not take effect unless ch. 66, SLA 1991, takes effect.

* Sec. 19. If this Act takes effect, it takes effect on the effective date of ch. 66, SLA 1991.

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-0862

House District 34

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3745

House Of Representatives

3/29/93

POSITION STATEMENT

MENTAL HEALTH TRUST LANDS SETTLEMENT

March 29, 1993

Legislation cannot solve issues covered in a pending lawsuit such as the Mental Health Trust case; legislation can only make law out of a settlement previously agreed upon by 100% of the involved parties or ordered by the court. I do believe that passing legislation such as HB201 (amendment to Chapter 66) may prompt such a settlement.

I am concerned because HB 201 is open-ended. I think it must include a termination date so as to allow future legislators the freedom to act in accordance with circumstances unforeseen at this time; for example, at some stated future time (ten years?) the security of the legislatively designated lands could be released and the percentage paid to the Mental Health Trust could be altered or eliminated. This of course assumes the continuing obligation of the legislature to appropriate funds as required by law for mental health needs.

According to my calculations, using the value of Mental Health Lands as stated in SB493 in 1990, and applying this value in 1991 dollars to lands not transferable back to the Trust at this date, the balance that would be due to the Mental Health Trust is less than the amount paid to date by the state for mental health capital and operating expenses. Thus the State is PAID UP. I recognize, however, that land alone will not pay for mental health needs and the mental health trust authority will need operating expenses to manage and/or dispose of trust properties. Three percent of unrestricted general fund revenues seems a reasonable allocation and approximates the amount currently being expended and does not preclude the legislature's appropriating additional funds if warranted.

Jeannette James

Representative Jeannette James

FISCAL NOTE

STATE OF ALASKA **BILL NO. CSHB201(FIN)**

1994 LEGISLATIVE SESSION

Revision Date: 29-Apr-94 REVISED
Dept Affected: Natural Resources
Title: "An Act amending provisions of ch.66 sla 1991, that relate to reconstitution of the corpus of the mental health trust..."
BRU: Resource Development
Component: Mental Health Trust (NEW)
Sponsor: House Resources
Requestor: House Resources
Component Serial No. NEW

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	239.9	239.9	239.9	239.9	239.9	239.9
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	475.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	728.9	278.9	278.9	278.9	278.9	278.9
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1004)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	450.0					
1005 GF/Program Receipts						
1006 GF/MHTIA		278.9	278.9	278.9	278.9	278.9
1061 CIP Receipts	278.9					
TOTAL	728.9	278.9	278.9	278.9	278.9	278.9

Estimate of any current year (FY94) cost: $ None

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

SEE ATTACHED.

The Department of Natural Resources work activities will focus on the conveyance of original trust land and replacement land, the final recordation of the current encumbrances of conveyable original trust land and replacement state land, and the recordation of the aforementioned conveyable lands to the state's status graphics record.

Prepared by: Ron Swanson, Director Phone : 762-2692
Division: Land Date : 29-Apr-94
Approved by Commissioner:
Harry A. Noah Date: 29-Apr-94
Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB201

Revision Date:
Dept. Affected: DHSS
Title: "An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of ..."
BRU: Admin. Services
Component: AMHB
Sponsor: House Resources Committee
Requestor:
COMPONENT SERIAL NO. #951

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL	38.5	39.5	40.5	41.5	42.5	43.6
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	38.5	39.5	40.5	41.5	42.5	43.6
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	38.5	39.5	40.5	41.5	42.5	43.6
Other						
TOTAL	38.5	39.5	40.5	41.5	42.5	43.6

Estimate of any current year (FY94) cost: $ -0-

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Average travel costs per board member 3500/yr. Fiscal note is calculated on Ch. 66 as passed which would add up to 11 new board members. Inflation after FY 95 is calculated at 2.5%. If amendments, as proposed by the AMHB, pass FY 95 additional cost would be reduced to 10.5, (FY'96=10.8, FY97=11.1, FY98=11.4, FY99=11.7, FY00=12.0).

Prepared by: Deborah Smith, Ex. Director
Phone: 465-3071
Division: Alaska Mental Health Board
Date: 4/22/94

Approved by Commissioner:
Date:
Agency:

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201(RES)

Revision Date: 12/17/93
Title: Mental Health Trust Amendments

Sponsor: House Resources
Requestor: House Resources

Dept. Affected: Fish and Game
BRU: Habitat and Restoration
Component: Habitat and Restoration

COMPONENT SERIAL NO. 0486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Frank Rue
Division: Habitat and Restoration
Approved by Commissioner:
Agency: Alaska Department of Fish and Game

Phone: 465-4105
Date: 12/17/93
Date: 12/17/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. Work Draft CSHB 201
Dated 3/27/93

Revision Date: March 28, 1993
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."
Sponsor: House Resources Committee
Requestor: House Resources Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Phone: 465-3672
Division: Administrative Services/Division
Date: March 28, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: March 28, 1993

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Rev 11/92

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. Work Draft CSHB 201
Dated 3/27/93

ANALYSIS CONTINUATION:

Although the March 27 Work Draft of the Resources Committee substitute for HB 201 may help resolve some of the potential constitutional issues raised in our fiscal note analysis of March 11, 1993, it is still likely that there will be substantial challenges to the bill from both without and within the mental health community. For this reason, we cannot predict either a savings or an increase in costs in the Department of Law's current level of effort involving the mental trust and mental health trust lands.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 201

Revision Date: March 11, 1993
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."
Sponsor: House Resources Committee
Requestor: House Resources Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: March 11, 1993

Richard L. Pegues /FOR/

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: March 11, 1993

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ANALYSIS CONTINUATION:

Enacting HB 201 as a proposed settlement of the mental health trust lands litigation will require the Department of Law to undertake some substantial effort, including:

1. Efforts to obtain court approval of the settlement. The mental health trust lands litigation is a class action lawsuit. Settlement of that lawsuit must comply with Rule 23 of the Alaska Rules of Civil Procedure. The parties may first need to draft a settlement agreement to present to the court (a settlement agreement may address terms not specifically provided for in the bill). The settlement agreement must then be presented to the court for preliminary approval--the court must determine that the settlement is fair, reasonable, and adequate. Following preliminary approval, notice of the settlement must be given to the class (in general, beneficiaries of the mental health land trust) so that they may comment to the court about the settlement. Only after notice may the court approve the settlement and dismiss the litigation.

The time and effort necessary to obtain final approval of a settlement arising from HB 201 is uncertain because it is not possible to predict what challenges may come. However, possible challenges include:

(a) that the constitutional prohibition against dedicated funds [Article IX, Sec. 7, Alaska Constitution] is violated by the provision in Sec. 4 of HB 201 [to be codified as AS 37.14.036(c)] that allocates 3% of the unrestricted general fund revenue during each fiscal year to the mental health income account, coupled with the restriction that future legislatures and governors may appropriate these amounts for other high priority public needs only if the funds are not "reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program" [Sec. 10, Ch. 66, SLA 1991, to be codified in AS 37.14].

(b) that the dedication of 3% of the unrestricted general fund revenue to the mental health income account [Sec. 4, HB 201], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, HB 201], coupled with the restrictions on appropriating amounts from that account under Sec. 10, Ch. 66, SLA 1991 [see Paragraph (a) above] may be challenged as being contrary to the public interest by persons who believe that the legislature and governor should not be restricted from appropriating public funds for other public needs if those needs are of higher priority (e.g. education, public safety, etc.). Different public interest groups will attach different priorities to the public need for different programs.

(c) that the allocation of 3% of the of the state's unrestricted general fund revenue to the mental health income account in perpetuity [Sec. 4, HB 201], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, HB 201], coupled with restrictions on appropriating "trust funds" [Sec. 10, Ch. 66, SLA 1991] is contrary to the public interest because it provides too much compensation to resolve this litigation. This claim was raised by intervenors Alaska Center for the Environment, et al. with respect to allegations that the state will

ANALYSIS CONTINUATION:

overcompensate the mental health trust by reconstituting too much land under Ch. 66. This "public interest" challenge could more easily be made as to the state overcompensating the mental health trust with funds under HB 201.

(d) that the transfer of any existing leases to the mental health trust [Sec. 6, HB 201, to be codified as AS 38.05.800(2)] could be challenged by the lessees. Marathon Oil Company and Union Oil Company of California have been permitted to intervene in the mental health trust land litigation to challenge the assignability of state oil and gas leases on state general grant land to the trust authority.

(e) that the combination in one bill of the reconstitution of mental health trust lands [Sec. 6, HB 201] with other substantive provisions [the remainder of HB 201] violates the constitutional provision that bills for appropriation shall be confined to appropriations [Article II, Sec. 13, Alaska Constitution]. The Alaska Center for the Environment, et al. have challenged the constitutionality of Ch. 66 on the grounds that this constitutional provision extends to bills that affect the status of public lands--such as reconstitution of land into the mental health trust.

(f) other challenges may be made by parties opposed to HB 201 as a resolution of the mental health trust lands litigation.

2. Enactment of HB 201 may result in litigation with the mental health trust plaintiffs and third-parties who hold interests in former trust lands over whether particular parcels are suitable for being reconstituted into the trust. The provisions in Sec. 6, HB 201 are ambiguous because the bill does not explicitly validate existing interests in former trust lands nor does it identify the specific parcels that will be reconstituted--e.g. trust land that "has not been conveyed or encumbered by the state" is subject to conflicting interpretations.

The settlement agreement negotiated under Ch. 66, SLA 1991 that provides specifically as to parcels which will be reconstituted will not serve HB 201. Under Ch. 66, SLA 1991 the parties negotiated parcels to be reconstituted with the understanding that for any former trust parcel not reconstituted, the state would provide substitute land of comparable character and equal fair market value--the value obtained by the trust was the same regardless of whether the former trust parcel was reconstituted. Under HB 201, the trust is given an all or nothing choice--reconstitute the former trust parcel or receive nothing. Plaintiffs are likely to claim that any parcel arguably described in Sec. 6, HB 201 for reconstituting must be reconstituted regardless of the impact on the state or third-party interests

The Department of Law currently receives $589,500 in general funds, and $1,000,000 in mental health trust funds to implement the Ch. 66, SLA 1991 settlement, including reconstituting the mental health lands trust within the terms of the settlement. The general funds are used to pay for two attorneys, one paraprofessional, and one clerical employee, who carry-out the state's responsibilities under Ch. 66. The mental health trust funds are

ANALYSIS CONTINUATION:

provided to the plaintiffs who have accepted the settlement so that they can carry-out their responsibilities under Ch. 66.

Because of the uncertainties described above, and because of the potential for continued legal challenges, we do not believe that the current efforts of either the state or the plaintiffs, will be reduced if HB 201 is adopted. This would cause existing resources to be redirected to implement and defend the new law. We cannot say if the bill would cause additional costs due to the uncertainty of potential litigation.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 201

Revision Date: Original
Title: Mental Health Trust: Alternative Settlement Proposal

Sponsor: House Resource Committee
Requestor: House Resource Committee

Dept. Affected: Natural Resources
BRU: Resource Development
Component: Land Development

COMPONENT SERIAL NO. 431

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	1022.2	817.2	186.1	197.3	209.2	221.8
TRAVEL	7.5	6.0				
CONTRACTUAL	890.0	1625.0	2000.0	2000.0	2000.0	2000.0
SUPPLIES	22.0	14.5				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1941.7	2462.7	2186.1	2197.3	2209.2	2221.8
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROG RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	16	11	2	2	2	2
PART-TIME	1	3				
TEMPORARY	2	2				

Estimate of current year (FY 93) impact $ 1941.7

ANALYSIS: (Attach a separate page if necessary.)
The program impacts of this Legislation are somewhat difficult to determine because of ambiguity in the wording of the legislation. It is unclear if the legislation contemplates the conveyance of unencumbered Original Trust Land to the Trust Authority or its 'redesignation' as Original Trust Land on DNR status plats. We have based our analysis on the premise that the aforementioned land is to be conveyed to the Trust Authority. This interpretation seems appropriate since Sec. 2 AS 37.14.009 (a)(2) allows the Trust Authority to sell, lease, exchange, or otherwise dispose of land in the trust.

Prepared By: Ron Swanson
Division: Land
Phone: 762-2692
Date: 3/10/93

Approved by Commissioner: Glenn A. Olds
Agency: Natural Resources
Date: 3/11/93

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HB 201[1]

DIVISION OF LAND

7100 Personnel Services	FY 94	FY 95
Mental Health Project Team		
(1) Project Manager	80.7	85.5
(1) Lands Manager	55.5	58.8
(2) NRO II	122.6	129.9
(2) NRO I	103.2	130.4
(1) CT III	37.3	39.5
(1) DPC II	39.2	41.3
(2) College Interns	27.5	29.1
	466.0	514.5
Land & Resource Management		
(1) Cadastral Surveyor III	110.2	116.8
Regional Offices		
Northern Regional Office		
(1) NRO II	60.4	32.0
Southcentral Regional Office		
(1) NRO II	60.4	32.0
Southeast Regional Office		
(1) NRO II (6 mo.)	30.2	32.0
Subtotal	727.2	727.3
7200 Travel		
Mental Health Project Team	3.0	3.0
Land & Resources	—	—
Regional Offices		
NRO	1.5	1.0
SCRO	1.5	1.0
SERO	1.5	1.0
Subtotal	7.5	6.0
7300 Contractual Services		
Mental Health Project Team		
Hazardous Substance Inventory	125.0	125.0
Land & Resources		
Cadastral Survey	750.0	1,500.0
Subtotal	875.0	1,625.0

[1] Assumes conveyance of unencumbered OTL to MHTA.

7400 Supplies

Mental Health Project Team		6.0	6.0
Land & Resouces		1.5	1.5
Regional Offices			
NRO		1.5	1.0
SCRO		1.5	1.0
SERO		1.5	1.0
	Subtotal	12.0	10.5
	TOTAL	1,621.7	2,368.8

	94	95
Personnel-Full time	11	9
Part time	1	3
Temporary	2	2

HB 201

LAND RECORD INFORMATION SECTION

	FY 94	FY 95
Personnel Services		
(1) Analyst/Programmer IV	77.0	0
(1) Analyst Programmer III	68.0	0
(1) Natural Resource Officer II	65.0	0
(1) Natural Resource Officer I	50.0	53.0
(1)(Data Processing Clerk I	35.0	37.0
Subtotal	295.0	90.0
Contractural Services		
DOA Data Processing Chargeback	15.0	0
Subtotal	15.0	0
Supplies		
Plotter, Micrographic & Office Supplies	10.0	4.0
Subtotal	10.0	4.0
TOTAL	320.0	94.0

TOTAL PROJECT COST

		FY 94	FY 95
Personnel Services			
Division of Land		727.2	727.3
LRIS		295.0	90.0
	Subtotal	1,022.2	817.3
Travel			
Division of Land		7.5	6.0
LRIS		0	0
	Subtotal	7.5	6.0
Contractural Services			
Division of Land		875.0	1,625.0
LRIS		10.0	0
	Subtotal	890.0	1,625.0
Supplies			
Division of Land		12.0	10.5
LRIS		10.0	4.0
	Subtotal	22.0	14.5
	TOTAL	1,941.7	2,462.8

	FY 94			FY 95		
Positions	Land	LRIS	Total	Land	LRIS	Total
Full time	11	5	16	9	2	11
Part time	1		1	3		3
Temp.	2		2	2		2

OUT-YEAR COSTS

Personnel Services	FY 96	FY 97	FY 98	FY 99
Land Manager	62.3	66.1	70.1	74.3
Cadastral Survey	123.8	131.2	139.1	147.5
Subtotal	186.1	197.3	209.2	221.8
Contractural Survey	2,000.0	2,000.0	2,000.0	2,000.0
TOTAL	2,186.1	2,197.3	2,209.2	2,221.8

8-LS0728\E.1
Chenoweth
3/11/93

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 201

Page 2, lines 9 - 13:

Delete all material.

Renumber the following bill sections accordingly.

Page 2, line 31, after "and,":

Insert

"(1) notwithstanding the pledge of the land as security, the state may continue to conduct all activities on the land that are authorized by law; and

(2)"

(2)

8-LS0728\E.5
Chenoweth
3/18/93

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 201

Page 1, line 10, after "(a)":

Delete "The"

Insert "**Except for land managed under AS 38.05.802. the** [THE]"

Page 2, following line 8:

Insert a new bill section to read:

"* **Sec. 3.** AS 37.14.009(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(b) In exercising its power under **(a)(1) - (3)** [(a)(2) OR (3)] of this section, the authority**, or the Department of Natural Resources to the extent it is managing the land assets of the trust under (a)(4) of this section, is not required to comply with AS 38.04 or AS 38.05, except that the authority and the department** shall

(1) comply with AS 38.05.285; however, the authority and the department are excused from complying with the requirements of AS 38.05.285 if disposal or use of state land in conformity to that section would conflict with a power, duty, or responsibility of the trustee set out in AS 37.14.007;

(2) give public notice in the manner provided under AS 38.05.945(b) and (c)

(A) of a preliminary decision to dispose of trust land and consider any written comments submitted within 30 days of the giving of the public notice before making a final decision; and

(B) of a final decision to dispose of trust land [, BUT IS NOT OTHERWISE BOUND BY THE PROVISIONS OF AS 38.04 OR AS 38.05]."

Renumber the following bill sections accordingly.

Page 2, line 21, after "section.":

Insert "In this subsection, "unrestricted general fund revenue of the state" means all the categories of accounting for money accruing to the state general fund that, under the statewide accounting system as established on the effective date of this bill section, were identified as revenue that was not restricted by law to a specific use."

Page 3, line 12, after "public domain;":

Insert "for purposes of this paragraph, "conveyed or encumbered" means that the land

(A) is subject to a contract for the sale of the land entered into by the state or a municipality of the state;

(B) is subject to a patent or deed executed in favor of a person, a municipality, or the University of Alaska;

(C) has been selected by a corporation under 43 U.S.C. 1611;

(D) is subject to a claim of allotment under 43 U.S.C. 1634 or is land for which a certificate of allotment has been issued to a Native under applicable federal law;

(E) has been identified for conveyance as part of a land exchange agreement between the state and a Native corporation or between the state and the University of Alaska, but the land was not, on the effective date of this Act, subject to a patent or deed;"

Page 3, line 14:

Delete "an oil or gas lease, coal lease, or other lease;"

Inset "a lease;"

Page 3, line 16, after "claim":

Insert "or mining leasehold location"

Page 3, line 19, after "this chapter;":

Insert

"(F) an exploration permit or prospecting permit;

(G) a water right;"

Page 3, following line 24:

Insert a new bill section to read:

"* Sec. 8. AS 38.05 is amended by adding new sections to read:

Sec. 38.05.802. MANAGEMENT OF LAND SUBJECT TO EXISTING INTERESTS WITHIN RECONSTITUTED MENTAL HEALTH TRUST CORPUS. (a) Land included in the corpus of the mental health trust under AS 38.05.800 is subject to the terms, conditions, and provisions of any lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, or water right issued by the United States or by the state before the effective date of this bill section.

(b) Land included in the corpus of the mental health trust under AS 38.05.800 is subject to any mining claim or mining leasehold location if the claim or location

(1) was acquired on or before the effective date of this bill section;

(2) was in compliance with applicable laws and regulations that were in effect on the effective date of this bill section; and

(3) continues in compliance with applicable laws and regulations at all times since the effective date of this bill section.

(c) The department shall manage any land of the trust that is subject to an interest in land that is identified in (a) or (b) of this section as general grant land, subject only to the laws applicable to general grant land of the state and without regard to any law that may be applicable to management of other land of the trust. However, the proceeds of the management of the land managed under this section shall be deposited into the mental health trust income account under AS 37.14.036(a)(1).

(d) The department shall manage land of the trust that is subject to an interest in land that is identified in (a) or (b) of this section for only as long as the lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, or mining leasehold that qualifies the land for management under this section continues in effect. When the last of any lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, or mining leasehold expires, the land of the trust that was subject to that interest must be managed under

AS 37.14.009.

(e) A person who holds an interest described in (a) or (b) of this section may enter into an agreement with the authority and with the department to waive the provisions of (c) of this section and have the land that is subject to the interest managed as provided by AS 37.14.009.

Sec. 38.05.809. DEFINITIONS APPLICABLE TO MENTAL HEALTH TRUST LAND. In AS 38.05.800 - 38.05.809,

(1) "authority" means the Alaska Mental Health Trust Authority;

(2) "land"

(A) includes both the surface estate and the mineral estate;

(B) does not include the land or minerals underlying navigable water;

(3) "lease" means an oil and gas lease, coal lease, mining lease, land lease, and any other surface or mineral lease;

(4) "right-of-way" means

(A) a right-of-way permit or easement; or

(B) a road, utility, or other improvement constructed under an approved land use application, permit, or letter of entry issued by the department and for which a right-of-way permit or easement has not, on the effective date of this bill section, been issued;

(5) "trust" has the meaning given in AS 47.30.061."

Renumber the following bill sections accordingly.

Page 3, following line 30:

Insert new bill sections to read:

"* **Sec. 12.** STATUS OF LAND GRANTED TO THE STATE UNDER THE ALASKA MENTAL HEALTH ENABLING ACT OF 1956 AND NOT INCLUDED WITHIN THE CORPUS OF THE RECONSTITUTED MENTAL HEALTH TRUST. On the effective date of this section, the land, including both the surface and the mineral estate, granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that is not includable within the corpus of the reconstituted mental health trust under AS 38.05.800(a),

repealed and reenacted by sec. 7 of this Act, is released from the mental health trust established by that Act and from any claim of the Alaska Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, or the beneficiaries of the trust established by the Alaska Mental Health Enabling Act of 1956.

* **Sec. 13.** CONVEYANCE OF LAND TO TRUST. On and after the effective date of this section, after giving public notice in the manner provided under AS 38.05.945(b) and (c), the commissioner of natural resources shall promptly convey to the Alaska Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, title to the land, including both the surface and the mineral estate, that is includable within the corpus of the reconstituted mental health trust under AS 38.05.800(a), repealed and reenacted by sec. 7 of this Act."

Renumber the following bill sections accordingly.

8-LS0728\E.6
Chenoweth
3/17/93

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 201

Page 1, line 11, after "trust":

Insert "**. except the land that is managed by the Department of Natural Resources under (4) of this subsection.**"

Page 2, line 5, after "**arrangements**":

Insert "**: the Department of Natural Resources shall manage the land assets of the trust in a fiduciary manner to fulfill the purposes of the trust**"

8-LS0728\K.1
Dierdorff
3/29/93

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 201(RES) (8-LS0728\K)

Page 3, line 4:

Delete "**state land**"

Insert "**trust land or minerals**"

Page 3, line 8, after "**land**":

Insert "**or minerals**"

Page 3, line 11, after "**land**":

Insert "**or minerals**"

Page 3, line 18, after "Resources":

Insert ","

Page 7, line 1:

Delete "(a)(1)"

Insert "(a)"

Page 7, line 2:

Delete "(a)(1)"

Insert "(a)"

Page 9, line 20:

Delete "**AS 38.05.809**"

Insert "**AS 38.05.802 - 38.05.809**"

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Juneau, Alaska 99801-2105

M E M O R A N D U M March 18, 1993

SUBJECT: Amendments E.5 and E.6 to House Bill 201 (Work Order No. 8-LS0728\E.5 and E.6)

TO: Representative Bill Williams, Chair
House Resources Committee
ATTN: Mary McDowell

FROM: Jack Chenoweth
Legislative Counsel

Amendment E.5:

Per suggestion, I had two discussions yesterday with Rick Johansen, attorney for Usibelli Mines, and have redrafted yesterday's amendment E.4 to respond to points covered in that discussion.

Under the changes proposed in House Bill 201 as it is before you, there would be two alternatives available for managing land. The Department of Natural Resources would, under AS 37.14.009(a)(4), manage the trust's land assets. Alternatively, under that same paragraph, the Alaska Mental Health Trust Authority would have the option of making "other arrangements" for management of trust lands.

The mechanism that amendment E.5 would put into place is a third land management alternative, specifically applicable to land that is added back to the reconstituted trust corpus and that is subject to one of the interests in land spelled out by law. That management arrangement is spelled out in the proposed AS 38.05.802. That land, subject to third party interests, would, so long as the interests are operative, be managed by the department as general grant land, not subject to the trust provisions.

I think the amendment drafted, E.5, is responsive to all the points of yesterday's discussion. I told Rick Johansen that you would fax a copy to him for review.

Amendment E.6:

The bill, House Bill 201, substitutes a mandatory duty--the Department of Natural Resources "shall . . . manage the land assets of the trust"--for the discretionary

authority set out in ch. 66, SLA 1991--"may contract . . . to manage the land assets of the trust." In the middle of my conversation with Mr. Johansen, I realized that, by making that substitution, we neglected to make two very significant related changes.

Those changes are picked up by amendment E.6.

As House Bill 201 is drafted, there is a conflict between proposed AS 37.14.-009(a)(1)--"[t]he trust authority shall manage the assets of the trust . . ."--and AS 37.14.009(a)(4)--"the Department shall . . . manage the land assets of the trust." The first part of amendment E.6 recognizes the division of responsibilities between the two.

As House Bill 201 is drafted, there is no management standard stated for the department's management of the trust land, and arguably the department may conclude that it may manage as it pleases. The intent, as I understand, is that the department shall manage to the same standard as the trust authority, that is, "in a fiduciary manner to fulfill the purposes of the trust." Consistent with the intent of the change in AS 37.14.009 as I understand it, the second part of amendment E.6 explicitly sets out that standard.

Amendment E.6 is not dependent on adoption of amendment E.5. It cleans up the bill as currently drafted and should be considered by the committee even if E.5 is not adopted.

JBC:pl
93-210.plm

Enclosure

Prepared by Rick Johannsen of Perkins-Coie

EXPLANATION OF AMENDMENT E.5 TO HOUSE BILL 201

Prepared for House Resources Committee Hearing
March 19, 1993

The Basic Structure of Chapter 66, SLA 1991

Establishes the Mental Health Trust Authority. Contains significant "program" provisions. Generally reconstitutes the land trust with non-legislatively designated OMHTLs which have not been conveyed by the state (including OMHTLs that are subject to third-party interests, such as leases). Uses "substitute land" to compensate the trust for the conveyed and legislatively designated OMHTLs not returned to the trust.

The "substitute lands" are the fuel for the fire. The public interest intervenors (PIIs) have challenged Chapter 66 in court, primarily because of issues involving the substitute lands. The oil company intervenors (Unocal and Marathon) have challenged Chapter 66 in court because they have leases on proposed substitute lands (PSLs). The attorneys for the state and the mental health beneficiaries have disagreements over the appropriateness of the plaintiff's PSLs and the nature and quantity of substitute land required to compensate the trust. Developmental interests are adversely affected by the land "freeze" imposed on PSLs (in addition to the land "freeze" continuing to affect OMHTLs and "hypothecated lands").

Chapter 66 contains a "stepdown" funding provision requiring that a percentage of the unrestricted revenue of the state be allocated to the mental health trust income account in each fiscal year beginning with FYE 1992 and ending in FYE 2003.

The Basic Structure of SB 67 and HB 201

Retains the Mental Health Trust Authority. Retains the significant "program" provisions. Retains reconstitution of the land trust with non-legislatively designated OMHTLs which have not been conveyed by the state (including OMHTLs that are subject to third-party interests, such as leases).

But, under SB 67 and HB 201, the "fuel for the fire" (substitute lands) is removed from the settlement. In its place, the trust receives monetary compensation for the OMHTL that is not being returned to the trust. Under HB 201, that

compensation is 3% of the "unrestricted general fund revenue of the state" during each fiscal year (under SB 67, the number is 6%). Because the money is intended to compensate the trust for the land that cannot be returned, there is no cut-off date for the payment. The "stepdown" funding provision in Chapter 66 is eliminated.

To secure the annual payment to the trust, legislatively designated OMHTLs are pledged as collateral for the state's obligation to allocate the required amount to the mental health trust income account each year.

The reconstituted land trust will consist basically of the same OMHTLs that would have been returned to the trust under Chapter 66. Two differences are: (1) OMHTLs subject to mining claims will be returned to the trust (under Chapter 66, the plaintiffs had the option to accept or reject these lands); and (2) OMHTL contained in the Haines State Forest Resource Management Area and the Tanana Valley State Forest will not be returned to the trust.

Summary of Changes Made by Amendment E.3 to HB 201

1. Two Categories of Trust Land for Management Purposes.

The proposed amendments essentially break the OMHTLs being returned to the trust into two categories of land for management purposes.

1.1 "Section 9" Land. The first category, which could be called "Section 9" land (because management of these lands is governed by Section 9 of AS 37.14) consists of OMHTLs that are not currently covered by any third-party interests (such as a lease, contract, mining claim) or appropriated uses (such as rights-of-way) and are truly owned by the state as "vacant" undeveloped lands. These Section 9 lands would be managed under AS 37.14.009 according to whatever land management standards are ultimately adopted to manage trust land under a fiduciary standard that fulfills the purposes of the trust. HB 201 requires the Trust Authority to contract with DNR to manage these Section 9 lands unless the Trust Authority determines that this is not in the best interest of the trust beneficiaries. If DNR manages the Section 9 lands under contract with the Trust Authority, DNR must do so under AS 37.14.009 (which requires that the assets be managed in a fiduciary manner to fulfill the purposes of the trust).

1.2 "Section 802" Land. Under the proposed amendments, the second category of land, which can be referred to as "Sec-

tion 802" land (because management of these lands is governed by new Section 802 of AS 38.05), consists of OMHTLs that are currently subject to a third-party interest (such as a lease, contract, or mining claim) or an appropriated use (such as a right-of-way). These Section 802 lands are returned to the trust, but the proposed amendments require that they be managed by DNR under AS 38.05.802. Section 802 makes it clear that the trust takes these lands subject to the third-party or appropriated interest. In addition, Section 802 requires DNR to manage these lands as general grant land under DNR's normal land management procedures. The Trust Authority does not have management authority over Section 802 lands and they are not managed by DNR pursuant to any contract with the Trust Authority. Because these lands are subject to existing interests, the Trust Authority is simply "divested" of any land management function and it is "business as usual" for DNR and all third-party interest holders. The only exception is that all income and proceeds from the management of these Section 802 lands are required to be deposited by DNR in the mental health trust income account. In addition, the third-party interest holder, the Trust Authority, and DNR can enter into a three-party agreement to waive Section 802 status and to have the land managed under Section 9 of AS 37.14. This allows a third-party interest holder to "opt in" to the Trust Authority land management system once the Trust Authority has established a stable land management program and a successful track record. Finally, when a particular parcel of Section 802 land is no longer subject to any protected third-party interest or appropriated use, management of the land "reverts" to the Trust Authority so that the land becomes Section 9 land.

2. **Public Interest Safeguards.**

As under Chapter 66, Section 9 trust land can be managed by the Trust Authority (or by DNR as the Trust Authority's contractor) without compliance with AS 38.04 or AS 38.05. But the proposed amendments contain a requirement designed to require "multiple purpose use" of Section 9 trust land whenever possible, consistent with the Trust Authority's fiduciary obligations. In addition, the proposed amendment requires public notice of any disposals of Section 9 trust land, a 30-day comment period, and a final public notice of any Section 9 trust land disposals. Section 802 trust land is managed like general grant land and therefore remains subject to AS 38.04 and AS 38.05.

3. **Definition of Unrestricted General Fund Revenue.**

The proposed amendments also contain a definition of "unrestricted general fund revenue of the state." The defi-

nition ties the meaning of this phrase to the manner in which money is categorized under the statewide accounting system as of the effective date of the Bill. The purpose of this provision is to remove the possibility that future restrictions imposed by the legislature on general fund revenues will have a negative impact on the dollar amount used for calculating the percentage allocated to the trust. No limitation is placed on the legislature's ability to impose future restrictions, but for purposes of calculating the amount to be paid to the trust, any such future restrictions would be disregarded.

4. Miscellaneous Provisions.

The proposed amendments contain several new definitions which are designed to clarify ambiguities in Chapter 66 (such as the meaning of "conveyed or encumbered" CMHTL that is not being returned to the trust). The proposed amendments also clarify that those lands not being returned to the trust are permanently released from any claim of the trust. As under Chapter 66, the proposed amendments also require an actual conveyance of title to reconstituted trust land from DNR to the Trust Authority.

Further Discussion of Specific Amendments

Page 1, Line 10:

This amendment to AS 37.14.009(a) contains the cross-reference to AS 38.05.802 which overrides AS 37.14.009 and divests the Trust Authority of land management power over reconstituted trust lands that are subject to third-party interests or appropriated uses.

Page 2, following Line 8:

This amendment to AS 37.14.009(b) contains the public interest safeguards that are applicable to the management of Section 9 trust lands in lieu of AS 38.04 and AS 38.05. The amendment requires land management decisions affecting Section 9 trust lands to comply with the state constitution and the principles of multiple purpose use consistent with the public interest. However, the amendment also recognizes that the trust principles established in AS 37.14.007 (as they exist in Chapter 66) must take priority if they conflict with multiple purpose use. The remaining language in the proposed amendments provides a 30-day public comment period to precede final Section 3 trust land disposal decisions, in order to insure that trust beneficiaries, trust land developers, people who use trust lands for other purposes, and other

members of the public have an opportunity to have their views considered by the Trust Authority. This proposed amendment also requires public notice of final decisions to dispose of Section 9 trust lands.

Page 2, Line 21:

This amendment to AS 37.14.036(c) is the definition of "unrestricted general fund revenue of the state."

Page 3, Line 12:

This amendment to AS 38.05.800 contains the definition of "conveyed or encumbered" land that is not being returned to the trust.

Page 3, Line 14:

This amendment to AS 38.05.800 simplifies the language because Section 809 now contains a definition of "lease" (which includes an oil or gas lease, coal lease, or other lease).

Page 3, Line 16:

This amendment to AS 38.05.800 makes Section 800 consistent with Section 802 by specifying those third-party interests that trigger the return of that particular land to the trust.

Page 3, Line 19:

This amendment to AS 38.05.800 makes Section 800 consistent with Section 802 by specifying those third-party interests that trigger the return of that particular land to the trust.

Page 3, following Line 24:

This amendment is the new Section 802 which is the heart of the proposed amendments. Subsections (a) and (b) clarify that any land being returned to the trust remains subject to the terms, conditions, and provisions of all third-party rights (such as leases, contracts, mining claims, and permits) and appropriated uses (such as rights-of-way). Unlike third-party interests such as leases, there is no legal document to reflect the terms of mining claims or leasehold locations and DNR normally makes no "validity" determination. The holders of mining claims and leasehold locations would therefore be

subject to the status quo -- they would face whatever challenges they might face from the trust that they could face from DNR. The trust simply takes subject to the claimant's rights, if any. Subparagraph (c) is the mandatory provision requiring DNR to manage all trust land that is subject to any third-party interest or appropriated use. To eliminate the threat of litigation by third parties against the trust and the state over private contract rights, this section requires DNR to manage these Section 802 lands as general grant land for as long as the third-party interests remain in effect. Subsection (d) is the "reverter" provision which converts Section 802 land to Section 9 land when the third-party interests have expired. Subsection (e) is the provision allowing a third party to "opt in" to Section 9 once the Trust Authority has established its land management program and a track record.

The definition of "land" contained in new Section 809 is intended to clarify that if either the surface estate or mineral estate is "conveyed or encumbered" then neither estate is returned to the reconstituted trust. In addition, if any third-party interest or appropriated use has been carved out of either the surface or mineral estate, then DNR must manage the entire estate like general grant land for as long as the third-party interest or appropriated use remains in effect. This is necessary to avoid "split estate" problems that arise when different persons control the surface and mineral estates.

The definitions of "lease" and "right-of-way" are intended to simplify the language of both Section 800 and Section 802 which contain these terms. "Authority" and "trust" are also defined to simplify the language in Section 802 which contains these terms.

Page 3, following Line 30:

New Section 12 is the provision that explicitly releases and removes from the trust all OMHTL not being returned to the trust.

New proposed Section 13 is the provision which explicitly requires DNR to convey title to the reconstituted trust land to the Trust Authority. The provision also clarifies that both the surface estate and the mineral estate are to be conveyed to the trust. The same public notice process (a 30-day public comment period) which was contemplated for conveyances of land under Chapter 66

from DNR to the Trust Authority is retained in Section 13.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated; ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, AND GABRIEL MAYOC; and H.L., M.K. and ALASKA ADDICTION REHABILITATION SERVICES,	)	
Plaintiffs,	)	
vs.	)	
STATE OF ALASKA,	)	Case No. 4FA-82-2208 CIVIL
Defendant.	)	

REVIEW DRAFT

SETTLEMENT AGREEMENT

REVIEW DRAFT

This Review Draft is being provided to interested people prior to formal signing by the parties. There may be some modifications to this Review Draft prior to signing. The Exhibit Package has not yet been completed and will be available upon completion.

QUICK REFERENCE GUIDE
AND
BRIEF ANALYSIS ON PAGE 2

ANALYSIS OF PROPOSED AGREEMENT
by
Philip Volland

The review draft of the proposed settlement agreement further establishes that Chapter 66 is unworkable. This proposed agreement:

> * *fails to address the current major legal challenges to Chapter 66. These include the legality of the Legislature's hypothecation (appropriation) of the security land, the applicability of Section 6i of the Statehood Act and other essential terms of the agreement.*
>
> * *places severe restrictions on development of some of Alaska's most promising 5 million acres of land during the years of litigation resulting from Chapter 66.*
>
> * *misleads innocent third parties into believing that the cloud on their titles will soon be removed.*
>
> * *obligates the legislature to pay millions of dollars to DNR and the attorneys each year to implement a settlement that may never be approved.*

Key provisions which demonstrate these problems are:

ONGOING AND INCREASING LITIGATION:

Chapter 66 must be reviewed and upheld by the Superior Court, the Alaska Supreme Court, and the U.S. Supreme Court. Only then can Chapter 66 be presented to the court for approval and implementation.

* The State and the Plaintiffs realize that the U.S. Supreme Court may ultimately decide that the proposed land exchange violates Section 6i of the Statehood Act. If that happens the parties have agreed that they will have 60 days to find a solution or they will terminate the agreement and resume the original litigation. (pp. 29-30) Despite nearly a year of work, this same lack of an adequate response is applied to the problems associated with the hypothecation (p. 32).

* Other essential terms of the agreement such as the law applicable to reconstitution (pp. 27-28), the management of Trust Lands (p. 39), the management of hypothecated lands (p. 46), and the release of hypothecated lands (p. 29) are subject to legal challenges. If any of these challenges are successful, the settlement may be voided.

LAND USE RESTRICTIONS:

During the upcoming years of litigation, the following land use restrictions must apply:

Original Trust Lands (one million acres) The injunction and the Lis Pendens will remain (pp. 56-57). This land will also be totally closed to mineral entry (p. 45).

Hypothecated Lands (four million acres) These lands will not be released until substitute land is conveyed to the Trust (pp. 28-29), a process that must await approval of the agreement, identification of the land, selection of the land, resolution of disputes over the value of the land, and the actual survey and conveyance of the land. Meanwhile, no mineral entry or other actions which devalue the land are allowed (p. 46).

Proposed Substitute Land (additional acres chosen from any state land) These lands are also closed to entry or disposal (p. 47).

Third Party Lands (thousands of individuals) The proposed agreement suggests that the hardships which will be suffered by innocent third parties because of the years of ongoing litigation will be cured by a temporary release of the Lis Pendens and modification of the injunction (p. 34). In fact, the Plaintiffs have retained the right to reassert claims to such lands if and when the proposed settlement fails (p. 35). The third parties gain no benefit or security from such a transparent and illusory arrangement.

IMPLEMENTATION COSTS:

As of the signing of the proposed agreement, the Legislature is obligated to appropriate sufficient funds for the plaintiffs to carry out the reconstitution process (p. 42). The plaintiffs are entitled to court orders necessary to carry out this requirement (p. 43). This obligation extends to DNR as well (p. 42). This obligation begins immediately and continues until the end of the litigation over Chapter 66 whether or not the proposed settlement is ever approved (p. 44). The proposed amount for FY 93 is over $6 million.

CONCLUSION

The defects in Chapter 66 have not been cured. Some have been made worse and new ones created. However, the Governor made a bold and good faith attempt last year to settle this issue. That effort has led directly to a viable alternative settlement proposal that would cure the problems with Chapter 66 and could be implemented within months.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated; ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, AND GABRIEL MAYOC; and H.L., M.K. and ALASKA ADDICTION REHABILITATION SERVICES,	)	
Plaintiffs,	)	
vs.	)	
STATE OF ALASKA,	)	Case No. 4FA-82-2208 CIVIL
Defendant.	)	

SETTLEMENT AGREEMENT

COME NOW the undersigned parties, by and through their respective counsel, to stipulate and agree as follows:

RECITALS

WHEREAS, the Plaintiffs and the State have been engaged in litigation since 1982 over numerous disputes relating to the requirements of the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709 (1956); and

WHEREAS, in an effort to resolve these disputes without further litigation, the undersigned parties have negotiated a proposed settlement, the basic terms of which were enacted in Chapter 66, Session Laws of Alaska 1991; and

WHEREAS, Section 58 of Chapter 66 provides:

This Act takes effect upon entry of a final order dismissing Weiss v. State of Alaska, 4FA-82-2208 Civil, and the expiration of any time for appeal. The superior court shall advise the lieutenant governor and the revisor of statutes when the final settlement and order of Weiss v. State of Alaska has been approved;

and

WHEREAS, the undersigned parties seek judicial approval of the terms and conditions of the settlement and if the settlement is approved, seek dismissal of this action;

NOW THEREFORE, IT IS AGREED:

ARTICLE I.
DEFINITIONS.

The following words and phrases shall have the following meanings:

(a) "Beneficiaries" means the beneficiaries of the trust created by Section 202 of the Enabling Act and comprise the members of the class represented by the Plaintiffs in this litigation.

(b) "Chapter 66" means Chapter 66, Session Laws of Alaska 1991, attached as Exhibit A.

(c) "Collateral of Last Resort" means State land described in Attachment 1 to "Lands Hypothecated to the Mental Health Trust, May 1991," referred to in Section 56(a) of Chapter 66, and more particularly described in pages _____ of Exhibit B hereto.

(d) "Commissioner" means the Commissioner of the Department of Natural Resources, State of Alaska.

(e) "Enabling Act" means the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709 (1956).

(f) "Encumbered Original Trust Land" means land granted under

the Enabling Act and that is subject to a lease, permit, oil and gas lease, mining claim or mining lease, coal lease, easement or right-of-way, timber sale, material sale contract, land sale contract, interagency land management assignment, or some other encumbrance of a similar nature not contained in the grant from the federal government.

(g) "Hazardous Substance" has the same meaning as that term is defined in AS 46.03.826(5), as now enacted or hereafter amended, including any successor statutes to AS 46.03.826(5).

(h) "Hypothecated Lands" means the lands listed in "Lands Hypothecated to the Mental Health Trust, May 1991" referred to in Section 56(a) of Chapter 66, and more particularly described in the attached Exhibit B, that have not been released pursuant to Section 56(c) of Chapter 66 and Article III, Section 21, of this Settlement Agreement.

(i) "Legislatively Designated Areas" has the same meaning as that set out in Section 55(b) of Chapter 66.

(j) "Non-Reconstituted Trust Land" means Original Trust Land, or an interest therein, that will not be conveyed to the Trust under Section 54(1) -- (6) of Chapter 66 and for which an exchange has been or will be completed under Section 54(7) of Chapter 66.

(k) "Original Trust Land" means land granted under the Enabling Act.

(l) "Plaintiffs" means VERN T. WEISS, father and next friend of CARL WEISS, minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA

MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated, ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, and GABRIEL MAYOC; H.L., M.K. and ALASKA ADDICTION REHABILITATION SERVICES; and such other parties as may be formally substituted for or added to the foregoing.

(m) "Proposed Substitute Land" means land that is proposed by either the State or the Plaintiffs for conveyance to the Trust under Sections 54(7) and 55 of Chapter 66 and this Settlement Agreement.

(n) "Reconstituted Trust Land" or "Trust Land" means land that has been conveyed to the Trust Authority under Sections 54 -- 56 of Chapter 66 and Article III, Section 15, of this Settlement Agreement, including Original Trust Land, Substitute Land, or some other real property, and includes improvements or interests therein owned by the Trust.

(o) "Substitute Land" means land other than Original Trust Land that will be conveyed to the Trust Authority under Sections 54(7) and 55 of Chapter 66 and this Settlement Agreement in exchange for Non-Reconstituted Trust Land, and includes improvements or interests therein owned by the State.

(p) "Trust" means the trust created by Section 202 of the Enabling Act, as reconstituted under Chapter 66 and this Settlement Agreement.

(q) "Trust Authority" means the Alaska Mental Health Trust Authority established under Section 26 of Chapter 66 or any successor entity or person that may subsequently be assigned one

or more of the responsibilities of the Trust Authority imposed by Chapter 66 and this Settlement Agreement.

(r) "Trust Corpus" means the principal of the Trust, including both real and personal property and cash assets properly allocated to the Trust Corpus from Trust Receipts.

(s) "Trust Funds" means all cash assets of the Trust, including cash that is part of the Trust Corpus and cash that is Trust Income. .

(t) "Trust Income" means Trust Receipts that are not properly allocated to the Trust Corpus.

(u) "Trust Property" means Trust Land, Trust Funds, including Trust Receipts, Trust Income, and Trust Corpus, and all other assets owned by the Trust.

(v) "Trust Receipts" means cash or other liquid assets received from the sale, management, or investment of the Trust's assets.

ARTICLE II.
INCORPORATION OF CHAPTER 66.

The provisions of Chapter 66 are incorporated herein. The parties agree that the provisions of Chapter 66 meet the trust responsibilities and obligations imposed on the State under the Enabling Act. This Settlement Agreement is intended to clarify the manner in which the State and the Plaintiffs are to discharge their responsibilities and obligations set out in Chapter 66 and to provide certain remedies for any breach thereof.

ARTICLE III.
TRUST RECONSTITUTION.

The Trust will be reconstituted in accordance with the provi-

sions of Sections 54 -- 57 of Chapter 66 and this Settlement Agreement. In doing so, the undersigned parties agree as follows:

1. Information Sharing. (a) Each party will provide the other access to all non-confidential files, a copier, and paper as required.

(b) The parties will jointly develop a shared computer-based information system. Information shall be developed by each party in a format allowing exchange and retrieval of the information by each party through the shared computer-based information system.

(c) Except for confidential analyses and confidential information developed in the course of or in anticipation of other litigation, the State and the Plaintiffs shall provide the other party computer-based data in its possession or control concerning parcels of Original Trust Lands, Hypothecated Lands, and other State land, including but not limited to revenue projections and valuations.

(d) Neither party will charge the other for new information developed by that party or for existing computer-based data retrieved or formatted in the course of implementing Chapter 66.

(e) The following information shall be developed by the State, unless the parties agree the Plaintiffs shall develop the information, and provided to the other party:

> Original Trust Lands: Information regarding (1) federal selections, approvals, and patents; (2) the status of title; and (3) encumbrances or conveyances plus, for Non-Reconstituted Trust Land and Encumbered Original Trust Land subject to Section 54(4) of Chapter 66 or election by the Plaintiffs under Section 54(6) of Chapter 66 and Article III, Section 8 of this Settle-

ment Agreement, (4) value, if already existing; (5) revenue history; (6) revenue projections, if already existing; (7) physical characteristics; (8) natural resource features; (9) current use to the extent existing files contain such information; (10) past use to the extent existing files contain such information; and (11) allowable uses;

Hypothecated Lands: Information regarding (1) federal selections, approvals, and patents; (2) the status of title; and (3) encumbrances or conveyances;

Potential Substitute Land: Information regarding (1) federal selections, approvals, and patents; (2) encumbrances or conveyances; (3) value, if already existing; (4) revenue history; (5) revenue projections, if already existing; (6) physical characteristics; (7) natural resource features; (8) current use to the extent existing files contain such information; (9) past use to the extent existing files contain such information; and (10) allowable use.

(f) Computer-based data, other than as described above, that either party has will be provided to the other party, upon request, in a timely manner subject to payment by the other party of the reasonable job costs associated with the request.

(g) Any dispute under this Section, including (i) whether the utility of the information justifies the expense to develop it, and (ii) whether sufficient information has been developed and provided to the other party, shall be resolved by the court under Section 57 of Chapter 66.

2. Confidential Information. Except for confidential information developed in the course of or in anticipation of other litigation, the information described in Article III, Section 1, to be provided by the parties includes confidential information (but not analyses), but its confidential nature shall be so stated by the State or Plaintiffs and may only be disclosed to counsel for the State or Plaintiffs, their employees, or

consultants, or any combination thereof, or to the court in the event that a dispute is referred to the court pursuant to Section 57 of Chapter 66. To the extent a third party may have a legally protectable interest in keeping the information confidential, the third party shall be informed sufficiently in advance of the possibility of disclosure for the third party to seek to have the disclosure enjoined. The State or Plaintiffs shall advise each other if any confidential information is not to be disclosed under this section and the nature of such data. Counsel for Plaintiffs and their employees and consultants to whom confidential information is disclosed may not further disclose the confidential information (except to the court in the event that a dispute is referred to the court pursuant to Section 57 of Chapter 66 and this Settlement Agreement).

3. Termination of At-Will Interests. Except for rights granted to the State, the State, after consultation with the Plaintiffs and upon their request, shall terminate those third party authorizations or interests in Original Trust Land to be conveyed to the Trust Authority that are, by the terms of the document granting the authorization or interest, terminable at will. If Plaintiffs do not request termination, compensation to the Trust will not be required.

4. Reducing Amount of Original Trust Land Used by State Agencies. Original Trust Land or interests therein used by any State agency (Agency) under a lease, permit, interagency land management agreement, interagency land management transfer, management agreement, management right, or other use granted to

the State and not located within a Legislatively Designated Area (except the Tanana Valley State Forest and the Haines State Forest Resource Management Area), is subject to a determination under this Section. Pursuant to this Section, the Commissioner shall determine the smallest practicable tract of land reasonably necessary to support the Agency's use and shall convey the remainder of the parcel to the Trust Authority.

(a) The parcel retained by the Agency may include improved lands and a buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage. Parcels containing gravel or other building materials used in direct connection with the State's purpose in using the parcel and not used simply as a source of revenue or services may also be retained by the agency. The extent of the areas retained as a source of materials will be the area disturbed but not depleted as of July 1, 1991.

(b) Unless the Plaintiffs elect to have the land conveyed to the Trust Authority subject to the rights of the Agency under Section 54(6) of Chapter 66 and Article III, Sections 8 and 15, of this Settlement Agreement, the State shall retain full title to the smallest practicable tract as determined hereunder for the Agency, provided, however, if the parcel is used primarily for access, a telecommunications site, electronic, light or visibility clear zones, rights-of-way, or similar uses, an easement may be reserved in lieu of full title if the Commissioner determines that an easement affords sufficient protection, is customary for

the particular use, and would further the objectives of Chapter 66.

(c) If the Commissioner does not have sufficient information to make a determination under this Section, the Commissioner shall issue written notice to any State agency that the Commissioner has reason to believe may be subject to this Section. The written notice shall provide that the information requested be furnished to the Commissioner and the Plaintiffs by the Agency within 45 days from the receipt of the notice. At a minimum, the information provided by the Agency shall include:

(i) the function and scope of the Agency's use of the parcel;

(ii) a legal description of the lands in actual use;

(iii) a list of structures or other alterations to the character of the land and their function, their location on the tract, and date of construction;

(iv) a description of the use and function of any unaltered land;

(v) a list of any rights, interests, or permitted uses that the Agency has granted to others or that have been granted to the Agency by others, along with dates of issuance and expiration and copies of any relevant documents. The Department of Natural Resources shall assist the Agency in determining any rights, interests, or permitted uses that the Department of Natural Resources has granted to others for the parcel being used by the Agency; and

(vi) if available, site plans, drawings, and annotated aerial photographs delineating the boundaries of the Agency's facilities and locations of areas used.

(d) The Commissioner shall request comments from the Plaintiffs relating to the determination of the smallest practicable tract. The Plaintiffs shall have 30 days to comment commencing from their date of receipt of the Agency's submission.

(e) The Agency has the burden of proof under this Section. The smallest practicable tract determination by the Commissioner shall be based on the information in the case file. The results of the determination shall be incorporated into an appropriate decisional document. The decision of the Commissioner shall be final and not reviewable by the court under Sections 55(h) and 57 of Chapter 66.

5. Conveyances of Unencumbered Land or Land Subject Only to Qualified Encumbrances. When the State and the Plaintiffs agree, or the court resolves a dispute pursuant to Section 57 of Chapter 66, that Original Trust Land is properly categorized as being included in Sections 54(1) -- (5) of Chapter 66, such land shall be conveyed to the Trust Authority pursuant to Article III, Section 15, below.

6. Non-Reconstituted Trust Land Parcels. When the State and the Plaintiffs agree, or the court resolves a dispute pursuant to Section 57 of Chapter 66, that Original Trust Land is properly characterized as:

(i) land in Legislatively Designated Areas, except for the Tanana Valley State Forest and the Haines State Forest

Resource Management Area;

(ii) land in which title has been conveyed out of State ownership;

(iii) land selected by a municipality under AS 29.65 or under former AS 29.18.190 -- 29.18.200 and which selection has been approved by the director of the division of lands, Department of Natural Resources on or before the effective date of Chapter 66 (which approvals were enjoined by a preliminary injunction entered on July 9, 1990, and no further approvals may be made without a modification of the preliminary injunction) and has not been mutually agreed by the parties to be returned to the State by a municipality for return to the Trust;

(iv) land subject to contracts of sale (including leases which have been or may be converted to contracts of sale);

(v) land properly entered under homesite, homestead, open to entry, or remote parcel entry programs prior to July 9, 1990;

(vi) land subject to the Chena River Condemnation; or

(vii) land subject to conveyance under land exchange and litigation settlement agreements entered into prior to July 9, 1990,

such land is Non-Reconstituted Trust Land and the parties shall proceed under Section 55 of Chapter 66 to identify Substitute Land to convey to the Trust under Sections 54(7) and 55 of Chapter 66 and Article III of this Settlement Agreement.

7. Compensation for Encumbrances. (a) The Trust shall not be compensated for encumbrances (i) set forth in Section 54(2) of Chapter 66, or (ii) contained in the grant from the federal government, including, but not limited to, encumbrances granted to the State which do not appear on the conveyance document because of the United States Department of the Interior, Bureau of Land Management's (BLM's) interpretation and administration of the merger of title doctrine.

(b) Except as may otherwise be mutually agreed upon, compensation to the Trust for Encumbered Original Trust Lands conveyed to the Trust Authority, subject to encumbrances under Section 54(4) of Chapter 66, or which the Plaintiffs elect to receive under Section 54(6) of Chapter 66 (other than the encumbrances set forth in Section 54(2) of Chapter 66), shall be determined as follows:

(i) Rights-of-way, except where granted for fair market lease rate, in which event the Trust shall receive the lease payments and no other compensation shall be due, by conveyance to the Trust of an equal acreage of comparable land in the same vicinity. In the event comparable land can not be located, land of equal value to the acreage subject to the right-of-way shall be conveyed to the Trust.

(ii) Leases, by calculating the leasehold value (the present value of the difference between market rent and contract rent), if any, using a 10% discount rate and conveying Substitute Land to the Trust under Sections

54(7) and 55 of Chapter 66 and Article III of this Settlement Agreement, equal to such leasehold value.

(iii) Land use permits not terminable at will, by conveying Substitute Land to the Trust Authority under Sections 54(7) and 55 of Chapter 66, and Article III of this Settlement Agreement, equal to the leasehold value of the Permit (the present value of the difference between market rent and the contract rent), if any. Leasehold value will be determined by using a discount rate of 10%, and annual rental rate of 8% of the fair market value of the land estate, for the length of the permit.

(iv) Subdivision roads (defined as internal roads within a tract of Original Trust Lands created during the subdivision process to provide access to lots within the tract of Original Trust Land), if less than all of the lots in the subdivision are conveyed to the Trust by conveying Substitute Land as provided in Subsection (i). If all of the lots in such a subdivision are conveyed to the Trust, no compensation shall be due.

(v) Material sales by payment to the Trust of all payments due under the material sale beginning July 1, 1991.

(vi) Other encumbrances, by conveying Substitute Land to the Trust Authority as provided in Sections 54(7) and 55 of Chapter 66 and Article III of this Settlement Agreement as provided in subsection (i), provided, however, that nothing herein prevents the parties from agreeing to other procedures for determining how to compensate the

Trust for such other encumbrances, similar to those procedures provided in (i) - (v) of this Subsection.

8. Encumbered Land Election. When the State and the Plaintiffs agree, or the court resolves a dispute pursuant to Section 57 of Chapter 66, that Original Trust Land is properly categorized as land subject to acceptance by Plaintiffs under Section 54(6) of Chapter 66, and after the amount of compensation has been determined pursuant to Article III, Section 7 of this Settlement Agreement, the Plaintiffs shall elect either conveyance to the Trust under Section 54(6) of Chapter 66 any such Encumbered Original Trust Land and have the Trust receive the compensation set forth in Article III, Section 7, or to have the Encumbered Original Trust Land not conveyed to the Trust and have it receive Substitute Land in exchange pursuant to Section 55 of Chapter 66 and Article III of this Settlement Agreement.

9. Encumbered Land Remains Subject to Encumbrances. Encumbered Original Trust Land that is conveyed to the Trust under Chapter 66 and this Settlement Agreement shall be conveyed subject to the terms of any valid existing encumbrance and the Trust Authority shall abide by and be entitled to enforce the terms of such encumbrance, except where the Trust is compensated with land under Article III, Subsection 7 (b) (i) of this Settlement Agreement, in which case the State may elect to retain the right to enforce the terms of such encumbrances. For the purpose of this Section, possible inconsistency with the Enabling Act is not grounds to challenge the validity of an encumbrance.

10. Nomination of Potential Substitute Land. When Plain-

tiffs determine that they are interested in reviewing certain State owned land for possible exchange they shall preliminarily nominate such land as potential Substitute Land and the information set forth in Article III, Section 1, pertaining to potential Substitute Land shall be developed and provided to both parties.

11. Nomination of Substitute Land. (a) Except for lands in Legislatively Designaced Areas, the Plaintiffs may nominate any land owned by the State and meeting the criteria of Section 55 of Chapter 66 as Proposed Substitute Land for conveyance to the Trust. For the purpose of this section, land which has been or may be selected under the Alaska Statehood Act, as amended, may be proposed as Substitute Land.

(b) If the Commissioner objects that the land so nominated does not meet the criteria of Section 55 of Chapter 66 or that the total amount of land nominated as Proposed Substitute Land greatly exceeds the amount of land foreseeably required to reconstitute the Trust, then the Commissioner shall notify the Plaintiffs of his or her objection. The Plaintiffs and the State shall then have 60 days to resolve the issue. If the issue is not resolved within such 60 day period, the Commissioner may refer the matter to the court for resolution under Section 57 of Chapter 66. If the Commissioner's objection is to the amount of Proposed Substitute Land and the court agrees, the Plaintiffs' have the right to select which Proposed Substitute Land shall be removed.

12. Developing Exchanges.

(a) Joint Effort. The State and the Plaintiffs shall work

together to develop exchange proposals that meet the requirements of Section 55 of Chapter 66, including mutually developing systems to efficiently handle the large number of transactions involved. In the event that the State and Plaintiffs reach an impasse on an exchange or exchanges, the differences shall be presented to the court for resolution under Sections 55(h) and 57 of Chapter 66.

(b) Parcels. Original Trust Lands parcels are the parcels identified under Chapter 48, SLA 1987, except (i) where different parceling is necessary or desirable to accomplish the reconstitution, or (ii) for purposes of valuation. For purposes of valuation, large parcels shall be reparceled into the size they are most likely to have been or would be sold in the marketplace. These parcels shall be no less than 40 acres nor larger than 160 acres in size in areas that are generally satisfactory for development, except where parcels smaller in size than 40 acres are legally conveyable. In the interpretation of this principle, "areas generally satisfactory for development" means areas having generally less than a 15% slope and no higher in elevation than the locally defined contour of tree line, with areas above this elevation being parceled as a separate tract or tracts. Areas classified as a 40 acre size shall be those tracts with greater accessibility to roads, water or airstrips; less adverse slopes; and more favorable development characteristics (soils, slope, drainage), while 160 acre parcels shall be those in a remote location with less desirable development characteristics. Settlement development trends and local land regulations (zoning)

shall also be considered in the classification of parcels into 40 and 160 acre sizes. This classification process shall be conducted jointly by the State and Plaintiffs and the parceling results shall be mutually agreed to by the parties. These procedures shall also apply to Proposed Substitute Land.

(c) Aggregation Allowed. Subject to the requirements of subsections 55(d) and (e) of Chapter 66, either individual parcels or groups of parcels may be exchanged.

(d) Equal Fair Market Value Always Required Even When Comparable Land Not Identified. The parties agree that the Trust will be reconstituted only with Substitute Land of equal fair market value compared to Non-Reconstituted Trust Land or to encumbrances on Original Trust Lands. When considering specific exchanges, Substitute Land must be exchanged for Non-Reconstituted Trust Lands and encumbrances on Original Trust Lands on the basis of equal fair market value, notwithstanding that comparable Proposed Substitute Land under Section 55(d) of Chapter 66 has not been identified.

(e) Revenue Generating Capacity of Substitute Land. When considering specific exchanges, if there is no Proposed Substitute Land comparable to the Non-Reconstituted Trust Lands for which the Proposed Substitute Land is to be compensation under Section 55 of Chapter 66, other land owned by the State may be proposed as Substitute Land, but only so long as its revenue generating history and/or potential is comparable to the revenue generating history and/or potential of the Non-Reconstituted Trust Land.

(f) Valuation of Parcels -- General Rules. In determining equal fair market value under Chapter 66, valuations of Non-Reconstituted Trust Land shall be based upon the fair market value of the parcel or parcels without regard to encumbrances, but with regard to physical access. Valuations of Legislatively Designated Non-Reconstituted Trust Land may consider the special and/or unique value which caused its recognition for the legislatively designated use, but may not be reduced because of the restrictions on use resulting from the legislative designation. Valuations of Proposed Substitute Lands shall reflect any change in value resulting from the existence of an encumbrance. Valuations of both Non-Reconstituted Trust Lands and proposed Substitute Land shall include the contributory value of site improvements, such as site preparation (i.e., excavation, clearing, grading, etc.), fill, building pads, roadbeds, runway base, wells, and septic systems. For Non-Reconstituted Trust Land, the value of other improvements such as paving, pipelines, electrical transmission or distribution lines, and buildings shall not be included. For Substitute Land, the value of other improvements such as paving, pipelines, electrical transmission or distribution lines, and buildings shall be included where the Trust Authority is to take title to the improvements. Parcels shall be assembled and considered together where appropriate.

(g) Exchanges of the Mineral Estate of Non-Reconstituted Trust Land.

(i) De Minimus Mineral Estate Values. When developing exchange proposals for Non-Reconstituted Trust Land, if

the parties agree that there is no indication that the mineral estate is of particular value, exchanges shall be developed without formally determining the value of the mineral estates of the Non-Reconstituted Trust Land and the proposed Substitute Land. In determining whether there is no indication that the mineral estate is of particular value, the parties shall consider whether the land was selected for mineral values, whether there have been any mineral closing orders applying to such land and the reasons for such closures, whether the geologic terrane is favorable for mineral value, and other available information.

(ii) Mineral Exchanges. Exchanges of the mineral estate of Non-Reconstituted Trust Land where the land is not considered to have a de minimus mineral value under Subsection (g) (i) shall be accomplished as provided in Sections 55 (c) -- (e) of Chapter 66 employing the following criteria and as specified in Exhibit C:

A. geologic characteristics;

B. mineral characteristics;

C. mineral economic valuation estimates using practical methods considering available data; and

D. differences in the states of knowledge of the mineral endowment of the respective lands.

(iii) Original Trust Land subject to state administered mining leases or mining claims which the Plaintiffs

elect for conveyance to the Trust shall be considered to have returned one-fourth of the comparable value of the mineral estate of such parcel to the Trust.

(iv) The economic impact of the existence of mineral encumbrances on Substitute Lands shall be considered prior to comparison with Non-Reconstituted Trust Lands and exchanges shall then be conducted as provided in Subsection (g) (ii) without further adjustment under Subsection (g) (iii).

(v) The exchange process will be based upon comparability as near as practicable. Differences in comparable character shall be resolved through selecting Substitute Land with different geologic and mineral characteristics as agreed to by the parties. Differences in states of knowledge shall be resolved through negotiation between the parties.

(vi) If agreement between both parties regarding the evaluation process or procedures cannot be attained, it shall be subject to review by a Technical Review Committee (TRC). The TRC will consist of five members, two selected by the State, two by the Plaintiffs, and one by the four so selected, consisting of recognized experts from industry, government, and academia. Rather than selecting a TRC, both parties may elect to use the Alaska Minerals Commission for this purpose. After review by the TRC or Alaska Minerals Commission, any remaining dispute shall be resolved by the court

under Section 57 of Chapter 66.

(h) Date of Valuation. The date of all valuations shall be the date of this Settlement Agreement.

(i) Severed Estate Permissible. If the land estate of Original Trust Land is in a category that prevents its conveyance to the Trust, but the mineral estate is in a category that allows for its conveyance to the Trust, the parties may agree to have the mineral estate conveyed to the Trust and the Trust compensated for the land estate not returned as provided in Section 55 of Chapter 66 and Article III of this Settlement Agreement. Unless otherwise mutually agreed to by the parties, all other conveyances under Chapter 66 and this Settlement Agreement shall include both the land and mineral estates.

13. Hazardous Substances. (a) In the event the presence of a Hazardous Substance on a parcel of Original Trust Land or Proposed Substitute Land is known prior to the conveyance of such land to the Trust Authority, then the State,

(i) in its sole discretion, shall elect to either (A) clean up the parcel to a standard mutually agreeable to the State and Plaintiffs, or (B) not convey the parcel and compensate the Trust with Substitute Land equal in fair market value to the parcel without the Hazardous Substance, as provided in Section 55 of Chapter 66 and Article III of this Settlement Agreement; or

(ii) if mutually acceptable to the State and Plaintiffs, need not clean up the parcel and convey the parcel subject to an indemnification from the State in favor

of the Trust for any claim or loss resulting from the presence of Hazardous Substances.

(b) If a Hazardous Substance came to be located on Reconstituted Trust Land prior to its conveyance to the Trust Authority and is discovered after it has been conveyed to the Trust Authority, the State shall

(i) be responsible to the Trust Authority for response actions that are consistent with the National Contingency Plan, 40 CFR Part 300, and in accordance with all applicable provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq., AS 46.03.822, and all other similar environmental statutes or regulations as may now be or subsequently become applicable; and

(ii) indemnify the Trust Authority for other claims, losses, judgments, damages, and costs (including attorney and consultant fees) resulting from the presence of a Hazardous Substance which came to be located on Reconstituted Trust Land prior to its conveyance to the Trust Authority,

PROVIDED, HOWEVER, that an environmental site assessment, appropriate in scope to the location and present and past use of the land, and acceptable to the Plaintiffs or Trust Authority (as appropriate) and the State, shall be conducted as follows:

A. at the sole discretion and expense of the State, prior to the conveyance of land to the Trust Authority; or

B. after the conveyance of land to the Trust Authority and prior the (A) disposal of such land, (B) disposal of an interest in such land, or (C) authorization of any use of such land with significant potential for the release of Hazardous Substances, whichever comes first, one-half of the cost for such investigation being borne by the State.

All reports and other information either party receives as a result of any such environmental investigations shall be provided to the other party. The Department of Environmental Conservation and the Commissioner shall be notified immediately of the known or suspected presence of Hazardous Substances. Except as specifically provided in this Section, nothing in this Section shall prohibit or otherwise limit the Trust Authority's or the State's right to assert any claims or defenses available to it under the law.

14. Notice of Proposed Exchange. When the State and Plaintiffs have agreed upon an exchange, or prior to submitting a proposed exchange to the court under Section 55(h) of Chapter 66, the State shall provide notice of the proposed exchange in accordance with AS 38.05.945(b) and (c) and furnish a copy thereof to Plaintiffs. The notice shall identify the Proposed Substitute Land and the Non-Reconstituted Trust Land, and state that an exchange is proposed under Section 54(7) of Chapter 66. Either party may modify its position on a proposed exchange as a result of the response to the public notice.

15. Conveyances of Land to Reconstitute the Trust.

(a) Land to be conveyed to the Trust Authority under Sections 54 and 55 of Chapter 66 and this Settlement Agreement shall be granted to the "Alaska Mental Health Trust Authority, trustee," by patent, in the form attached hereto as Exhibit D, with the status of title agreed to by the parties or resolved by the court under Section 57 of Chapter 66. The parties shall jointly develop procedures for timely acceptance or rejection of proposed conveyance documents and court review. If any such Reconstituted Trust Land requires survey prior to issuance of a patent, the State shall first convey such land by issuing a "Mental Health Trust Interim Conveyance," in the form attached hereto as Exhibit E, and then have the land surveyed and issue the patent upon completion of the survey. As a general rule, the conveyance document shall convey land by township and each conveyance document shall contain only one category of land (Original Trust Land or Substitute Land), one type of estate to be conveyed (land and mineral, land only or mineral only), and segregate the surveyed and unsurveyed portions.

(b) The State, at its expense, may defend the status of title as set forth in Subsection (a) of this Section. For Reconstituted Original Trust Land, if the status of title, as of the date of the conveyance document, with respect to interests created by the State subsequent to the State receiving management authority over such land whether by conveyance of such land from the federal government, by approval for conveyance or patent, or otherwise, is different than as set forth in Subsection (a) of this Section, the State shall compensate the Trust for the dif-

ference as provided in Article III, Section 7 of this Settlement Agreement. For Substitute Land, if the status of title as of the date of the conveyance document is different than as set forth in Subsection (a) of this Section, the State shall compensate the Trust for the difference as provided in Article III, Section 7 of this Settlement Agreement. The remedies provided in this Subsection are exclusive.

16. Surveys of Reconstituted Trust Land. Parcels of Reconstituted Trust Land requiring survey shall be surveyed by the State at its expense in the order specified by the Trust Authority and completed as soon as practicable. Plaintiffs and the State agree to jointly develop and propose to the Legislature a survey budget for each fiscal year, provided, however, nothing herein shall be deemed to mean that the State is not required to complete the surveys as soon as practicable. In order to convey land to the Trust, the parties agree that surveys appropriate to the type of land conveyed shall be accomplished, considering future Trust management and the potential uses the land, and satisfy local platting requirements.

17. Releases of Non-Reconstituted Trust Lands. For Non-Reconstituted Trust Lands that have been exchanged for Substitute Land, the Plaintiffs and the Trust Authority will, if requested, assist in the preparation of and will execute releases of interest from "the Alaska Mental Health Trust Authority and Beneficiaries of the trust created by Section 202(e) of the Alaska Mental Health Enabling Act of 1956, PL. 84-830, 70 Stat. 709 (1956), represented by the named plaintiffs in Weiss et. al. v. State,

4FA 82-2208 Civ.," to the "State of Alaska," in the form attached hereto as Exhibit F, at the time the patent or interim conveyance of the Substitute Land is issued.

18. Conveyances Recorded at State Expense. The patents, interim conveyances, and releases of interest shall be recorded at the State's expense in the recording district in which the land is located, with the original interim conveyances and patents returned to the Trust Authority and releases of interest returned to the State.

19. Exchanges Not Re-opened As a Result of Acreage Adjustments by BLM. The parties acknowledge that (1) many of the Original Trust Lands are lands that have been selected and approved for conveyance but have not been patented because they are unsurveyed, (2) it may be some time before the BLM surveys and issues patents for those lands, and (3) the acreages of some parcels as patented may vary from the acreages of those parcels shown in the selections approved for conveyance. The parties agree that no Chapter 66 exchange shall be adjusted if a later BLM patent of a parcel of Non-Reconstituted Trust Land shows an acreage figure different from that shown on the land records employed during the process of reconstituting the Trust.

20. Law Applicable to Reconstitution. (a) In reconstituting the Trust, it is the parties' intent that:

(i) only the provisions of Sections 54 -- 57 of Chapter 66 and the provisions of this Settlement Agreement apply;

(ii) except for (A) AS 38.05.945(b) and (c), and (B) as otherwise specifically provided herein, the provisions

of State law that otherwise apply to the conveyance of state lands do not apply to the conveyance of lands to the Trust under this Settlement Agreement, provided, however, that access to or along navigable or public waters may be reserved from conveyances of Substitute Land to the Trust (with the value of the Substitute Land taking into account such reservations); and

(iii) lands are not required to be in a disposal classification in order to be conveyed to the Trust.

(b) In the event that claims are made challenging the validity of (i) -- (iii) of Subsection (a), the State and the Plaintiffs will defend the parties' right to proceed in accordance with (i) -- (iii) of Subsection (a).

(c) If a final order is entered prohibiting the parties from continuing to honor the terms of (i), (ii), or (iii) of Subsection (a), the parties shall have 60 days to arrive at a mutually agreeable way to reconstitute the Trust in compliance with such final order. In the event the parties are unable to arrive at such an agreement, (1) if the final order requires a contrary application of AS 38.04 or AS 38.05, either party has the right to terminate this Settlement Agreement; or (2) if the final order requires the application of any other State law, the parties may apply to the court for appropriate relief.

21. Release from Hypothecation. As the Trust is reconstituted by Substitute Land being conveyed to the Trust by the interim conveyances or patents specified in Article III, Section 15 above, the State may request that Plaintiffs execute a release

from hypothecation of specified parcels of Hypothecated Lands from the Hypothecated Lands List in the form attached hereto as Exhibit G, provided, however, that the lands remaining on the Hypothecated Lands List shall at all times be sufficient to provide security for the remaining exchanges to be accomplished under Section 55 of Chapter 66 and this Settlement Agreement. In the event of a dispute between the parties with respect to the release of lands from the Hypothecated Lands List, the dispute shall be resolved by the court as provided in Sections 55 -- 57 of Chapter 66.

22. Notice When Reconstitution Complete. Upon completing reconstitution of the Trust pursuant to Sections 54 -- 57 of Chapter 66 and this Settlement Agreement, the Plaintiffs and the State shall jointly send written notice thereof to the Governor, the President of the Senate, the Speaker of the House, the Revisor of Statutes, the Commissioner of the Department of Health and Social Services, the Attorney General, the Commissioner, the Director of the Division of Mental Health and Developmental Disabilities, the Trust Authority, the Alaska Mental Health Board, the Governor's Council for the Handicapped and Gifted, the Advisory Board on Alcoholism and Drug Abuse, the Older Alaskans Commission, and the Alaska Native Health Board. Any disagreement as to whether reconstitution of the Trust has been completed shall be determined by the court under Section 57 of Chapter 66.

23. Remedy in Event Conveyance of Mineral Estate Violates Section 6(i). The State and the Plaintiffs intend that unless specifically excluded, the Mineral Estate as well as Land Estate

be conveyed to the Trust as part of the Trust reconstitution process (including Hypothecated Lands acquired by foreclosure). In the event that it is finally held that including the mineral estate in conveyances of Original Trust Land or Substitute Land to the Trust under Chapter 66 and this Settlement Agreement is a violation of Section 6(i) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339, or is otherwise categorically prohibited, the parties shall have 60 days to arrive at a mutually agreeable way to resolve the issue. If no such agreement is reached, this Settlement Agreement shall be terminated.

24. Remedy in Event State Does Not Allocate Required Percentage of Unrestricted General Fund. AS 37.14.036(c), as enacted in Section 11 of Chapter 66, provides that in each of the following State fiscal years:

> [T]he commissioner of revenue shall allocate from the general fund of the state to the mental health trust income account in the general fund an amount equal to the percent of unrestricted revenue of the state specified for that fiscal year:

FISCAL YEAR ENDING	PERCENT OF UNRESTRICTED STATE REVENUE
June 30, 1992	six percent
June 30, 1993	six percent
June 30, 1994	five percent
June 30, 1995	five percent
June 30, 1996	four percent
June 30, 1997	four percent
June 30, 1998	three percent
June 30, 1999	three percent
June 30, 2000	two percent
June 30, 2001	two percent
June 30, 2002	one percent
June 30, 2003	one percent

The provisions of AS 37.14.036(c) are of material importance to the Plaintiffs in the resolution of this suit. The parties agree

that if, in any fiscal year, the commissioner of revenue, for any reason, fails to allocate the full amount provided under AS 37.14.036(c), the Plaintiffs are entitled to obtain an injunction, to which the State shall not object, requiring the commissioner of revenue to allocate the full amount provided under AS 37.14.036(c) to the Mental Health Trust Income Account. If the Legislature reduces the percentage of unrestricted revenue for any fiscal year under the provisions of AS 37.14.036(c), the Plaintiffs may obtain a judgment against the State (as to which the State shall not object) that the reduction is void and obtain an injunction against the State (as to which the State shall not object) from spending the difference between the amount arrived at using the percentages set forth above and the reduced amount.

25. Remedy in the Event of Breach of Good Faith and Fair Dealing. In the event of a breach of the implied covenant of good faith and fair dealing by either party resulting in an inability to complete the reconstitution of the Trust by December 1, 1994 (or such extended time as may be agreed to by the parties), and in addition to other equitable relief, a court may equitably toll the date for reconstitution of the Trust by the amount of time such party is in breach of the covenant.

26. General Remedies for Breach of Reconstitution Provisions. In the event of a breach of the terms of Chapter 66 and this Settlement Agreement pertaining to the reconstitution of the Trust, either party may seek appropriate equitable relief to compel the other party to comply with the terms of Chapter 66 and this Settlement Agreement. If a party seeks equitable relief

under this Section, the other party will not assert as a defense to the action that there exists an adequate legal remedy.

27. Remedy for Failure of Hypothecation. In the event that the hypothecation of the Hypothecated Lands is declared ineffective by a final judicial order, the parties shall have 60 days to arrive at a mutually agreeable way to address such invalidity. In the event the parties are unable to arrive at such an agreement, either party has the right to terminate this Settlement Agreement.

28. Remedies for Failure to Reconstitute the Trust. (a) In the event the trust is not fully reconstituted by December 1, 1994 (or such extended date for reconstituting the Trust as may be agreed to by the parties), unless such failure to reconstitute the Trust is due to the lack of good faith on the part of the Plaintiffs, the Plaintiffs shall, in addition to any other remedies they may have, be entitled to foreclose on the Hypothecated Lands as provided in Section 56(d) of Chapter 66 and Article III, Section 29 of this Settlement Agreement.

(b) If Plaintiffs are unable to validly and effectively require reconstitution of the Trust as contemplated under Chapter 66 and this Settlement Agreement, the Plaintiffs may apply to the court for any other appropriate relief.

29. Foreclosure as Remedy. Plaintiffs are not required to foreclose on the Hypothecated Lands prior to seeking any other relief available to Plaintiffs. In the event of foreclosure, (1) the parcels to be foreclosed and manner of foreclosure, and (2) entitlement to the future rents, proceeds, products, and profits

derived from the Hypothecated Lands, shall be determined by the court under Sections 56 and 57 of Chapter 66.

30. Termination of Settlement. (a) Except as specifically provided in this Settlement Agreement, any dispute whether termination of the settlement embodied in Chapter 66 and this Settlement Agreement is appropriate shall be resolved by the court under Section 57 of Chapter 66. In considering whether termination of the settlement is appropriate, the following factors shall apply:

(i) the extent to which the Trust has been reconstituted;

(ii) the likelihood that the Trust will be reconstituted as contemplated under Chapter 66 and this Settlement Agreement if the settlement is terminated;

(iii) the amount of work completed and funds expended toward reconstitution of the Trust as provided in Chapter 66 and this Settlement Agreement;

(iv) the good faith of the parties;

(v) the prejudice to the parties if the settlement is or is not terminated; and

(vi) other appropriate considerations.

(b) In the event this settlement is terminated as provided in this Section or otherwise, the settlement embodied in Chapter 66 and this Settlement Agreement shall be void and, except as provided in Article III, Section 31, the parties returned to their respective positions as if this settlement had never become effective, including the right to re-assert claims to Original Trust Lands.

31. Cancellation of Re-Notice of Lis Pendens and Modification to Remove Preliminary Injunction With Respect to Certain Third Party Transactions. (a) Plaintiffs recorded re-notices of lis pendens affecting all Original Trust Lands in or about September 1990, and by order of the Superior Court dated July 9, 1990, the State has been enjoined

> from issuing any patent(s) or other documents or taking any further steps which convey or transfer mental health trust lands or any interest(s) therein, including without limitation, any permits to use or occupy mental health trust lands, or extract resources from any mental health trust lands, pending final resolution of this litigation or earlier order of this court.

Upon final approval of this Settlement Agreement and Chapter 66 taking effect, all such third party rights are validated and the need to litigate issues relating to title is eliminated. The length of time, however, to obtain approval may cause substantial hardship to certain third parties who have received patents or who have entered into contracts to receive title to Original Trust Lands from the State or municipalities. Therefore, upon presentation of this Settlement Agreement to the court for approval, the State and the Plaintiffs executing this Settlement Agreement through counsel shall immediately move for cancellation of the re-notice of lis pendens and modification to remove the preliminary injunction with respect to Original Trust Lands in which the State or any municipality conveyed or agreed to convey title to a third party in the form attached hereto as Exhibit H. For purposes of this Section, a conveyance or agreement to convey by the State to a municipality is not one to a third party.

(b) In order to protect the Trust's interests in the Original Trust Lands described in Subsection (a), the parties agree that if the settlement of this action contemplated by Chapter 66 and this Settlement Agreement is not finally approved by the court, the Plaintiffs may reassert claims to such lands. The parties further agree that if the settlement of this action contemplated by Chapter 66 and this Settlement Agreement is not finally approved by the court, or is terminated for any reason, the State shall compensate the trust for the fair market value of any valid interest(s) of the Trust that were cut-off after the date the re-notices of lis pendens were canceled. The compensation may be made in land as comparable in character as practicable to the land for which the Trust's valid interests were cut-off, as provided in Section 55 of Chapter 66.

(c) If the court denies the motion or if an order approving the motion for cancellation of the re-notice of lis pendens and for modification to remove the preliminary injunction set forth in subsection (a) is not entered within 4 months of the date the motion is submitted to the court for decision, the parties shall have 60 days to arrive at a mutually agreeable way to address the interests of such third parties and the Trust in the parcels of Original Trust Lands. In the event the parties are unable to arrive at such an agreement, either party may terminate this Settlement Agreement.

(d) This Section survives termination of this Settlement Agreement.

ARTICLE IV.
ONGOING RESPONSIBILITIES
OF THE STATE AND THE TRUST AUTHORITY

1. General Trust Responsibilities and Obligations. The parties agree that the State, in carrying out its responsibilities and obligations under the Enabling Act, acts through the Governor and his or her Administration, the Legislature, and the Trust Authority.

(a) The Trust Authority is under the obligation when performing functions related to the Trust to do so as provided in Chapter 66, including without limitation,

(i) when exercising any discretion under Chapter 66 pertaining to the Trust, to do so properly as provided in Chapter 66;

(ii) assuring that Trust Property and Trust Funds are administered properly;

(iii) assuring that the Trust corpus is preserved and protected;

(iv) assuring that all revenue derived from Trust Property is deposited into the Mental Health Trust Fund or the Mental Health Trust Income Account as either corpus or income, as appropriate, pursuant to AS 13.38.010 et. seq.;

(v) assuring that Trust Funds are spent solely for Trust purposes as provided in Chapter 66, unless an excess is properly determined to exist under Chapter 66; and

(vi) assuring that grantees of and contractors being paid with Trust Funds spend Trust Funds in accordance with

Chapter 66, and the terms of the grant or contract.

(b) The Legislature is under the obligation when performing functions related to the Trust to do so as provided in Chapter 66, including without limitation,

(i) when exercising any discretion under Chapter 66 pertaining to the Trust, to do so properly as provided in Chapter 66; and

(ii) appropriating Trust Funds solely for Trust Purposes properly as provided in Chapter 66, unless an excess is properly determined to exist under Chapter 66.

(c) The Governor and his or her Administration is under the obligation when performing functions related to the Trust to do so as provided in Chapter 66, including without limitation,

(i) when exercising any discretion under Chapter 66 pertaining to the Trust, to do so properly as provided in Chapter 66;

(ii) assuring that Trust Funds are spent solely for Trust purposes as provided for in Chapter 66, unless an excess is properly determined to exist under Chapter 66; and

(iii) assuring that grantees of and contractors being paid with Trust Funds spend Trust Funds in accordance with Chapter 66, and the terms of the grant or contract.

2. Sharing of Information. (a) Except as provided under Subsection (c), the parties agree that the Trust Authority is entitled to receive at its request all information in the State's possession or control relevant to:

(i) the preparation, revision, or amendment of the integrated comprehensive mental health program plan;

(ii) the planning of expenditures from the Mental Health Trust Account; and

(iii) the implementation of the integrated comprehensive system of care established under the Enabling Act, as determined by the plan.

(b) Information under (a) of this Section includes information that is confidential under state and federal law. To the extent that information provided under this Section is confidential, its confidentiality shall be so stated and provided subject to appropriate safeguards regarding maintenance of confidentiality.

(c) If the State asserts that disclosure of information requested by the Trust Authority is prohibited by law or otherwise need not be made, it shall provide the Trust Authority with the identity of the source and a description of the nature of the information withheld, and the Trust Authority may seek appropriate judicial relief to compel disclosure of the information.

3. Taxation of Trust Land. The parties agree that Trust Land is not subject to general taxation except that a private leasehold, contract, or other interest in the property is taxable to the extent of that interest.

4. Management of Other State Land. The parties agree that Reconstituted Trust Lands shall be treated as private land for purposes of the management of other State land, including without limitation, entitlements to preference rights and buffer zones.

5. Law Applicable to Management of Trust Lands. (a) Except for the notice required under AS 38.05.945 (b) and (c), the parties agree that Reconstituted Trust Land shall be managed by the Trust Authority free from all State laws that apply only to the sale, encumbrance, development or use of State lands not held in trust.

(b) If a claim is made challenging the validity of subsection (a), the State agrees to defend its validity on all appropriate grounds, including the ground that enforcement of the claim constitutes impairment of Plaintiffs' and Beneficiaries' contract rights under this Settlement Agreement.

6. Access to Trust Land. The parties agree that the State will reserve without charge legal rights-of-ways and easements for access and for utility services to each parcel of Reconstituted Trust Land. Consistent with state and federal law, a right-of-way or easement shall be located to assure adequate and feasible access for the purposes for which the right-of-way or easement is intended. Nothing in this Section requires the State to provide access across non-State land.

7. State Infrastructure on Trust Lands. The State may not exclude infrastructure or financial support to the Trust on the basis that such infrastructure or financial support would benefit Trust Land.

8. Compliance With Chapter 66 and this Settlement Agreement Is a Defense. In any action by the Beneficiaries in which it is alleged that any State action is inconsistent with the requirements of the Enabling Act, it is a complete and total

defense that the State is acting consistently with Chapter 66 and this Settlement Agreement.

9. State Amendment of Selection Priorities. The parties agree that timely conveyance of the Trust's remaining land entitlement under the Enabling Act is critical to the Trust. Accordingly, the State will provide the Plaintiffs with a complete listing of pending mental health selections and its analysis of selection conflicts, if any. The Plaintiffs will prioritize the remaining mental health selections and provide this listing to the State which shall incorporate such prioritization in the annual conveyance priority list filing with BLM. The State shall consult with the Plaintiffs when it determines the appropriate ranking of the mental health selections among the other State conveyance priorities. In those cases where mental health selections and general or community grant selections are coexistent: (1) the State and Plaintiffs will resolve the conflicts in a manner which ensures future Trust or State ownership, and (2) when requested by Plaintiffs, the State shall resolve conflicts in favor of the Trust.

10. Competing Native Allotments. (a) The State and the Plaintiffs support the prompt adjudication and approval of valid Native allotment applications. The State shall determine whether to challenge the validity of any Native allotment application on Original Trust Lands, Hypothecated Lands, and other State lands identified as Substitute Land or Proposed Substitute Land. The State shall notify Plaintiffs of the State's determinations, which shall be final and not reviewable by the court under Sec-

tions 55(h) and 57 of Chapter 66.

(b) Lands that have been approved for conveyance or patent under the Enabling Act that are determined to be subject to valid Native Allotment applications shall be treated as Non-Reconstituted Trust Lands for which compensation shall be made pursuant to Section 55 of Chapter 66 and Article III of this Settlement Agreement as follows:

(i) To the extent that remaining selections under the Enabling Act will result in conveyance of lands that are not as valuable as the Native Allotment Land, the State will compensate the Trust in the same manner as for Non-Reconstituted Trust Lands under Chapter 66 and this Settlement Agreement with land as comparable as practicable to the Native Allotment land, and equal in fair market value to the difference in fair market value between the land most likely to be conveyed and the Native Allotment land.

(ii) Since the actual conveyance by BLM of lands to replace the Native Allotment land may not occur for some time, the Plaintiffs and the State shall jointly determine those lands that are most likely to be conveyed under the Enabling Act instead of the Native Allotment land.

(iii) This Section only applies to Native Allotment Applications that are shown on the BLM Master Title Plats prior to conveyance of the relevant land to the Trust Authority. After such time, the Trust Authority shall be responsible for handling Native Allotment Applica-

tion conflicts.

11. Funding of Mental Health Program from General Fund. The parties agree that only when Trust Income exceeds the amount that is reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program that any Trust Funds may be transferred to the general fund. In the event that Trust Income is insufficient to fund the necessary operating and capital expenses of the integrated comprehensive mental health program, appropriations may be made from the general fund for that purpose. Nothing in Chapter 66 or this Settlement Agreement is intended to change any obligation the State may have under state and federal law to provide, from general fund revenue sources, for the health and welfare of Beneficiaries.

ARTICLE V.
INTERIM OBLIGATIONS TO THE TRUST AND THE BENEFICIARIES.

The parties recognize that Chapter 66 imposes certain interim obligations and responsibilities upon the State and Plaintiffs during the period of implementing the Trust reconstitution. In recognition of those interim obligations, the parties agree:

1. Plaintiffs Will Be Funded by the State. (a) Plaintiffs are entitled to receive from the State sufficient funds to adequately perform the responsibilities imposed upon the Plaintiffs in the reconstitution process under Chapter 66 and this Settlement Agreement. As a general principle, the State and the Plaintiffs shall receive equal funding for equal work effort to be performed under Chapter 66 and this Settlement Agreement. Equal funding

for equal work effort to be performed shall take into consideration the different types of work, the different amounts of work, the different costs associated with different types of personnel employed to perform the work, and similar considerations. The intent of this provision is to ensure that neither party obtains a financial advantage over the other. The parties recognize, however, that the scope of the work performed by one party may differ significantly from that performed by the other, and that different amounts of funds may be provided to the parties to reflect this fact.

(b) In the event of a dispute as to the amount of funding required for the Plaintiffs to accomplish their responsibilities under Chapter 66, the court will resolve the dispute under Section 57 of Chapter 66 and this Settlement Agreement.

(c) The parties recognize that the there may be some delay in obtaining approval of the settlement embodied in Chapter 66 and this Settlement Agreement, but that work to implement the settlement must begin immediately to ensure that the Trust is reconstituted in a timely manner. Funding for such work will be provided in accordance with this subsection. Before October 1, the parties will meet to seek agreement on funding for the following fiscal year. If agreement is not reached, or if the legislature appropriates less than the agreed upon amount, the Plaintiffs may apply to the court (1) to determine whether the amount appropriated is reasonable to permit Plaintiffs to perform their responsibilities under the settlement embodied in Chapter 66 and the Settlement Agreement, and (2) if it is not, to deter-

mine the appropriate remedy. Nothing in this subsection precludes the State from arguing that the amount appropriated is reasonable in light of all the circumstances. This Subsection is effective as of the date of this Settlement Agreement.

2. Interim Management of Original Trust Lands. Until such time as a conveyance to the Trust Authority has been completed with respect to each parcel of Original Trust Land which may be conveyed to the Trust under Chapter 66 and this Settlement Agreement:

(i) the State and the Plaintiffs may agree to sell, lease, exchange, or otherwise enter into transactions with respect to parcels of such land or any interest therein, provided, however, that prior to completing any such transaction, any notice required under AS 38.05.945 shall be given;

(ii) any transaction with respect to such parcel requires the written consent of the Plaintiffs, and any transaction consummated without such consent is void;

(iii) all revenue received beginning July 1, 1991 from each such parcel shall be separately accounted for, and all such revenue from each parcel ultimately conveyed to the Trust shall be deposited into the Mental Health Trust Fund or Mental Health Trust Income Account as either corpus or income pursuant to AS 13.38.010 et seq.; and

(iv) the State, after consultation with Plaintiffs, at its expense, shall take all practical steps to protect such

Original Trust Lands from trespass, damage, and waste to the same extent that it takes such steps with respect to State general grant land given the highest protection (For example, unless otherwise agreed to by the parties, and prior to conveying Original Trust Land to the Trust, the State shall undertake trespass enforcement actions. As another example, the State and Plaintiffs shall mutually agree upon the appropriate category for forest fire management purposes for Original Trust Land).

3. Management of Land After Conveyance. After a parcel of Original Trust Land or Substitute Land has been conveyed to the Trust Authority as provided in Article III, Section 15 hereof, all management authority for that parcel is transferred to the Trust Authority. After an exchange has been completed with respect to a parcel of Non-Reconstituted Trust Land for which the Trust is not to receive title, all management authority for that parcel of Non-Reconstituted Trust Land is transferred to the State. Nothing herein shall be deemed to prevent the Trust Authority from entering into one or more agreements with the State to manage Trust Lands after management authority has been transferred to the Trust Authority.

4. Land Closed to Mineral Entry. Until such time as a parcel of Original Trust Land has been conveyed to the Trust Authority, or an exchange has taken place with respect to such parcel of Original Trust Land, such parcels of Original Trust Land shall remain closed to mineral entry under State law, and

any interests claimed or granted in contravention of this Section are void.

5. Management of Hypothecated Land. Until such time as a conveyance to the Trust Authority has been completed with respect to each parcel of Hypothecated Land or the parcel has been released from hypothecation:

(i) any transaction with respect to such parcel will be subject to a finding that it is consistent with hypothecation of the parcel, which will include that no substantial devaluation of the parcel for purposes of Trust ownership will result; the draft finding will be given to the Plaintiffs at the time notice of the proposed action is circulated for agency review;

(ii) the State, at its expense, will take all practical steps to protect Hypothecated Lands from damage to the same extent that it takes such steps with respect to State general grant land; and

(iii) any disputes with respect to the management of Hypothecated Lands, including application of this section, shall be resolved by the court under Section 57 of Chapter 66.

6. Adherence to Settlement Agreement. The Commissioner shall ensure adherence to the provisions of Article V, Sections 2, 5, and 7 of this Settlement Agreement, including but not limited to noting to the record the status of Hypothecated Land and promulgating a Department Order in the form attached hereto as Exhibit I. The Hypothecated Lands List shall also be recorded

by the State at its expense. This Section is effective as of the date of this Settlement Agreement.

7. Management of Proposed Substitute Land. Proposed Substitute Land shall be segregated from entry or disposal, including closure to mineral entry, unless otherwise mutually agreed to by the parties.

ARTICLE VI.
EXERCISE OF REMEDIES FOR BREACH OR DEFAULT.

1. Remedies for Breach of Responsibilities and Obligations. The parties agree that each provision of Chapter 66 and this Settlement Agreement are of material importance to this settlement. In the event of:

(i) a breach by the State or Plaintiffs of any provision, term, or covenant of this Settlement Agreement;

(ii) a failure of a party or the Trust Authority to comply with any applicable provision of Chapter 66 or this Settlement Agreement; or

(iii) an amendment of any provision of Chapter 66 (or other law) that materially diminishes responsibilities and obligations of the State provided in Chapter 66 and this Settlement Agreement,

the parties shall be entitled to pursue, in addition to any specific remedies provided herein for breach of particular terms, covenants, or conditions, any remedies that may be available to them under this Settlement Agreement or otherwise in law or equity, including declaratory relief or injunctive relief and including specific performance of their rights and obligations

hereunder and under Chapter 66.

2. Remedies Are Not Exclusive and May Be Pursued in Any Order. Except as otherwise specifically provided, none of the remedies provided in this Settlement Agreement for breach or other inability to comply is exclusive, and Plaintiffs or the State may pursue any one or more remedies provided in this Settlement Agreement in any order, as may be applicable.

3. No Waiver of Remedies by Delay or Omission. A delay or omission by the Plaintiffs or the State in exercising any right or power arising from any breach of this Agreement does not prevent the Plaintiffs or the State from exercising that right or power if the breach continues. A waiver of breach, whether full or partial, by the Plaintiffs or the State, may not be taken to extend to any subsequent breach. The giving, taking, or enforcement of any particular security does not operate to prejudice, waive, or affect any other security, or any rights, powers or remedies exercised under it.

4. No Waiver of Remedies. No course of dealing on the part of the Plaintiffs or the State or any delay or failure on the part of Plaintiffs or the State to exercise any right is a waiver of such right or otherwise prejudices Plaintiffs' or the State's rights, powers, and remedies.

5. Court May Execute Instruments Necessary to Implement Orders. In the event that the State or the Plaintiffs fail to comply with any order of a court hereunder, the court may execute and deliver to Plaintiffs or the State, respectively, any instrument or document necessary or desirable to implement such order.

6. Who Can Exercise Rights and Remedies. With the exception of rights and remedies exercisable by the State, rights and remedies provided for herein are exercisable by the Plaintiffs, the Trust Authority, or the Beneficiaries of the Trust, or any combination thereof, as follows:

(a) Rights and remedies pertaining to the reconstitution of the Trust are exercisable only by the Plaintiffs now or hereafter executing this Settlement Agreement through counsel, until notice of reconstitution is given under Article III, Section 22, of this Settlement Agreement, except for malfeasance or misfeasance on the part of the Plaintiffs, in which event the Trust Authority, the non-signing Plaintiffs, or other Beneficiaries of the Trust may exercise such rights or remedies upon order of the court under Section 57 of Chapter 66.

(b) After notice of reconstitution of the Trust pursuant to Article III, Section 22, of this Settlement Agreement, any remaining responsibilities assigned to the Plaintiffs under this Settlement Agreement are transferred to the Trust Authority and the Trust Authority may exercise rights and remedies pertaining to the reconstitution of the Trust.

(c) Until the Trust Authority is appointed and notifies the Plaintiffs in writing that it is ready to assume its responsibilities hereunder, the Plaintiffs may exercise any rights and remedies pertaining to the Trust Authority under this Settlement Agreement. After the Trust Authority is appointed and notifies the Plaintiffs in writing that it is ready to assume its respon-

sibilities hereunder, the Trust Authority may exercise any rights and remedies pertaining to its responsibilities.

(d) In the event the Trust Authority fails or refuses to exercise any rights or remedies herein in appropriate circumstances, the Beneficiaries, including the Plaintiffs, may exercise any such rights and remedies. The Beneficiaries may otherwise exercise any remedies or rights provided herein under the circumstances beneficiaries may ordinarily enforce the terms of a trust, subject to the rights of the State, the Trust Authority, the Plaintiffs, or any combination thereof, to defend on the grounds of res judicata, collateral estoppel, or any other available legal or equitable defenses.

ARTICLE VII.
INTERPRETATION.

Both the State and the Plaintiffs participated equally through counsel in the drafting of this Settlement Agreement and agree that the canon of construction that ambiguities in an agreement be construed against the drafter does not apply.

ARTICLE VIII.
AUTHORITY OF COUNSEL FOR PLAINTIFFS TO IMPLEMENT RECONSTITUTION OF THE TRUST.

Counsel of record for the Plaintiffs shall designate one of their number as lead counsel and provide that designation to the Attorney General and the Commissioner. Plaintiffs warrant to the State that the designation of lead counsel confers upon lead counsel all authority necessary to implement the provisions of this Settlement Agreement relating to the reconstitution of the Trust under Chapter 66 and this Settlement Agreement on behalf of

all the Beneficiaries, and to sign documents on behalf of and binding upon all Beneficiaries. Plaintiffs' counsel may change the designation of lead counsel at any time, but such a change in designation will not become effective until served upon the Attorney General and the Commissioner. If lead counsel ceases to represent at least one Plaintiff, counsel for Plaintiffs shall immediately designate a new lead counsel and serve that designation on the Attorney General and the Commissioner. Lead counsel may designate one or more co-counsel to exercise specific authority under this Section and shall notify the Attorney General and the Commissioner of such designation.

ARTICLE IX.
MODIFICATION; AMENDMENT.

1. Settlement Agreement Incorporated into Consent Decree. The terms of this Settlement Agreement will be incorporated into a consent decree of a prospective nature that is binding upon the State, the Plaintiffs, and the Beneficiaries.

2. Modification in Form of Relief from Judgment. (a) The parties acknowledge that a change in circumstances may occur that would thwart or hinder the accomplishment of the purposes of the parties in entering into this Settlement Agreement by strict adherence to one or more of the specific provisions hereof. Recognizing, however, that the parties are releasing claims and defenses in exchange for the resolution of this dispute as provided in Chapter 66 and this Settlement Agreement, and that by releasing such claims and defenses, the parties may be prejudiced by any relief from the judgment incorporating Chapter 66 and this Settlement Agreement, the parties agree that nothing less than a

clear showing of new and unforeseen conditions that thwart or hinder accomplishment of the settlement may give rise to a request by only one party to this Settlement Agreement to be relieved from judgment that in any way modifies:

(i) the compensation to the Trust;

(ii) the obligations of the State with respect to providing services to the Beneficiaries from Trust Income under Chapter 66, or

(iii) the rights of the State, the Plaintiffs, the Trust Authority, and the Beneficiaries of the Trust to fully enforce the terms hereof.

(b) Other requests to modify judgment hereunder shall be governed by Civil Rule 60.

3. Agreement to Amend Settlement Agreement Prior to Reconstitution. Amendment to this Settlement Agreement by the parties is effective only as hereinafter provided. Prior to the giving of notice under Article III, Section 22 that reconstitution of the Trust has been completed, and notice thereof having been given by publication in newspapers of general circulation throughout the State, this Settlement Agreement may be amended only upon approval by the court under such conditions as may be ordered by the court, which may include notice to the Beneficiaries under Civil Rule 23.

4. Agreement to Amend Settlement Agreement After Reconstitution. After the giving of notice under Article III, Section 22 that reconstitution of the Trust has been completed, and except as provided in Article IX, Section 2 of this Settlement Agree-

ment, this Settlement Agreement may only be amended by the court with the approval of the Trust Authority or the Beneficiaries, and notice thereof having been given by publication in newspapers of general circulation throughout the State, and upon approval by the court under such conditions as may be ordered by the court, which may include notice to the Beneficiaries under Civil Rule 23.

ARTICLE X.
INDEMNIFICATION.

(a) The State shall indemnify, defend, and hold harmless:

(i) Plaintiffs and Beneficiaries from and against any liability (excluding liability for death, bodily injury, physical property damage, or punitive damages) for entering into this Settlement Agreement or from acts or omissions in performing Plaintiffs' and Beneficiaries' responsibilities and obligations under this Settlement Agreement; and

(ii) Plaintiffs, counsel for Plaintiffs, and Beneficiaries from and against any liability (excluding punitive damages) for death, bodily injury, or physical property damage in connection with Original Trust Land, Hypothecated Land or Proposed Substitute Land and arising from the entering into or implementing of this Settlement Agreement, PROVIDED, HOWEVER, that for lands over which Plaintiffs have concurrence authority under Article V, Section 2 of this Settlement Agreement, the State and Plaintiffs' counsel take all commercially reasonable

steps to obtain a similar indemnity and adequate evidence of financial responsibility from any private party seeking to use such land, which indemnity and financial responsibility shall be primary to the State's indemnity under this subsection;

and PROVIDED, FURTHER, that the State shall not indemnify, defend, nor hold harmless Plaintiffs, counsel for Plaintiffs, or Beneficiaries under Subsection (a)(i) or (a)(ii) from any liability arising from

A. grossly negligent or reckless acts or omissions, or intentional misconduct of the Plaintiffs, counsel for Plaintiffs, Beneficiaries, or their employees and agents,

B. the improper disclosure of confidential information;

C. workers' compensation or other insurance or workplace statutes or regulations;

D. employment disputes or other alleged civil rights violations under state or federal law, including, without limitation, claims for wrongful termination, claims under 42 U.S.C. Secs. 1983, 1985, 2000(e), AS 18.80, the Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327, the Age Discrimination and Employment Act, 29 U.S.C. Secs. 621 et. seq., and the Age Discrimination Act, 42 U.S.C Secs. 6101 et. seq.; or

E. claims or demands made by the State against the

Plaintiffs, counsel for Plaintiffs, or Beneficiaries under this Settlement Agreement.

(b) The State's indemnity obligation under this Article is in excess of and will not contribute with any other insurance, indemnity, or contractual transfer of responsibility. The Plaintiffs, counsel for the Plaintiffs, and Beneficiaries shall and hereby do assign any claims and defenses they may have with respect to liability under this Article and covenant to cooperate fully in the prosecution or defense of any action with respect to liability under this Article. Plaintiffs, counsel for Plaintiffs, and the Beneficiaries shall give the State notice of any claims that may result in liability under this Article in a timely manner so as to provide the State with an opportunity to defend against such claims or actions. Failure to notify the State within 30 days of first knowledge of a claim shall relieve the State of any obligation under this Article.

(c) Except for incidents or occurrences occurring (i) prior to conveyance of Reconstituted Trust Land to the Trust by interim conveyance or patent with respect to Reconstituted Trust Land, and (ii) the giving of notice of reconstitution under Article III, Section 22 with respect to Hypothecated Land and Proposed Substitute Land, the State's obligation under this Article shall terminate upon the giving of notice of reconstitution under Article III, Section 22 of this Settlement Agreement. This Article does not survive termination of this Settlement Agreement.

ARTICLE XI.

GENERAL PROVISIONS.

1. Time. Time is of the essence in each and every provision hereof.

2. Captions. The captions to the sections in this Settlement Agreement are solely for convenience of reference and do not in any way limit, amplify, or modify the provisions hereof.

3. Severability. Except as specifically provided herein, the invalidity or unenforceability of any particular provision of this Settlement Agreement does not affect the other provisions hereof, and such provision shall be construed to most closely match the intent of such provision to the extent that it may be valid and enforceable.

4. Entire Agreement. This is the entire agreement of the parties pertaining to the subject matter hereof and supersedes all or any other prior agreements and understandings between the parties, representing full and final disposition of the pending claims in this case.

5. Dispute Resolution. In the absence of an agreement for alternate resolution of a dispute and except for disputes to be resolved under section 57 of Chapter 66 (primarily concerning implementation of the reconstitution of the Trust), any suit to enforce the terms of this Settlement Agreement must be brought in the superior court for the State of Alaska.

ARTICLE XII.
SETTLEMENT OF ACTION.

Upon approval of this Settlement Agreement by the court and the issuance of an order or decree incorporating the provisions of this Settlement Agreement as a Consent Decree,

1. This action shall be dismissed and the parties' respective rights and obligations shall be determined under this Settlement Agreement,

2. The Preliminary Injunction issued in this action on July 9, 1990 shall be dissolved,

3. The Plaintiffs will be ordered to cancel the Re-Notices of Lis Pendens filed by Plaintiffs in the form attached hereto as Exhibit J, with recording charges borne by the State, and

4. The actions described in 1 -- 3 of this Article shall be stayed until Chapter 66 becomes effective.

DATED this _____ day of April, 1992.

PLAINTIFFS:

DAVID T. WALKER, ESQ., lead counsel, and Attorney for Plaintiffs VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated

By: _____
David T. Walker

JAMES B. GOTTSTEIN, ESQ., Attorney for Intervening Plaintiffs ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN on behalf of themselves and all others similarly situated

By: _____
James B. Gottstein

JEFFREY L. JESSEE, ESQ., Attorney for Intervening Plaintiffs ANITA BOSEL,

FRANCES DOULIN, SHARON GOODWIN, and GABRIEL MAYOC

By: _____
Jeffrey L. Jessee

STATE:

CHARLES E. COLE
ATTORNEY GENERAL

By: _____
Charles E. Cole

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REMARKS BY PHILIP R. VOLLAND
March 19, 1992

I have asked for this opportunity to address you for two reasons.

First, I have been exceedingly troubled of late by the look of candor of those attorneys who have pushed a purported settlement to the Mental Health Lands case in a manner that I believe deceives the public and the mental health community into believing that there is a settlement when, in fact, there likely will not be one. But, I am also here out of a sense of responsibility that I must do something constructive to end this crisis. I wish not to cast blame, but to offer solutions. Were I not to do so; were I to sit idly by and wait for my opportunity to object through the courts, I would simply allow myself and my clients to become part of the problem.

Chapter 66 does not settle the Mental Health Lands issues. Chapter 66 was a hastily and secretly negotiated deal which at first blush may have appeared as an attractive and novel solution, but which now after a year of examination is clearly doomed to failure.

Chapter 66 does not settle the Mental Health Lands case. It was so hastily conceived in the waning days of the Legislature last year that its substantial legal questions have engendered separate litigation which will prevent the proposed settlement from even being presented to the court for approval for years to come -- and that's only the beginning. The land exchange issues involved in Chapter 66 are so far reaching that even if the public intervenors fails in their legal challenge to Chapter 66, the land exchange process will be a target of litigation for decades.

Chapter 66 does not free up the million acres of land that has been held under a cloud by the court's injunction and the plaintiffs' claims to title. Rather it adds an additional four million acres of land to a pool of state land which cannot be developed, encumbered, or transferred in any way until after the years that it takes to go through the process of land exchange.

Chapter 66 does not calm the uncertain atmosphere for mineral and resource development which the Mental Health Lands case originally created. In addition to the four million acres of hypothecated land that are now subject to legal claims and cannot be developed, Chapter 66 allows the Trust to choose replacement land from <u>any</u> state land. All

this accomplishes is placing additional uncertainty on state land which might be subject to private or public use.

Chapter 66 is neither speedy nor inexpensive. The law calls for a massive and complex land exchange process which itself will take years to complete. Because Chapter 66 is not law until the settlement is approved, this process of land exchange can't even begin until years after the intervenors' litigation is resolved.

Chapter 66 does nothing to ease the funding needs of the mental health recipients in the state. The only benefits the bill appears to offer are to the lawyers and land managers who will make a profit from years of involvement in a complex and massive land exchange. If this case was really "settled" by Chapter 66, why have hundreds of thousands of dollars been spent this year on attorneys and Department of Natural Resources' representatives meeting to prepare a settlement document that is not yet even complete? If this is a true settlement of litigation, why has the Department of Law added two new attorney positions to "implement" the settlement? If this is such an easy and inexpensive solution to the land crisis, why has the Department of Natural Resources budgeted for 27 new positions next year just to map and catalog the lands that are subject to exchange?

The most troubling aspect of this needless rush into yet another Alaskan land exchange debacle is that there is a simple, easy solution already in place which would free up land for development, satisfy the interests of the mental health community, and not create a bureaucracy of layers and land managers.

All one needs to do is to look at the laws that are already on the books to see that there is an effective, easy, and quick solution to the present crisis. First, there is original Mental Health Trust Land that can be returned to the Trust. This land has only minimal or modest development potential, and everyone seems to agree that it can remain in the Trust without creating difficulty. Simply leave it there.

Secondly, Chapter 210 has been on the books for a number of years. Under Chapter 210, the Legislature allocates 6% of unrestricted general revenues each year to mental health programs. This is approximately the same level of public funds that the state has spent on these programs for decades. It is no golden parachute to mental health programs. As income to the state declines, mental

health programs will have to tighten their belts like anyone else. Just leave Chapter 210 on the books.

Finally, Chapter 66 did have one important benefit, and that was the creation of an authority for deciding allocations among the various mental health programs. Leave these provisions of Chapter 66 in place. This takes the pressure off the Legislature and the Governor to decide funding priorities among mental health programs. Simply leave these provisions of Chapter 66 in place.

I have asked myself, and other members of the public have asked me, why this shouldn't form the basis of a solution to the Mental Health Lands crisis? It seems both reasoned and reasonable. It allows resource development to move forward and addresses the fundamental concerns of the plaintiffs, and the one thing that I can say, and can say for a certainty, is that had this concept been enacted last year instead of Chapter 66, the settlement would likely have already been presented to the court for approval, would already have been approved, and the lis pendens, injunctions, and other clouds of title on the million acres of state land would already have been resolved.

I fault not the parties or the administration for the idea of trying to reconstruct the Trust. Trying to put the Trust back together again looked like a good idea at the time. But, it is now evident that all the King's men and all of the King's horses simply can't put the Trust back together again, not without endless years of litigation, endless expense, and a continued cloud of title over millions of acres of state land. The true losers in this are the unnamed plaintiffs who still search for adequate mental health services in the state and the anonymous members of the public cannot understand why a simpler, expedient solution to the mental health crisis can't be achieved.

If nothing else, let this be my personal appeal to my colleagues who are lawyers in the case, to the Governor, and to the Administration, and to the intervenors, that you be wise enough to recognize that the solution you have crafted simply will not work and not so proud as to not embrace a simpler speedier more reasoned solution.

Philip R. Volland represents H.L., M.K. and Alaska Addiction Rehabilitation Services on behalf of the subclass of chronic alcoholics who are plaintiff beneficiaries in the Weiss case.

MENTAL HEALTH LANDS TRUST
PROPOSED ALTERNATIVE SETTLEMENT

The Chapter 66 proposal for settlement faces a lengthy and uncertain future in the courts. It is opposed by many Alaskans. The unavoidable delay in its approval will severely limit development on 5 million acres of land when oil revenues are declining. The goal of this alternative is to reach a settlement that is acceptable to all Alaskans. This would avoid further litigation and the resulting restriction on land use and provide a basic level of funding for the Mental Health Program. Most importantly, it would not require a cash payment from the State to settle this issue.

This new proposal is a mixed land/income stream approach which incorporates the Trust Authority developed for Chapter 66.

THE LAND

In this new proposal, like Chapter 66, nearly half of the original Trust lands will be returned to the Trust. This is the least valuable of the original lands. The Trust would take these lands subject to all third party interests such as leases or rights of way.

Unlike Chapter 66, income from this land would be placed in a cash corpus account and invested like the Permanent Fund. The income from this principal would be deposited in the Trust income account and be available each year to support the Mental Health Program. This is the mechanism used in the University of Alaska Land Trust Settlement.

INCOME STREAM

This new proposal incorporates existing law where 6% of unrestricted general fund revenue would continue to be allocated to the Trust income account. This would provide a continuing and dependable source of funds available for the Mental Health Program. It is tied directly to overall State income.

Each year the money available to fund the Mental Health Program would include this 6% plus any earnings from the cash corpus account. Any of this money not needed to meet the necessary expenses of the Mental Health Program will be returned to the State general fund.

TRUST MANAGEMENT

As in Chapter 66, a Trust Authority appointed by the Governor would manage the land and cash corpus account. In addition, it would make recommendations to the Governor and the Legislature on how to spend available funds.

NONRETURNED TRUST LANDS

When the new proposal is approved, all lands owned by third parties, including Municipalities, will be immediately and permanently released from claims by the Trust. Original Trust lands which are now in Legislatively Designated Areas, such as State parks, would serve as security for the State's promise to allocate the 6%. The State would still own these lands and continue to manage them according to their designation.

ADVANTAGES

*The main advantage is that this proposal could build a consensus leading to the fastest final resolution possible.

*Each element of this new proposal is either in existing law or has universal acceptance as part of a Trust settlement. This dramatically reduces the possibility of a long and difficult approval process.

*It eliminates any restriction on the additional 4 million acres of State land held hostage by Chapter 66.

*This new proposal will generate wealth from two sources. First, the land will be used to generate money. Then this money will be invested like the Permanent Fund and would increase over the years. It is this capacity to increase earnings over time which may make the 6% income stream acceptable to the beneficiaries despite the coming reduction in State income.

*The cash corpus will grow over time and reduce the Mental Health Programs dependence on the General Fund. The massive land driven Trust envisioned in Chapter 66 would spend all that it earns every year and could never fund the Mental Health Program.

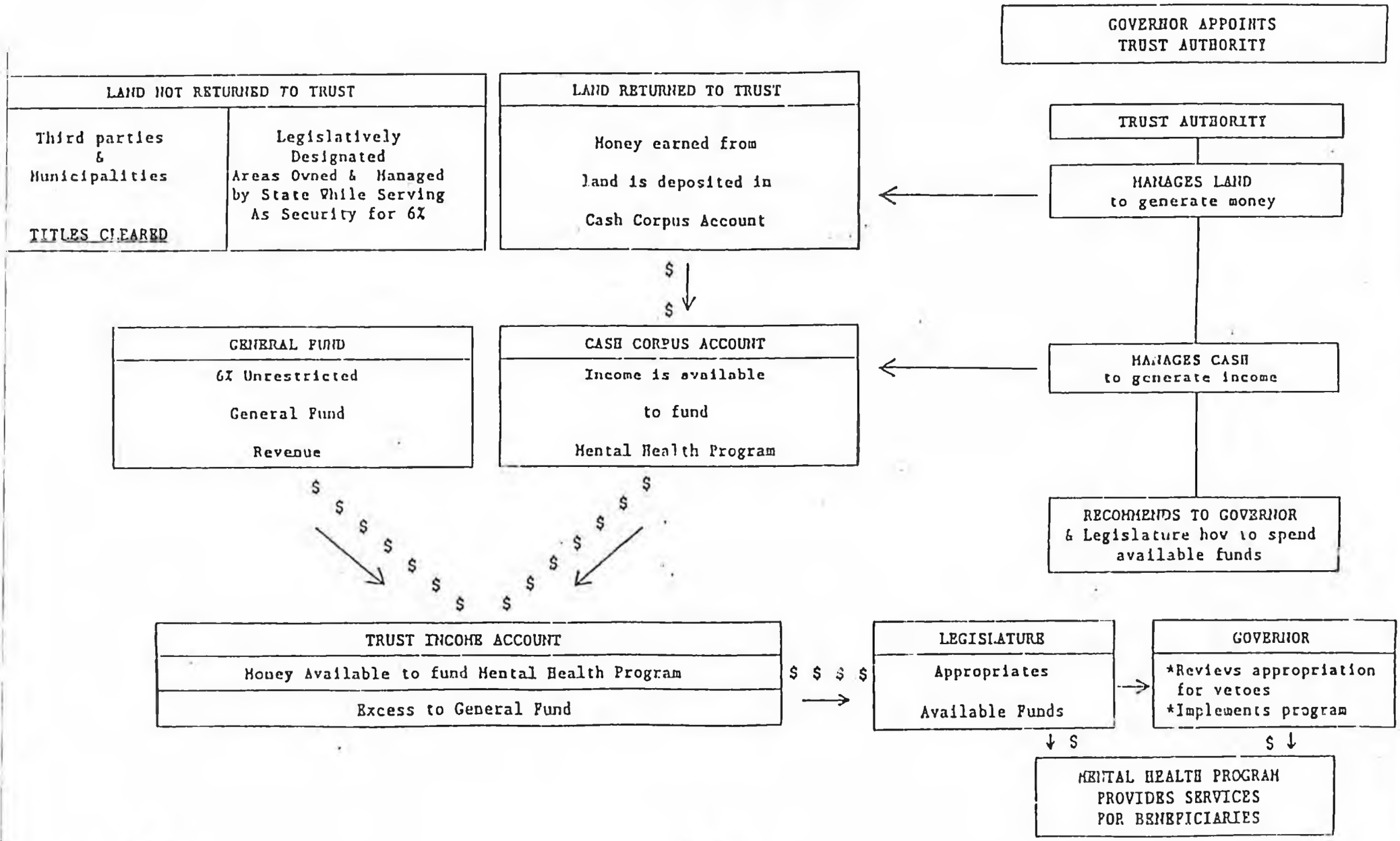
*The 6% allocation is currently in effect and is working. It goes down as State income goes down. The Office of Management and Budget (OMB) estimates the cost of the current Mental Health Program at $165 million. Although the 6% is estimated to generate only $142 million in FY 93, it will at least provide a base level for funding the Mental Health Program.

*25% of the earnings from the State land to be given to the Trust under Chapter 66 would continue to be placed in the Permanent Fund. This would avoid the reduction in Permanent Fund dividends which would result from Chapter 66.

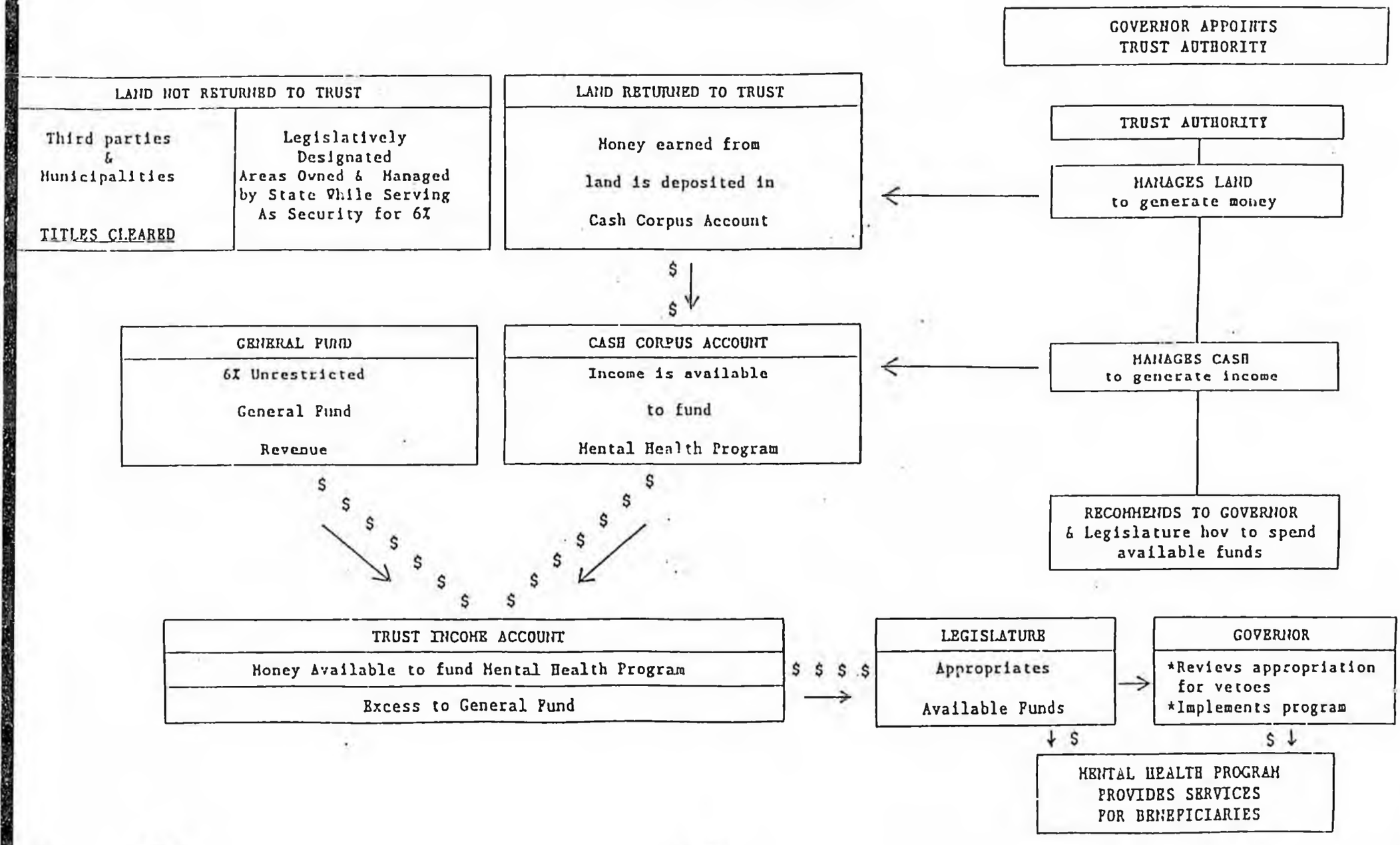
CONCLUSION

This new proposal offers the quickest, least expensive and most acceptable solution to a problem that we must all put behind us.

NEW PROPOSAL



NEW PROPOSAL



MENTAL HEALTH LANDS TRUST

CHAPTER 66: OBSTACLE TO SETTLEMENT

The Chapter 66 proposal for settling the long standing Mental Health Lands Trust dispute was negotiated in ten days and passed by the Legislature in four. Despite the best of intentions on the part of the Governor and the attorneys for the plaintiffs, it now appears that portions of Chapter 66 will create more problems than they solve. It must be reevaluated as a settlement proposal.

BASIC FRAMEWORK

Any Trust settlement must answer two questions. First, how is the Trust to be compensated for the valuable land which the State illegally took, sold, or gave to third parties? Second, how will the Trust be managed in the future?

Chapter 66 proposes to compensate the Trust by exchanging other comparable State land of similar income producing potential for the original land which cannot be returned to the Trust. While seemingly straight forward, it is this provision which will have unintended, unforeseen, and potentially devastating effects on all of us.

Chapter 66 also creates a comprehensive Trust management system. This provision is a major step forward in reaching a permanent settlement. It preserves Legislative and Executive control over the Trust while providing for proper Trust management. It also has virtually universal acceptance.

LITIGATION OVER THE LAND EXCHANGE

In October of 1991 a coalition representing environmental, sportfishing and tourism interests sued to block the Chapter 66 proposal. Their complaint lists 11 counts against Chapter 66. There are two which best illustrate the problems with this proposal.

THE "HYPOTHECATED" LANDS

Chapter 66 required that the State "hypothecate" or pledge as security specific lands which are comparable to the original Trust lands which cannot be returned to the Trust. Because of the valuable nature of the original Trust lands, over 4 million acres of other State land, including Cook Inlet oil and gas wells, were included on the hypothecated lands list. Unfortunately, due to the rush to pass the bill, this list was not available to the Legislature or the public prior to its enactment. One question is whether the Legislature could legally appropriate 4 million acres of land without knowing what it was.

SECTION 6i OF THE STATEHOOD ACT

The original Trust lands came complete with the rights to the subsurface minerals. For the exchange contemplated under Chapter 66 to work, the replacement lands must also come to the Trust with the rights to the minerals.

However, Section 6i of the Statehood Act prohibits the State from granting away the mineral rights to State land. This provision was to ensure that Alaska's mineral wealth benefited all Alaskan's not just a few. This is why the State must lease or receive royalties for mineral development. Violation of Section 6i results in the forfeiture of the land back to the United States.

Obviously, no matter how certain the Governor and the plaintiff's attorneys are that the Chapter 66 exchange would not violate Section 6i, no actual exchanges can occur until the applicability of Section 6i is totally resolved.

TIME FRAME FOR CHAPTER 66 LITIGATION

It is common knowledge that litigation is never fast. Even a "best case" scenario reveals that the implementation of Chapter 66 is years away.

First, the Superior Court in Fairbanks will be presented with the proposal and will be asked to address the 11 concerns raised by the lawsuit against the proposal. After a series of legal briefs have been filed and any oral argument scheduled and heard, the Court will consider the matter and prepare a written decision. It is reasonable to think that this could take 9 months to a year or more.

Next, the losing party will no doubt appeal to the Alaska Supreme Court where the briefing, oral argument and decision preparation process will be repeated. This is potentially another year or more.

Next, the losing party may file a petition for review to the U.S. Supreme Court since Section 6i is a federal issue. Even if the petition is denied this may take 6 months or more. If the petition is granted, Supreme Court review could take years.

LAND STATUS DURING CHAPTER 66 LITIGATION

During these years of litigation, the original one million acres of Trust lands will continue to be tied up. In addition, the 4 million acres of hypothecated lands may not be managed in any way that diminishes their value as security. Alaska simply cannot afford to have 5 million acres of its most developable land tied up for years.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

May 4, 1993

Hon. Ramona Barnes, Speaker
Alaska House of Representatives
Eighteenth Alaska Legislature, First Session
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear Speaker Barnes:

On April 26, 1993, Superior Court Judge Mary E. Greene ruled that the legislation settling the mental health trust lands litigation (Chapter 66, SLA 1991) was constitutional in all respects except one. In her view, the pledging of the land on the "Hypothecated Lands List" to the trust as security for the state's performance of its obligations under ch. 66 was not valid because it did not contain adequate standards to guide the commissioner of natural resources in negotiating the list with the plaintiffs.

Judge Greene went out of her way to point out, however, that the legislature could easily cure the problem:

> Obviously, it would be very easy for the legislature to remedy this problem. If the legislature amended section 56(a) to adopt a specific, known list or delegated the task of preparing a new list with adequate standards, the difficulty would be eliminated.

Memorandum Decision and Order Re: Intervenors' Complaint (April 26, 1993) at 82, n. 42 (emphasis added).

The attached proposed amendments to CSHB 201(RES) would implement Judge Greene's suggestion for curing ch. 66 by delegating to the commissioner of natural resources the task of preparing a new Hypothecated Lands List, to consist of (1) original mental health land that will be returned to the trust under sec. 54, ch. 66, and (2) up to 1.5 million acres of other state land, selected under the criteria set out in secs. 55(d) and (e), ch. 66, for identifying land to be exchanged to the trust in return for original mental health land not returned to the trust. (This will reduce the amount of state land hypothecated to the trust from the 6.7 million acres on the original Hypothecated Land List to no more than 1.5 million acres and, because the same standards will be used for hypothecation as for exchanges, make it likely that the same land that is hypothecated will ultimately be exchanged to the trust.)

The proposed amendments also make a technical amendment to ch. 66 by exempting the process for reconstituting the trust from the planning and classification requirements of AS 38.04 and AS 38.05, and substituting procedures by which the public may participate in the reconstitution of the mental health trust. Judge Greene found that the planning and classification requirements of AS 38.04 and AS 38.05 would apply to the reconstitution process under ch. 66 as currently written. The proposed amendments to CSHB 201(JUD) will result in substantial savings of both time and money in completing the reconstitution process and bringing this issue to final closure.

In effect, Judge Greene has determined that ch. 66, SLA 1991 is a constitutionally permissible means to settle this divisive and costly lawsuit that has adversely impacted many people in the state. Passage of the amended version of CSHB 201(JUD) that we are proposing will (1) significantly advance the final settlement of the case, and (2) free most of the land on the original Hypothecated Lands List for development.

If this legislation is not enacted before the legislature adjourns, the chances are strong that the settlement agreement reached with the Weiss plaintiffs under ch. 66 will be terminated and the headway we have made over the

past two years in settling the mental health lands mess will become a dead letter.

We urge your favorable consideration of the proposed amendments.

Very truly yours,

Charles E. Cole
Attorney General

CEC:cl

cc w/ enc.: Rep. Gail Phillips
Rep. Ron Larson
Rep. Eileen MacLean

Pat Ryan, Chief of Staff
Kris Lethin, Legislative Liaison
Office of the Governor

Hon. Glenn A. Olds, Commissioner
Dept. of Natural Resources

David T. Walker
James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Richard M. Johannsen
Peter J. Maassen
G. Thomas Koester

Brian D. Bjorkquist, Assistant Attorney General
Wendy S. Feuer, Assistant Attorney General

93138

Rep. Larson

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110300 · STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

May 4, 1993

Hon. Ramona Barnes, Speaker
Alaska House of Representatives
Eighteenth Alaska Legislature, First Session
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear Speaker Barnes:

After meeting with the settling plaintiffs in Weiss, we agree that two minor amendments should be made in the proposed language that was distributed to you earlier today to resolve Judge Greene's concerns in the mental health trust lands litigation. The amendments are reflected in the proposed language attached to this letter.

We are available to explain these proposed amendments. We urge your favorable consideration on this matter.

Very truly yours,

Charles E. Cole
Attorney General

CEC:cl

cc w/ enc.: Rep. Gail Phillips
Rep. Ron Larson
Rep. Eileen MacLean

Pat Ryan, Chief of Staff
Kris Lethin, Legislative Liaison
Office of the Governor

Hon. Glenn A. Olds, Commissioner
Dept. of Natural Resources

5/4/93

REVISED

Proposed Amendments to CSHB 201(RES) and CSSB 67(JUD)

Page 1, line 2:

Following "mental health trust":

Delete all material

Insert "; and providing for an effective date.""

Page 1, lines 3 - 7:

Delete all material

Page 1, line 9 - page 11, line 9:

Delete all material

Insert the following:

"* **Section 1.** Section 55(g), ch. 66, SLA 1991, is amended to read:

(g) **Except for public notice as provided under AS 38.05.945(b) and (c), the** [THE] provisions of **AS 38.04, AS 38.05, and** AS 38.50 do not apply to exchanges under this section.

* **Sec. 2.** Section 55(h), ch. 66, SLA 1991, is amended to read:

(h) If agreement cannot be reached between the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, and the commissioner of natural resources under (f) of this section as to appropriate lands to be conveyed to the trust as compensation or as to the

value of the original lands taken or of replacement lands, the Alaska Supreme Court shall resolve the disagreements using the criteria set out in this section, **but may not give deference to the commissioner's finding under (j) of this section**. The Alaska Supreme Court may order the commissioner of natural resources to convey appropriate state land to the trust without further legislative authorization.

* **Sec. 3.** Section 55, ch. 66, SLA 1991 is amended by adding new subsections to read:

(i) The commissioner of natural resources shall give public notice as provided under AS 38.05.945(b) and (c) of proposed exchanges negotiated under (f) of this section, or exchanges proposed by either the plaintiffs in Weiss v. State of Alaska (4FA-82-2208 Civil) or the commissioner of natural resources under (h) of this section. In the notice, the commissioner shall provide for a written comment period of at least 30 days. The commissioner shall hold a public hearing in the area of the land proposed to be conveyed to the trust under the proposed exchange.

(j) Following public notice of a proposed exchange under this section and the public hearing, the commissioner shall make, and give notice of, a written finding as to whether the proposed exchange meets the criteria of (b) - (e) of this section.

(k) In order to obtain judicial review of the commissioner's finding under (j) of this section and of the exchange, a person must

(1) have submitted written or oral comment in response

to a notice published under (i) of this section;

(2) demonstrate that the person has an interest that will be adversely affected by the exchange if the exchange becomes final; and

(3) within 30 days after the commissioner gives notice of the commissioner's finding, file a notice of appeal with the court with jurisdiction under sec. 57 of this Act.

* **Sec. 4.** Section 56(a), ch. 66, SLA 1991, is repealed and reenacted to read:

(a) To secure the reconstitution of the trust as provided in secs. 54 and 55 of this Act, the following land is hypothecated to the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709:

(1) original mental health land that will be returned to the trust under sec. 54 of this Act; and

(2) up to 1,500,000 acres of other state land as negotiated by the commissioner of natural resources and the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, using the criteria set out in secs. 55(d) and (e) of this Act, for the exchange of land to the trust in return for original mental health land not returned to the trust; the total amount of land hypothecated to the trust under this paragraph, in conjunction with land hypothecated to the trust under (1) of this subsection, shall be sufficient to reconstitute the trust.

* **Sec. 5.** Section 58, ch. 66, SLA 1991, is amended to read:

Sec. 58. **(a) Sections 56(a) and (b) of this Act take effect**

on the effective date of an Act passed by the Eighteenth Legislature amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust.

(b) Sections 1 - 55, 56(c) and (d), and 57 of this [THIS] Act take [TAKES] effect upon entry of a final order dismissing Weiss v. State of Alaska, 4FA-82-2208 Civil, and the expiration of any time for appeal. The superior court shall advise the lieutenant governor and the revisor of statutes when the final settlement and order of Weiss v. State of Alaska has been approved.

* **Sec. 6.** If ch. 66, SLA 1991, is finally disapproved as a settlement of Weiss v. State, 4FA-82-2208 Civil, this Act is repealed.

* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Post Office Box 110001
Juneau, Alaska 99811-0001

WALTER J. HICKEL
Governor

JOSEF P. HOLBERT
Director of Communications

JOHN MANLY
Press Secretary

JOHN HENDRICKSON
Deputy Press Secretary
Anchorage Office: 561-4228

BRIAN HART
Assistant Press Secretary

907-465-3500
FAX: 907-586-8369

FOR RELEASE: April 27, 1993
No. 93-094

COURT DECIDES AGAINST MENTAL HEALTH INTERVENORS

JUNEAU--A Fairbanks judge has ruled that the Mental Health Trust agreement entered into by the state and the Weiss claimants two years ago does not violate the Alaska Constitution, as claimed by the Sierra Club Legal Defense Fund.

In ruling against the so-called public interest intervenors, Superior Court Judge Mary Greene granted partial summary judgment on Monday, April 26, to the state and the Weiss claimants on most of the counts brought forth by the Sierra Club, which represented a number of environmental organizations.

The one provision of the settlement Judge Greene found invalid was the pledging, or hypothecation, of certain state lands to the trust as security for the state's performance of its obligations under the settlement.

In the judge's view, the Legislature did not give the Commissioner of Natural Resources sufficient standards for determining which state lands should be included as part of the pledged land, and which should not.

Cole called the decision "a smashing success. We are very pleased with the decision. It vindicates our position to stand firm in the face of efforts to modify the settlement in ways that would have required the state to pay too much to settle this case."

Judge Greene gave the state and the claimants 70 days to fix the deficiency. Cole expected to meet with the claimant attorneys Tuesday afternoon to explore ways to do that.

####

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Post Office Box 110001
Juneau, Alaska 99811-0001

WALTER J. HICKEL
Governor

JOSEF P. HOLBERT
Director of Communications

JOHN MANLY
Press Secretary

JOHN HENDRICKSON
Deputy Press Secretary
Anchorage Office: 561-4228

BRIAN HART
Assistant Press Secretary

907-465-3500
FAX: 907-586-8369

FOR RELEASE: March 15, 1993
No. 93-061

MENTAL HEALTH SETTLEMENT GIVEN 60 DAYS

JUNEAU--Governor Walter J. Hickel today gave lawyers on both sides of the mental health trust controversy 60 days to reach an agreement to release third parties from the case or the state will exercise its option to terminate the settlement agreement entered into in April 1992.

"We have no desire to roll this issue back to square one," Hickel said, "but that's what's at risk if we can't find an acceptable solution for those innocent third parties who bought land that was once part of the mental health trust and now can't get title to it."

The Governor's action was sparked by the most recent rejection by the courts of a joint request by the state and the settling plaintiffs to have a preliminary injunction modified to allow the state to issue patents to individuals who have paid off their land. The patents would extricate those landowners from the issue and allow them to sell, exchange or otherwise develop their land.

Fairbanks Superior Court Judge Mary E. Greene denied the joint motion on Janaury 14. The Alaska Supreme Court denied the state's petition to review her decision on March 8.

The Mental Health Lands Trust was created by Congress in 1956 and dissolved in 1978 by the state legislature, which promised that in its place 1.5 percent of income from resource development on state lands would be allocated to mental health programs. In 1982, after no such amount was ever appropriated, mental health advocates sued the state and won. In 1985, the Supreme Court ordered that the trust be reconstituted and that fair market value should be paid for those lands that had been sold, subject to a set-off for state mental health expenditures.

####

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 11, 1993

SUBJECT: Measure amending provisions of ch. 66, SLA 1991 (relating to the reconstitution of the mental health trust); and providing for an effective date -- sectional analysis (Work Order No. 8-LS0728\E)

TO: Representative Bill Williams, Chair
House Resources Committee
Attn: Mary McDowell

FROM: Jack Chenoweth
Legislative Counsel

The measure, based on CSSB 469 (Resources) of the last legislature, sets out a series of proposed amendments to ch. 66, SLA 1991, the legislation reconstituting the mental health trust. Necessarily, I will discuss these provisions out of the order in which they appear in the bill.

I

Sec. 54 of existing ch. 66, SLA 1991, reconstitutes the corpus of the mental health trust by identifying specific land held by the state and that is to be conveyed by it in order to reconstitute the trust. Sec. 55, ch. 66, SLA 1991, authorizes substitution of other state land (i.e. "replacement land" as substitution for former mental health lands that now cannot be returned to the trust because it is unavailable to the state) to the reconstituted trust and sets out standards to guide the making of replacement land substitutions. Sec. 56, ch. 66, SLA 1991, is an enforcement mechanism in that it hypothecates or pledges certain state assets to secure the transfer of compensation due the reconstituted trust corpus. These provisions are proposed to be repealed by **bill section 8.**

In their place, **bill section 6** proposes to reconstitute the trust corpus in the permanent law. Some, but not all, of the land identified in sec. 54, ch. 66, SLA 1991, is carried over into this section. Omitted from the list approved in the 1991 Act is land identified in paragraph (5) (Tanana Valley State Forest and Haines State Forest Resource Management lands), paragraph (6) (other land satisfactory to the plaintiffs

drawn from legislatively-designated areas), and paragraph (7) (compensation land identified under former sec. 55). Added, in the enumeration set out in bill section 6, is land subject to "other lease" (proposed AS 38.05.800(2)(A)), land subject to mining claim or sale of materials (proposed AS 38.05.800(2)(D) and (E)), and land exclusive of that necessary to carry out purposes of an interagency land management agreement (proposed AS 38.05.800(3)).

In the 1991 legislation, existing AS 38.05.800 was to have been repealed. Since, in this bill, AS 38.05.800 would be modified and continued, the change set out in **bill section 7** drops that section from the list of sections repealed in the 1991 legislation.

II

This legislation also proposes to revise the mechanism by which to reconstitute an important element of the mental health trust, the mental health trust income account. Under current AS 37.14.036(c), the state obligates itself to pay to the mental health trust income account a declining percentage (six percent at inception declining to one percent in the last years) of unrestricted state revenue, the last payment to be made by June 30, 2003. The change proposed by **bill section 4**, a reenactment of AS 37.14.036(c), directs that a fixed annual payment of **three** percent of unrestricted state general fund revenue be allocated for an indefinite period "as compensation for land that constituted the [original] trust . . . and that is not reconstituted as part of the mental health trust corpus established under AS 38.05.800 . . . ." The payment, when made by the state and received by the trust, would be added to the balance of the mental health trust income account, the principal source of support for the programs and services to the trust beneficiaries.

However, payment of the allocation requires legislative appropriation. As a guarantee that the allocation will be made, **bill section 5** adds two subsections to AS 37.14.036. Under proposed subsection (d), land that came to the state under the mental health enabling act and that has been since placed in so-called "legislatively-designated" land status--state park, state forest, state game refuge, and the like--would be pledged as security. Under proposed subsection (e), the superior court is given the authority to determine the manner of the trust's foreclosure against those lands in the event the state fails to make the required allocation under subsection (c)

It was the decision to convert the payment obligation from one with a set termination date to one of indefinite duration that prompted the addition or revision of permanent law sections and the repeal or deletion of temporary law sections in this bill.

III

Two provisions, bill sections 2 and 3, change provisions of ch. 66, SLA 1991, that relate to the management of trust assets.

The language added in **bill section 2** revises the responsibility given the Alaska Mental Health Trust Authority as to management of the land assets of the trust. It would require that the land assets of the trust be managed by the state's Department of Natural Resources under an agreement between the department and the mental health trust authority unless the authority "determines that the best interests of trust beneficiaries would be served by other arrangements." The change would replace the current language providing the mental health trust authority the option to contract with the department for land management services.

Ch. 66, SLA 1991, reestablishes a mental health trust fund. That fund consists of the cash assets constituting part of the trust principal. The amendment made by **bill section 3** would direct that the earnings derived from management of the land that is within the trust corpus--that is, of the land identified in AS 38.05.800, reenacted in bill section 6--are to be constituted part of the trust principal (and not added to or made part of the mental health trust income account).

IV

The Alaska Court System had asked that several changes be made in the definition of the jurisdiction of a court to hear disputes arising under ch. 66. Accordingly, in **bill section 1**, the superior court is designated the court of original jurisdiction to hear and resolve disputes arising out of AS 37.14.036(c) (the subsection is reenacted in bill section 4) and out of AS 37.14.036(d) and (e) (these subsections would be added by bill section 5). Under **bill section 9**, a dispute to be heard by the superior court may be referred by a judge to a special master appointed for the purpose. Finally, under existing sec. 57, ch. 66, SLA 1991, original jurisdiction to hear disputes is vested in the Supreme Court. (Sec. 57, ch. 66, SLA 1991, is repealed as part of the series of repealers set out in **bill section 8**.) These changes have the effect of making the judicial examination and resolution of disputes involving reconstitution and payment of money due the reconstituted trust similar to the manner of examination and resolution of other disputes to which the state is a party.

*

Under the effective date clause of the bill, since the effective date of the principal measure, ch. 66, SLA 1991, is dependent on the outcome of judicial proceedings dismissing the litigation in Weiss v. State, the coming into effect of this bill is tied to it. I have added two related bill sections. The first one **bill section 10** -- is intended to give this measure retroactive effect if ch. 66, SLA 1991 takes effect before this one. The second -- **bill section 11** -- is a condition placed on this bill and intended to

operate if one or the other houses of the legislature fails to adopt the effective date clauses in this bill by the required two-thirds vote.

JBC:gc:lmb
93-067.lmb

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX S
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

March 15, 1993

The Honorable Bill Williams
Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Dear Representative Williams:

The Department of Revenue (DOR) would like to propose certain amendments to HB 201, "An Act amending provisions of ch.66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, . . . date.". These amendments deal with the investment management of the Mental Health Trust Fund (MHTF). Section 2, subsection (a)(5) mandates that the Alaska Mental Health Authority (AMHA) establish the investment management of the MHTF with the Alaska Permanent Fund Corporation. Section 3 establishes the custody of the MHTF with the DOR - Treasury Division. For management efficiencies, DOR suggests that the investment management and custodial functions of the MHTF be kept together.

Using HB 201, version HB0201a, dated 3/5/93 as the base document, page 2, line 6 should be amended to read: "(5) shall contract with the Alaska Permanent Fund Corporation or Department of Revenue - Treasury for management . . . entity." Page 2, line 11 should be amended to read: "is established as a separate fund within the Alaska Permanent Fund Corporation or the state treasury."

These amendments will provide AMHA with the flexibility for establishing a sound investment management approach to the MHTF.

Sincerely,

Brian C. Andrews
Deputy Commissioner

BCA:sp
93-058

04-D2LH

APR 21 1993

LAW OFFICES
DAVID T. WALKER
417 HARRIS STREET
JUNEAU, ALASKA 99801

(907) 586-3537

DAVID T. WALKER
GERALD K. DAVIS, JR.

TELECOPIER:
(907) 586-1350

April 21, 1993

HAND DELIVERED

Senator Steve Frank, Co-Chairman
Senate Finance Committee
Capitol Building, Room 518
Juneau, Alaska 99811

Senator Drue Pearce, Co-Chairman
Senate Finance Committee
Capitol Building, Room 508
Juneau, Alaska 99811

Re: Proposed Mental Health
Trust Lands Legislation
SB 67/HB 201

Dear Senators Frank and Pearce:

As brief introduction, I represent Vern Weiss, the original named plaintiff in Weiss v. State, 4FA-82-2208 Civil. This letter is also written on behalf of Jim Gottstein who represents the Alaska Mental Health Association, et al, in Weiss. The litigation was begun by the Alaska Mental Health Association through Mr. Weiss and later the Association became a formal named plaintiff on behalf of trust beneficiaries. Mr. Weiss and the Alaska Mental Health Association then are the parties that originally commenced the Mental Health Trust Lands litigation and have had primary responsibility for prosecuting it for its ten year course. We are writing you with respect to SB 67, which has companion legislation in the House known as HB 201.

In 1991, Chapter 66 SLA 1991 was negotiated by the Administration and us[1] and passed as a proposed settlement of the class action lawsuit. Any such settlement must necessarily be a "proposed" one because under the rules applying in class actions any settlement has to be approved by the court as fair and equitable to the class (including that it is legal). The approval process is well under way for Chapter 66 with the court's initial rulings expected

---

1/ Along with Jeff Jessee, representing mentally retarded and mentally defective beneficiaries who intervened later in the litigation.

within the next 60 days or so.[2] The basic structure of the Chapter 66 reconstitution of the Trust[3] is to return as much original Trust Land to the Trust as possible and replace the balance with state land as comparable as practicable and equal in value. All reconstituted Trust Land will then be managed for Trust purposes, i.e., generation of revenue for the mental health program.

As expected, Chapter 66 has been vigorously challenged in court by environmental and other organizations represented by the Sierra Club Legal Defense Fund. Recently, Unocal and Marathon Oil Companies entered the lawsuit to claim that the State has no right to transfer their oil and gas leases to the Trust. Some beneficiaries also object to Chapter 66 because it does not guarantee adequate funding for the mental health program. It is fair to say that the delay in settlement approval is related to these parties' challenges in court. In addition to the parties formally challenging the settlement in court, industry interests are unhappy with the delay in resolving this situation (as are we).

SB 67/HB 201 have been proposed by these interests as a way to resolve all their problems with Chapter 66 and immediately resolve the litigation. To do this it is proposed that SB 67/HB 201 substitute a percentage of unrestricted general fund revenues (6% in SB 67 and 3% in HB 201) for original Trust land not returned to the Trust. Unfortunately, passage of SB 67/HB 201 in their current form cannot resolve the litigation quickly and, in our view, cannot be approved as a settlement.

As mentioned, under judicial rules the court must approve any class action after notice and an opportunity to object is given to all class members. First, a proposed settlement is presented to the court for "preliminary approval." Preliminary approval is granted if the proposed settlement is "within the range of possible approval and has no obvious defects" (such as being illegal). If preliminary approval is granted, notice is given to the class[4], the court receives comments, holds one or more hearings and determines if the settlement should be granted final approval. The court can suggest changes, but may not force the parties to reach a different settlement. Of course, any trial court determinations are subject to appeal.

2/ While in one sense the rulings are "initial," the issues have been so extensively briefed by the parties that the court's impending rulings should give a clear view of how the trial court will ultimately treat the proposed settlement. However, everyone expects the non-prevailing party(ies) to pursue all available appeals.

3/ Chapter 66 also provides detailed rules regarding how trust funds will be applied in support of the mental health program.

4/ A 90 day comment period may very well be a minimum.

As indicated previously, we believe the parties will soon receive the trial court's determinations regarding initial fairness and legality of the Chapter 66 settlement. If SB 67 or HB 201 were to pass, this process would have to start over and it has taken over a year to reach this stage with respect to Chapter 66, without including the time required for the settling parties to draft a basic settlement document to present to the court for consideration.

Substantively, there are two very serious legal questions associated with SB 67/HB 201. The first is whether a settlement in which the Trust gives up title to the bulk of its assets for an unenforceable under-secured promise to pay money can be approved as fair. While the proponents of SB 67/HB 201 have striven mightily to come up with techniques to minimize the chances of the State breaching (consistent with the proponents' unwillingness to put their interests on the line), the separation of powers doctrine and specifically Article IX, Section 13 of the Alaska Constitution prohibits the courts from enforcing any debt owed by the State. In our view, this attribute of SB 67/HB 201 means that such legislation will not be approved as a settlement.[5]

The second major problem with the proposed legislation is that it raises the question of whether the requirement that the State pay a fixed percentage of the general fund into the mental health trust income account amounts to a dedicated fund prohibited by Article IX, Section 7 of the Alaska Constitution. The only way this question can be answered is by the courts. The proponents of SB 67/HB 201 want the beneficiaries to ignore the potential dedicated fund problem and hope that nobody else will raise it. This would be imprudent because it would expose the beneficiaries to the unacceptable risk that they will have released all their claims to Trust property only to have the settlement challenged later by any citizen and declared illegal. There is virtually no chance that the dedicated fund issue will not be raised.

Thus, while we share everyone's frustration with the time being taken for resolution of the Chapter 66 settlement, there is absolutely no way that SB 67/HB 201 can resolve the litigation quickly. More importantly from our perspective, SB 67/HB 201 takes us significantly backward and, will most probably result in the original litigation being revived (including the claim to lands conveyed to third parties and lands placed in legislative

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5/ In fact, the 1978 legislation redesignating Mental Health Trust land as general grant land which was invalidated by the Alaska Supreme Court in Weiss v. State, 706 P.2d 681 (1985) included a promise to pay a percentage of funds earned from state lands to the Trust (albeit a smaller amount than currently proposed).

designations),[6] because, it suffers from substantially greater infirmities than Chapter 66. To aid in your understanding of this complex issue, we have enclosed a chart which analyzes the interest groups' goals vis a vis Chapter 66, litigation and SB 67/HB 201, as well as a brief description of these approaches. We believe that any unbiased review will confirm that at this point SB 67/HB 201 are extremely counter-productive.

All of this is not to say that the legislature can not be constructive in the current situation. In fact there is short, uncomplicated legislation that could be enacted which would be very productive.

The first element of the legislation would confirm, approve and ratify the April 6, 1992 settlement agreement filed in Weiss. In essence the legislation would enact the settlement agreement. By doing this all of the legal challenges to the current settlement are eliminated except those based upon the claim that the legislature does not have the constitutional authority to enter into the settlement.

A second element of the legislation would replace the approximately seven million acres of land currently hypothecated to the Trust with the approximately 550,000 acres of onshore land nominated by the Plaintiffs as Proposed Substitute Land plus the approximately 1.5 million acres of the existing collateral of last resort (offshore Cook Inlet oil and gas fields). The remaining currently hypothecated lands would be released. We have discussed this with our clients and they have agreed to this (although it would take court approval). The reason for this amendment to Chapter 66 is that a good deal of the opposition to Chapter 66 is related to the 7 million acres of land currently hypothecated to the Trust.

The third element of the legislation would direct the State to escrow receipts from new development on Proposed Substitute Land so that if such land is ultimately conveyed to the Trust, the funds received will be deposited into the Trust Fund.[7] After land is

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6/ The State has repeatedly attempted to have these claims dismissed to no avail. A legal memorandum issued in January 1990 describing these claims and their legal bases was widely distributed in 1990 and is available upon request. The State's disregarding of the legal principles described in that memorandum resulted in the imposition of the preliminary injunction against the State doing anything on Mental Health Trust Land without court approval and the placing of a cloud on all third party interests in Mental Health Trust Lands.

7/ The Department of Law has indicated there is no authority to place such funds in escrow under current law.

nominated as Proposed Substitute Land, in order to protect the Trust's future interest, the Plaintiffs must approve any transactions. If funds received from such new activity can never be deposited into the Trust fund, there are many fewer transactions that it makes sense for the Plaintiffs to approve.

We recognize that there has been intense pressure to pass SB 67/HB 201 as a way to immediately resolve the Mental Health Trust Lands litigation. Unfortunately, that route leads to calamity. We hope that in the rush to adjournment, you will find time to appraise the Weiss litigation and avoid limited - perspective fixes to Chapter 66 that will only exacerbate the situation. We also hope that you will accept our suggestions to enhance the acceptability of the Chapter 66 settlement to the court as a way to help all of us through this morass sooner than any other course of action presently under consideration by the legislature.

Very truly yours,

David T. Walker

Enclosure

cc: James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Charles E. Cole
Charles P. Boddy
Robert B. Stiles
Walt Baldwin
Peter J. Maassen
G. Thomas Koester
Wendy S. Feuer
Brian D. Bjorkquist
Kent V. Dawson
Richard S. Thwaites, Jr.
Vern T. Weiss

Comparison of Mental Health Trust Resolution Approaches

PARTY/INTEREST GROUP	GOALS	CURRENT SETTLEMENT (Chapter 66)[1]	LITIGATED RESULT	SB67/HB201[2]
Beneficiaries	• Adequate funding for mental health program. • Fair enforceable settlement. • Appropriate Trust management, including expenditures.	• No guaranty of adequate funding. • Receive land comparable in earning capacity to the most land that could be obtained in litigation. • Appropriate Trust administration; exceeding what could be obtained in litigation agreed to by all parties.	• No guaranty of adequate funding. • Receive what Trust is entitled to under Alaska Mental Health Enabling Act (whatever land can be recovered).[3] Trust will have what land earns. • Whatever trust management can be forced upon the state.	• No guaranty of adequate funding. • Small amount of high quality land encumbered with restrictions, inappropriate management, and excessive costs; better not to have it at all. • Receipt of a debt that the Trust has no right to enforce and is inadequately secured.
Administration	• Release Trust's claims to third party interests. • Minimize financial obligations • Promote development (place land in the trust that will increase development).	• Trust's claims to third party interests are released. • State's financial liability to Trust is minimized. • Development is promoted for reconstituted Trust Land.	• Trust is likely to prevail on many claims. Trust's claims released only after appeals are exhausted. • Financial liability to Trust minimized, unless Weiss overturned.. • Development will eventually be promoted, but not very effectively.	• Trust's claims eventually released. • Financial obligation maximized (except that State can ignore it). • Development is minimized.
Legislature	• Resolve problem quickly • Release Trust's claims.	• All third party interests preserved. • Resolved as soon as possible.[4]	• Maximum time to resolve. • Trust's claims litigated.	• Private third party titles under a cloud for long time while approval litigated.
Industry	• Business as usual (pay less than fair value, non-Trust management).[5][6] • Resolve problem quickly. • Preserve rights.	• All rights preserved. • Discretionary functions determined under trust management principles. • Resolved as soon as possible.	• Current arrangements upset. • Immediate interference with business likely. • Long time to resolve.	• All rights preserved. • Long time to resolve. • Managed by DNR under current rules (except unencumbered land).
Environmental Intervenors	• Prevent/restrict development (minimize Trust land; maximize restrictions). • Preserve 370,000 acres of land put into parks, etc.(legislative designations)	• Development promoted on reconstituted Trust Land. • Legislative designations preserved.[7].	• Development maximized on land returned to Trust. • Legislative designations may or may not be ordered back into the trust to earn as much $ as possible.[8]	• Development minimized. • Legislative designations preserved, but at risk upon default.
Private Third Party Purchasers	• Clear title ASAP.	• Private third party purchaser interests are protected.	• Land may be taken from third parties and returned to the Trust[9]	• Third party purchasers protected. • Longer than current settlement.
Municipalities	• Retain Trust Land given to them.	• Municipalities' interests in Trust land is preserved.	• Municipalities' interests in Trust land almost certainly lost.	• Third party purchasers protected. Will take a long time.

[1]It is possible that the current settlement may be disapproved or declared illegal. The court's initial rulings are expected within the next 60 days. If the settlement is disapproved or ruled illegal, it may very well be possible to fix identified problems. Perhaps the only potential problem that could not be fixed (except by Congressional action) is whether the transfer of the mineral estate to the Trust Authority violates Section 6(i) of the Statehood Act.

[2]Our view is that the proposed legislation cannot be approved by the court because of its unenforceability/lack of security, and illegality as a dedicated fund. It appears that it would take a constitutional amendment to fix both of these problems. **The SB67/HB201 approach ends up being the litigated result because it is believed the court will not** approve this legislation as a settlement. A new settlement is always possible, but the approval process will have to be started over. Keep in mind that people have been trying to fashion a settlement for over six years and it is hard to imagine that any fundamentally new proposal will be offered. A constitutional amendment would solve a lot of the problems with SB67/HB201 but their proponents are unwilling to wait the time such an approach requires. Similarly, the State could transfer sufficient assets to the Trust to guaranty payment, but that would require the court's confirmation of the State's right to place subsurface rights in the Trust.

[3]The setoff allowed by the Supreme Court for the State to deduct what it has spent on the Mental Health Program from the amount it owes is likely to eliminate any financial obligation for land lost from the trust. This issue will be vigorously re-argued by the plaintiffs if the litigation is resumed, and the United States Supreme Court will be the ultimate authority (although it does not have to hear the case).

[4]This is disputed by the opponents of the current settlement.

[5]By definition "fair value" is a price at which the landowner receives fair compensation and the land user does not pay more than will allow it to earn a reasonable profit.

[6]While industry will say they are concerned with funding for mental health programs, this is clearly driven by a desire to free up the land. Certainly individual industry representatives may have a sincere interest in adequate mental health program funding, but it is not what is driving industry's interests here.

[7]The current settlement returns to the Trust approximately 120,000 acres of land in the Tanana and Haines State Forests. These forest lands were already open to logging and mining, but with more restrictions than is anticipated under Trust management.

[8]The Trust should prevail on this issue. If not, however, the land may be lost and the State not owe any money because of the setoff.

[9]The Trust has excellent arguments on this issue, but public opinion may cause the courts to look for another result.

Law offices of
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686
TELECOPIER (907) 274-9493

APR 22 1993

James B. Gottstein
Jill C. Wittenbrader

April 22, 1993

Richard M. Johannsen
Perkins Coie
1029 West Third Avenue, Suite 300
Anchorage, Alaska 99501

Re: SB67/HB201

Dear Rick:

You and Jeff Jessee have asked us to address the language of SB67/HB201 for some time, most recently in connection with your April 15, 1993 proposed amendments. As you know, we have felt that SB67/HB201 have at least two serious legal problems which would likely lead to their rejection by the court. One of these problems is unenforceability. You have attempted to address enforceability in your recent proposed amendments. The other serious problem, whether the bills create a prohibited dedicated fund, is not perceived as a subject the legislature can address.[1] Because of these fundamental problems we are anxious to avoid the appearance that we are negotiating the terms of these bills.

In light of the effort your group has put into drafting this legislation we agree it is only fair to give you our thoughts. In doing so, we are not negotiating the terms of SB67/HB201, we are not endorsing SB67/HB201, even if our suggestions were accepted, and we have not changed our fundamental analysis that the SB67/HB201 approach is likely to fail as a settlement of the Weiss litigation for the reasons noted.[2]

Our comments will be directed to CSSB67(Jud) and CSHB201(Res) as if they were amended by your April 15 1993 transmittal.

Sec. 2.

We are opposed to requiring DNR to manage the lands. DNR is not equipped to manage the lands appropriately. The fiscal note

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[1]We frankly feel that the unenforceability issue is similarly incapable of legislative correction.

[2]We do understand that Usibelli prefers going back to the original litigation over consummating the Chapter 66 settlement. We think passage of SB67/HB201 will accomplish that goal of Usibelli.

prepared by DNR confirms this because no particular personnel are assigned to manage Trust land but rather a portion of DNR personnel expense is allocated to the Trust. This will lead to continued lack of attention to Trust lands, and, as will be discussed below, use of the Trust to fund general DNR functions.

We note that at line 15 of page 2, the addition of the words "and dispose of" appears to require disposal of the land and minerals. Simply using the word "manage" ought to be sufficient.

Sec. 3.

The imposition of AS 38.05.285 on the management of Trust land is inappropriate. Multiple use and other State constitutional provisions relating to management of general grant land do not apply to the management of Trust land. Providing that in case of conflicts, trust management principles apply does not solve this problem, because (1) it sets up an inappropriate management criteria in the first place, and (2) provides too much opportunity for legal challenges to actions on Trust land.

Sec. 4.

See, comments below regarding "802" lands.

New Sec. 5.

New Section 5 proposed in your April 15th transmittal amends AS 37.14.031, added by Section 11 of Chapter 66 to provide that the Trust fund will be a separate fund within the Permanent Fund or the Treasury. Which is it? Who decides? If it is the Permanent Fund, is that part of the Treasury? If not how can funds be removed from the treasury and deposited into the Permanent Fund without an appropriation without running afoul of Article 9, Section 13 of the Constitution.

Sec. 5 (Old).

This section which contains the compensation scheme, is the one with the fundamental problems. First, it is fundamentally unenforceable (we will address the remedy section where it comes up). Second, it raises the question of whether a binding commitment to pay or allocate a percentage of unrestricted general fund revenues is a constitutionally prohibited dedicated fund.

With respect to the former, Article 9, Section 13 of the Alaska Constitution provides that

> No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

Similarly AS 09.50.270 provides in part, "No attachment or execution shall issue against the State." Article 9, Section 13 of the Constitution, makes any promise to pay or stated alternatively any debt based compensation to the trust (which is the essence of SB67/HB201) inherently unenforceable. We do not believe the court would approve a settlement wherein the beneficiaries release all of their rights to unreturned Trust land in exchange for an unenforceable promise to pay. Indeed, the 1978 legislation purporting to redesignate Mental Health Trust Land as general grant land that was invalidated in *State v. Weiss*, 706 P.2d 681 (Alaska 1985) contained a promise to pay a percentage of funds received from all State lands. It is very hard to see how SB67/HB201 are different in this material aspect from the legislation invalidated in *Weiss*.[3]

With respect to the dedicated fund issue, Article 9, Section 7 of the Alaska constitution prohibits dedicated funds except for (1) the permanent fund, (2) when required by the federal government for state participation in federal programs, and (3) dedications existing upon the date of ratification of the Constitution. The first and third exceptions clearly do not apply.[4] It is conceivable that the second exception applies which would make the dedication permissible. However, prudence requires that the issue be decided by the courts because the beneficiaries can not bear the risk that the dedication of a percentage of general fund revenues to the Trust is unconstitutional. You have suggested in conversation that this issue not be brought up by us and maybe no one else will. This would not be prudent because the issue could be raised after the beneficiaries had released their claim to Trust land, leaving them with nothing.

Frankly, we could live with the time involved to resolve this issue as long as the Chapter 66 option was preserved as a

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[3]The issue of enforceability does not impugn the intentions of the legislature. It simply reflects the undeniable fact that future legislatures may be faced with situations where, in their view, the public interest requires a breach, particularly if there are no penalties involved. In order to avoid any enforceability questions, it would be a simple matter to transfer sufficient income producing State assets to equal the anticipated payment requirement. For example, the recently identified Sunfish oil field in Cook Inlet is expected to generate royalties in the $130 million per year range. This is completely new revenue, not previously expected by the State. Of course, this would require resolution of the 6(i) issue. At least the trial court's ruling on this issue is imminent.

[4]The constitution was ratified in April of 1956 while the Alaska Mental Health Enabling Act was not passed until July of 1956.

backup[5], but believe the parties urging adoption of SB67/HB201 are unwilling to take the time involved. Similarly, a constitutional amendment could solve both the unenforceability and dedicated fund problems but we understand the proponents of SB67/HB201 are unwilling to consider such an approach.

The definition of unrestricted general fund revenues, while an improvement over no definition, is insufficient. The definition should list all current sources of revenues that are considered restricted (or not unrestricted). Otherwise, it will be quite easy to get into later disagreement over what was or was not restricted on the effective date. To say that "all categories of accounting for money accruing to the general fund that were not restricted" is too open-ended. First, I don't know what a "category of accounting" is. Second, new categories could be created. Also, since there will be some time before the effective date, new restrictions could be made to apply between now and the effective date.

Sec 6 (Old - as amended).

We recognize the effort that you and your group have put in to address the enforceability issue with your new proposed amendments to Section 6. We understand that the mandatory injunction approach (in the event the allocation is not made) was arrived at because you could not identify any other approach that would withstand constitutional scrutiny. In our view, the critical issue in evaluating the problem is to focus on "who's money is it?" In other words, are funds that have been "allocated" to the Mental Health Trust Income Account "owned" by the Trust. If so, it appears that a mandatory injunction transferring ownership of the funds from the State to the Trust would be unconstitutional under Article 9, Section 13 of the Alaska Constitution. If the Trust does not truly "own" the funds, then the hard won right of the beneficiaries to enforce the State's fiduciary obligations respecting expenditure of Trust funds would be nullified by Article 9, Section 13. This seems explicitly recognized in your amendment where it provides the mandatory injunction will issue "without regard to any difficulty of enforcement." The result seems to be that the payment obligation would still end up being unenforceable. Now, to the extent that you desired this to be tested in court, it would not

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[5]In this regard, my client, the Alaska Mental Health Association is probably much more willing to consider an enforceable percentage of general fund revenues than Mr. Weiss, who I understand to be convinced the State will never live up to a payment obligation, regardless of the enforceability provisions. Because of my belief that sufficient enforceability provisions are not likely to be achievable, Mr. Weiss's position and the Association's are probably not, as a practical matter, any different.

be objectionable to me as long as Chapter 66 is retained as an option.

With respect to inadequacy of security issues, clarifying that foreclosed LDA land is to be received by the Trust free and clear of any legislative restrictions has not been addressed. While proponents of SB67/HB201 can hypothesize that it may be better to leave that question open as a way to prevent a gung-ho development administration from breaching the payment obligation in order to open the LDAs to development, it simply is insufficient as a reason to deny the Trust an appropriate remedy.

In addition, the collateral is clearly insufficient (even with the addition of the subsurface of conveyed land) to secure the debt because only a small part of the original Trust land not to be returned is serving as collateral for all of the land not to be returned. Obvious additions to the collateral would be subjecting the "802" interest protections and any municipal land that has not been conveyed out of municipal ownership as of the date of enactment to foreclosure. Usibelli has indicated that it is sure the State won't breach the compensation obligation. If so, then it should not object to making its "802" interest protections subject to foreclosure in the event of default. The same is true with respect to the LDA management issue upon foreclosure. This brings up the concept of protection of the security. Under the proposed legislation, the State may do anything it wants on the pledged land, including reducing or eliminating its value as collateral. This substantially reduces its value as security.

Finally, the foreclosure procedures should specify more clearly, the rights upon foreclosure. Who conducts the sale? We assume non-judicial foreclosure rights are intended, but without elimination of the allocation obligation. It would appear that summary foreclosure of all parcels was intended. If so, it should be stated specifically. Since it would not appear that actual sales of the parcels to be foreclosed to third parties is contemplated, it seems a more direct approach could be taken. This is the rental or lease approach that we have previously indicated would be preferred to a security interest approach. Under this approach, title to the "pledged" land would remain in the Trust, with the State "leasing" or "renting" the right to use the land. If the allocation were not made the "lease" could be terminated and all rights returned to the Trust without going through a foreclosure proceeding. The notice periods required to exercise such rights need not change from your proposed amendments.

Sec. 7 (Old).

We have been advised by our consultants that the lack of a survey will substantially reduce if not completely eliminate the ability to manage Trust lands effectively. Without a survey it will not be possible to locate accurately which lands are Trust lands which are 802 lands and which are general grant lands. In addition, eliminating the requirement for survey for conveyances is completely contrary to property law as it has been consistently applied for centuries. Tentative Approval under the Statehood Act and Interim Conveyances under ANCSA were adopted solely as interim measures, with patents to follow after survey. Abandoning the requirement that property has to be sufficiently described to locate it on the ground in order to validly convey it for the sole purpose of saving survey costs is short-sighted and ill-advised.[6]

Sec. 8 (Old).

Trust land that has been disapproved for conveyance to municipalities (Subsection (C)) should not be exempt from conveyance to the Trust.

No Trust Land was purchased so that Subsection (D) is inapplicable.[7]

Just because land has been selected by a Native corporation (Subsection (E)) does not mean the corporation would receive the land even absent the Trust's selection. There is no reason for the Trust to give up land because of Native corporation selections where the Native corporations would not receive the land in any event.

The same is true of Native allotment applications (Subsection F).

Land identified for exchange but not yet conveyed (Subsection (G)) should, by definition be identifiable right now. DNR should do so and the lands be evaluated, rather than wait for later and end up in dispute.

Many ILMAs have been granted where the receiving agency does not use the land for direct public services and/or uses the land

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[6]DNR's calculation of the cost of surveys was based upon a full township and sections survey where much cheaper platted metes and bounds surveys would suffice. We estimate that the cost of the latter type of survey would reduce the cost to about 20% of that estimated by DNR.

[7]It is possible that existing Trust land was encumbered with restrictions because of conditions imposed by accepting grants relating to the improvement of those parcels.

to earn revenue. ILMAs and the like are susceptible to identification and, in fact, the various departments have been stonewalling on the "smallest practicable tract" determination that is being undertaken under the Settlement Agreement. Justification for continuation of each ILMA, including the necessary area should be required. If the departments have not complied with this process the land should be returned to the Trust.

Sec. 9 (Old).

The whole "802" process is clearly inappropriate as trust management. To the extent that the percentage is meant to compensate for this inappropriate management, the "802" provisions should be subject to continuing performance by the State of its obligations under the settlement. See above discussion regarding Section 6 (Old) as amended.

In any event the "802" lands should only include contracts as of the date of enactment, not the effective date.

We are not sure of the intent of subsection (f). If the idea is to validate all existing mining claims and leases on Trust land, it should say that. Continuation of management of these interests the same as general grant land should also depend upon the State's performance.

Sec 10 (Old).

Using Trust funds to pay for DNR's management is a raid on the Trust fund and undoubtedly will be used to fund non-Trust functions. This is particularly true because of the way DNR proposes to allocate a portion of individuals to the Trust. The cost of managing 802 interests should not be borne by the Trust.

Sec 11 (Old).

See comments on Section 10, above.

Sec. 13 (Old).

SB67/HB201 should not repeal Sections 54-57 of Chapter 66, except conditionally upon final approval, including exhaustion of appeals. In this way, if SB67/HB201 were to fail, Chapter 66 would be resurrected. In fact, it seems to us that the Chapter 66 and SB67/HB201 approaches could proceed contemporaneously in order to have some solution by the time of the effective date of approval.

Sec. 15 (Old).

The Trust's security interest in Trust Land should be recognized.

Sec. 16 (Old).

As discussed above, the land should be surveyed.

Secs. 17-19 (Old).

These effective date provisions are a whizzer-go-round. Literal reading of these sections requires approval of the current settlement (including rejection of legal challenges) before SB67/HB201 become effective. It does not appear that this is what is intended although your client's stated intention that it prefers the litigated approach to Chapter 66 makes us wonder if these effective date provisions are intended to make SB67/HB201 effective only if Chapter 66 would otherwise be approved. If the intent is that it becomes effective when Chapter 66 as amended by SB7/HB201 is approved by the courts as a final settlement including exhaustion of all appeals, that is what it should say.

Sec. 21 (New).

The grounds for modification of the consent decree should track those negotiated in the Settlement Agreement. It is also not clear what the intent is in saying that changes to unrestricted revenues are anticipated. Is the statement that the obligations are to place the Trust in the same position as if the State had not breached the Trust, an attempt to buttress the legislation against a citizen/taxpayer attack on the settlement as a giveaway?

As we indicated at the beginning, our addressing the proposed legislation should not be taken or expressed as an indication that we are negotiating on these bills. We think our comments make clear that SB67/HB201 as presently proposed are not viable vehicles for the settlement of the *Weiss* litigation. You know we also believe that whether it is us or someone else, legal challenges are almost certain to be raised and therefore the settlement consideration process under these bills will tend to be as long as the process under Chapter 66. With respect to the land returned to the Trust under the proposed legislation, and its management regime, it is our opinion that the Trust would be better off without it. That is why the enforceability/security provisions are so critical.

I know that you have worked very hard on this legislation including attempting to address our concerns. Unfortunately, in our view, the approach insisted upon by your group can not form the basis of a settlement of the Mental Health Trust Lands litigation.

Yours truly,

James B. Gottstein

cc: facsimile
Alaska Mental Health Association
Sen. Drue Pearce
Rep. Ron Larson
Thomas S. Waldo
Charles E. Cole
Jeffrey L. Jessee
Philip R. Volland
Charles P. Boddy
Robert B. Stiles
David T. Walker
Vern T. Weiss
Sen. Steve Frank
Rep. Eileen Maclean
Peter J. Maasen
G. Thomas Koester
Wendy S. Feuer
Brian D. Bjorkquist
Kent V. Dawson

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EXPLANATION OF CS FOR SENATE BILL NO. 67 (JUD)

April 12, 1993

BACKGROUND

CS for Senate Bill No. 67(JUD) amends Chapter 66, SLA 1991. Chapter 66 was intended to constitute a "settlement" of the mental health trust lands dispute but is now hopelessly embroiled in legal challenges being asserted in the Weiss litigation. A broad coalition of interests supports CSSB 67. The coalition includes two of the four named plaintiffs (beneficiary groups) in the Weiss litigation, the public interest intervenors and the oil company intervenors that are challenging Chapter 66 in the Weiss litigation, and representatives of the development community (the Alaska Coal Association, the Alaska Miners Association, and the Resource Development Council). The coalition is attempting to build a consensus for the amendments to Chapter 66 among the state and the two named plaintiffs who still support an unamended Chapter 66.

THE BASIC STRUCTURE OF CHAPTER 66, SLA 1991

Chapter 66 establishes the Mental Health Trust Authority and contains significant "program" provisions that benefit the recipients of mental health services. Chapter 66 generally reconstitutes the land trust with original mental health trust lands (OMHTLs) which have not been conveyed by the state or placed by the legislature in legislatively designated areas (LDAs) such as parks and refuges. To compensate the trust for the conveyed and legislatively designated OMHTLs not being returned to the trust, Chapter 66 calls for a negotiated land exchange involving "substitute land" to be proposed by the plaintiffs' attorneys. Over 650,000 acres of "substitute land" have already been proposed. In addition, under Chapter 66 approximately 6.7 million acres of state land have become "hypothecated land" to be foreclosed upon if the land exchange is not completed by December 1, 1994.

The "substitute lands" are what has caused Chapter 66 to become hopelessly embroiled in litigation. The public interest intervenors (PIIs) have challenged Chapter 66 primarily because of issues involving the substitute lands. The oil company intervenors (Unocal and Marathon) have challenged Chapter 66 in court because they have leases on proposed substitute lands (PSLs). The attorneys for the state and the mental health beneficiaries have disagreements over the appropriateness of the plaintiffs' PSLs and the nature and

quantity of substitute land required to compensate the trust. Developmental interests are adversely affected by a land "freeze" that has been imposed on PSLs (in addition to the land "freeze" continuing to affect OMHTLs and "hypothecated lands").

Chapter 66 contains a "step down" funding provision requiring that a percentage of the "unrestricted revenue of the state" be allocated to the mental health trust income account in each fiscal year beginning with FYE 1992 and ending in FYE 2003.

THE BASIC STRUCTURE OF CSSB 67(JUD)

CSSB 67 retains the Mental Health Trust Authority and the significant "program" provisions that benefit the recipients of mental health services. In addition, CSSB 67 retains the concept of reconstituting the land trust with OMHTLs which have not been conveyed or are not within LDAs.

However, CSSB 67 amends Chapter 66 to remove the complicated land exchange provision from the settlement, thereby doing away with all of the legal problems and disputes that involve substitute lands and hypothecated lands. Instead, under CSSB 67 the trust receives monetary compensation for the OMHTL that is not being returned to the trust. Under CSSB 67 that compensation is an allocation to the mental health trust income account of 6% of the "unrestricted general fund revenue of the state" during each fiscal year. See AS 37.14.036(c) on pages 3-4 of CSSB 67. The money is intended to compensate the trust for the OMHTL that cannot be returned and for the land and mineral interests that have been carved out of OMHTL that is being returned. There is no cut-off date for this annual percentage allocation and the "step down" funding provision in Chapter 66 is eliminated.

Legislatively designated OMHTLs are pledged as collateral for the state's obligation to allocate the required percentage amount to the mental health trust income account each year. See AS 37.14.036(d) and (e) on page 4 of CSSB 67.

The reconstituted land trust will consist basically of the same OMHTLs that would have been returned to the trust under Chapter 66. Two differences are: (1) OMHTLs subject to mining claims will be returned to the trust (under Chapter 66, the plaintiffs had the option to accept or reject these lands); and (2) OMHTL contained in the Haines State Forest Resource Management Area and the Tanana Valley State Forest will not be returned to the trust.

OTHER REFINEMENTS TO CHAPTER 66 MADE BY CSSB 67

1. Protection of Existing Third Party Interests or Appropriated Uses and Management of Such Interests and Uses by the Alaska Department of Natural Resources (DNR) Under AS 38.05.802

CSSB 67 amends Chapter 66 to specifically provide that the trust authority's title to the land being returned to the reconstituted trust remains subject to all existing third party interests (such as leases, contracts, permits, and mining claims) and appropriated uses (such as rights-of-way). See AS 38.05.802(a) and (b) on page 7 of CSSB 67.

Unlike third party interests such as leases, there is no legal document to reflect the terms of mining claims or leasehold locations and DNR normally makes no "validity" determination. The holders of mining claims and leasehold locations would therefore be subject to the status quo -- they would face whatever challenges they might face from the trust that they could face from DNR. The trust simply takes subject to the claimant's rights, if any. Unlike Chapter 66, CSSB 67 clarifies that for purposes of mining claims and mining leasehold locations, OMHTL is considered to have been open to mineral entry unless closed to mineral entry by a court or DNR order. See AS 38.05.802(f) on page 8 of CSSB 67. All OMHTL has been closed to mineral entry by court and DNR orders since November 5, 1985 and the provision is not intended to alter the effect of these closing orders.

In addition, CSSB 67 imposes a mandatory requirement that DNR manage all existing third party interests and appropriated uses under DNR's land management rules and standards for general grant land (as opposed to those rules and standards that will be applicable to mental health trust land). See AS 38.05.802(c) on page 7 of CSSB 67. For example, rental and royalty decisions for existing mineral leases on OMHTL would be made by DNR pursuant to DNR's normal regulations and without regard to the fact that the land is OMHTL. All income and proceeds from the management of these existing interests and uses must be deposited by DNR into the mental health trust income account. See AS 38.05.802(c) on page 7 of CSSB 67.

The bill further provides that a person who holds a protected interest may enter into an agreement with DNR and the trust authority to waive DNR's mandatory land management under general grant land standards. See AS 38.05.804 on page 8 of CSSB 67. This allows a third party interest holder to "opt in" to the trust authority land management system once the trust authority has established a stable land management program and a successful track record.

2. Management of Reconstituted Trust Land Under AS 37.14.009

Except for existing third party interests and appropriated uses (which must be managed by DNR under AS 38.05.802, as discussed above), the reconstituted land trust must be managed, as required by Chapter 66, under AS 37.14.009 in a fiduciary manner to fulfill the purposes of the trust. However, CSSB 67 amends Chapter 66 to require the trust authority to adopt regulations relating to land management and disposal. See AS 37.14.009(a)(4) on page 2 of CSSB 67. In addition, except for existing third party interests and appropriated uses (which must be managed by DNR under AS 38.05.802), CSSB 67 amends Chapter 66 to require the trust authority to contract with DNR to manage and dispose of reconstituted trust lands in accordance with the trust authority's regulations unless the trust authority determines that the best interests of the trust beneficiaries would be served by other arrangements (for example, by having the trust authority manage the land itself or through another contractor). See AS 37.14.009(a)(4) on page 2 of CSSB 67.

The potential for a conflict exists on any parcel of reconstituted trust land between DNR's management of a protected third party interest or appropriated use under AS 38.05.802 and management of the remainder of the land by the trust authority (or DNR as its contractor) under AS 37.14.009. Therefore, CSSB 67 contains a provision to require that any such conflicts are to be resolved in accordance with the many laws (including court decisions) that apply to conflicts between concurrent users of land. See AS 37.14.009(c) on page 3 of CSSB 67. This makes it clear that the trust authority's management is subject to these developed legal principles and that these principles are not to be distinguished or disregarded just because the trust is the landowner and the trust authority has an obligation to manage its assets in a fiduciary manner to fulfill the purposes of the trust. Of course, because the trust takes its land subject to existing third party interests, any contractual rights addressing whether other concurrent land uses are allowed must also be honored by the trust authority in its management of the remainder of any particular parcel of land under AS 37.14.009.

3. Public Interest Safeguards Applicable to Reconstituted Trust Land Managed Under AS 37.14.009

As under Chapter 66, under AS 37.14.009 reconstituted trust land is to be managed by the trust authority (or by DNR as the trust authority's contractor) without compliance with AS 38.04 or AS 38.05. But CSSB 67 amends Chapter 66 to

include a requirement designed to require that disposal and use of trust land under AS 37.14.009 comply with the state constitution and the principle of multiple purpose use consistent with the public interest. See AS 37.14.009(b)(1) on pages 2-3 of CSSB 67. However, the amendment also recognizes that the trust principles established in AS 37.14.007 and AS 37.14.009 must take priority if they conflict with multiple purpose use. In addition, CSSB 67 amends Chapter 66 to require public notice of any disposals of trust land under AS 37.14.009, a 30-day comment period, and a final public notice of any trust land disposals under AS 37.14.009. See AS 37.14.009(b)(2) on page 3 of CSSB 67. This ensures that trust beneficiaries, trust land developers, people who use trust lands for other purposes, and other members of the public have an opportunity to have their views considered by the trust authority. Existing third party interests or appropriated uses continue to be managed like general grant land under AS 38.05.802 and therefore remain subject to AS 38.04 and AS 38.05 unless the interest holder elects to "opt in" to the trust authority land management system governed by AS 37.14.009.

4. Definition of Unrestricted General Fund Revenue

CSSB 67 contains a definition of "unrestricted general fund revenue of the state" to be used for calculating the annual percentage allocation to be made by the state to the mental health trust income account. See AS 37.14.036(c) on pages 3-4 of CSSB 67. The definition ties the meaning of this phrase to the manner in which money is categorized under the statewide accounting system as of the effective date of Chapter 66. The purpose of this provision is to remove the possibility that future restrictions imposed by the legislature on general fund revenues will have a negative impact on the dollar amount used for calculating the percentage allocated to the trust. No limitation is placed on the legislature's ability to impose future restrictions, but for purposes of calculating the amount to be allocated to the trust, any such future restrictions would be disregarded.

5. Clarification of Land Reconstitution Ambiguities Contained in Chapter 66

CSSB 67 contains several provisions which are designed to clarify ambiguities in Chapter 66, such as what land is actually being returned to the reconstituted trust. Under Chapter 66 this is ambiguous and has been left open to negotiation between the state and the plaintiffs' attorneys. CSSB 67 amends Chapter 66 to clearly provide that all OMHTLs are to be returned to the reconstituted trust unless they have been "conveyed" or "reserved by law from the public domain."

See AS 38.05.800 on pages 5-6 of CSSB 67. The terms "conveyed" and "reserved by law from the public domain" are then specifically defined. See AS 38.05.800(a)(1) and (2) on pages 6-7 of CSSB 67. CSSB 67 also clarifies that if either the surface or the mineral estate of OMHTL has been "conveyed" or "reserved by law from the public domain," then neither estate is being returned to the reconstituted trust. See AS 38.05.800(b) on page 7 of CSSB 67.

CSSB 67 clarifies that those lands not being returned to the trust are permanently released from any claim of the trust. See Section 15 on page 10 of CSSB 67.

As under Chapter 66, CSSB 67 requires an actual conveyance of reconstituted trust land from DNR to the trust authority. But CSSB 67 clarifies Chapter 66 by providing that reconstituted trust land is to be conveyed to the trust authority by patent without a survey, resolving another matter that has been the subject of negotiations under Chapter 66. See Section 16 on pages 10-11 of CSSB 67. CSSB 67 amends the existing Alaska statute which arguably requires a survey before reconstituted trust lands could be conveyed to the trust authority. See AS 38.04.045(b) on pages 4-5 of CSSB 67.

6. Funding of DNR Land Management Responsibilities

Under Chapter 66, as amended by CSSB 67, DNR is required to manage all existing third party interests and appropriated uses. In addition, the trust authority is required to contract with DNR to manage reconstituted trust land unless the trust authority determines that the best interests of the trust beneficiaries would be served by other arrangements (direct trust authority management or a contractual arrangement with a private land manager). CSSB 67 amends Chapter 66 to allow the legislature to make appropriations from the mental health trust income account to fund DNR's land management duties. See AS 47.30.046(a) on page 9 of CSSB 67 and AS 47.30.056(a) on page 10 of CSSB 67. Of course, any revenue generated from DNR's management of the reconstituted trust must be deposited by DNR into the same mental health trust income account from which DNR can be funded.

7. Resolution of Disputes Over Annual Percentage Allocation, Collateral, and Foreclosure of Collateral

Under Chapter 66 the Alaska Supreme Court was given original and exclusive jurisdiction over any disputes arising out of reconstitution of the trust, the land exchange negotiations, and the collateral for reconstitution of the land trust. CSSB 67 amends Chapter 66 to return jurisdiction

over any such disputes to the superior court and to specifically provide that the superior court also has jurisdiction over any dispute pertaining to the annual percentage allocation required to be made to the mental health trust income account, the collateral for that allocation (the OMHTL LDAs), and any foreclosure of that collateral. See AS 22.10.020(j) on page 1 of CSSB 67. In addition, CSSB 67 specifically gives the superior court the power to refer any such disputes to a special master. See Section 14 on page 10 of CSSB 67.

* * * * * *

CSSB 67 is exactly the same as a companion bill in the House (CSHB 201) with the exception of the amount of the annual percentage allocation which is 3% in the House bill.

Sen. Pearce

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

SB 67

May 4, 1993

Hon. Rick Halford, President
Alaska State Senate
Eighteenth Alaska Legislature, First Session
State Capitol, Room 111
Juneau, Alaska 99801-1182

Dear President Halford:

After meeting with the settling plaintiffs in Weiss, we agree that two minor amendments should be made in the proposed language that was distributed to you earlier today to resolve Judge Greene's concerns in the mental health trust lands litigation. The amendments are reflected in the proposed language attached to this letter.

We are available to explain these proposed amendments. We urge your favorable consideration on this matter.

Very truly yours,

Charles E. Cole
Attorney General

CEC:cl

cc w/ enc.: Sen. Robin Taylor
Sen. Steve Frank
Sen. Drue Pearce

Pat Ryan, Chief of Staff
Kris Lethin, Legislative Liaison
Office of the Governor

Hon. Glenn A. Olds, Commissioner
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David T. Walker
James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Richard M. Johannsen
Peter J. Maassen
G. Thomas Koester

Brian D. Bjorkquist, Assistant Attorney General
Wendy S. Feuer, Assistant Attorney General

5/4/93

REVISED

Proposed Amendments to CSHB 201(RES) and CSSB 67(JUD)

Page 1, line 2:

Following "mental health trust":

Delete all material

Insert "; and providing for an effective date.""

Page 1, lines 3 - 7:

Delete all material

Page 1, line 9 - page 11, line 9:

Delete all material

Insert the follcwing:

"* **Section 1.** Section 55(g), ch. 66, SLA 1991, is amended to read:

(g) **Except for public notice as provided under AS 38.05.945(b) and (c), the** [THE] provisions of **AS 38.04, AS 38.05, and** AS 38.50 do not apply to exchanges under this section.

* **Sec. 2.** Section 55(h), ch. 66, SLA 1991, is amended to read:

(h) If agreement cannot be reached between the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, and the commissioner of natural resources under (f) of this section as to appropriate lands to be conveyed to the trust as compensation or as to the

value of the original lands taken or of replacement lands, the Alaska Supreme Court shall resolve the disagreements using the criteria set out in this section, **but may not give deference to the commissioner's finding under (j) of this section**. The Alaska Supreme Court may order the commissioner of natural resources to convey appropriate state land to the trust without further legislative authorization.

*** Sec. 3.** Section 55, ch. 66, SLA 1991 is amended by adding new subsections to read:

(i) The commissioner of natural resources shall give public notice as provided under AS 38.05.945(b) and (c) of proposed exchanges negotiated under (f) of this section, or exchanges proposed by either the plaintiffs in Weiss v. State of Alaska (4FA-82-2208 Civil) or the commissioner of natural resources under (h) of this section. In the notice, the commissioner shall provide for a written comment period of at least 30 days. The commissioner shall hold a public hearing in the area of the land proposed to be conveyed to the trust under the proposed exchange.

(j) Following public notice of a proposed exchange under this section and the public hearing, the commissioner shall make, and give notice of, a written finding as to whether the proposed exchange meets the criteria of (b) - (e) of this section.

(k) In order to obtain judicial review of the commissioner's finding under (j) of this section and of the exchange, a person must

(1) have submitted written or oral comment in response

to a notice published under (i) of this section;

(2) demonstrate that the person has an interest that will be adversely affected by the exchange if the exchange becomes final; and

(3) within 30 days after the commissioner gives notice of the commissioner's finding, file a notice of appeal with the court with jurisdiction under sec. 57 of this Act.

* **Sec. 4.** Section 56(a), ch. 66, SLA 1991, is repealed and reenacted to read:

(a) To secure the reconstitution of the trust as provided in secs. 54 and 55 of this Act, the following land is hypothecated to the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709:

(1) original mental health land that will be returned to the trust under sec. 54 of this Act; and

(2) up to 1,500,000 acres of other state land as negotiated by the commissioner of natural resources and the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, using the criteria set out in secs. 55(d) and (e) of this Act, for the exchange of land to the trust in return for original mental health land not returned to the trust; the total amount of land hypothecated to the trust under this paragraph, in conjunction with land hypothecated to the trust under (1) of this subsection, shall be sufficient to reconstitute the trust.

* **Sec. 5.** Section 58, ch. 66, SLA 1991, is amended to read:

Sec. 58. **(a) Sections 56(a) and (b) of this Act take effect**

on the effective date of an Act passed by the Eighteenth Legislature amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust.

(b) Sections 1 - 55, 56(c) and (d), and 57 of this [THIS] Act **take** [TAKES] effect upon entry of a final order dismissing Weiss v. State of Alaska, 4FA-82-2208 Civil, and the expiration of any time for appeal. The superior court shall advise the lieutenant governor and the revisor of statutes when the final settlement and order of Weiss v. State of Alaska has been approved.

* **Sec. 6.** If ch. 66, SLA 1991, is finally disapproved as a settlement of Weiss v. State, 4FA-82-2208 Civil, this Act is repealed.

* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

SB 67

May 4, 1993

Hon. Rick Halford, President
Alaska State Senate
Eighteenth Alaska Legislature, First Session
State Capitol, Room 111
Juneau, Alaska 99801-1182

Dear President Halford:

On April 26, 1993, Superior Court Judge Mary E. Greene ruled that the legislation settling the mental health trust lands litigation (Chapter 66, SLA 1991) was constitutional in all respects except one. In her view, the pledging of the land on the "Hypothecated Lands List" to the trust as security for the state's performance of its obligations under ch. 66 was not valid because it did not contain adequate standards to guide the commissioner of natural resources in negotiating the list with the plaintiffs.

Judge Greene went out of her way to point out, however, that the legislature could easily cure the problem:

> Obviously, it would be very easy for the legislature to remedy this problem. If the legislature amended section 56(a) to adopt a specific, known list or <u>delegated the task of preparing a new list with adequate standards</u>, the difficulty would be eliminated.

Memorandum Decision and Order Re: Intervenors' Complaint (April 26, 1993) at 82, n. 42 (emphasis added).

The attached proposed amendments to CSSB 67(JUD) would implement Judge Greene's suggestion for curing ch. 66 by delegating to the commissioner of natural resources the task of preparing a new Hypothecated Lands List, to consist of (1) original mental health land that will be returned to the trust under sec. 54, ch. 66, and (2) up to 1.5 million acres of other state land, selected under the criteria set out in secs. 55(d) and (e), ch. 66, for identifying land to be exchanged to the trust in return for original mental health land not returned to the trust. (This will reduce the amount of state land hypothecated to the trust from the 6.7 million acres on the original Hypothecated Land List to no more than 1.5 million acres and, because the same standards will be used for hypothecation as for exchanges, make it likely that the same land that is hypothecated will ultimately be exchanged to the trust.)

The proposed amendments also make a technical amendment to ch. 66 by exempting the process for reconstituting the trust from the planning and classification requirements of AS 38.04 and AS 38.05, and substituting procedures by which the public may participate in the reconstitution of the mental health trust. Judge Greene found that the planning and classification requirements of AS 38.04 and AS 38.05 would apply to the reconstitution process under ch. 66 as currently written. The proposed amendments to CSSB 67(FIN) will result in substantial savings of both time and money in completing the reconstitution process and bringing this issue to final closure.

In effect, Judge Greene has determined that ch. 66, SLA 1991 is a constitutionally permissible means to settle this divisive and costly lawsuit that has adversely impacted many people in the state. Passage of the amended version of CSSB 67(FIN) that we are proposing will (1) significantly advance the final settlement of the case, and (2) free most of the land on the original Hypothecated Lands List for development.

If this legislation is not enacted before the legislature adjourns, the chances are strong that the settlement agreement reached with the Weiss plaintiffs under ch. 66 will be terminated and the headway we have made over the past two years in settling the mental health lands mess will become a dead letter.

We urge your favorable consideration of the proposed amendments.

Very truly yours,

Charles E. Cole
Attorney General

CEC:cl

cc w/ enc.: Sen. Robin Taylor
Sen. Steve Frank
Sen. Drue Pearce

Pat Ryan, Chief of Staff
Kris Lethin, Legislative Liaison
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David T. Walker
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Peter J. Maassen
G. Thomas Koester

Brian D. Bjorkquist, Assistant Attorney General
Wendy S. Feuer, Assistart Attorney General

Proposed Amendments to CSHB 201(RES) and CSSB 67(JUD)

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Following "mental health trust":

Delete all material

Insert "; and providing for an effective date.""

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Page 1, line 9 - page 11, line 9:

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(g) **Except for AS 38.05.945(b) and (c), the** [THE] provisions of **AS 38.04, AS 38.05, and** AS 38.50 do not apply to exchanges under this section.

* **Sec. 2.** Section 55, ch. 66, SLA 1991 is amended by adding new subsections to read:

(i) The commissioner of natural resources shall give public notice as provided under AS 38.05.945(b) and (c) of proposed exchanges negotiated under (f) of this section, or exchanges proposed by either the plaintiffs in Weiss v. State of Alaska (4FA-82-2208 Civil) or the commissioner of natural resources under (h) of this section. In the notice, the commissioner shall provide for

a written comment period of at least 30 days. The commissioner shall hold a public hearing in the area of the land proposed to be conveyed to the trust under the proposed exchange.

(j) Following public notice of a proposed exchange under this section and the public hearing, the commissioner shall make, and give notice of, a written finding as to whether the proposed exchange meets the criteria of (b) - (e) of this section.

(k) In order to obtain judicial review of the commissioner's finding under (j) of this section and of the exchange, a person must

(1) have submitted written or oral comment in response to a notice published under (i) of this section;

(2) demonstrate that the person has an interest that will be adversely affected by the exchange if the exchange becomes final; and

(3) within 30 days after the commissioner gives notice of the commissioner's finding, file a notice of appeal with the court with jurisdiction under sec. 57 of this Act.

* **Sec. 3.** Section 56(a), ch. 66, SLA 1991, is repealed and reenacted to read:

(a) To secure the reconstitution of the trust as provided in secs. 54 and 55 of this Act, the following land is hypothecated to the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709:

(1) original mental health land that will be returned to the trust under sec. 54 of this Act; and

(2) up to 1,500,000 acres of other state land as negotiated by the commissioner of natural resources and the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, using the criteria set out in secs. 55(d) and (e) of this Act, for the exchange of land to the trust in return for original mental health land not returned to the trust; the total amount of land hypothecated to the trust under this paragraph, in conjunction with land returned to the trust under (1) of this subsection, shall be sufficient to reconstitute the trust.

*** Sec. 4.** Section 58, ch. 66, SLA 1991, is amended to read:

Sec. 58. **(a) Sections 56(a) and (b) of this Act take effect on the effective date of an Act passed by the Eighteenth Legislature amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust.**

(b) Sections 1 - 55, 56(c) and (d), and 57 of this [THIS] Act **take** [TAKES] effect upon entry of a final order dismissing Weiss v. State of Alaska, 4FA-82-2208 Civil, and the expiration of any time for appeal. The superior court shall advise the lieutenant governor and the revisor of statutes when the final settlement and order of Weiss v. State of Alaska has been approved.

*** Sec. 5.** If ch. 66, SLA 1991, is finally disapproved as a settlement of Weiss v. State, 4FA-82-2208 Civil, this Act is repealed.

*** Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

March 12, 1993

Hon. Bill Williams, Chairman
House Resources Committee
Eighteenth Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Re: House Resources Committee
Hearing on HB 201

Dear Chairman Williams:

While I was unable to attend all of the House Resources Committee meeting on HB 201 this morning, I have been told the substance of the testimony of some of the other witnesses. Because I have a marked disagreement with some of their representations, including the characterization of my position on several matters, I am compelled to respond.

First, there is no question but that the 1978 legislation removing mental health lands from trust status, coupled with the legislature's failure to appropriate any funds to compensate the trust for these lands, constituted a breach of trust. The Alaska Supreme Court decided that to be the case, and I agree with the decision. The plaintiffs' other claims of breach, as outlined by Representative Hudson, have not been resolved by the high court and, in light of the state's substantial financial commitment to mental health programs over the years, I am convinced that those claims for past damages have little merit.

What has eluded everyone to date is a final resolution to the entire controversy. As I stated this morning, my view is that resolution must bear a reasonable relationship to the remedy specified by the Alaska Supreme Court: (1) return to trust status of the original mental health lands still in state ownership; and (2) compensation to the trust for the fair market value of former mental health lands that have been sold subject to a set-off for state mental health expenditures.

One of plaintiffs' attorneys remarked that they should not be considered "greedy" because the six percent of the state's unrestricted general fund revenues that they are demanding -- an amount almost everyone agrees bears no relation to the earning capacity of the original land grant -- was taken from chapter 210, SLA 1990. While chapter 210 did allocate six percent of unrestricted general fund revenues to the mental health trust income account, it did not do a number of the things which the

plaintiffs now are demanding: (1) the creation of a new, independent Mental Health Trust Authority; (2) the return of 500,000 acres of original mental health lands to trust status (this, of course, in addition to the six percent of the unrestricted general fund); (3) establishment of a separate process for mental health appropriations under which the legislature's discretion would be substantially diminished and the plaintiffs would be given significant "influence" (and which would no doubt result in new litigation over mental health appropriations if the plaintiffs' recommendations are not followed in toto); and (4) the state's mental health program would be modified substantially in the manner desired by the plaintiffs. Those are all new demands by the plaintiffs which, if agreed to by the State, would be unfair to all other Alaskans.

The State, it was suggested this morning, has a history of "backing out of" deals once it decides that they were not in the State's best interests. Two examples were cited: Chapter 48, SLA 1987, and the recent nomination by the plaintiffs of producing oil and gas leases as proposed substitute lands under the chapter 66 Settlement Agreement. Chapter 48, however, mandated an approach based on "fair market value." Agreement could not be reached on the appropriate procedures for determining fair market value, and the Commissioner of Natural Resources properly declared impasse. If that action had violated chapter 48, plaintiffs could easily have obtained a court order to compel the Commissioner to go forward with the alleged agreement. The fact that they did not try to obtain such an order demonstrates that, in declaring impasse, the State did not "back out of" any agreement embodied in chapter 48.

With respect to the recent Cook Inlet nominations under Chapter 66, Mr. Jessee presented a list of original mental health lands that plaintiffs' consultants had identified as having "significant oil and gas potential." Chapter 66 and the Settlement Agreement, however, expressly provided that the trust would be reconstituted with "land of comparable character" to the original mental health lands not returned to trust status. Land with merely oil and gas potential, of course, is not comparable to producing oil and gas properties in Cook Inlet.

As reported to me, several lesser points were made in others' testimony with which I disagree, but I will await another opportunity to address them. At this juncture, suffice it to say that I find it unfortunate that the legislative process has now been clouded with inaccuracies, distortions, and misrepresentations, and that some apparently now believe it advantageous to attack me personally and to point the finger of blame at me for the present state of affairs. This problem is too complex and the stakes are too great, however, to get lost travelling down such unproductive paths.

Let me simply say that I am fully familiar with the issues surrounding this controversy and I have listened intently to a broad range of views expressed by Alaskans, including those of plaintiffs' counsel. My goal remains what it has always been, and that is to get us all back on track and together to move toward a resolution that is just and fair to all Alaskans, both those that are plaintiffs in the Weiss litigation and those that are not. I and the Department of Law look forward to working with the legislature and all of the parties to achieve that end.

Very truly yours,

Charles E. Cole
Attorney General

cc: House Resources Committee
David T. Walker
James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Richard M. Johannsen
Peter J. Maassen
Sen. Robin Taylor
Eric P. Jorgensen
Thomas S. Waldo
G. Thomas Koester
Brian D. Bjorkquist
Wendy S. Feuer

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☒ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

DEPARTMENT OF LAW

March 23, 1993

OFFICE OF THE ATTORNEY GENERAL

Hon. Bill Williams, Chairman
House Resources Committee
Eighteenth Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Re: Comments on Proposed Amendments to HB 201

Dear Chairman Williams:

Pursuant to your request, the state (Departments of Law and Natural Resources) offer the following comments regarding amendments to HB 201 that have been proposed by the coalition that consists of dissenting plaintiffs in Weiss, certain coal companies, and the environmental intervenors (Alaska Center for the Environment et al.). Our comments are strictly limited to the proposed amendments as requested. The state continues to have grave reservations concerning the approach to settlement contained in HB 201.

As a preliminary matter, we were uncertain about what the coalition intended to implement with certain proposed amendments. We discussed several of these issues with the coalition's drafting counsel, Richard Johannsen, and base several comments on our understanding derived from those conversations. If we have misinterpreted the coalition's intent, we may need to modify certain comments.

1. Who has management authority?

We believe the proposed amendments are ambiguous as to whether the Trust Authority or the Department of Natural Resources ("DNR") would (1) make each land disposal decision, and (2) establish the specific "fiduciary" standards and procedures by which trust land would be managed under AS 37.14.009[1] (the coalition refers to this as "Section 9" land -- it is trust land that is now generally "vacant and undeveloped"). We understand that the coalition's intent is that (1) the Trust Authority would make each land disposal decision, but could delegate that duty to DNR, and (2) that the Trust Authority would establish by regulation the specific "fiduciary" standards and procedures by which trust land would be managed. The following comments are based upon these understandings.

---

[1] In contrast, we believe that management guidelines are more clearly established for lands to be managed under AS 38.05.802.

a. If the Trust Authority will either make or delegate to DNR the duty to make land disposal decisions, the following modifications should be made:

i) The proposed amendment in E.6 to page 1, line 11 should be deleted. The Trust Authority will "manage the assets of the trust in a fiduciary manner" whether it does so directly through its own land office or indirectly through a contract with DNR under AS 37.14.009(a)(4).

ii) Furthermore, deleting that proposed amendment in E.6 would eliminate ambiguity as to whether trust lands DNR would manage under AS 37.14.009(a)(4) may be sold, leased, exchanged or otherwise disposed. The ambiguity arises because the only express authorization for leases or disposals of trust lands is found in what would become AS 37.14.009(a)(2).[2] If that section were to be amended as suggested in E.6, it would authorize the Trust Authority to dispose only the trust land it manages and there arguably would be no authority for disposals when the Trust Authority contracts for DNR to manage trust lands.

b. If the Trust Authority will establish the standards and procedures by which trust lands will be managed in a fiduciary manner, regardless of whether the Trust Authority or DNR actually manages those lands, the following modifications could be made:

i) In each place where HB 201 provides that DNR would manage the land assets of the trust, clarify that such management would be pursuant to standards and procedures adopted by the Trust Authority (or jointly adopted by the Trust Authority and DNR). The Trust Authority would adopt the standards and procedures as regulations. See AS 47.30.031(b)(2), to be enacted by § 26, ch. 66, SLA 1991. These regulations would then, presumably, be incorporated as part of the contract with DNR to manage land assets of the trust under what would become AS 37.14.009(a)(4). Our review revealed only one place for such clarification that the Trust Authority (alone or jointly with DNR) would establish fiduciary standards and procedures by regulation -- Modify proposed amendment E.6, the insert regarding page 2, line 5 of HB 201, to read (suggested modification underlined):

> "the Department of Natural Resources shall manage the land assets of the trust in a fiduciary manner

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[2] This is because any disposal under (a)(2) must be "consistent with (1) of [subsection (a)]" and subsection (a)(1) would exclude lands DNR would manage under (a)(4) if proposed amendment E.6 were adopted.

pursuant to standards and procedures adopted by the authority under AS 47.30.031(b) to fulfill the purposes of the trust"

c. The following modifications are suggested to section 3 of E.5.

i) Modify proposed amendment E.5, the insert at page 1 which would add a new Section 3 to HB 201, regarding what would become AS 37.14.009(b)(1): after "set out in AS 37.14.007" insert "or AS 37.14.009." The reason for this revision is that subsection (b)(1) imposes AS 38.05.285 multiple use standards on management of trust land assets, except if a conflict with trust management arises. The Trust Authority's "power, duty, or responsibility" with respect to managing trust land is set forth in AS 37.14.009 in addition to AS 37.14.007. At a minimum, both of those sections should be listed if the "trust management" exception to multiple use management under AS 38.05.285 is limited to statutory powers, duties, and responsibilities of the trustee.

ii) The requirement that trust land be managed in accordance with multiple use requirements unless a conflict with a power, duty, or responsibility of the trustee arises creates a situation ripe for litigation. The state anticipates constant challenges to whether the proper management is under section 285 or something else. The possibly that section 285 may not need to be complied with creates uncertainty as to how the land will be managed. This absence of predictability will lessen private sector interest in developing trust land. We suggest that the proposed subsection (b)(1) to AS 37.14.009 be deleted in its entirety.

iii) We suggest a minor wording change to subsection (b)(2)(A) of proposed AS 37.14.009:

> (A) of a preliminary decision to dispose of trust land and consider any written comments submitted within 30 days of such [THE GIVING OF THE] public notice before making a final decision; and

2. Management of trust lands within legislative designated areas.

The proposed amendment E.1 to page 2, line 31 is intended by the coalition to eliminate the state's concern that trust interests in original trust lands within legislative designated areas will impair the state's ability to develop those lands. In what may be an "excess of caution," we suggest that the proposed amendment be modified as follows to clarify that the "activities on this land that are authorized by law" is made without regard to restrictions that might arise out of the Alaska Mental Health

Enabling Act:

> "(1) notwithstanding the pledge of security or that the land was granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, the state may continue to conduct all activities on this land that are authorized by law; and"

3. Categories of Land Reconstituted into the Mental Health Trust Corpus.

a. Proposed E.5 at page 2 would amend proposed AS 38.05.800 of HB 201 to define the phrase "conveyed or encumbered by the state." If an interest is listed in that amendment that means land conveyed by that interest will not be returned to the trust. It is the coalition's intent that land necessary to carry out the purposes of an interagency land management agreement or similar authorization[3] will not be returned to the trust as it is encumbered. Because this is the case, the definition of conveyed or encumbered should be revised and a new subsection (F) added:

> (F) is subject to an interagency land management agreement, interagency land management transfer, management agreement or management right but does not include land unnecessary to carry out the purpose of the interagency land management agreement, interagency land management transfer, management agreement or management right.

If this change is made then subsection 3 of AS 38.05.800(HB 201, page 3 of lines 20-21) should be deleted.

b. In general proposed AS 38.05.800 and E.5's amendment to the definition of lands "conveyed or encumbered" omits a category of lands that should not be reconstituted - - "land leases issued with conversion rights to sale." Because these leases give the lessee the right to purchase the land, the lands should be considered "conveyed or encumbered." We offer the following conforming amendments:

(i) Add a new subsection (F) to the definition of "conveyed or encumbered" contained at page 2 of E.5:

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[3] DNR also uses documents called interagency land management transfer, management agreement or management right to transfer the control of state land to another agency.

"(F) is subject to a land lease issued with conversion rights to sale."

(ii) Revise proposed AS 38.05.800 subparagraph 2(A) to read: "(A) leases, but not including land leases with rights of conversion to sale."

(iii) Revise AS 38.05.809(3) to read: "lease" means an oil and gas lease, coal lease, mining lease, land lease without conversion rights to sale, and any other surface or mineral lease."

c. Finally we suggest the following minor change to the definition of conveyed or encumbered contained in E.5 to subsection (c): "has been selected by a native corporation under 43 USC 1611."

4. Management under AS 38.05.802.

a. The proposed amendment F.5 would add a new Sec. 38.05.802 which would govern the administration of lands returned to the trust that have certain third party interests or appropriated uses. We note the following ambiguities in this section. Under its authority to manage the "section 802" lands, may DNR create new interests in these lands (i.e. issue a lease, approve the assignment of a lease, change the royalty rate, convert a mining claim to a mining lease) which new interest arguably would be a disposal of trust land? Nothing in HB 201 expressly gives DNR the authority to dispose of interests in section 802 trust land. While some may consider the assignment of a lease, for example, a mere management function, beneficiaries of the trust may consider it a disposal of an interest in trust land. Perhaps a definition of manage should be added to section 802:

(f) for purposes of this section "manage" includes the right to dispose of interests in land in the trust.

b. The management of lands under AS 38.05.802 as if it were general grant land could be deemed to be in breach of trust (i.e., the failure to manage the land under trust principles breaches the state's trust obligations. We understand the intent of the proposed amendments is that no breach of trust results because the percentage of unrestricted general fund revenues paid the trust would compensate for the diminishment in value, if any, from management under AS 38.05.802 rather than under trust principles. Section 4 of SB 67 should be amended as follows to clarify this point.

(c) As compensation for the land or interests

> therein that constituted the trust established by the enabling Act and that is not reconstituted as part of the mental health trust corpus established under AS 38.05.800, including any interests in land not conveyed due to management imposed under AS 38.05.802, the state shall make an annual payment of three percent of the unrestricted general fund revenue of the state during each fiscal year. The commissioner of revenue shall annually allocate that amount from the general fund to the mental helath trust income account established in (a) of this section.

5. Costs of management under AS 38.05.802.

Another ambiguity in the proposed section AS 38.05.802 concerns the costs of managing the trust land under section 802. The proposed amendment E.5 to page 3, line 24 would add Section 8 that would have DNR continue to manage trust lands on which any third party interest exists, and that "the proceeds of the management of the land managed under this section shall be deposited into the mental health trust income account under AS 37.14.036(a)(1)." See the last sentence of what would become AS 38.05.802(c). We interpret the intent of that provision to require that DNR's costs associated with managing lands would be borne by DNR -- a result that is contrary to fundamental trust law principles that the trust, not the trustee, bears the costs associated with managing trust assets. To insure that the reconstituted trust would be managed pursuant to fundamental trust principles, the last sentence of what would become AS 38.05.802(c) should be modified to read "However, the proceeds of the management of the land managed under this section shall be deposited into the mental health trust income account under AS 37.14.036(a)(1) and the department shall be funded from the Mental Health Income Account for the management of trust land."

6. Transfer of Land To Trust.

Section 13 of the proposed amendment E.5 concerns how land will actually be transferred to the trust. This section is ambiguous as to the manner of transfer. If the transfer is to occur by patent then a survey complying with AS 38.04.045 would be required prior to issuance of the patent. That section would require that land located within a municipality comply with all local planning, platting, and zoning requirements. DNR has previously estimated that it will cost $30 to $35 million and take about 20 years to survey the land that would be reconstituted to the trust. It is neither in the state's nor trust's interest to convey land to the trust by patent or deed. There is no point in

undertaking the detailed surveying and platting exercises required by law to transfer the land to the trust when DNR will be managing the land in any event. Further, because much of the land that will be returned to the trust is undeveloped, there is no point in having it surveyed and platted prior to someone actually seeking to develop the land. This way when a person seeks to develop the land, that person will have more flexibility in developing and platting and that person can help defray the cost of survey. If conveyance is required, it would be expected that local platting authorities will impose restrictions on development that would not arise if the land is simply redesignated. The conveyance to the trust should occur by means of "redesignating" the land. Not only will transfer by redesignation avoid the cumbersome and costly survey process it will also avoid the need for researching and preparing thousands of title documents for each parcel of land to be returned. Redesignation could be accomplished quickly and result in prompt, active management of the land. We suggest revising section 13 as follows:

> On or after the effective date of this section, after giving public notice in the manner provided under AS 38.05.945(b) and (c), the commissioner of natural resources shall promptly redesignate as mental health trust land [CONVEY TO THE ALASKA MENTAL HEALTH TRUST AUTHORITY ESTABLISHED BY SEC. 26, CH 66, SLA 1991, TITLE TO] land, including both the surface and mineral estate, that is includable within the corpus of the reconstituted mental health trust under AS 38.05.800(a), repealed and reenacted by sec. 7 of this Act.

7. The proposed amendments may not remove the potential legal challenges to HB 201 as the coalition suggests.

The coalition suggests that HB 201, as amended, removes concerns set forth in sections V, VI, VIII, X.3, and X.4 of the Attorney General's February 3, 1993 letter to Senator Mike Miller. See Document from coalition titled "Explanation of Proposed Revisions to SB 67/HB 201. We are not convinced that the amendments satisfy and remove the challenges to Chapter 66 raised by intervenors Alaska Center for the Environment, et. al., with respect to providing "other safeguards of the public interest" for land management as intervenors claim is mandated under Art. VIII, § 10 of the Alaska Constitution. See Section X.3 of letter to Senator Miller. (February 3, 1993). Intervenors Alaska Center for the Environment, et al. should explain on the record how the proposed amendments fully satisfy their constitutional challenges regarding management of trust lands.

8. Definition of "land."

The definition of "land" set out in what would become AS 38.05.809(2)(A) does not clarify that the trust may not receive the surface estate or mineral estate if the other has been encumbered. We suggest that definition be amended to read: "(A) includes both the surface estate and the mineral estate, neither of which have been severed.

We hope that these comments are helpful to the committee in its further diliberations on HB 201. Please contact us if we can answer any question.

Very Truly Yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Brian D. Bjorkquist
Assistant Attorney General

BDB/sh
4:BDB13/HB201AME.LTR

cc: Attorney General Cole
David Walker
James Gottstein
Jeff Jessee
Philip Volland
Bruce Phelps
Ron Swanson
Tom Koester
Tom Waldo
Richard Johannsen
Peter Maassen

file re: PSLs

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO: general file

☒ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 25, 1993

David T. Walker, Esq.
Law Office of David T. Walker
417 Harris Street
Juneau, AK 99801

Law Offices of
MAR 1 1993
GOTTSTEIN

Re: Proposed Substitute Lands

Dear David:

This letter is in response to your request that the state articulate its position with respect to how proposed substitute land (PSL) becomes a PSL before chapter 66 becomes effective. This letter also describes why the state believes Cook Inlet oil and gas tracts currently are not PSLs, and why parcels are not automatically closed to mineral entry when a PSL nomination is made.

Proposed Substitute Lands. At this time, the mere nomination of a parcel as a PSL by plaintiffs does not create a PSL until the state accepts that nomination. Art. III, § 11 of the settlement agreement provides for the result plaintiffs apparently believe is occurring now (i.e. that the mere nomination transforms the parcel into a PSL). That section[1] of the settlement agreement, however, does not become effective until both chapter 66 and the settlement agreement are approved by the court, as section 11 merely implements the land exchange provision of chapter 66. Only those provisions that explicitly state that they become immediately effective upon the signing of the settlement agreement are now effective, except as the parties mutually agree in anticipation of chapter 66 becoming effective.[2]

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[1] Article III, Section 11 also provides for removal of inappropriate PSL nominations by the Alaska Supreme Court or special master.

[2] See, e.g., Settlement Agreement, Art. III, § 31 (cancellation of renotice of lis pendens and modification to remove preliminary injunction with respect to certain third party transactions); Art. V, § 1(c) (plaintiffs' will be funded by the state); and Article V, § (adherence to Settlement Agreement).

The state is committed to making the chapter 66 reconstitution work to resolve Weiss v. State. As a demonstration of its good faith,[3] the state has now accepted a very substantial portion of plaintiffs' PSL nominations. Accepting PSL nominations in order to assure that these parcels are available to reconstitute into the trust is often in the state's best interest. Before chapter 66 becomes effective, however, it would be inappropriate[4] for the state to agree to impose the substantial burdens of a parcel becoming a PSL in those limited situations where it is contrary to the best interests of the state, such as where private rights to the parcel are at stake, where the parcel is not comparable to original trust land and there is substantial question whether the parcel should ever be reconstituted into the trust, or where the benefit to the state in retaining the parcel overwhelms the possible benefits to the trust in obtaining the parcel. This is particularly true given the fact that chapter 66 and the settlement agreement are not yet effective and there consequently is no dispute resolution mechanism by which the state may challenge what it believes to be inappropriate nominations.

That plaintiffs do not have unlimited discretion to have any parcel of state land treated as PSL until chapter 66 becomes effective does not jeopardize beneficiaries' interests in obtaining a fully reconstituted trust. We understand that Meg Hayes and Bruce Phelps currently are working to reach a mutually agreeable approach to certain suggested PSL parcels consisting of tidelands leases, hydropower facilities (where it appears the parcel has little or no income generating potential), state facilities, state campgrounds/recreation sites, and other potential problem areas. A review of the Cook Inlet oil and gas tracts which the state has not accepted as PSLs also demonstrates that the reconstitution is not jeopardized by plaintiffs not having unlimited discretion under the settlement agreement to nominate PSLs before chapter 66 becomes effective.

Cook Inlet Oil and Gas Tracts. The state did not accept the PSL nominations of oil and gas tracts because they are not comparable to any original trust parcels. The state understands

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[3] The state's good faith efforts are extended not only to mental health trust beneficiaries, but also to the people of Alaska who now rely on the reconstitution under chapter 66 to resolve the mental health trust litigation.

[4] As you know, the oil company intervenors allege that reconstitution efforts (e.g. accepting PSL nominations) before chapter 66 becomes effective is not only inappropriate, but also "unlawful, ineffectual, and void."

that plaintiffs made these nominations because they believe non-comparable, high income producing substitute land may eventually be necessary to reconstitute the trust. The time to even consider imposing the substantial PSL burdens on non-comparable land, however, only arises after the reconstitution analysis identifies the original trust parcels (and income generating potential) for which there is insufficient comparable land to reconstitute the trust.

Furthermore, there is no justification to rush the nomination of non-comparable potential substitute land where there is absolutely no danger that reconstitution of the trust could be jeopardized by the state disposing of the oil and gas interests in the Cook Inlet basin because §6(i) of the Alaska Statehood Act prohibits any such disposal of the mineral estate. Not only are the oil and gas tracts plaintiffs sought to nominate also collateral of last resort, but plaintiffs have always agreed that state management of oil and gas leases has been appropriate even when viewed under trust principles. That these parcels are not accepted as PSLs does not adversely affect the beneficiaries' interests in the reconstitution of the trust.

The state further believes that the facts being developed in the reconstitution process will demonstrate that Cook Inlet oil and gas tracts will be not necessary to reconstitute the trust, and may be inappropriate substitute land under the chapter 66 criteria. First, non-comparable land may not be necessary to reconstitute the trust. Second, if exchanges of non-comparable land with comparable income generating potential is necessary to reconstitute the trust, oil and gas tracts may not be the most appropriate parcels. Such exchanges must still consider the additional factors listed in section 55(e) of chapter 66, (e.g. ensuring an appropriate diversity in the character of land in the trust corpus; the benefits to the trust resulting from the exchange; and the efficiency of land management resulting from the exchange). The selection of a non-renewable, depleting resource (i.e. oil and gas tracts) may not be in the trust's interest when compared to an alternative selection of a renewable, non-depleting resource (e.g. timber lands with very high income producing potential). While some non-comparable land may eventually be necessary to reconstitute the trust, there are several reasons why the Cook Inlet tracts should be among the last of those non-comparable lands considered for reconstitution into the trust. At this early date, it simply is not in either the state's or trust's interests to do so.

Segregation/Mineral Closures. Parcels are not automatically segregated from entry or disposal, including closure to mineral entry, merely upon nomination or even upon acceptance of

nomination as PSLs. As you know, the state must follow statutes and regulations to segregate land and close it to mineral entry. These statutory and regulatory procedures include public notice and other steps which necessarily take time to implement. No mineral closure can become effective until all appropriate procedures are satisfied. There are no provisions that automatically segregate land and close it to mineral entry.

Please contact me, if you desire to discuss this matter any further.

Very Truly Yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Brian Bjorkquist
Brian D. Bjorkquist
Assistant Attorney General

BDB/sh
BDB4/DW-PSL.LTR

cc: James Gottstein
Jeff Jessee
Philip Volland
Meg Hayes
Attorney General Cole
Ron Swanson
Bruce Phelps
G. Thomas Koester
Wendy S. Feuer

M E M O R A N D U M

TO: All Counsel for Main parties in Weiss v. State

FROM: Judge Greene MEG

RE: Weiss v. State
4FA-82-2208 Civil

DATE: April 26, 1993

The decision on the Public Interest Intervenor's action is final today. I have asked my secretary to fax each of you the "Conclusions and Order" portion. Since the decision is more than 100 pages long, we will not fax the entire decision. Copies have been mailed to you today. Copies are available in my chambers if you want someone to pick one up for you and send it more expeditiously.

My secretary, Barb Woods, will be calling all counsel except counsel for the Public Intervenors in two days to ascertain whether you want me to continue with the decisions on the oil companies' intervention action and the preliminary approval.

I understand that failure of hypothecation is a potential "deal-breaker" under the Proposed Settlement Agreement, art. III, sec. 27. I have held that the preparation of the Hypothecated Land List was the result of an unconstitutional delegation. Therefore, I propose to stay action on the decision re: preliminary approval for 70 days to allow time for the parties to decide what to do. Objections are welcome. If anyone objects, I will proceed with the decision. At that point, anyone wanting a stay should move for a stay.

I propose continuing with the oil companies' intervention action. If anyone objects, they should file an expedited motion for stay.

MEG:bsw

cc: File

CONCLUSION AND ORDER

Part I. The court has concluded that Article VIII, Section 10 of the Alaska Constitution requires the legislature to provide safeguards of the public interest" in addition to public notice. The court has concluded that the legislature provided constitutionally adequate safeguards for the disposal of lands by the Alaska Mental Health Trust Authority. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment with respect to Count I of the Public Interest Intervenors' complaint, consistent with this decision.

Part II. The court has concluded that section 202(e) of the Mental Health Enabling Act preempts application of the Permanent Fund Amendment, Article IX, Section 15, to mineral revenues received from use of original or substitute lands in the mental health lands trust to the extent the revenues are used for the mental health program of Alaska. Article IX, Section 15 will apply to excess revenues designated for other uses. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment with respect to Count II of the Public Interest Intervenors' complaint, consistent with this decision.

Part III. The court has concluded that Chapter 66, as supplemented by the Proposed Settlement Agreement, does not violate section 6(i) of the Alaska Statehood Act. Accordingly, the State and Settling

Plaintiffs are granted partial summary judgment with respect to Count III of the Public Interest Intervenors' complaint, consistent with this decision.

Part IV. The court has concluded that Chapter 66 does not violate Article II, Section 13 of the Alaska Constitution. The court has concluded that "appropriations" in that section refers only to money, not land. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment with respect to Count V of the Public Interest Intervenors' complaint, consistent with this decision.

Part V. The court has concluded that the hypothecation provision did not result in a violation of the "three-readings" requirement of Article II, Section 14 of the Alaska Constitution. The court has concluded that the legislature intended to delegate the task of preparing the Hypothecated Lands List to the Department of Natural Resources. The court has concluded that the delegation is unconstitutional because Chapter 66 does not contain constitutionally required standards and/or procedural safeguards applicable to the delegation. The court has concluded that the hypothecation of state lands to the mental health trust was not subject to Article VIII, Section 10 of the Alaska Constitution. The court has concluded that the public trust doctrine is not applicable to the public lands. Accordingly the State and Settling

Plaintiffs are granted partial summary judgment on Counts VI, VIII, and IX of the Public Interest Intervenors' complaint, consistent with this decision. The Public Interest Intervenors are granted partial summary judgment on Count VII (alternative portion) of their complaint, consistent with this decision.

Part VI. The court has concluded that the conveyance of substitute land selected under Section 55 of Chapter 66 to the Alaska Mental Health Trust Authority is subject to the planning and classification provisions of AS 38.04 and AS 38.05. Accordingly, the Public Interest Intervenors are granted partial summary judgment on Count X of their complaint, consistent with this decision.

Part VII. The court has concluded that even if the planning and classification provisions of AS 38.04 and AS 38.05 were not applied to the reconstitution of substitute lands, the reconstitution would not violate Article VIII, Section 10 of the Alaska Constitution. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment on Count IV of the Public Interest Intervenors' complaint, consistent with this decision.

Part VIII. The court has concluded that the original mental health lands in the Haines and Tanana Valley State Forests will not be subject to the provisions of AS 41 applicable only to the

general grant lands of the state. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment on count XI of the Public Interest Intervenors' complaint, consistent with this decision.

IT IS SO ORDERED. If any party desires a final judgment with respect to the allegations of the Public Interest Intervenors' complaint, they must file a motion in compliance with Alaska Civil Rule 54(b).

DATED at Fairbanks, Alaska this 26 day of April, 1993.

Mary E Greene

MARY E. GREENE
Superior Court Judge

Alaska State Legislature

Session Address:
STATE CAPITOL BUILDING
ROOM 502
JUNEAU, ALASKA 99801-1182
(907) 465-3878
FAX (907) 465-2293

Interim Address:
P.O. BOX 53
PALMER, ALASKA 99645
(907) 746-1048 - Palmer
(907) 746-3560 - FAX
(907) 376-8628 - Wasilla

Representative Ronald L. Larson
District 27

April 22, 1993

David T. Walker
417 Harris Street
Juneau, Alaska 99801

Re: Proposed Mental Health Trust Lands Legislation SB 67/HB 201

Dear Mr. Walker:

Responding briefly to your letter of yesterday, suggesting that "short, uncomplicated legislation could be enacted which would be very productive" in resolving the Chapter 66, Mental Health Land Trust issue. Your suggestions and my comments follow:

Amend SB 67/HB 201 to enact the April 6, 1992 settlement agreement. It rarely occurs to the Legislature to enact regulations or agreements especially when the Attorney General has given notice of intention to withdraw the State from an agreement. But, if it were done, it would only follow full discussion, review and recommended approval by either Judiciary Committee of the Legislature. No such recommendation exists and to my knowledge, your suggestion was never raised during the two months SB 67 was in Senate Judiciary Committee.

Replace the hypothecated land with 550,000 acres of substitute Trust lands selected by the plaintiffs and designate as collateral, lands in Cook Inlet oil and gas fields. If the Finance Committee were to consider the appropriation of specific lands of the State to any given public purpose it would only do so at the recommendation of the Resource Committee. Again, no such, committee recommendation exists.

Direct the escrow of receipts from the above substitute lands so they might ultimately be conveyed to the Trust. For better or for worse Chapter 66 SLA 1991 has a floating effective date - when the Weiss case is dismissed, the law takes effect. Until such time the State continues to set aside each year six percent of the General Fund in the Mental Health Trust Income Account. And, appropriations will continue to be made from that account to adequately fund mental health programs.

MADE IN ALASKA

LAW OFFICES
DAVID T. WALKER
417 HARRIS STREET
JUNEAU, ALASKA 99801

(907) 586-3537

DAVID T. WALKER
GERALD K. DAVIS, JR.

TELECOPIER:
(907) 586-1350

April 21, 1993

HAND DELIVERED

Representative Ronald L. Larson
Co-Chairman
House Finance Committee
Capitol Building, Room 502
Juneau, Alaska 99811

Representative Eileen MacLean
Co-Chairman
House Finance Committee
Capitol Building, Room 507
Juneau, Alaska 99811

Re: Proposed Mental Health
Trust Lands Legislation
SB 67/HB 201

Dear Representatives Larson and MacLean:

As brief introduction, I represent Vern Weiss, the original named plaintiff in Weiss v. State, 4FA-82-2208 Civil. This letter is also written on behalf of Jim Gottstein who represents the Alaska Mental Health Association, et al, in Weiss. The litigation was begun by the Alaska Mental Health Association through Mr. Weiss and later the Association became a formal named plaintiff on behalf of trust beneficiaries. Mr. Weiss and the Alaska Mental Health Association then are the parties that originally commenced the Mental Health Trust Lands litigation and have had primary responsibility for prosecuting it for its ten year course. We are writing you with respect to SB 67, which has companion legislation in the House known as HB 201.

In 1991, Chapter 66 SLA 1991 was negotiated by the Administration and us[1] and passed as a proposed settlement of the class action lawsuit. Any such settlement must necessarily be a "proposed" one because under the rules applying in class actions any settlement has to be approved by the court as fair and equitable to the class (including that it is legal). The approval process is well under way for Chapter 66 with the court's initial rulings expected

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1/ Along with Jeff Jessee, representing mentally retarded and mentally defective beneficiaries who intervened later in the litigation.

within the next 60 days or so.[2] The basic structure of the Chapter 66 reconstitution of the Trust[3] is to return as much original Trust Land to the Trust as possible and replace the balance with state land as comparable as practicable and equal in value. All reconstituted Trust Land will then be managed for Trust purposes, i.e., generation of revenue for the mental health program.

As expected, Chapter 66 has been vigorously challenged in court by environmental and other organizations represented by the Sierra Club Legal Defense Fund. Recently, Unocal and Marathon Oil Companies entered the lawsuit to claim that the State has no right to transfer their oil and gas leases to the Trust. Some beneficiaries also object to Chapter 66 because it does not guarantee adequate funding for the mental health program. It is fair to say that the delay in settlement approval is related to these parties' challenges in court. In addition to the parties formally challenging the settlement in court, industry interests are unhappy with the delay in resolving this situation (as are we).

SB 67/HB 201 have been proposed by these interests as a way to resolve all their problems with Chapter 66 and immediately resolve the litigation. To do this it is proposed that SB 67/HB 201 substitute a percentage of unrestricted general fund revenues (6% in SB 67 and 3% in HB 201) for original Trust land not returned to the Trust. Unfortunately, passage of SB 67/HB 201 in their current form cannot resolve the litigation quickly and, in our view, cannot be approved as a settlement.

As mentioned, under judicial rules the court must approve any class action after notice and an opportunity to object is given to all class members. First, a proposed settlement is presented to the court for "preliminary approval." Preliminary approval is granted if the proposed settlement is "within the range of possible approval and has no obvious defects" (such as being illegal). If preliminary approval is granted, notice is given to the class[4], the court receives comments, holds one or more hearings and determines if the settlement should be granted final approval. The court can suggest changes, but may not force the parties to reach a different settlement. Of course, any trial court determinations are subject to appeal.

2/ While in one sense the rulings are "initial," the issues have been so extensively briefed by the parties that the court's impending rulings should give a clear view of how the trial court will ultimately treat the proposed settlement. However, everyone expects the non-prevailing party(ies) to pursue all available appeals.

3/ Chapter 66 also provides detailed rules regarding how trust funds will be applied in support of the mental health program.

4/ A 90 day comment period may very well be a minimum.

As indicated previously, we believe the parties will soon receive the trial court's determinations regarding initial fairness and legality of the Chapter 66 settlement. If SB 67 or HB 201 were to pass, this process would have to start over and it has taken over a year to reach this stage with respect to Chapter 66, without including the time required for the settling parties to draft a basic settlement document to present to the court for consideration.

Substantively, there are two very serious legal questions associated with SB 67/HB 201. The first is whether a settlement in which the Trust gives up title to the bulk of its assets for an unenforceable under-secured promise to pay money can be approved as fair. While the proponents of SB 67/HB 201 have striven mightily to come up with techniques to minimize the chances of the State breaching (consistent with the proponents' unwillingness to put their interests on the line), the separation of powers doctrine and specifically Article IX, Section 13 of the Alaska Constitution prohibits the courts from enforcing any debt owed by the State. In our view, this attribute of SB 67/HB 201 means that such legislation will not be approved as a settlement.[5]

The second major problem with the proposed legislation is that it raises the question of whether the requirement that the State pay a fixed percentage of the general fund into the mental health trust income account amounts to a dedicated fund prohibited by Article IX, Section 7 of the Alaska Constitution. The only way this question can be answered is by the courts. The proponents of SB 67/HB 201 want the beneficiaries to ignore the potential dedicated fund problem and hope that nobody else will raise it. This would be imprudent because it would expose the beneficiaries to the unacceptable risk that they will have released all their claims to Trust property only to have the settlement challenged later by any citizen and declared illegal. There is virtually no chance that the dedicated fund issue will not be raised.

Thus, while we share everyone's frustration with the time being taken for resolution of the Chapter 66 settlement, there is absolutely no way that SB 67/HB 201 can resolve the litigation quickly. More importantly from our perspective, SB 67/HB 201 takes us significantly backward and, will most probably result in the original litigation being revived (including the claim to lands conveyed to third parties and lands placed in legislative

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5/ In fact, the 1978 legislation redesignating Mental Health Trust land as general grant land which was invalidated by the Alaska Supreme Court in Weiss v. State, 706 P.2d 681 (1985) included a promise to pay a percentage of funds earned from state lands to the Trust (albeit a smaller amount than currently proposed).

designations),[6] because, it suffers from substantially greater infirmities than Chapter 66. To aid in your understanding of this complex issue, we have enclosed a chart which analyzes the interest groups' goals vis a vis Chapter 66, litigation and SB 67/HB 201, as well as a brief description of these approaches. We believe that any unbiased review will confirm that at this point SB 67/HB 201 are extremely counter-productive.

All of this is not to say that the legislature can not be constructive in the current situation. In fact there is short, uncomplicated legislation that could be enacted which would be very productive.

The first element of the legislation would confirm, approve and ratify the April 6, 1992 settlement agreement filed in Weiss. In essence the legislation would enact the settlement agreement. By doing this all of the legal challenges to the current settlement are eliminated except those based upon the claim that the legislature does not have the constitutional authority to enter into the settlement.

A second element of the legislation would replace the approximately seven million acres of land currently hypothecated to the Trust with the approximately 550,000 acres of onshore land nominated by the Plaintiffs as Proposed Substitute Land plus the approximately 1.5 million acres of the existing collateral of last resort (offshore Cook Inlet oil and gas fields). The remaining currently hypothecated lands would be released. We have discussed this with our clients and they have agreed to this (although it would take court approval). The reason for this amendment to Chapter 66 is that a good deal of the opposition to Chapter 66 is related to the 7 million acres of land currently hypothecated to the Trust.

The third element of the legislation would direct the State to escrow receipts from new development on Proposed Substitute Land so that if such land is ultimately conveyed to the Trust, the funds received will be deposited into the Trust Fund.[7] After land is

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6/ The State has repeatedly attempted to have these claims dismissed to no avail. A legal memorandum issued in January 1990 describing these claims and their legal bases was widely distributed in 1990 and is available upon request. The State's disregarding of the legal principles described in that memorandum resulted in the imposition of the preliminary injunction against the State doing anything on Mental Health Trust Land without court approval and the placing of a cloud on all third party interests in Mental Health Trust Lands.

7/ The Department of Law has indicated there is no authority to place such funds in escrow under current law.

nominated as Proposed Substitute Land, in order to protect the Trust's future interest, the Plaintiffs must approve any transactions. If funds received from such new activity can never be deposited into the Trust fund, there are many fewer transactions that it makes sense for the Plaintiffs to approve.

We recognize that there has been intense pressure to pass SB 67/HB 201 as a way to immediately resolve the Mental Health Trust Lands litigation. Unfortunately, that route leads to calamity. We hope that in the rush to adjournment, you will find time to appraise the Weiss litigation and avoid limited - perspective fixes to Chapter 66 that will only exacerbate the situation. We also hope that you will accept our suggestions to enhance the acceptability of the Chapter 66 settlement to the court as a way to help all of us through this morass sooner than any other course of action presently under consideration by the legislature.

Very truly yours,

David T. Walker

Enclosure

cc: James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Charles E. Cole
Charles P. Boddy
Robert B. Stiles
Walt Baldwin
Peter J. Maassen
G. Thomas Koester
Wendy S. Feuer
Brian D. Bjorkquist
Kent V. Dawson
Richard S. Thwaites, Jr.
Vern T. Weiss

LAW OFFICES
DAVID T. WALKER
417 HARRIS STREET
JUNEAU, ALASKA 99801
(907) 586-0607

DAVID T. WALKER
GERALD K. DAVIS, JR.

TELECOPIER:
(907) 586-1060

March 10, 1993

HAND DELIVERED

The Honorable Charles E. Cole
Attorney General
State of Alaska
P. O. Box 11300
Juneau, Alaska 99811

Re: Plaintiffs' Nomination of
Proposed Substitute Land

Dear Attorney General Cole:

This is in response to your letter dated February 25, 1993 pertaining to implementation of the proposed settlement of Weiss et al v. State, 4FA-82-2208 Civ., with respect to Proposed Substitute Land nominations, the Cook Inlet Oil and Gas Proposed Substitute Land nominations, and mineral closing orders on Proposed Substitute Land.

Your letter asserts that until the proposed settlement has been finally approved by the court, nominations of Proposed Substitute Land[1] are subject to acceptance or rejection by the State. This assertion is incorrect. Article V, Sections 6 and 7, provide:

1/ Article III, Section 11 provides:

11. Nomination of Substitute Land. (a) Except for lands in Legislative Designated Areas, the Plaintiffs may nominate any land owned by the State and meeting the criteria of Section 55 of Chapter 66 as Proposed Substitute Land for conveyance to the Trust. For the purpose of this section, land which has been or may be selected under the Alaska Statehood Act, as amended, may be proposed as Substitute Land.

(b) If the Commissioner objects that the land so nominated does not meet the criteria of Section 55 of Chapter 66 or that the total amount of land nominated as Proposed Substitute Land greatly exceeds the amount of land foreseeably required to reconstitute the Trust, then the Commissioner shall notify the Plaintiffs of his or her objection. The Plaintiffs and the State shall then have 60 days to resolve the issue. If the issue is not resolved within such 60 day period, the Commissioner may refer the matter to the court for resolution under Section 57 of Chapter 66. If the Commissioner's objection is to the amount of Proposed Substitute Land and the court

6. Adherence to Settlement Agreement. The Commissioner shall ensure adherence to the provisions of Article V, Sections 2, 5, and 7 of this Settlement Agreement, * * * This Section is effective as of the date of this Settlement Agreement.

7. Management of Proposed Substitute Land. Proposed Substitute Land shall be segregated from entry or disposal, including closure to mineral entry, unless otherwise mutually agreed to by the parties.

The Settlement Agreement clearly contemplated and provided that the Plaintiffs could nominate Proposed Substitute Land prior to court approval and that once nominated, such lands were to be segregated from entry or disposal and closed to mineral entry unless the parties agreed otherwise.

Your letter suggests that the remedy provided to the State for improper nomination under Article III, Section 11(b) is not available until final court approval and therefore the State has the right to unilaterally rewrite the terms of the Settlement Agreement to allow the State to reject nominations of Proposed Substitute Land. We have never taken the position that the 11(b) procedure is unavailable to the State prior to final approval, in fact we have notified your offices that we believe the State does have the right to exercise the 11(b) procedure and remedy.

Under the procedures of Article III, Section 11 (b) of the settlement agreement (set forth in footnote 1), if the State believes a nomination does not meet the criteria of Section 55 of Chapter 66 or that the total amount of land nominated as Proposed Substitute Land greatly exceeds the amount of land foreseeably required to reconstitute the trust, the parties have 60 days to resolve the issue, following which the State may, if it chooses to do so, seek a court determination of whether the nomination stands. We are therefore treating your February 25, 1993 letter as commencing the 60-day period. If at the end of the 60 days, the State continues to maintain that the nominations are improper, it must follow the agreement and return to court, not take unilateral action in violation of the settlement agreement.

Your letter's assertion that "the state did not accept the PSL nominations of oil and gas tracts because they are not comparable to any original trust parcels" reflects the Department of Law's refusal to acknowledge the Trust's loss of significant oil and gas properties for which there must be compensation under the settlement. We have advised the State that under the settlement there is significant acreage of Non-Reconstituted Trust Land with oil and gas potential for which the Trust must be compensated. Frankly, I thought we had

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agrees, the Plaintiffs have the right to select which Proposed Substitute Land shall be removed.

resolved this issue of the propriety of the nominations last fall when we met. In any event, by letter dated October 15, 1992, from our project manager, Meg Hayes, to the State's project manager, Bruce Phelps, we provided the State with a list of Non-Reconstituted Trust Land parcels that we believed had oil and gas value (copy attached). We also know that millions of dollars have been received over the years from leases on Original Trust Lands.

The Settlement Agreement is quite clear that the Plaintiffs can nominate any land for inclusion in the Trust and that a process is then followed to determine if it should ultimately be conveyed to the Trust. On March 4, 1993, we received a March 2, 1993 letter from Ron Swanson "rejecting" additional nominations. The same analysis applies to the parcels purported to be "rejected" in that letter. One of the procedures, as outlined above, is the right of the State to challenge the nomination in court after a 60-day notice period. We are confident that our nominations can sustain such a challenge because of their comparability to Non-Reconstituted Trust land. We insist that the State follow the agreed-upon procedures and segregate all nominations from entry or disposal and close them to mineral entry.[2] While we are willing to continue to work with the State with respect to voluntarily denominating Proposed Substitute Land in appropriate circumstances we cannot accept the State's attempt to unilaterally reject nominations in violation of the Settlement Agreement.

I urge you to reconsider your position in this matter, and, in the case of a continuing dispute over the correct interpretation of the language of our agreement to seek the court's guidance as contemplated by the parties and provided under the settlement agreement.

Very truly yours,

David T. Walker

DTW:ndp

cc: James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Margaret J. Hayes
Brian D. Bjorkquist
Ron Swanson
Bruce Phelps
G. Thomas Koester
Wendy S. Feuer

2/ We have been working with DNR on a way to encourage mineral development on Proposed Substitute Lands but have been told that current statutes and regulations do not allow sufficient flexibility to accomplish this.

Charles E. Cole, Esq.
P.O. Box K, State Capitol
Juneau, Alaska 99811-0300
(907) 465-3600

Attorney General of the
State of Alaska, Defendant

David T. Walker, Esq.
417 Harris Street
Juneau, Alaska 99801
(907) 586 3537

Lead Counsel for Plaintiffs

James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907 274-7686

Attorney for Plaintiffs,
the Alaska Mental Health
Association, et al.

Jeffrey L. Jessee, Esq.
615 E. 82nd Avenue
Anchorage, Alaska 99518
(907) 344- 1002

Attorney for Plaintiffs
Anita Bosel, et al.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated; ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, AND GABRIEL MAYOC; and H.L., M.K. and ALASKA ADDICTION REHABILITATION SERVICES,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 CIVIL

SETTLEMENT AGREEMENT

(iii) any disputes with respect to the management of Hypothecated Lands, including application of this section, shall be resolved by the court under Section 57 of Chapter 66.

6. Adherence to Settlement Agreement. The Commissioner shall ensure adherence to the provisions of Article V, Sections 2, 5, and 7 of this Settlement Agreement, including but not limited to noting to the record the status of Hypothecated Land and promulgating a Department Order in the form attached hereto as Exhibit I. The Hypothecated Lands List shall also be recorded by the State at its expense. This Section is effective as of the date of this Settlement Agreement.

7. Management of Proposed Substitute Land. Proposed Substitute Land shall be segregated from entry or disposal, including closure to mineral entry, unless otherwise mutually agreed to by the parties.

ARTICLE VI.
EXERCISE OF REMEDIES FOR BREACH OR DEFAULT.

Remedies for Breach of Responsibilities and Obligations. The parties agree that each provision of Chapter 66 and this Settlement Agreement are of material importance to this settlement. In the event of:

(i) a breach by the State or Plaintiffs of any provision, term, or covenant of this Settlement Agreement;

(ii) a failure of a party or the Trust Authority to comply with any applicable provision of Chapter 66 or this Settlement Agreement; or

DEPARTMENT OF FISH AND GAME
POSITION PAPER

BILL NO: HB201

SPONSOR: House Resources Committee

DIVISION: Habitat and Restoration

DEPARTMENT POSITION: Support HB201 with amendments.

HB201 is an improvement over existing Mental Health Trust legislation because ADNR management of trust lands, if governed by state land management statutes and negotiations would provide greater consideration of public resources and interests in the use and disposal of trust lands, and would offer the trust land management services at lower cost than they could obtain as an independent organization. HB201 limits state land in legislatively designated areas held as collateral to old Mental Health Trust lands, rather than all lands as required in existing statutes. HB201 would not prevent money from wildlife stamps, fees, etc., for use of special areas managed by ADF&G from being allocated to the department for special areas management. HB201 does not allow the Mental Health Trust to select lands in legislatively designated areas.

HB201 is an improvement over SB67 and existing Mental Health Trust legislation in that it only requires 3% of the general state revenue be deposited in the Mental Health Trust. This is a much more reasonable amount than SB67 or AS 38.05.800 which require a 6% deposit.

The meaning of the new AS 38.05.800 subsection (2) is not as clear as it could be. Apparently this subsection means that the existence of an oil and gas lease, mining claim, etc., would not prevent land from being transferred to the Mental Health Trust. This subsection should be rewritten to simply say that state lands with existing mining claims, leases, oil and gas leases, and unconveyed municipal selections may be transferred to the Mental Health Trust.

Rewrite AS 38.05.800 (2) to say land that is subject to any or all of the following may be transferred to the trust. Add a section 5 which says: land purchased with Wallop-Breaux or Pittman Robinson funds for public purposes in legislatively designated special areas which fall within original Mental Health Trust lands may not be transferred to the trust.

COMMISSIONER'S SIGNATURE _____ **DATE** 5/24/93

EXPLANATION OF DIFFERENCES BETWEEN

PREVIOUSLY PROPOSED AMENDMENTS AND CSHB 201(RES)

Prepared for House Resources Committee Hearing

March 29, 1993

Management of Section 802 Land

As previously proposed, if a parcel of land qualified as "Section 802" land because of the existence of a third-party interest or appropriated use, then the amendments would have required the Department of Natural Resources to manage all of that land under Section 802 (general grant land management standards). For example, in the case of a CMHTL covered by a surface lease, DNR would have been required to not only administer the surface lease under Section 802, but DNR would also be required to administer the mineral estate under Section 802.

CSHB 201 changes this by providing that only the qualifying interest or interests (e.g., the surface lease) will be administered by DNR under Section 802. Each of the remaining unappropriated "sticks" in the "bundle" of property rights will be managed under Section 9 (AS 37.14.009).

This creates the potential for a conflict between DNR's management of a qualifying (e.g., preexisting) interest under Section 802 standards, and management of the other "sticks" by the trust authority (or DNR as its contractor) under Section 9 standards. A new section has been added to CSHB 201 (Section 4 on page 3) to require that any such conflicts are to be resolved in accordance with the many laws (including court decisions) that apply to conflicts between surface and mineral users. The reason this new section has been included is to make it clear that the trust authority's management is subject to these developed legal principles and that these principles are not to be distinguished or disregarded just because the trust is the landowner and the trust authority has a obligation to manage its assets in a fiduciary manner to fulfill the purposes of the trust. Of course, because the trust takes its land and mineral assets subject to existing third-party interests, any contractual rights addressing whether other concurrent land uses are allowed must also be

honored by the trust authority in its management of the other "sticks" under Section 9.

Transfer of Title to Trust Authority

As previously proposed, the amendments required DNR to "convey title" to the reconstituted trust land to the trust authority. CSHB 201 now clarifies that DNR shall convey title "by patent without survey" to the trust authority (Section 16 on page 10). A new section has been added to CSHB 201 (Section 7 on page 4) to clarify that these conveyances are exempt from the existing requirements of the Alaska statute which arguably requires that these lands be surveyed prior to conveyance. This is a reasonable compromise because it allows the trust authority to actually take title by patent while at the same time delaying the expense of surveys until there is a real reason to survey a particular parcel of reconstituted trust land.

Identification of Property to be Returned to Reconstituted Trust

In CSHB 201, AS 38.05.800 (contained in Section 8 on page 5) has been rewritten to clarify exactly what OMHTL is being returned to the reconstituted trust. What was previously defined as "conveyed or encumbered" land is now defined as "conveyed" land. The word "encumbered" has been deleted from the definition because conveyed land is generally being removed from the trust while encumbered land is generally being returned to the trust (subject to existing third-party interests and appropriated uses).

At the request of DNR, additional categories of lands have been added to the list of "conveyed" OMHT lands that are not being returned to the reconstituted trust.

In CSHB 201 "reserved by law from the public domain" has now also been defined (page 6). The term covers the OMHTL in legislatively designated areas (LDAs) that are not being returned to the reconstituted trust.

Finally, a provision has been added to CSHB 201 (AS 38.05.800(b) at the bottom of page 6) to clarify that if either the surface or the mineral estate of OMHTL has been "conveyed," then neither estate is being returned to the reconstituted trust.

Protected Third-Party Interests in OMHTL

With the assistance of DNR, Section 802 of AS 38.05 (AS 38.05.802 starting at the top of page 7 of CSHB 201) has been revised to broaden the list of protected third-party interests so that all third-party rights are protected. New definitions have been added to cover "land use permits" and "land rights convertible to title." The later term covers land interests (such as leases and homestead rights) that may be converted to title. A new subsection (e) added to AS 38.05.802 (on page 8 of CSHB 201) provides that these "land rights convertible to title" are treated as protected third-party interests until title is issued, at which time the trust is divested of its interest in the property. This allows the trust to receive the lease payments or other revenues generated from these OMHT lands unless and until they are converted to fee interests.

Additional language has also been added to CSHB 201 (subsection (f) to AS 38.05.802 on page 8) to clarify that for purposes of mining claims and mining leasehold locations, OMHTL is considered to have been open to mineral entry unless closed to mineral entry by a court or DNR order. All OMHTL has been closed to mineral entry by court and DNR orders since November 5, 1985 and the provision is not intended to alter the affect of these closing orders.

Funding of DNR Land Management Responsibilities

Under the bill DNR is required to manage all Section 802 interests. In addition, the trust authority is required to contract with DNR to manage the rest of the reconstituted trust as well, unless the trust authority determines that the best interests of the trust beneficiaries would be served by other arrangements (for example, direct trust authority management, or a contractual arrangement with a private land management contractor). CSHB 201 has been revised to include two new sections (Sections 10 and 11 on pages 9 and 10) which allow the legislature to make appropriations from the mental health trust income account to fund DNR's management duties. Of course, the bill already provides that any revenue generated from DNR's management of OMHTL must be deposited by DNR into the same mental health trust income account from which DNR can be funded.

CLERK'S OFFICE
AMENDED AND APPROVED
Date: 3-23-93

Submitted by: Assemblymember Barnett
Prepared by: Assembly Policy and Budget Office

For reading:

ANCHORAGE, ALASKA
AR NO. 93-71 (As Amended)

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING AN EXPEDIENT AND FINAL RESOLUTION TO THE MENTAL HEALTH LAND TRUST LITIGATION

WHEREAS, an expedient and final resolution of the Mental Health Land Trust litigation and establishment of funding guidelines for mental health programs, is important for the residents of the Municipality of Anchorage and the State of Alaska; and

WHEREAS, orderly acquisition, management, and conveyance of lands for municipal purposes is vital to the continued and orderly development of the Municipality; and

WHEREAS, continuation of existing multiple-use land-use patterns on lands within or adjacent to the Municipality is important for industry, recreation, and tourism; and

WHEREAS, in 1991, the Legislature adopted Chapter 66, SLA which proposed a resolution of the Mental Health Land Trust dispute that would return as much of the original Trust Land as possible and exchange other State land for original Trust land that could not be returned, that would provide a series of cash payments to be made over a twelve year period, and which pledged 6.7 million acres of State land to be held as security to insure completion of the land reconstitution and the cash payments; and

WHEREAS, subsequent efforts to implement Chapter 66, SLA 1991 have encountered significant and protracted litigation involving multiple affected parties, frustrating a final resolution to the Trust settlement for an indeterminate number of years; and

WHEREAS, until all litigation is resolved, the uncertainties regarding land ownership and management restrictions will continue to hamper land-use activities on (1) the 6.7 million acres of State land being held as security, (2) the one million acres of original Mental Health Trust land, some of which has been transferred, or tentatively approved for transfer, to the Municipality, (3) the hundreds of thousands of acres of land being nominated as exchange land, including certain lands located within the Municipality, and (4) any other State land, including State land located within and adjacent to the Municipality which may be proposed for development; and

WHEREAS, the Assembly has concluded that continued attempts to implement Chapter 66 would result in significant disruption to public and private development within the Municipality and adjacent areas; an

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 3

To REP. BILL WILLIAMS	From JIM BARNETT
Co. CHAIR - HOUSE	Co. ANCH ASSEMBLY
Dept. RESOURCE COMM.	Phone # 343-4750
Fax # 465-3982	Fax # 343-4370

WHEREAS, continuing uncertainty regarding the disposition of those Municipal entitlements that were once original Mental Health Trust lands has frustrated Municipal planning and development activities; and

WHEREAS, the land reconstitution as proposed in Chapter 66 would have the potential to create financial hardships and uncertainty for already marginal resource development because the Trust would be required by law to maximize money it gets from business in order to meet its responsibility to the Trust beneficiaries; and

WHEREAS, ongoing efforts to plan for and develop a four season ski resort in the upper Girdwood Valley will be frustrated or halted by land claims made by certain mental health litigants to that land pursuant to Chapter 66; and

WHEREAS, the State Superior Court concluded on January 14, 1993, that, "at this point in time... the likelihood of final approval [of Chapter 66] is speculative, at best"; and

WHEREAS, the basic provisions necessary for an appropriate and reasonable settlement responsive to the mental health community's concerns regarding dependable long-term funding, establishment of an integrated comprehensive Mental Health Program, and Trust reconstitution, as well as responsive to the Assembly's concerns regarding the Municipal lands, have already been agreed to in previously adopted legislation.

NOW, THEREFORE, the Anchorage Assembly resolves:

Section 1: That the Anchorage Municipal Assembly supports alternative settlement options to the Mental Health Trust litigation, such as those introduced by the Senate and House Resources Committees in SB 67 and HB 201, which:

1. return to the Trust approximately half the original Trust lands which still have clear title, including lands with certain encumbrances which would be compatible with the Trust management, and which have not been placed in legislatively designated areas or transferred to municipalities;

2. in place of those lands which cannot be returned to the Trust, provide an annual allocation of a percentage of the unrestricted general fund to the Mental Health Trust Income Account, for subsequent appropriation by the Legislature, as is currently required by law (SLA 210, 1990), thereby providing for continuing and dependable financial support for the State's mental health programs and eliminating the need for the litigious land exchanges;

3. retain provisions for trust management and mental health program priorities that have previously been agreed to and adopted (Chapter 66, SLA 1991); and

4. identify those original Trust lands which are located in legislatively designated areas to be held by the State as security, but managed consistent with their legislative designations, to insure that the annual allocations to the Mental Health Trust Income Account are made in accordance with the agreement.

Section 2: That this resolution presents a reasonable, responsible, and more timely solution which positively addresses the Assembly's concerns identified above.

Section 3: That a copy of this resolution be submitted to each member of the Eighteenth Alaska State Legislature and to the Governor.

Section 4: That this resolution becomes effective upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this ____ day of_____, 1993.

_____
Chair

ATTEST:

_____
Municipal Clerk

LR/law:DOCE/AR15

DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT

POSITION STATEMENT

MENTAL HEALTH TRUST LANDS SETTLEMENT

Representative Jeannette James

March 19, 1993

Today Alaska finds itself locked up, with most resource development on hold and many residents unclear about title to their land. As legislators we are being bombarded with pressure from our voters to solve the Mental Health Lands issue and many of us feel obligated to do this. However, it appears that we have allowed ourselves to be forced into a no-win situation. We are not even party to the lawsuit, yet we are expected to have the same powers as the court to find a solution. This we simply cannot do. Here are my ideas:

(First, A THOUGHT - should we perhaps enter the lawsuit as interveners?)

I am not willing to support any agreement or legislation which alters the Legislature's ability to appropriate funds for mental health expenses or to use excess funds held by the mental health authority for other purposes or which alters the original intent of the original mental health enabling act. I cannot support the provision on Page 8 of Chapter 66 which requires the legislature to submit "findings" if their appropriations vary from the Mental Health Authority's request.

I concur with paragraph #3 in Mr. Cole's March 12 letter: "....Resolution must bear a reasonable relationship to the remedy specified by the Alaska Supreme Court: (1) return to trust status of the original mental health lands still in state ownership; and (2) compensation to the trust for the fair market value of former mental health lands that have been sold subject to a set-off for state mental health expenditures."

I believe that NO legislation of any kind will solve the problem. The problem must be solved by an agreement of 100% of the involved parties and approved by the court. Legislation can only make law out of a previously-agreed-upon settlement.

The following figures are only estimates, but please consider them:

ESTIMATED STATE EXPENDITURES ON MENTAL HEALTH

(since 1979, in 1991 dollars)

Attorney Costs 1987 - 1993	
Plaintiffs $2,592,900	
State 999,700	$ 3,592,600
Operating Expenses 1979 - 1991	$1,128,499,000
Est. operating exp. 1992 - 1993	200,000,000
Capital Expenses 1979 - 1993	
38,251,500 x 2.44 ("1991 factor")	$ 93,333,660
(NOTE: This does NOT include 1993 building replacement costs OR land.)	
TOTAL	$1,425,425,260

Total surveyed Mental Health Trust Lands	997,900	acres
Unencumbered lands	- 352,386	acres
Encumbered lands	645,514	acres

$$\frac{1425425260}{645514} = \$2208/\text{acre paid by state}$$

If these figures are valid, the state has already paid over $2000 an acre to the Trust. We need to consider the original intent of the enabling act. Is this intent being met? If not, what can we as legislators do to help the parties refocus on the original intent? How can we exert political pressure on the involved parties to respond positively? I for one do not appreciate the burden on my back of something I cannot solve.

CALCULATIONS
(Estimates based on actual figures)

Representative Jeannette James
March 29, 1993

CURRENT STATUS OF THE ORIGINAL MENTAL HEALTH TRUST LANDS:

Conveyed to third parties	46,000 acres
Conveyed to municipalities	43,000 acres
Land Settlements	
conveyed to Native corporations	36,000 acres
conveyed to University of Alaska	3,000 acres
Condemned	5,000 acres
Leased to third parties	89,225 acres
Material sales	1,900 acres
Mining claims	60,000 acres
Legislatively designated areas	
State forests	113,289 acres
Parks, wildlife refuges, etc.	243,600 acres
Inter-agency land mgmt agreements	4,500 acres
Unencumbered	352,386 acres
TOTAL surveyed lands	997,900 acres

Unencumbered	352,386	Third party	46,000
Condemned	5,000	Municipalities	43,000
Leased	89,225	Native corp	36,000
Material sales	1,900	U of A	3,000
Mining claims	60,000	Legislatively des.	113,289
Land mgmt agreements	4,500		243,600
Keep as Trust Lands	513,011	Keep as State Lands	484,889

ESTIMATED STATE EXPENDITURES ON
MENTAL HEALTH
(since 1979. in 1991 dollars)

Attorney Costs 1987 - 1993		
Plaintiffs	$2,592,900	
State	999,700	$ 3,592,600
Operating Expenses 1979 - 1991		$1,128,499,000
Est. operating exp. 1992 - 1993		200,000,000
Capital Expenses 1979 - 1993 (1979-1990 total x 1.2625 "1991 factor" plus 1991, 92, 93 w/o factor)		44,149,186
TOTAL		$1,376,240,786

SB48 &493 $2.243 updated to 1991
for total value of Mental Health Lands.....$2,402,253,000

Total land value $2402253000
Total acres 997900 = $2408 / acre

Money state has spent	$1,376,240,786
Value of land state keeps	-$1,167,612,712 @ $2408/ac
SURPLUS state has paid Trust	$ 208,628,074

State fails in Mental Health Trust controversy

Fred Pratt

The million-acre chess board on which Mental Health Trust controversy is played out has 3,102 special "pawns" on the state's side.

As we all know, pawns are coldly sacrificed to create positional advantage for the more powerful and important pieces behind them.

The pawns on the white side are the unfortunate beneficiaries of the trust. The black pawns are the people who bought trust land from the state and now have title to their land frozen because of the state's illegal action in seizing the trust's assets 15 years ago.

The state of Alaska, the "black king" in this game, is weeping a bucket of crocodile tears on behalf of its pawns. In January, state attorneys tried to get Fairbanks Superior Court Judge Mary Greene to lift a three-year-old injunction barring sale of these lands, which total almost 50,000 acres.

The state failed. Before the third-party landholders blame Judge Greene or the Mental Health Trust beneficiaries, they should look at why the state failed.

The Legislature and former Gov. Jay Hammond dissolved the Mental Health Trust in 1978 and took the land. They later leased, gave, sold or exchanged about one-third of it to outside parties.

In 1985 the Alaska Supreme Court ruled this action illegal. The court clearly made the point that trustees managing a trust, which is what the Legislature is, cannot just appropriate the assets of the trust for their own use.

The management of the Mental Health Trust was an obligation willingly taken on by the state of Alaska in the Alaska Statehood Act. If any other trustee outside government had done such a thing, he would go to jail.

The people who acquired Mental Health Trust land from the state unwittingly fenced stolen property. If they lose their land back to the trust, they have a great case for a lawsuit against the state for selling them such land in the first place.

After the 1985 decision the state and the trust beneficiaries tried to settle the case without having to take back all this land and expose the state to thousands of expensive lawsuits. The state, however, blocked earlier settlements and now seeks to turn the ire of the third-party landholders on the court or the plaintiffs in the lawsuits, rather than own up to its own sins.

The motion to have Judge Greene lift the injunction on the third-party landholder "pawns" was an empty gesture, as Judge Greene's order clearly shows.

She notes that she can modify or cancel a standing injunction only for certain reasons. She can do it if it can be shown to be no longer necessary. If it creates an undue hardship, if the plaintiffs have been delaying a reasonable resolution, or if the state has a substantial likelihood of winning its case.

Judge Greene clearly disposed of each of these matters in a nine-page decision.

She pointed out that plaintiffs agreed to the first settlement only two years after the 1985 ruling, but it was the state that torpedoed that settlement process in 1990, not the beneficiaries. Second and third settlement bills passed the Legislature in 1992 and 1991, but these "solutions" are mired deeply in new problems.

Judge Greene also raised the question of whether she could clear land title to these parcels by simply lifting the injunction.

That could just shift legal questions to another court. Judge Greene pointed out that if this happened, lifting the injunction would be "nothing more than a cruel hoax visited on the third parties."

"They get no relief; they would receive a worthless piece of paper and unmarketable title," she noted. "If they transferred their interest in the land, they would l selling a lawsuit and both they a the purchasers would ultimate have to litigate."

State attorneys suggested t trust could be compensated by e change of other state land of co parable value for the land grant the third party buyers. Judg Greene notes correctly that t state's inability to work within pa agreements on determining valu of land killed the first settlement

She also notes that the state likelihood in prevailing is weak at time when two of the four plaintiff groups refuse to accept its curre settlement, and when its strong opposed by environmental group hunting clubs, fishing organiz tions and outdoor recreation i terests, as well as coal develope and major oil companies.

State attorneys appealed Judg Greene's decision to the Alas Supreme Court. Two weeks ago t Alaska Supreme Court rejecte that appeal, without comment.

Free-lance journalist Fred Pratt h been covering Alaska business a politics for the past 18 years.

FAIRBANKS NEWS MINER
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Voice of The Times

The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

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Tossing in the towel

THE APPARENT failure of the mental health trust settlement agreement probably is being greeted with some cheers across the state. Most people who have followed the issue are frustrated by all the legal tangles and delays that have come with efforts to rebuild the original land trust set up by the federal government almost 40 years ago. The rebuilding is necessary because of a 1985 court order which said the state had no business dissolving the trust in 1978, an action which followed years of neglect and non-management of the mental health lands.

Putting the trust back together, however, has become as complicated as unscrambling eggs. Two years ago, it appeared Attorney General Charlie Cole and then Resource Commissioner Harold Heinze had come up with a solution. They reached agreement in 1991 with attorneys for the mental health groups and won approval by the Legislature to replace land originally held in trust with state lands of equal value and comparable in character.

It was an involved plan, one that permitted mental health lawyers and trustees to identify state public lands on a tentative basis pending final approval by the court of the whole agreement. And identify lands they did: oil leases in Cook Inlet, coal fields, ski resorts, gold mines and anything else of potential value. Each piece of land selected, however, meant planned development activities there were put in limbo, making developers more and more disenchanted with the plan. That wasn't the only problem.

AS PART OF the 1991 settlement agreement, the state was to be free to issue patents on previously purchased small tracts of mental health lands. Alaskans who own these so-called "mom and pop" lands are now prohibited from selling, exchanging or otherwise developing the land until the legal cloud is lifted.

The agreement was supposed to make that possible. It didn't.

A Superior Court judge rejected releasing any of the original trust lands until the whole agreement is finalized. Last week, the Supreme Court backed the decision.That prompted Gov. Walter Hickel to give notice that the state would back out of the agreement — unless lawyers can figure out another way to free up the so-called mom and pop lands. That's not likely to happen. More likely, the issue will now go back to the Legislature for resolution.

Bills are moving in both houses which abandon the idea of replacing trust with state lands to generate revenue. Instead, the new legislative proposals would commit annual funding from the state treasury to cover mental health needs. A Senate bill would earmark 6 percent of general revenue each year for the mental health trust, while a House bill would commit 3 percent.

This alternative is bad policy and would set a bad precedent. But given that the best alternative just fell apart, it may be the only politically possible resolution.

Juneau Empire 5-19-93

Lands trust ruling hits oil companies

By BRIAN S. AKRE
THE ASSOCIATED PRESS

A judge has ruled that Cook Inlet oil and gas leases may be transferred to a new mental-health lands trust without violating the lease terms, but the issue is far from resolved, attorneys said Tuesday.

Oil companies oppose the possible transfer because the trust might look to increase its revenues for mental-health programs by collecting higher royalties on oil and gas production.

The ruling by state Superior Court Judge Mary Greene of Fairbanks is an initial defeat for the oil companies that hold the state leases. They plan to appeal to the Alaska Supreme Court.

"This is just the first round in the fight," said Peter Maassen, an attorney for the companies. "Nothing's over yet."

Greene also ruled Friday that a state administrative order dealing with management of lands being considered for the trust is invalid because it was not adopted in compliance with the state Administrative Procedures Act.

The ruling is the latest chapter in the long legal saga over the trust. It follows another ruling late last month in which Greene struck down a key part of the proposed trust settlement as unconstitutional.

The Hickel administration persuaded the Legislature to approve the settlement two years ago. It was seen as a relatively quick way to end the costly, decade-old lawsuit challenging the Legislature's illegal dissolution of the trust in 1978.

The oil industry opposes the possible transfer of oil and gas leases to a new mental-health lands trust because the trust might try to collect higher royalties.

Congress created the 1 million-acre trust in 1956, designating proceeds from development and management of the lands to fund programs for mentally ill Alaskans.

Advocates for the mentally ill sued the state over the dissolution, and the Alaska Supreme Court in 1985 ordered the state to recreate the trust. The settlement proposes to do that with original trust land and substitute land for those trust parcels that were sold or otherwise obligated.

As security, the state agreed to designate 6.7 million acres that the trust could foreclose upon if the exchange is not completed by December 1994. But Greene ruled last month that the Legislature improperly delegated the task of preparing the list of security lands to a state agency without the proper standards and procedural safeguards.

Gov. Walter J. Hickel tried to persuade lawmakers to pass a bill to correct that problem in the final days of the recent legislative session, but failed.

Attorney General Charlie Cole said he has not yet talked to Hickel about the possibility of a special session to address the issues Greene has raised.

On Friday, Greene ruled on challenges to the settlement brought by Marathon and Unocal oil companies.

The companies say they want to keep the state as their landlord because it must consider the broader public interest in managing the leases. The trust, on the other hand, would be interested solely in getting the most money from the leases, Maassen said.

Greene ruled that the assignment of the leases to the trust would not harm the companies, as they had claimed.

But she did not rule on the broader issue of whether the lucrative leases are comparable to former trust lands.

The state has maintained that they are not comparable because none of the original trust lands were in Cook Inlet or capable of producing oil and gas. Cole told lawmakers earlier this month that he would not support transferring the leases to the trust.

But Cole indicated Tuesday that he might back down from that stand.

The judge ruled in favor of the companies on another issue. She said the state may not release confidential production and revenue records on the leases to the mental-health plaintiffs until the settlement takes effect.

Meanwhile, Cole said Greene's rejection of the administrative order dealing with management of lands considered for the new trust can be fixed without legislation.

"That can be easily cured by simply redoing the process" so it complies with the Administrative Procedures Act, he said. That will require putting the regulations through public review, with hearings.

Philip Volland, an attorney for mental-health advocates who have not endorsed the settlement, said Cole was minimizing the effect of doing that. Developers, environmental groups and other interests can be expected to fight the restrictions and conditions the order places on the use of the security and substitute lands, some of which have strong recreation and development potential, he said.

CHAPTER 66 BACKFIRES

(continued from page one)

their lawsuit against Chapter 66. It seems they don't appreciate having their multi-million dollar investment tied up in this debacle. They, too, have a few more reasons why they think the Settlement is illegal. Last week, the Court let them into the lawsuit too.

It's not surprising then that those concerned with economic development, coal and other mining interests have also weighed in against Chapter 66. They don't want to deal with a land management bureaucracy whose only interest is making money for the beneficiaries, instead of economic activity and jobs. The continuing stream of litigation is viewed as an Arctic blast of cold wind that discourages investment and development of any state Land.

Chapter 66 was supposed to give clear title to the innocent Alaskans who thought they purchased and owned "state" lands. Assuming that Chapter 66 would be approved by the Court and because it looked like all this was going to take a lot longer than anticipated, the State filed a motion to get these "Moms and Pops" released from the lawsuit. Last week, the Judge denied the State's request, stating that the "relief" requested could be considered "nothing more than a cruel hoax" because "the likelihood of final approval [of Chapter 66] is speculative, at best."

Deciding who is right will take time, in fact, years. The challenges to Chapter 66 will first be decided in the Superior Court and appealed to the Alaska Supreme Court. Some issues will even go to the U.S. Supreme Court. All this has to happen before Chapter 66 receives final approval.

So, instead of a one million care "spill" we have over eight million acres tied up in this and counting. Instead of a settlement agreement, we are faced with additional lawsuits and years of costly litigation before we get a decision on Chapter 66. Oh, by the way, it doesn't look like the land will make enough money to even start to pay for the Mental Health Program. So much for the beneficiaries.

It was my hope that Chapter 66 would lead to a better life for people who are beneficiaries of this Trust. I thought it would free the thousands of innocent third party hostages caught in the middle. Since Chapter 66 has proven to present far more difficulties than anticipated, my clients withdrew their support of Chapter 66.

Now, what are our options? We could stay on course with Chapter 66 until the bitter end. We could return to the original lawsuit and litigate the 8,000 illegal transactions the State made with Trust lands. Or we can look for another solution. A strange coalition of developers, environmentalists, miners and dissenting plaintiffs think they may have one. Since we can withdraw our support of Chapter 66, but not from this case, we are sure going to look hard at this alternative. We hope everyone else will too.

KEYNOTES is a publication of the Alaska State Association on Developmental Disabilties (ADD). The views expressed within these pages are those of the editors and should not be construed to represent the opinions or policies of the Association. KeyNotes welcomes any comments on articles, suggestions for future articles and recommendations for making this newsletter as responsive as possible to the needs and desires of individuals experiencing developmental disabilities.

Editors: **Carl Evertsbusch**
Steve Lesko

540 W. International Airport Road
Anchorage, AK 99518-1110
907-561-5335
FAX 907-564-7429
TTY/TTD (907) 564-7445

KEYNOTES
c/o 540 West International Airport Road
Anchorage, Alaska 99518

Representative Bill Williams
P.O. Box V
Juneau, AK 99801-1182

PACKET FROM USIBELLI COAL

MENTAL HEALTH LANDS TRUST BRIEFING PAPER

March 1, 1993

This information is provided by the Alaska Coal Association, the Alaska Center for the Environment and Advocacy Services of Alaska

1956 - THE FEDERAL GRANT

During territorial days, the federal government imposed a barbaric mental health system on Alaskans. People who experienced mental disabilities such as Alzheimer's disease, mental retardation and mental illnesses were tried and convicted of the crime of being an "insane person at large". After conviction, they were sent to Morningside Hospital in Oregon where the federal government paid the bill.

Over time, Alaskans became more and more outraged over this treatment. In addition, impending Statehood meant that Alaska would need to assume responsibility for administering and funding its own mental health program. Finally, in 1956, Congress passed the Alaska Mental Health Enabling Act, granting authority to the Territory of Alaska to administer its own mental health program. To provide funds to operate the program, Alaska was granted the right to select *one million acres of land* to be administered as a *public Trust.*

Recognizing that the purpose of the Trust was to earn income, the Territory, and then the State of Alaska selected land that was believed to be the most valuable property in the State. These included urban and suburban lands in Anchorage, Fairbanks, Juneau, Sitka, Ketchikan, Petersburg, Wrangell, Haines, Homer, Kodiak and Skagway. Also selected were lands on the Kenai peninsula, in the Matanuska and Susitna Valleys and in Kachemak Bay. High value resource lands were also selected, such as 60% of what is now known as the Haines State Forest, forest lands at Cape Yakataga, a significant percentage of the known coal resources, oil and gas prospects, and prime mineral districts of the State. These lands were selected because they were best suited to the production of income in perpetuity.

Although the land was selected for the Trust, and was supposed to earn money in support of the mental health program, the State Division of Lands received no direction on managing the Trust lands as a Trustee. As a result, no Trust administration was established, and no trust fund was created. In this vacuum some of the land was improperly disposed of and no proper accounting of Trust funds was made.

1978 - THE GREAT LAND THEFT

Due to the valuable nature of the land, there was tremendous pressure by municipalities and individuals to make Mental Health Trust Lands available for other purposes. In response to this pressure, in 1978 the Alaska Legislature attempted to abolish the Trust by "redesignating" Mental Health Trust Lands as general grant lands. In exchange, the legislature was supposed to compensate the Trust with 1.5% of revenues from *all* State lands. However, not a single payment to the Trust account was ever made.

1982 - THE ORIGINAL LAWSUIT

An attempt was made to get the legislature to correct this blatant violation of federal law and the State's obligation as a Trustee. After being told "we don't care if it is illegal - sue us", the Alaska Mental Health Association sponsored the beginning of the litigation in 1982. Vern Weiss, on behalf of his son Carl, and Earl Hilliker, on behalf of themselves and the class of people entitled to benefits under the Trust (beneficiaries of the Trust) were named as plaintiffs in the lawsuit. Since that time, the Alaska Mental Health Association, representatives of the mentally retarded and mentally defective (developmentally disabled), and representatives of chronic alcoholics with psychosis have formally intervened to participate with the original plaintiffs in the lawsuit. Elderly people with dementias, such as Alzheimer's disease, are also beneficiaries of the Trust.

1985 - THE ALASKA SUPREME COURT DECISION

In 1985, in what is known as the Weiss Decision, the Alaska Supreme Court rejected the State's arguments that there really was no Trust. The Court 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"

At the time of the Weiss Decision, the following legally questionable actions had been taken by the State with respect to Mental Health Trust Lands:

370,000 acres	Designated as state parks, refuges, etc.
83,000 acres	To Municipalities
36,000 acres	To Native corporations
50,000 acres	To individuals ("Moms & Pops")
3,000 acres	To the University of Alaska, and
150,000 acres	Encumbered land
692,000 acres	Total

Obviously, determining which of these lands could be returned to the Trust would involve years of litigation. Returning these lands would create incredible hardship for thousands of innocent third parties and disrupt decades of land use planning efforts. This began what has become years of unsuccessful efforts to reach a settlement as a way to avoid this court ordered mandate to return the original land to the Trust.

1987 - SETTLEMENT ATTEMPT #1 CHAPTER 48

Chapter 48 would have determined the fair market value of the original one million acres under procedures approved by the Interim Mental Health Trust Commission set up by the State. The State would then "rent" the Trust lands in perpetuity for 8% of their value. As security, the Trust would have been made whole with legislatively designated lands of equal value to those Trust lands illegally disposed of by the State. The Alaska Mental Health Board was created to determine the needs of the mental health program and make recommendations regarding necessary funding for the mental health programs to the Governor and Legislature.

1990 - THE OBSTRUCTION TO IMPLEMENTATION OF CHAPTER 48

The Interim Mental Health Trust Commission worked from the passage of Chapter 48 until January of 1990 to determine and approve the appropriate valuation procedures to implement Chapter 48. On November 7, 1989, the Commission adopted by a two to one vote (the State's representative dissenting) its final approved procedures for determining the value of the original Mental Health Trust Lands. Utilizing these approved procedures the value of the Mental Health Trust Lands, as of September 7, 1987, is $2.243 billion. However, on January 23, 1990, the State Department of Natural Resources announced a creative interpretation of Chapter 48 that the Commission could not approve any valuation procedures that the Commissioner of Natural Resources did not accept. On February 1, 1990, the Department of Natural Resources issued its Minority Recommendations, indicating it believed the value of the Trust Lands was only $565 million. The Commissioner of Natural Resources then declared an "impasse".

1990 - SETTLEMENT ATTEMPT #2 SENATE BILL 493

During the 1990 legislative session, a bill was introduced which would have adopted the $2.243 billion value for the Trust lands and implemented Chapter 48. However, in the closing hours of the session, a Finance Committee substitute was passed which changed the compensation from 8% of the value of the Trust lands to a permanent 6% of unrestricted general fund revenue.

The Beneficiaries commissioned an economic analysis of changing the form of compensation from the value of the land to a percentage of declining state revenues. Not surprisingly, the Beneficiaries believed that this change seriously under compensated the Trust.

This, together with the lack of security for the promise to pay and the lack of an adequate Trustee, led the beneficiaries to reject this unilateral attempt to settle the litigation.

1990 - THE LAND FREEZE AND ITS CONSEQUENCES

Faced with yet another example of the State breaking it's promises and breaching its responsibilities as a Trustee, the Beneficiaries went back to court for an injunction that would prohibit the State from transferring or issuing any permits or leases on Mental Health Trust lands. The Court granted the injunction which held that the Beneficiaries were entitled to challenge the status of previous dispositions of Mental Health Trust lands.

The Beneficiaries' attorneys believe that a third party does not receive good title to Mental Health Trust Lands unless that party *paid value* for the land and *had no reason to know of the breach of trust*. They believe that all persons will be found to have "constructive knowledge" of the breach of trust because it was a matter of public record.

The difficulties that third parties are now experiencing are the difficulties the State, the Beneficiaries and others have tried to avoid by continuing to look for a settlement to this issue.

THE INNOCENT THIRD PARTIES CAUGHT IN THE CROSSFIRE

There are over 6,000 questionable actions that have occurred on Mental Health Trust Lands that are open for reversal. Prospective activities on Mental Health Trust Lands have been suspended, or are in limbo. For example, the Wishbone Hill Coal Mining Project has been put on hold pending determination of certain legal questions. Usibelli Coal Mine operates substantially on Mental Health Trust Lands and its future operations are planned to be substantially on Mental Health Trust Lands. The Diamond Chuitna Coal Project in the Beluga Coal Field is also on hold. People who have received patents to Mental Health Trust Lands, like the Moms and Pops, may lose their land[1]. Lessees of Trust lands may have their leases declared invalid. Municipalities which received Trust lands face the possibility of losing the land despite the fact that they've already spent time and money in planning for its use.

1991 - SETTLEMENT ATTEMPT #3 CHAPTER 66

During the 1991 session, legislation was once again introduced in an effort to reach a settlement. Lengthy negotiations with the Legislature resulted in the agreement to create a Mental Health Trust Authority to serve as a Trustee. However, the Administration refused to consider a cash based settlement. With less than two weeks left in the session, the Administration and three of the four plaintiff groups began negotiating what would become Chapter 66. Chapter 66, if approved, would:

1) Create the Mental Health Trust Authority as Trustee,

2) Return as much of the original Trust land as possible to the Trust,

3) Exchange other comparable state land for original Trust land that cannot be returned,

4) Begin the exchange process before Chapter 66 is approved by the courts pursuant to a Settlement Agreement negotiated by the parties after the session,

5) Hypothecate (pledge as security) 6.7 million acres of State land to be foreclosed upon in the event the land exchange is not completed before December of 1994.

6) Become effective only after the settlement is finally approved by the courts, the Weiss case is dismissed, and the time for any appeals has expired.

1 On the other hand, the Beneficiaries have tried to eliminate unnecessary hardship, and when no harm to the trust is apparent, the Beneficiaries have uniformly agreed to modify the injunction to allow things to proceed.

1991 - LAWSUITS OVER CHAPTER 66

In October of 1991, a group representing tourism, sport fishing, environmental and other public interests sued to intervene in the lawsuit. They believe that Chapter 66 violates State law, the State Constitution, and the Statehood Act. They object to transferring to the Trust hundreds of thousands of acres of multiple use public lands that were never in the original Trust. They also object to nullifying numerous state land use planning processes in which thousands of Alaskans participated in good faith. The intervention was expected and initially welcomed by the settling parties as they believed that favorable decisions on these issues would "bulletproof" the settlement against challenges after approval. Unfortunately, the settling parties failed to understand how long these issues would take to resolve and the consequences in the meantime.

After over a year and a half, these challenges are still pending in the Superior Court. A decision is not expected until the spring or summer of 1993. The losing party will then, no doubt, appeal to the Alaska Supreme Court. After that appeal, the losing party can then ask the U.S. Supreme Court to review the Statehood Act issue relating to the ability of the State to transfer the mineral estate to the Trust as a part of the exchange. Only after all of this litigation is concluded can the courts finally approve or disapprove Chapter 66. While nobody can predict how long this will all take, it is safe to assume that it will be measured in years not months.

To make matters worse, during the exchange process, the plaintiffs discovered that the ***State did not have lands comparable to those which would be lost***. Therefore, they were forced to look to income producing lands which the State had not anticipated would become involved in the exchange process. The Cook Inlet oil and gas fields, Glacier/Winner Creek in Girdwood, Leask Lakes in Ketchican, hydroelectric sites throughout Southeast Alaska, airport lands and the proposed site for the new Capital building in Juneau are just a few of the lands which may have to be placed into the Trust.

Most recently, in response to these actions, the Cook Inlet oil and gas producers, Marathon and Unocal entered the litigation to protect their interests. They do not believe that the State has the right to transfer their leases to the Trust and that the Settlement Agreement is illegal. Despite the objections of the State, the court has allowed the oil companies to intervene and the litigation over their claims is just beginning. Other affected parties such as Municipal governments and coal producers have also considered intervention.

In the meantime, the ***injunction and lis pendens[2] on the original one million acres*** of Trust land remains. In addition, ***title to the 6.7 million acres of hypothecated***

2 A lis pendens is a notice filed in the record of title that a claim has been made against the land

lands is clouded by the prospect that foreclosure may occur anytime after 1994. Further, under the terms of the Settlement Agreement the ***plaintiffs have already selected 550,000 acres of other State land*** for possible exchange. This land must be segregated and closed to mineral entry or disposal. Finally, since these ***additional selections can continue to be made from any State land, virtually the entire inventory of State land outside of Legislatively Designated Areas is subject to being brought into the litigation*** at any time.

EFFECTS ON DEVELOPMENT

This cloud on millions of acres of State land will remain for years to come while lawsuits over Chapter 66 continue. This has created an international perception that Alaskan land and natural resources are off limits to development. This perception is widely held in both the natural resource investment community and international markets for Alaskan resources and is fostered by Alaska's competitors.

This perception of a land "freeze" is not limited to specific projects, resources, or problems like Wishbone Hill, expansion of the Girdwood ski resort or the consequences of higher utility rates in Southeast Alaska. The length of and uncertain results from the lawsuits, together with the potential for more land to be selected and therefore tied up at any time, combine to create a global stigma about development in Alaska at a time when we can least afford it.

Both the State and the Settling Plaintiffs justifiably claim that they are willing to work with affected parties on specific problems. However, the belief in this freeze will continue because of the possibility, even probability, that any valuable mineral deposit, transportation or pipeline corridor, or strategic surface estate will be tied up in this dispute.

FAILED ATTEMPT TO RELEASE THE "MOMS & POPS"

When the State realized how long the litigation over Chapter 66 would take and the hardship that would be suffered by innocent third parties, it realized the need to ask the Superior Court for "relief" for the over 3,000 so-called Moms and Pops. The State's plan, agreed to by the Settling Plaintiffs, would have modified the injunction and removed the cloud in the record of title. The Settling Plaintiffs could agree to this only with the condition that if Chapter 66 was not approved, *the Trust would be able to reassert its claims to the land.* The court rejected this "relief" last month stating that it could be considered nothing more than a "cruel hoax visited on the third parties" because at this point in time "the likelihood of final approval [of Chapter 66] is speculative, at best".

THE "UNHOLY ALLIANCE"

By early 1992, a number of diverse interest groups normally at odds found that they were united in their opposition to pursuing the land exchange portion of the proposed settlement. The Resource Development Council, Alaska Center for the Environment, Alaska Miners Association, Susitna Valley Association, Sierra Club Legal Defense Fund, Alaska Coal Association, Non-settling plaintiffs and now Marathon and Unocal realized that an amendment to Chapter 66 is needed. These groups all agree that the settlement must be within the State's ability to pay and offer fair compensation to the Trust.

1993 - AMENDMENTS TO CHAPTER 66 SENATE BILL 67

Last session, the members of this unusual coalition united behind an amendment to Chapter 66 which could finally settle the Mental Health Lands Trust litigation. Reintroduced this session by the Senate Resources Committee, Senate Bill 67 would:

1) Retain the portion of Chapter 66 that creates the Mental Health Trust Authority as the Trustee while maintaining the Legislature's ability to appropriate Trust funds,

2) Retain the portion of Chapter 66 which returns as much of the original Trust land as possible to the Trust,

3) Eliminate the land exchange which has led to the litigation over Chapter 66,

4) Instead of the land exchange, continue the current allocation of 6% of the State's unrestricted General Fund Revenue to the Trust income account in place since 1990,

5) Hypothecate (pledge as security) only those original Trust lands that are now in Legislatively Designated Areas (370,000 acres) to insure that the 6% allocation is made. This would free up the 6.7 million acres currently pledged as security.

WHERE DO WE GO FROM HERE?

There is unprecedented and widespread support for amending Chapter 66. Development and environmental interests, local governments, the majority of the Beneficiaries, the thousands of third party hostages, Chambers of Commerce, and many legislators realize the necessity of amending Chapter 66 now.

Unfortunately, the current administration has refused to consider any amendments to Chapter 66. Unless Alaskans become informed and communicate directly with the Governor and their legislators, we face years of litigation while development is discouraged on millions of acres of land. Alaska cannot afford such a divisive, expensive, and lengthy attempt at a settlement.

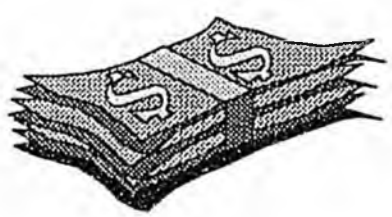
MENTAL HEALTH LANDS TRUST
THE OFFSET

Attorney General Cole has stated that in Chapter 66 "the state gave up a $1.3 billion offset which the Alaska Supreme Court held that the state is entitled to". (Letter to Senator Mike Miller dated February 3, 1993).

However, the ***Supreme Court actually said*** that "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 the expenditures exceeded the value of lands **sold** , the state need not furnish cash as part of the reconstitution." (State v. Weiss, 706 P. 2nd 681 at 684.) (emphasis added).

SO, WHAT IS THE OFFSET?

The value of the offset would depend on the outcome of lengthy litigation over how much the State has actually spent on mental health and whether any of the land was legally "sold".



The Interim Mental Health Trust Commission estimated the offset at only $200 million.

The State has inflated the offset to $1.3 billion by including expenditures of the Dept. of Law, D.N.R., Dept. of Administration, etc. *in addition to* program costs. (At the same time the State claims the entire 1,000,000 acres of land is worth only $565 million.)

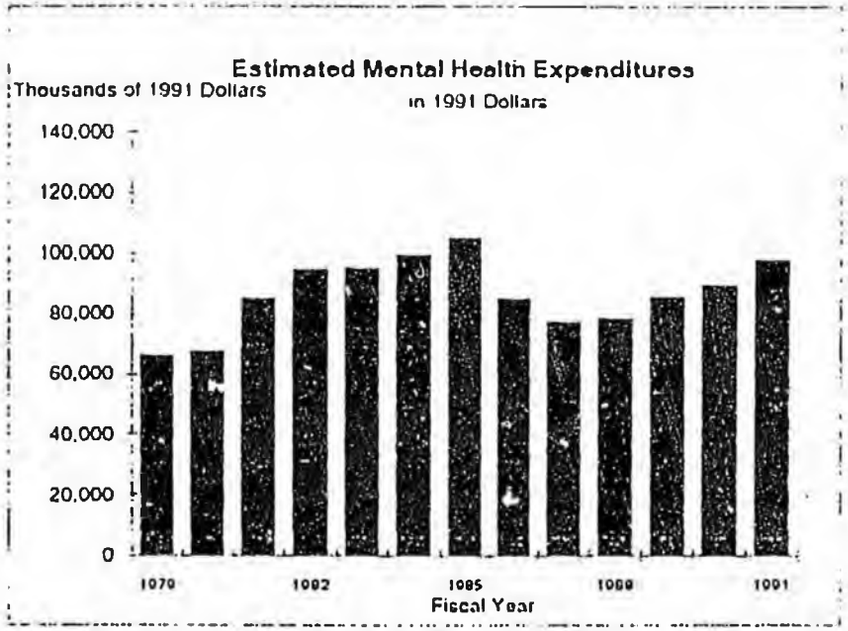
"SOLD"?

Returnable Land 315,000 acres	Must be returned to the trust.
Encumbered 150,000 acres	Can be returned subject to encumbrances.
Legislatively Designated Areas (LDAs) 370,000 acres	Set aside by legislature for parks, wilderness, forests, etc.
Municipalities 83,000 acres	Paid nothing. Had actual notice of breach of trust.
Settlement 40,000 acres	Traceable land to be returned to trust.
Moms & Pops 50,000 acres	Paid value. Notice of trust status in record of title.

Estimated Mental Health Expenditures from Unrestricted General Fund Revenue

(In Thousands of Dollars)

Agency/Budget Request Unit	Fiscal Year 1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Department of Administration	530	586	754	1,119	1,154	1,184	1,217	1,683	1,680	1,682	1,847	1,953	1,588
Department of Law	13	30	44	48	43	40	38	73	42	54	52	59	67
Department of Education	3,147	3,560	4,155	4,803	5,493	6,017	6,715	1,844	1,684	1,676	1,751	1,859	2,226
Dept. of Health and Social Services	29,881	33,246	46,619	53,391	55,193	59,019	64,822	62,501	59,528	63,452	72,779	80,009	92,990
Department of Public Safety	1,095	2,418	3,595	3,972	3,511	3,278	3,152	826	483	619	587	673	0
Department of Corrections	2,042	2,222	2,479	3,320	3,981	5,956	7,043	966	952	1,039	1,178	1,195	1,222
Total Estimated Expenditure	36,708	42,062	57,646	66,655	69,374	75,494	82,987	67,892	64,380	68,521	78,195	85,749	98,092
Cumulative Estimated Expenditure	36,708	78,770	136,416	203,071	272,445	347,939	430,926	498,819	563,198	631,720	709,914	795,663	893,755
FY 79 - FY 85	36,708	78,770	136,416	203,071	272,445	347,939	430,926						
FY 86 - FY 91								67,892	132,272	200,793	278,988	364,737	462,829
Total Estimated Expenditure in 1991 Dollars	66,340	67,632	85,083	94,714	94,972	99,419	105,317	85,197	77,377	78,869	85,681	89,607	98,092
Cumulative Estimated Expenditure in 1991 Dollars	66,340	133,972	219,055	313,769	408,740	508,160	613,476	698,673	776,050	854,919	940,799	1,030,407	1,128,499
Mental Health Expenditures As Percentage of General Fund Unrestricted Revenues	3.24%	1.68%	1.55%	1.62%	1.91%	2.23%	2.55%	2.21%	3.58%	2.97%	3.58%	3.42%	3.47%



Prepared by the Legislative Research Agency (91.242)

Source: Mental Health Lands Trust Review. Summary Schedule and Analysis - Potential State Mental Health Expenditures
State of Alaska, Office of Management and Budget - Division of Budget Review, Operating Budget Funding summary, All Funds, By Agency, BRU & Component, January 28, 1991
Note: Program Receipts have been removed from totals given.

Sunday March 21/1993 D.N.Miner

State fails in Mental Health Trust controversy

Fred Pratt

The million-acre chess board on which Mental Health Trust controversy is played out has 3,162 special "pawns" on the state's side.

As we all know, pawns are coldly sacrificed to create positional advantage for the more powerful and important pieces behind them.

The pawns on the white side are the unfortunate beneficiaries of the trust. The black pawns are the people who bought trust land from the state and now have title to their land frozen because of the state's illegal action in seizing the trust's assets 15 years ago.

The state of Alaska, the "black king" in this game, is weeping a bucket of crocodile tears on behalf of its pawns. In January, state attorneys tried to get Fairbanks Superior Court Judge Mary Greene to lift a three-year-old injunction barring sale of these lands, which total almost 50,000 acres.

The state failed. Before the third-party landholders blame Judge Greene or the Mental Health Trust beneficiaries, they should look at why the state failed.

The Legislature and former Gov. Jay Hammond dissolved the Mental Health Trust in 1978 and took the land. They later leased, gave, sold or exchanged about one-third of it to outside parties.

In 1985 the Alaska Supreme Court ruled this action illegal. The court clearly made the point that trustees managing a trust, which is what the Legislature is, cannot just appropriate the assets of the trust for their own use.

The management of the Mental Health Trust was an obligation willingly taken on by the state of Alaska in the Alaska Statehood Act. If any other trustee outside government had done such a thing, he would go to jail.

The people who acquired Mental Health Trust land from the state unwittingly fenced stolen property. If they lose their land back to the trust, they have a great case for a lawsuit against the state for selling them such land in the first place.

After the 1985 decision the state and the trust beneficiaries tried to settle the case without having to take back all this land and expose the state to thousands of expensive lawsuits. The state, however, blocked earlier settlements and now seeks to turn the ire of the third-party landholders on the court or the plaintiffs in the lawsuits, rather than own up to its own sins.

The motion to have Judge Greene lift the injunction on the third-party landholder "pawns" was an empty gesture, as Judge Greene's order clearly shows.

She notes that she can modify or cancel a standing injunction only for certain reasons. She can do it if it can be shown to be no longer necessary, if it creates an undue hardship, if the plaintiffs have been delaying a reasonable resolution, or if the state has a substantial likelihood of winning its case.

Judge Greene clearly disposed of each of these matters in a nine-page decision.

She pointed out that plaintiffs agreed to the first settlement only two years after the 1985 ruling, but it was the state that torpedoed that settlement process in 1990, not the beneficiaries. Second and third settlement bills passed the Legislature in 1990 and 1991, but these "solutions" are mired deeply in new problems.

Judge Greene also raised the question of whether she could clear land title to these parcels by simply lifting the injunction.

That could just shift legal questions to another court. Judge Greene pointed out that if this happened, lifting the injunction would be "nothing more than a cruel hoax visited on the third parties."

"They get no relief; they would receive a worthless piece of paper and unmarketable title," she noted. "If they transferred their interest in the land, they would be selling a lawsuit and both they and the purchasers would ultimately have to litigate."

State attorneys suggested the trust could be compensated by exchange of other state land of comparable value for the land granted the third party buyers. Judge Greene notes correctly that the state's inability to work within past agreements on determining value of land killed the first settlement.

She also notes that the state's likelihood in prevailing is weak at a time when two of the four plaintiffs' groups refuse to accept its current settlement, and when its strongly opposed by environmental groups, hunting clubs, fishing organizations and outdoor recreation interests, as well as coal developers and major oil companies.

State attorneys appealed Judge Greene's decision to the Alaska Supreme Court. Two weeks ago the Alaska Supreme Court rejected that appeal, without comment.

Free-lance journalist Fred Pratt has been covering Alaska business and politics for the past 18 years.

Voice of The Times

The Anchorage Times

Publisher: BILL J. ALLEN
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Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN
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Tossing in the towel

THE APPARENT failure of the mental health trust settlement agreement probably is being greeted with some cheers across the state. Most people who have followed the issue are frustrated by all the legal tangles and delays that have come with efforts to rebuild the original land trust set up by the federal government almost 40 years ago. The rebuilding is necessary because of a 1985 court order which said the state had no business dissolving the trust in 1978, an action which followed years of neglect and non-management of the mental health lands.

Putting the trust back together, however, has become as complicated as unscrambling eggs. Two years ago, it appeared Attorney General Charlie Cole and then Resource Commissioner Harold Heinze had come up with a solution. They reached agreement in 1991 with attorneys for the mental health groups and won approval by the Legislature to replace land originally held in trust with state lands of equal value and comparable in character.

It was an involved plan, one that permitted mental health lawyers and trustees to identify state public lands on a tentative basis pending final approval by the court of the whole agreement. And identify lands they did: oil leases in Cook Inlet, coal fields, ski resorts, gold mines and anything else of potential value. Each piece of land selected, however, meant planned development activities there were put in limbo, making developers more and more disenchanted with the plan. That wasn't the only problem.

AS PART OF the 1991 settlement agreement, the state was to be free to issue patents on previously purchased small tracts of mental health lands. Alaskans who own these so-called "mom and pop" lands are now prohibited from selling, exchanging or otherwise developing the land until the legal cloud is lifted.

The agreement was supposed to make that possible. It didn't.

A Superior Court judge rejected releasing any of the original trust lands until the whole agreement is finalized. Last week, the Supreme Court backed the decision.That prompted Gov. Walter Hickel to give notice that the state would back out of the agreement — unless lawyers can figure out another way to free up the so-called mom and pop lands. That's not likely to happen. More likely, the issue will now go back to the Legislature for resolution.

Bills are moving in both houses which abandon the idea of replacing trust with state lands to generate revenue. Instead, the new legislative proposals would commit annual funding from the state treasury to cover mental health needs. A Senate bill would earmark 6 percent of general revenue each year for the mental health trust, while a House bill would commit 3 percent.

This alternative is bad policy and would set a bad precedent. But given that the best alternative just fell apart, it may be the only politically possible resolution.

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Post Office Box 110001
Juneau, Alaska 99811-0001

WALTER J. HICKEL
Governor

JOSEF P. HOLBERT
Director of Communications

JOHN MANLY
Press Secretary

JOHN HENDRICKSON
Deputy Press Secretary
Anchorage Office: 561-4228

BRIAN HART
Assistant Press Secretary

907-465-3500
FAX: 907-586-8369

FOR RELEASE: March 15, 1993
No. 93-061

MENTAL HEALTH SETTLEMENT GIVEN 60 DAYS

JUNEAU--Governor Walter J. Hickel today gave lawyers on both sides of the mental health trust controversy 60 days to reach an agreement to release third parties from the case or the state will exercise its option to terminate the settlement agreement entered into in April 1992.

"We have no desire to roll this issue back to square one," Hickel said, "but that's what's at risk if we can't find an acceptable solution for those innocent third parties who bought land that was once part of the mental health trust and now can't get title to it."

The Governor's action was sparked by the most recent rejection by the courts of a joint request by the state and the settling plaintiffs to have a preliminary injunction modified to allow the state to issue patents to individuals who have paid off their land. The patents would extricate those landowners from the issue and allow them to sell, exchange or otherwise develop their land.

Fairbanks Superior Court Judge Mary E. Greene denied the joint motion on Janaury 14. The Alaska Supreme Court denied the state's petition to review her decision on March 8.

The Mental Health Lands Trust was created by Congress in 1956 and dissolved in 1978 by the state legislature, which promised that in its place 1.5 percent of income from resource development on state lands would be allocated to mental health programs. In 1982, after no such amount was ever appropriated, mental health advocates sued the state and won. In 1985, the Supreme Court ordered that the trust be reconstituted and that fair market value should be paid for those lands that had been sold, subject to a set-off for state mental health expenditures.

####

PRESS ADVISORY

March 24, 1993

FOR IMMEDIATE RELEASE
FOR MORE INFORMATION CONTACT: Walt Baldwin, 276-4849

STATE REFUSES TO LIVE UP TO LATEST PROPOSED SETTLEMENT OF MENTAL HEALTH LANDS TRUST

With little fanfare, a press release issued by Governor Walter J. Hickel on March 15, 1993 signaled the State's intention to withdraw from the latest attempt to settle the Mental Health Lands Trust litigation.

While giving the impression that this action is based on the State's failure to gain the release of the third party land owners known as "Moms & Pops", in fact, the State had already refused to comply with the terms of the Settlement Agreement (see attachments 1 and 2).

"Of course I knew it was in trouble when the State wrote a letter on February 25, 1993, refusing to allow the Settling Plaintiffs'Attorneys to pick the land needed, as agreed to in the Settlement Agreement, to replace land that the State stole from the original Trust", said Walt Baldwin.

In light of these developments a number of groups representing Trust beneficiaries agreed upon a resolution calling attention to the real reason the State has threatened to withdraw from the settlement (see attached Resolution).

STATE of Alaska, Appellant/Cross-Appellee,

v.

Vern T. WEISS, et al., Appellee/Cross-Appellant.

Nos. S–653, S–678.

Supreme Court of Alaska.

Oct. 4, 1985.

Class action was brought against State for breach of public trust in enacting legislation redesignating federal mental health grant lands as general grant lands. The Superior Court, Fourth Judicial District, Fairbanks, Warren W. Taylor, J., ruled the legislation could not be invalidated, but that the State breached its duties as trustee by removing federal grant lands from the trust. The state appealed, and plaintiffs cross-appealed. The Supreme Court, Compton, J., held that: (1) the State breached its duties as trustee in redesignating the land, and (2) the redesignation legislation was invalid.

Affirmed in part, reversed in part and remanded.

1. Public Lands ⇐62

In passing the Alaska Mental Health Enabling Act, the United States Congress intended to create a trust, to be based on a corpus of one million acres of federal land, to help effectuate the creation and operation of mental health care facilities in the state, and the state, as trustee, had no power to alter the status of the property grant, thereby effectively terminating the trust. Alaska Mental Health Enabling Act, § 101 et seq., 70 Stat. 709; Laws 1978, c. 181, § 3(a).

2. Public Lands ⇐62

In passing act [Laws 1978, c. 181, § 3(a)] redesignating trust lands given state by United States Congress under Alaska Mental Health Enabling Act as general grant land, the State went beyond the power which had been granted it with respect to the land by Congress and the redesignation act was therefore invalid. Alaska Mental Health Enabling Act, § 101 et seq., 70 Stat. 709.

G. Thomas Koester, Asst. Atty. Gen., Norman C. Gorsuch, Atty. Gen., 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, C.J., and BURKE, MATTHEWS and COMPTON, JJ.

OPINION

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

[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 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.

[2] 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

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."

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, 87 S.Ct. 584, 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.

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 University. *Id.* at 811. Years after the grant, the state included 5,040 acres of the trust land in a 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 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.

MOORE, J., not participating.

In the Matter of the Application of: John L. McKAY, Jr., An Applicant for admission to the Practice of Law in Alaska and Membership in the Alaska Bar Association.

No. S-667.

Supreme Court of Alaska.

Sept. 27, 1985.

Applicant for Bar filed an appeal with Board of Governors of the Alaska Bar As-

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.

PROPOSED REVISIONS TO SB 67/HB 201

Page 1, line 9:
Delete "(a)".

Page 1, line 10:
Change entire line to read:

"(a) Except as provided in AS 38.05.800, the Alaska Mental Health Trust Authority"

Page 2, after line 8:
Insert:

"(b) In exercising its power under (a)(1), (2) or (3) of this section, the authority or its contractor under (a)(4) of this section is not bound by the provisions of AS 38.04 or AS 38.05, except that it shall

(1) comply with AS 38.05.285 subject to its obligations under AS 37.17.007;

(2) give public notice in the manner provided under AS 38.05.945(b) and (c) [BUT IS NOT OTHERWISE BOUND BY THE PROVISIONS OF AS 38.04 OR AS 38.05] of a preliminary decision to dispose of trust land and consider any written comments submitted within 30 days of such notice prior to making a final decision; and

(3) give public notice in the manner provided under AS 38.05.945(b) and (c) of any final decision to dispose of trust land."

Page 2, line 21:
After "section" insert:

"In this section, "unrestricted general fund revenue of the state" means all the categories of accounting for money accruing to the state general fund that,

under the statewide accounting system as established on the effective date of this Act, were identified as revenue that was not restricted by law to a specific use."

Page 3, lines 8-24:
Make this subsection (b) of AS 38.05.800

Page 3, line 8:
Insert a new subsection (a) to read:

"(a) For purposes of this section:

(1) "conveyed or encumbered" means (A) covered by a land sale contract issued by the state or a municipality; (B) covered by a patent executed in favor of any person, entity, native corporation, municipality, or the University of Alaska; (C) selected by a native corporation under 43 U.S.C. § 1611; (D) covered by a claim of a native for an allotment under 43 U.S.C. § 1634 or by a certificate of allotment issued under applicable federal law; and (E) identified for conveyance pursuant to a land exchange agreement between the state and a native corporation, but not yet covered by a patent;

(2) "department" means the Department of Natural Resources;

(3) "land" includes both the surface estate and the mineral estate;

(4) "lease" means any oil and gas lease, coal lease, mining lease, land lease, and any other mineral or surface lease; and

(5) "right-of-way" means any right-of-way permit or easement, or any road, utilities, or

other improvements constructed pursuant to an approved land use application or permit or letter of entry issued by the department and for which no right-of-way permit has yet been issued."

Page 3, line 14:

Change entire line to read: "(A) a lease;"

Page 3, line 24:

Insert new subsections to read:

"(c) any land included in the corpus of the mental health trust shall be subject to the terms, conditions, and provisions of any lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, or water right issued by the United States or the state on or before the effective date of this Act;

(d) any land included in the corpus of the mental health trust shall be subject to any mining claim or mining leasehold location that was acquired and continued in compliance with applicable laws and regulations on or before the effective date of this Act and that is continued in compliance with applicable laws and regulations thereafter;

(e) the department shall manage all land that is subject to any interest identified in (c) and (d) of this section for as long as such interest remains in effect;

(f) all land that is subject to any interest identified in (c) and (d) of this section shall be governed only by and managed by the department only pursuant to the laws and regulations applicable to

general grant land and not pursuant to any laws or regulations applicable to the other land of the trust except that the proceeds from the management of such land shall be included in the mental health trust income account in accordance with AS 37.14.036;

(g) with respect to any particular lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, or mining leasehold location, the owner of such interest, the department, and the mental health trust authority established under AS 47.30.011 may agree to waive the provisions of (e) and (f) of this section in which case the land involved will then be governed only by the laws and regulations applicable to the other land of the trust and will be managed like the other land of the trust;

(h) all land granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that is not included in the corpus of the mental health trust under (b) of this section is released and removed from the trust and shall no longer be subject to any of the provisions of the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, or any claim of the trust;

(i) after giving public notice in the manner provided under AS 38.05.945(b) and (c), all land included in the corpus of the mental health trust under (b) of this section shall be conveyed by patent by the commissioner of the department to the mental health trust authority established under AS 47.30.011 and the trust authority takes its title

subject to any interest described in (c) and (d) of this section and subject to all of the provisions of this section."

EXPLANATION OF PROPOSED REVISIONS TO SB 67/HB 201

1. The amendment to AS 37.14.009(a) is a cross-reference to the overriding provisions of AS 38.05.800 which divest the trust authority of land management authority over trust lands that are currently subject to third party interests (discussed more fully in paragraph 6 below).

2. To the extent that the trust authority is not divested of land management authority over trust lands by virtue of AS 38.05.800, the amendments to AS 37.14.009(b) add two safeguards of the public interest applicable to management of trust lands in lieu of AS 38.04 and AS 38.05. These amendments are intended to establish a public process for trust land management decisions and to insulate the bill from legal challenges under Article VIII, Section 10 of the Alaska Constitution.

2.1 Subsection (b)(1) requires land management decisions to comply with the state constitution and the principles of multiple purpose use consistent with the public interest. However, this subsection also recognizes that the trust principles established in AS 37.14.007, added by Chapter 66, SLA 1991, must take priority if they conflict with multiple purpose use.

2.2 Subsection (b)(2) provides a 30-day public comment period to precede final land disposal decisions. This period is intended to ensure that trust beneficiaries, trust land developers, people who use trust lands for other purposes, and other members of the public have an opportunity to have their views considered by the trust authority.

2.3 Subsection (b)(3) requires public notice of final decisions to dispose of trust lands.

3. The proposed revision to AS 37.14.036(c) adds a definition of "unrestricted general fund revenue of the state" to the bill.

4. A new subsection (a) containing key definitions is added to AS 38.05.800.

4.1 In order to clarify that the land in the trust corpus will include both surface and mineral estates, "land" is so defined.

4.2 In order to make the entire section read more easily, and to specifically cover as many types of leasehold estates as possible, "lease" is now a defined term.

4.3 The Department of Law has expressed concern over the ambiguity inherent in stating that "conveyed or encumbered" land is not being returned to the trust. To satisfy this concern, "conveyed or encumbered" is now defined. Conveyances to native corporations, municipalities, and the University of Alaska are now specifically included as "conveyed or encumbered" land. In addition, ANCSA selections are now defined as being "conveyed or encumbered." Finally, the Department of Law had concluded that under SB 67/HB 201 land with native allotment claims would go back to the trust and that the trust would be compelled to challenge these claims. To avoid this problem, lands covered by native allotment claims are now also defined as "conveyed or encumbered."

4.4 A definition of "right-of-way" is included to reflect the fact that roads and other improvements are constructed pursuant to land use permits and letters of entry. In some cases these valid rights have never been reflected in a right-of-way permit because the issuance of such permits has been barred by the superior court's preliminary injunction since July 9, 1990.

5. The existing language in AS 38.05.800 would become new subsection (b) of the section.

6. New subsections (c) through (i) would be added to AS 38.05.800.

6.1 New subsection (c) clarifies that any land remaining in the corpus of the trust remains subject to the terms, conditions, and provisions of all third party rights. This new subsection validates such third party interests, thus satisfying another concern of the Department of Law. (Chapter 66 currently contains no such provision, although the settling plaintiffs did agree in the Chapter 66 settlement agreement that the trust would take all of its land subject to third party interests.) Subsection (c) is not intended to validate or question the validity of RS 2477 rights-of-way which may or may not exist.

6.2 New subsection (d) clarifies that trust land will also remain subject to any mining claims or leasehold locations that were acquired and continued in compliance with current applicable law. Unlike the third party interests covered by subsection (c), there is no legal document to reflect the terms of mining claims or leasehold locations

(unless they are subsequently converted to a mining lease, which is covered by subsection (c)) and DNR normally makes no "validity" determination. The holders of mining claims and leasehold locations would therefore be subject to the status quo under SB 67/HB 201 -- they would face the same challenges from the trust that they could face from the state -- the trust simply takes subject to the claimant's rights, if any. If the claimant can satisfy the legal requirements of a valid claim, the claim will be valid. Original mental health trust land has been closed to mineral entry since November 5, 1985 pursuant to court and DNR orders so the only mining claims or leasehold locations of concern will be those that were validly located prior to that date.

6.3 Neither subsection (c) nor (d) use the common legal term "valid existing rights," because the Weiss plaintiffs have asserted that there are no valid third party rights in mental health trust land. Therefore, the revisions provide that the trust takes subject to any of the mentioned interests, whether or not they are valid from the point of view of the Weiss plaintiffs. As previously mentioned, the one exception is that the trust would stand in the state's shoes in being able to challenge any mining claim or leasehold location that has not been acquired and continued in accordance with existing applicable law.

6.4 New subsection (e) is a mandatory provision requiring DNR to manage all land that is subject to any third party interest enumerated in subsections (c) and (d) for as long as the enumerated interest remains in effect. This provision eliminates the possibility of litigation by third parties against the trust and the state on the ground that third parties have a contractual right to have DNR as their land manager.

6.5 New subsection (f) further provides that DNR will manage all land covered by third party interests pursuant to the laws and regulations applicable to general grant land, except that all proceeds from such lands shall be placed in the mental health trust income account. Again, this provision is necessary to prevent litigation by third parties against the trust and the state for breach of their contract rights.

6.6 By defining "land" in subsection (a) as both the surface and mineral estates, the proposed revisions clarify that if any interest has been carved out of either estate, then DNR must manage the entire estate like general grant land for as long as the third party interest remains in effect. This provision is necessary to avoid "split estate" problems that are likely to cause litigation. For example, in the case of an oil and gas lease, if DNR manages the

subsurface estate but the trust authority manages the surface estate, the trust authority might attempt to take action to impair the contract rights of the oil and gas lessee (such as by charging a surface use fee for the lessee's drilling rigs and equipment).

6.7 New subsection (g) allows a third party contract holder, the trust authority, and DNR to waive DNR's management of the land in question. This gives any affected third party the option to seek a three-way agreement with DNR and the trust to have the land subject to the third party's interest managed by the trust authority pursuant to whatever land management regulations and standards the trust authority eventually adopts for normal (unencumbered) trust lands.

6.8 New subsection (h) specifically states that all original mental health trust land not included in the corpus of the trust pursuant to AS 38.05.800 is released and removed from the trust and is no longer subject to any of the provisions of the original 1956 act. (Again, this is a provision which is implied, but is not explicitly stated, in Chapter 66.)

6.9 New subsection (i) specifically provides that DNR will actually convey the land that is being returned to the trust to the trust authority and that the trust authority takes its title subject to all protected third party interests and the restrictions of AS 38.05.800. The same public notice process (a 30-day public comment period) contemplated for conveyances of land under Chapter 66 from DNR to the trust authority will apply to reconstitution of the trust under SB 67/HB 201.

7. These revisions remove the concerns set forth in Sections V, VI, VIII, X.3, and X.4 of Charlie Cole's February 3, 1993 letter to Senator Mike Miller. The proposed revisions to SB 67/HB 201 are, like Chapter 66 itself, a "settlement" of the dispute different from that mandated by the Alaska Supreme Court in 1985. Although there is nothing in that 1985 decision indicating that the state has a "fiduciary duty" to manage trust lands solely to maximize revenue to the trust, even if this were true, this would be in direct conflict with third party contract rights. The proposed revisions protect these third party rights as long as the particular land interest remains in effect. When the third party land interest expires, terminates, or is surrendered, the subject land reverts to the trust for management pursuant to whatever standards have been adopted by the trust authority.

BURR, PEASE & KURTZ
A PROFESSIONAL CORPORATION

DONALD A. BURR
RICHARD A. HELM
L. S. KURTZ, JR.
OF COUNSEL

THEODORE M. PEASE, JR.
CHARLES P. FLYNN
ARDEN E. PAGE

RUSSELLYN S. CARRUTH
RALPH E. DUERRE
ANN C. LIBURD
JOHN C. SIEMERS
NELSON G. PAGE
THOMAS E. MEACHAM
PETER GRUENSTEIN
MICHAEL W. SEWRIGHT

PETER J. MAASSEN
MICHAEL W. SEVILLE
DAVID W. PEASE
THOMAS P. OWENS III

810 N STREET
ANCHORAGE, ALASKA 99501-3293
TELEPHONE: (907) 276-6100
FACSIMILE III: (907) 258-2530

TAX ID NO. 92-0037399

VIA FACSIMILE TO NO. 465-2864

May 5, 1993

Senator Drue Pearce
Senator Steve Frank
Co-Chairs, Senate Finance Committee
State Capitol Building
Juneau, Alaska 99811

Re: Mental Health Lands Legislation
Our File No. 2686-1

Dear Senators Pearce and Frank:

I represent Marathon Oil Company and Union Oil Company of California in Weiss v. State, 4FA-82-2208 Civil. Marathon and Unocal intervened in that lawsuit last fall in order to challenge various aspects of the land exchange process currently under way by the State and the settling plaintiffs pursuant to the terms of Chapter 66, SLA 1991, and their settlement agreement. As you are well aware, Judge Greene has recently ruled that certain aspects of Chapter 66 are unlawful. The State and the settling plaintiffs have proposed last-minute amendments to SB 67 and HB 201 which they contend will fix the legal problems. Unfortunately, they will not.

One aspect of the proposed amendments is a reduction of the hypothecated list from 6.7 million acres to 1.5 million acres, to be selected by the Department of Natural Resources "using the criteria set out in secs. 55(d) and (e) of this Act" (Chapter 66). See Sec. 4(a)(2). Although the proposed amendments do not say so, the settling plaintiffs have made it plain that they intend the hypothecated list to be comprised of Cook Inlet oil and gas leases. In a letter to Representatives Larson and MacLean dated April 21, 1993, in which the idea of the current amendments was first raised, settling plaintiffs'

counsel David Walker explained (at p. 4) that the proposed amendments "would replace the approximately seven million acres of land currently hypothecated to the Trust with the approximately 550,000 acres of onshore land nominated by the Plaintiffs as Proposed Substitute Land plus the approximately 1.5 million acres of the existing collateral of last resort (offshore Cook Inlet oil and gas fields)."

Besides the legal challenges that Marathon and Unocal have already mounted against hypothecation of the Cook Inlet oil and gas leases, you should be aware that the proposed amendments will create further conflict between the State and the settling plaintiffs and give Marathon and Unocal a wholly new ground for judicial challenge. Ever since the settling plaintiffs nominated the Cook Inlet leases as Proposed Substitute Land in July 1992, the State has maintained that the leases are not in fact comparable under sections 55(d) and (e) of Chapter 66. Director Ron Swanson of the Division of Lands wrote to the settling plaintiffs on August 20, 1992: "The state does not believe that the oil and gas lease tracts are appropriate for nomination as Proposed Substitute Land at this point in the reconstitution process because the oil and gas lease tracts are not comparable to non-reconstituted trust land." On February 25, 1993, the Department of Law reconfirmed the State's position that the leases were "non-comparable land" in a letter from Assistant Attorney General Brian Bjorkquist to Mr. Walker: "While some non-comparable land may eventually be necessary to reconstitute the trust, there are several reasons why the Cook Inlet tracts should be among the last of those non-comparable lands considered for reconstitution into the trust."

In short, while the settling plaintiffs are apparently assuming that the Cook Inlet leases will be on the reduced Hypothecated List, the State cannot allow those leases to be hypothecated under the "comparability" criteria of Chapter 66 without making a direct and drastic turn-about in its previously consistent position. Thus, these amendments merely give the State and the settling plaintiffs one more thing to fight about. Not only that, but if the State does reverse itself and hypothecate the leases, it will give Marathon and Unocal additional grounds for judicial challenge -- that, as the State itself has maintained, the hypothecated list does not comply with the comparability provisions of Chapter 66.

On behalf of Marathon and Unocal, I urge you to reject these last-minute amendments.

Very truly yours,

BURR, PEASE & KURTZ

Peter J. Maassen

PJM/3

Alaska Environmental Lobby, Inc.
P.O. Box 22151 Juneau, Alaska 99802
Phone: 907-463-3366
Fax: 907-463-3312

DO NOT PASS ADMINISTRATION AMENDMENTS TO SB 67/HB 201

-Judge Greene on April 26 handed down a decision on the public interest intervenors' claims. The public interest intervenors prevailed on two out of eleven claims. They will appeal on several of the other claims.

-The judge held that: 1) the hypothecated lands list was illegally compiled, and 2) as a matter of statutory interpretation of Chapter 66, Alaska's land planning and classification laws (38.04/38.05) do apply to the reconstitution of the Trust.

-The administration is asking the legislature to adopt two amendments to "fix" problems identified by the court in Chapter 66: Re-hypothecating 1.5 million acres using acceptable standards, and exempting land exchanges in Ch. 66 from 38.04/38.05 and instead establishing procedural guidelines in lieu of 38.04/38.05.

-These amendments are two separate items. **They do not need to pass in tandem.**

-These "fixes" won't solve the problem. They will instead intensify the substantial opposition to Ch. 66, and they will do nothing to prevent continued litigation. **Massive land exchanges are the problem with Ch. 66.** In the 1990's, there are too many differing interests in public lands to make these massive land exchanges feasible.

-The public and the legislature still won't know which public lands will be pledged as security (i.e. hypothecated) for the performance of the state's obligations under Ch. 66. The legislature and the public should be able to participate fully in this decision.

-The massive land trust would not adequately meet the needs of the mental health programs. The legislature would still need to appropriate funds for mental health programs.

-Let's avoid a quick fix approach. The oil company's claims will be considered by the judge in the next few months. The public intervenors will appeal their claims. Other legal challenges are sure to follow. The legislature should not rush through quick fix amendments after each court ruling.

-Let's learn from experience and not rush through last minute amendments without adequate public and legislative consideration.

-The solution instead is found in SB 67/ HB201 in their current version: **the return of 500,000 acres of original unencumbered trust land, and a percentage of general fund revenues for the land that can't be returned.**

5/5/93

THE PUBLIC PROCESS IN THE PROPOSED AMENDMENTS IS A FARCE

* The proposed amendments provide for no public process until after the plaintiffs and DNR have negotiated their deal. This belated, abbreviated public participation comes too late to influence the land selections.

* Thousands of Alaskans have devoted years of effort to the land use planning and classification process. The existing plans are the result of consensus that has emerged from diverse interests participating in this open, public process.

* Alaska Statute 38.04.065 requires "meaningful participation" by the public in decisions affecting state lands. The proposed amendments would repeal this fundamental public policy.

* The proposed amendments would arbitrarily restrict judicial review to those who submitted comments during the period provided after the deals are made, even if a person is adversely affected and is otherwise entitled to judicial review under settled law.

* Who supports the existing planning process?

  - Resource developers
  - Small businesses in the tourism industry
  - Sport fishing organizations
  - Home-grown Alaska environmental groups
  - Alaskans who care about the public lands

* Who opposes the proposed amendments to Chapter 66?

  - ALL OF THE ABOVE.

* Why?

  - Alaskans of all stripes have benefitted from a consensus-building public process and built their expectations around the decisions made in these plans.

Don't throw years of effort out the window.

PLEASE VOTE AGAINST THE ADMINISTRATION AMENDMENTS TO CHAPTER 66.

ADVOCACY SERVICES OF ALASKA

615 East 82nd, Suite 101
Anchorage, AK 99518
(907) 344-1002 T D D
Toll Free 800-478-1234
Fax (907) 349-1002

230 South Franklin
Juneau, AK 99801
(907) 586-1627 T D D
Fax (907) 586-1066

250 Cushman, Suite 3H
Fairbanks, AK 99701
(907) 456-1070 T D D
Fax (907) 456-108[illegible]

ATTORNEY GENERAL SAYS CHAPTER 66 AMENDMENTS MAY NOT BE NECESSARY

In a brief filed Wednesday, May 5, in superior court, the Attorney General said that legislation to amend Chapter 66 may not be necessary:

> **"Even if the legislature does not pass the settling parties' proposed legislation, however, there are other options that the parties can explore."**

See pages 2-3 of the State's opposition brief (attached).

For more information, contact Jeff Jessee, 344-1002.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK, and JOHN MARTIN, on behalf of themselves and all others similarly situated; ANITTA BOSEL, FRANCES DOULIN, SHARON GOODWIN, AND GABRIEL MAYOC; and E.L., M.K., and ALASKA ADDICTION REHABILITATION SERVICES,

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 Civil

OPPOSITION TO MOTION TO STAY PROCEEDINGS

Defendant State of Alaska ("state") opposes Marathon Oil Company and Union Oil Company of California's ("oil company intervenor-lessees") Motion to Stay Proceedings. Contrary to oil company intervenor-lessees' allegations, the termination of the settlement agreement on May 11, 1993 is not a certainty. It would prejudice the other parties to this litigation, as well as the public, to stay proceedings on issues this court has found "crucial to the issues before the court." See Order re: Intervention of Marathon and Union Oil Companies (January 22, 1993).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

Oil company intervenor-lessees give the impression that the settlement agreement will automatically terminate on May 11, 1993, the 60th day following the state's letter invoking Article III, section 31(c) of the Settlement Agreement. This is not true. Section 31(c) gives the parties at least sixty days to try to reach another agreement for relief to third-parties, however, nothing in that section prohibits the parties from jointly agreeing to extend the time within which to reach another agreement.

Prior to the court's April 26, 1993 Memorandum Decision and Order Re: Intervenors' Complaint ("Memorandum Decision") the state and settling plaintiffs had been exploring a variety of ways to provide relief to the affected third-parties. The Memorandum Decision, however, suggested a straightforward legislative resolution of the settlement's legal problems that would make it more likely that the court would ultimately approve the settlement and, as a result, provide relief to those third-parties. Since April 26, as oil company intervenor-lessees' noted, the parties have devoted their energies toward a legislative solution. See oil company intervenor-lessees' Memorandum in Support of Motion to Stay Proceedings at 3 n.1 ("oil company intervenor-lessees' memorandum"); See also B. Arke, "Hickel puts priority on mental health lands bill," Anchorage Daily News, at E-2 (May 4, 1993) (copy attached).

Even if the legislature does not pass the settling parties' proposed legislation, however, there are other options

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

that the parties can explore. With all indications pointing toward chapter 66 being a legal and constitutional vehicle to settle this litigation and, thereby, providing the relief to affected third-parties, it is less likely the state would terminate the settlement agreement because of concerns about providing relief to third-parties. Indeed, approval of chapter 66 as settlement may provide the most expeditious relief to affected third-parties.

The court has stayed the proceedings on preliminary approval for seventy days to give the state and settling parties time to try to reach agreement concerning the hypothecated land list and the application of AS 38.04 and 38.05 to the reconstitution. A prompt decision by the court with respect to the oil company intervenor-lessees' complaint would assist the parties in their negotiations. If the court granted summary judgment in favor of the state and settling plaintiffs, the parties would be even more inclined to reach agreement to "save" the settlement. If the court granted summary judgment in favor of the oil companies, either in whole or in part, the parties would then have the opportunity to respond to that decision at the same time they are negotiating over the two other problems. It would prejudice the state, settling plaintiffs, and the public, for the parties to spend substantial amounts of time and money to attempt to resolve two problems with the settlement, if several months later the settlement were to fail because the court were to find that oil and gas leases may not be transferred

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

to the trust authority.

Moreover, it should be pointed out that the possibility of the termination of the settlement agreement is nothing new and has not been a compelling reason in the past for any of the court's decisions. The possibility of termination was obvious on January 14, 1993 when the court denied the state and settling plaintiffs' joint motion for relief for third-parties. The court issued that decision a week before granting the oil companies intervention, conditioned upon expedited discovery and briefing, so that their issues could be promptly addressed. See Order Re: Intervention of Marathon and Union Oil Companies at 2 (January 22, 1993). This court, in denying the re-filed joint motion on April 19, 1993, again recognized the obvious possibility that either party might terminate the settlement agreement,[1] yet such possibility did not result in this court piecemealing its recent Memorandum Decision addressing environmental intervenors' challenges to chapter 66.

Staying the proceedings on oil company intervenor-lessees' complaint will only serve to further the strategy of opponents to chapter 66 who have brought challenges to chapter 66 seriatim so as to perpetually extend the preliminary approval process. The issues related to the oil company intervenor-lessees' complaint have been fully briefed and will be ripe for decision as soon as oral argument is concluded. It will further

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W FOURTH AVENUE SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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[1] See Order at 2 (April 19, 1993) (The state's notice of termination "is merely the exercise of a right which the court knew the State had and could use").

the interests of judicial economy to conduct the oral argument and render the decision now while the issues are still fresh in both the court's and the parties' attorneys' minds.

That the court should render a prompt decision on oil company intervenor-lessees' claims holds true even if the settlement embodied in chapter 66 and the settlement agreement is "terminated." This is because the issues raised by oil company intervenor-lessees' complaint in intervention will not necessarily become mooted by termination of the settlement agreement. These issues are: "(1) lease assignability, (2) applicability of the Administrative Procedure Act ["APA"] to DNR order 135 and the broad land-use provisions of the Settlement Agreement, and (3) the legality of the Agreement's provision regarding sharing of confidential materials." Oil company intervenor-lessees' memorandum at 2.

With respect to the first issue, the parties to this litigation will be faced with the issue of whether oil and gas leases may be transferred from DNR to "trust status" even if there is no settlement and the state and plaintiffs are back in litigation. There are at least three active oil and gas leases on original trust land.[2] Pursuant to the Alaska Supreme Court's

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

[2] In the affidavit of Carol Wilkinson attached as exhibit 1 to the state's Reply to Opposition of Marathon and Unocal to Summary Judgment Motions of State and Settling Plaintiffs (April 17, 1993), the state identified leases ADL numbers 21129 and 359150 as active oil and gas leases containing original mental health trust land still owned by the state. In preparing this opposition the state re-reviewed file 359150 and determined that that lease had been terminated in December 1990.

(continued...)

direction in Weiss v. State, all original trust lands that have not been sold must be returned to trust status. In any reconstitution of the trust, the court will almost certainly need to resolve the issue of whether oil and gas leases on original trust land may be returned to trust status, either by conveyance to the Trust Authority under chapter 66 or otherwise.

Although there would be no "trust authority" in a litigated reconstitution, it is undisputed that the reconstituted trust lands will be administered as trust lands rather than as general grant lands. This means that the objections oil company intervenor-lessees' raise with respect to the proposed Trust Authority managing oil and gas leases would apply with equal force to the state managing oil and gas leases returned to reconstituted trust status. See e.g. oil company intervenor

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[2] (...continued)

The settling plaintiffs have identified oil and gas leases ADL numbers 21129 (lessee: Shell), 60553 (lessee: Chugach Electric), 319688 (lessee: Chugach Electric), 359157 (lessee: Micallef), 359159 (lessee: Danco) as active leases containing original trust land still owned by the state (compare tables I and II of the affidavit of David L. Thomas attached as exhibit B to Memorandum in Support of Motion of Settling Plaintiffs for Summary Judgment Dismissing Complaint in Intervention of Oil Companies (March 22, 1993). The state terminated leases 359157 and 359159; however, that termination is being appealed. C.f. James W. White's Motion to Amend Preliminary Injunction filed in this case on July 30, 1992; State's Opposition to James W. White's Motion to Amend Preliminary Injunction dated August 17, 1992; Orders Denying James W. White's Motion to Amend Preliminary Injunction, Denying J. White's request for Hearing, and Denying Intervention of J. White all dated September 1, 1992.

It appears then, that there are at least three active oil and gas leases containing original trust land still owned by the state - - ADL numbers 21129, 60553 and 319688.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

lessees' Memorandum in Support of Motion for Summary Judgment, 16-32 (March 22, 1993); Reply of Marathon and Unocal to State and Settling Plaintiffs' Oppositions to Motion for Summary Judgment, 16-12, 27 (April 19, 1993).

While none of the three remaining original trust land leases are Marathon or Union leases, the arguments raised by oil company intervenor-lessees against the transfer of their leases also apply to oil and gas leases held by other persons and companies. Indeed, oil company intervenor-lessees, in all their briefing, have not once drawn a distinction between an oil and gas leases issued on original trust land and an oil and gas leases issued on general grant land.[3] The state used the same standard lease forms for leasing original mental health trust lands and general grant lands. See State's Nonopposition to Settling Plaintiffs' Summary Judgment Motion and Opposition to Marathon and Unocal's Summary Judgment Motion at 13 and Exhibit 2 thereto (April 8, 1993); State's Memorandum in Support of Motion for Summary Judgment with Respect to Issues Raised in Marathon and Unocal's Complaint, Exhibit 14 at 34-38 (March 22, 1993)("state's memorandum"); and Memorandum in Support of Motion of Settling Plaintiffs for Summary Judgment Dismissing Complaint in Intervention of Oil Companies, Affidavit of David Thomas, Exhibit E at 5-7 (March 22, 1993) ("settling plaintiffs'

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

[3] Table II of David Thomas' affidavit referenced in footnote 2 identifies ten oil and gas leases containing both original trust land and general grant land where either Union or Marathon was, or is, the lessee.

memorandum"). Just because "[a] 'strict reconstitution' of the trust pursuant to Weiss is not of direct concern to Marathon and Unocal"[4] that does not mean that a strict reconstitution is of no concern to the state or the public. Either the oil and gas leases can be transferred to trust status or they cannot be transferred. Having had the issue of the transferability of the leases raised, and having fully briefed it, the state is not willing to drop this issue and risk later litigation by other oil and gas lessees challenging the return of their leases to trust status.

With respect to the second and third issues, the applicability of the APA to the negotiating and drafting of a settlement agreement and department order, and the sharing of confidential information between the state and settling plaintiffs, these issues are almost certain to arise in any future proposed settlement of this litigation. The settling plaintiffs have been adamant that any settlement of this case must be accompanied by a settlement agreement. Both the state and settling plaintiffs have articulated their strong beliefs that a settlement agreement cannot be and should not be promulgated as a regulation. See e.g. state's memorandum at 45-49; settling plaintiffs' memorandum at 68-74. The state and settling plaintiffs have also explained why a department order such as Department Order #135 is not a regulation and need not be promulgated like one. State's memorandum at 49-54; settling

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
NATURAL RESOURCES BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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[4] Oil company intervenor-lessees' memorandum at 5.

plaintiffs' memorandum at 53-68. Similarly, the state and settling plaintiffs negotiated a procedure in the settlement agreement for the sharing of confidential information between them that the parties strongly believe is legal and constitutional. They would likely use the same procedure again in any future settlement agreement that includes a land exchange as part of the compensation provided.

Thus, even if the parties terminate the current settlement agreement, should they enter into any future settlement agreement, the APA and confidentiality issues will likely rise again. Therefore, it is important to the settling parties for the court rule on the cross motions for summary judgment. Even if the APA and confidentiality issues become technically moot in the event the parties decide to terminate the proposed settlement agreement (of course, these issues are not now moot as the settlement agreement is very much alive), a court may still resolve disputes that are "moot" under the public interest exception to the mootness doctrine. Alaska Fish Spotters Assoc. v. State, 838 P.2d 798, 800 n.1 (Alaska 1992) (regulation that was the subject of appeal was withdrawn after briefs submitted to court, court decided case under public interest exception to the mootness doctrine). The public interest exception involves consideration of three main factors:

> (1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues, and (3) whether the issues presented are so important to the public interest as to

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

justify overriding the mootness doctrine. Peninsula Marketing Ass'n v. State, 817 P.2d 917, 920 (Alaska 1991). The public interest exception to the mootness doctrine applies to the trial courts as well. See Kitlutsisti v. Arco Alaska Inc., 592 F. Supp. 832, 838 (D. Alaska 1984) appeal dismissed and vacated 782 F. 2d 800.

The issues raised by oil company intervenor-lessees fall squarely within the public interest exception. As explained above, the APA and confidentiality provision are likely to arise again if there is a future settlement agreement. Applying the mootness doctrine, and staying the proceedings, would mean that the parties would face substantial uncertainty if they attempted to negotiate any future settlement. If the parties knew in advance that they must approach the negotiation of a settlement agreement as though the state were promulgating a regulation, then the parties would try to figure out a way to do so. If, however, the parties are not advised that this is the law until after they agree to another settlement agreement, then, they would be forced to start all over again resulting in a tremendous waste of time and effort - -all at public expense. In addition to this being a costly path to follow, it would also frustrate the public interest in a prompt resolution of this litigation. The more guidance the court can provide to the parties, the more likely it is that the parties may someday reach a mutually agreeable and lawful settlement.

In sum, the issues raised by oil company intervenor-

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5275

lessees are far from moot. A prompt decision on their complaint can only help to expedite the resolution of this litigation. The state urges the court to deny oil company intervenor-lessees' motion to stay the proceedings.

Respectfully submitted this 5 day of May, 1993.

CHARLES E. COLE
ATTORNEY GENERAL

By: Wendy S. Feuer
Wendy S. Feuer
Assistant Attorney General

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

file . HB 201

Chugiak-Eagle River
Chamber of Commerce
(907) 694-4702

P.O. Box 770353
Eagle River, Alaska 99577

12110 Business Blvd.
Eagle River, Alaska 99577

April 10, 1993

APR 17 199

Represenatative Bill Williams
State Capitol
Juneau, AK 99801-1182

On behalf of the Chugiak-Eagle River Chamber of Commerce Board of Directors, I am writing to encourage you to consider pending legislation which will provide a solution to the Mental Health Land Trust Litigation. The Chamber fully acknowledges the complexity of this issue and is very concerned with the protracted litigation which is preventing a final resolution.

From discussions with affected parties, we understand the SB 67 and HB 201 appear to provide a solution which is satisfactory to many of the players. We believe the legislature's time would be well spent trying to solve this issue through this legislation or appropriate alternatives to the Mental Health Land Trust litigation. It goes without saying that many economic development opportunities are being drastically affected because no adequate solution exits. With the decline in state oil production, economic diversification becomes increasingly vital if Alaska is to continue to thrive.

Thank you for your consideration and please feel free to call the Chamber office with questions.

Sincerely,

Bruce

Bruce Marion
President

AKAMI

4050 Lake Otis Suite 103
Anchorage, Alaska 99508
(907) 561-5127
FAX (907) 561-2717

April 7, 1993

Representative Bill Williams
Room 128
Juneau, Alaska 99801-1182

APR 17 1993

Dear Representative Williams;

Enclosed you will find AKAMI Resolution 93-1 pertaining to the settlement of the Mental Health Trust litigation.

We are most encouraged with the Senate Judiciary committee substitute to SB 67 currently under consideration. By and through this resolution, we wish to advance our support for the settlement concepts to amend Chapter 66, as embodied in CS 67 (Sen. Jud.)

Sincerely,

John Malone

John Malone
President

Alaska Alliance for the Mentally Ill
Resolution 93-1
A resolution pertaining to the Mental Health Trust settlement.
Passed April 6, 1993

WHEREAS, Alaskans who experience a mental illness were once tried and convicted of a crime of being "an insane person at large" and were sent out of the state at great expense to the federal government; and

WHEREAS, upon contemplating impending Statehood for Alaska, Congress passed the Alaska Mental Health Enabling Act granting authority and responsibility to the Territory of Alaska to administer its own mental health program, and granting the state the right to select one million acres of federal land to be administered as a public Trust; and

WHEREAS, the State of Alaska selected valuable properties, best suited to the production of income, including urban, suburban and resource rich lands containing coal, oil, gas and precious minerals, in order to earn money in support of the mental health program; and

WHEREAS, the State gave no direction in the management of the Trust, established no Trust administration, established no fund for proceeds of the Trust, and gave no direction to the State Division of Lands, which resulted in the Legislature's attempt to abolish the Trust by "redesignating Mental Health Trust Lands as general grant lands" in 1978; and

WHEREAS, not a single payment to the Trust account was ever made as a result of the 1978 action, and people entitled to benefits from the Trust filed suit – including the Mental Health Association, individuals, developmentally disabled, chronic alcoholics with psychosis, and Alzheimer's and related disorders suffering from psychosis; and

WHEREAS, in 1985 the Alaska Supreme Court rejected the State's 1978 redesignation legislation and ordered the "trust be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective" including the 692,000 acres of land which had already been taken by the State and given to municipalities, native corporations, individuals, and state use designations; and

WHEREAS, innocent third parties have been caught up in this litigation as prospective activities, sales, and development on Trust Lands have been suspended or are in limbo, including Wishbone Hill Coal Mine, Usibelli Coal operations, Diamond Chuitna Coal Mine, and many individual "Moms and Pops"; and

WHEREAS, numerous settlement attempts, particularly Chapter 66, have generated additional lawsuits from tourism, sport fishing, environmental groups, and oil companies; and

WHEREAS, the injunction by the court and the cloud on the title to the original one million acres of Trust Land remains, and the title to 6.7 million acres of hypothecated state lands is yet troubled by the prospect of foreclosure. These difficulties prompted amendments to Chapter 66 contained in the Senate Judiciary Committee Substitute Bill CS 67 currently under consideration; and

WHEREAS; new legislators are coming to grips with the complexities of this issue for the first time and may benefit by a fresh re-iteration of the Trust obligations of the State and the position of the Alliance;

NOW THEREFORE BE IT RESOLVED that the Alaska Alliance for the Mentally Ill supports legislation which effectively meets the basic needs of the Trust beneficiaries, specifically:

1. Creation of a Mental Health Trust Authority as trustee;

2. Retention of the portion of Chapter 66 which returns, by patent, unencumbered original trust land, including these only encumbered by leases, to the Trust to be administered by the Trust Authority;

3. Elimination of the land exchange substitution process for lands not being returned to the Trust which has led to so much additional litigation in this matter;

4. Continuation of the current allocation of 6% of the State's unrestricted general fund revenue to the Trust income account or an allocation process by which the real program need is determined annually by the Trust Authority and the Alaska Mental Health Board, as the annual allocation; and

5. Encumber as security those original Trust Lands remaining in legislatively designated areas to insure that the agreed upon allocation process to fund the mental health program is made, and so that a tangible corpus be further identified and secured per the Supreme Court's direction in *Weiss v. State*, thus freeing up the 6.7 million acres of state land currently pledged.

By unanimous vote of the Board of Directors.

John Malone
President

4/7/93
Date

Emily Nusunginya
Secretary

4/7/93
Date

KEY NOTES

Vol. I, Issue 3

KeyNotes is the official newsletter of the Key Campaign. It is published twice per month from December to June of each calendar year. KeyNotes is a publication of the Alaska State Association on Developmental Disabilities (ADD) and is intended to provide information about Key VI Campaign and related topics to the membership, consumers, families, advocates, and other interested friends and supporters. Everyone is encouraged to contribute to KeyNotes — the views of all our members are essential for developing a strong, comprehensive philosophy of service delivery.

February 15, 1993

CHAPTER 66 BACKFIRES

A Mental Health Lands Trust Update

(Jeff Jessee, Advocacy Services of Alaska)

Nearly two years ago my clients, beneficiaries of the Mental Health Lands Trust, decided to accept Chapter 66 as a proposed settlement to this lawsuit. We thought that this would finally end this divisive and costly litigation. Unfortunately, it has backfired worse than an aerial wolf hunt. To bring you up to date, let's briefly review the history of this complex lawsuit.

Before statehood, barbaric mental health laws were used to brutalize Alaskans. Marshals arrested people experiencing senility, mental illness, psychosis, mental retardation and even cerebral palsy. Hundreds were convicted of the "crime" of being an insane person at large. These people were then shipped to Oregon and imprisoned in a mental hospital.

After years of hearings about this practice, Congress gave Alaska, as Trustee, the right to select one million acres of Federal land to establish a Trust. The Trustee was supposed to manage the land to produce income to fund a mental health program *in Alaska, for Alaskans*.

Instead of establishing and managing the Trust, the State took the lands, turned some into parks, gave some away and tried to sell some to unsuspecting Alaskans. Money from these transactions were never deposited to the Trust. Over ten years ago, the State got caught stealing the lands and mismanaging the Trust. The beneficiaries sued, and the Supreme Court ordered the land returned to the Trust.

In 1991, Chapter 66 was proposed as a settlement to this lawsuit. Chapter 66 provided for 1) returning what was left of the million acres to the Trust, 2) appointing a Trust Authority to make sure the State followed through with their promises, and 3) allowing the beneficiaries to select comparable State land of equal income producing potential in exchange for the land that could not be returned to the Trust.

Unfortunately, there wasn't any land comparable to original lands like Homer Spit, Mountain View, and Kenai River frontage. This forced the plaintiffs' lawyers to select Cook Inlet oil and gas fields, Southeast hydroelectric sites, Glacier/Winner Creek, Leask Lakes, the Fort Knox gold mine, and even the site for the new Capital Building in Juneau.

An indication of the trouble to come was the lawsuit filed by a coalition that represented tourism, sport fishing, and environmental interests. These groups are concerned that potentially millions of acres of State land would be placed into the Trust without public input. They are also concerned that land will be utilized and managed only to benefit the Trust rather than in the public interest. They claim that Chapter 66 violates the Statehood Act, the Alaska Constitution, and State law.

It didn't take long after oil and gas leases were selected for the oil companies in Cook Inlet to file

continued on page five

"...PUT PEOPLE FIRST"

"We cannot, with Huck Finn and Mark Twain, light out for the territory any more, ... We need to find our home. We need to find a place where we take on the responsibilities of adults to the human community." Barry Lopez - The Rediscovery of North America.

Governor Hickel's State of the State address on January 12 made it crystal clear where his priorities lay: streamlining a government that strengthens Alaska's "family of one". Throughout his address, "Alaskan family" was mentioned no less than seven times and "quality of life" no less than five. The Governor stated that caring for all members of the "family" is the responsibility of all Alaskans, not just government. We heartily agree. The Key Campaign has a vision where all Alaskans are fully included in their neighborhood schools, in the workplace and in their communities. We have a vision where diversity is embraced. We have a vision of neighbors helping neighbors and building community together.

The Governor spotlighted Project Choice as a means for providing ways for persons with severe disabilities to live at home with their families instead of in "expensive institutions". We applaud the governor. We agree with him totally. But we would take it a step further. People should have the fundamental choice not to live in institutions, regardless of the expense. They should have the choice to live at home in their community with the people who love and care about them. And they should have the support of their neighbors, their community and their state for their chosen lifestyle. The fact that it costs less ought to be secondary to the goal of providing all Alaskans with lives of quality.

In the Governor's State of the Budget address, he referred to bringing the cost of government into line with projected revenues. He said we must bring spending under control by reducing funding for unneeded or over-utilized State programs. "The yardstick for determining funding is obvious," stated Governor Hickel. "The priority should be people in need." With the applicant file growing daily, we know who are the "people in need."

A priority of government should always be providing the support people need to achieve the quality of life espoused by Governor Hickel. Many of these families and individuals do not need expensive supports; just enough to help them live a life that all other families take for granted. And for those who have needs beyond which the family can provide, Alaska should be ready to stand behind them; to include them in the 'Alaskan Family'. We salute Governor Hickel for his vision for Alaskans. We stand behind him totally. What we expect from him and the legislature is not great, but can make such a difference to many Alaskans: do what is right and do what you would expect others to do for you, and that is, in the Governor's words, "...put people first."

KEY VI CAMPAIGN

MARCH 16-17, 1993

JUNEAU, ALASKA

Join Us — BEE an ADVOCATE

Contact Barb Nath at 561-5335
for hotel and travel arrangements.

ALASKA STATE LEGISLATURE
EIGHTEENTH LEGISLATURE - FIRST SESSION
STANDING COMMITTEES

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Olberg — Chairman
Sanders — Vice-Chairman
Williams; toohey; Bunde; Davies; Willis

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Larson — Co-Chairman
macLean — Co-Chairman
Hanley — Vice-Chairman
Therriault; Martin; Parnell; Foster;
Grussendorf;Navarre; Brown; Hoffman

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Pearce — Co-Chairman
Jacko — Vice-Chairman
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Health, Education & Social Services 465-3762
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Vezey; Kott; Olberg; Davis, B; Nicholia; Brice

Judiciary 465-3717
Taylor — Chairman
JameHalfords — Vice-Chairman
Jacko; Donley; Little

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Rieger — Vice-Chairman
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Leman — Chairman
Miller — Vice-Chairman
Taylor; Ellis; Duncan

Transportation 465-4921
Sharp — Chairman
Phillips — Vice-Chairman
Kelly; Kerttula; Lincoln

MEMBERSHIP ALERT

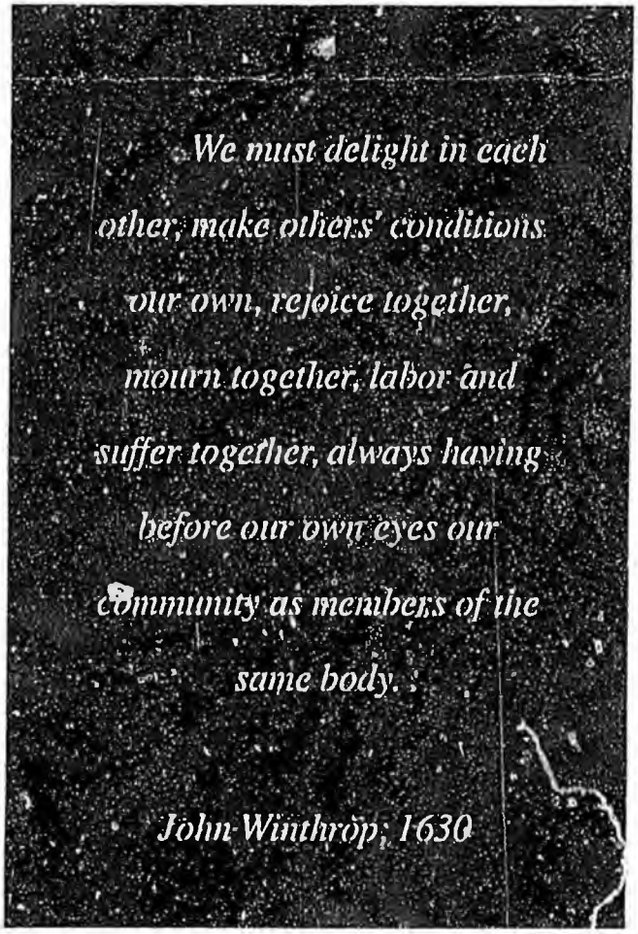
- Congratulations to Duane French on his appointment to the vacant seat on the Anchorage Assembly. Duane has been a strong advocate for a community that embraces diversity and supports persons with disabilities. His appointment is a breath of fresh air in a community recently experiencing more division than cooperation. Good luck, Duane. ADD is with you all the way.

- SB 67 was filed on January 25. The bill relates to an alternative to the settlement of the Mental Health Lands Trust included in Chapter 66. Essentially, the amendments return Chapter 66 to an early settlement that would establish a 6% annual appropriation from the unrestricted general fund to the Mental Health Trust, return all encumbered lands and create the Mental Health Lands Trust Authority.

  On February 5, the Senate Resources Committee approved the amendments and sent the bill to the Senate Judiciary Committee. The earliest Judiciary is willing to schedule a hearing is February 22, 1993. Testifying before the Resources Committee on February 3rd, Attorney General Cole informed the Resource Committee that he would recommend that Governor Hickel veto the bill if it is passed, but couldn't guarantee what the Governor would do.

- SB 70 was filed 1-27-93 by Senator Duncan which would establish a loan guarantee and interest rate subsidy program for assistive technology. If passed the state would guarantee up to 90% of the principal of a loan or subsidize the interest of a state guaranteed loan. The assistive technology would be used to enable either a person with a disability obtaining or maintaining employment or to live more independently.

- Governor Hickel has requested the same amount of money for DD Base Grants as was appropriated last year. As you know, this falls far short of the Key Campaign's goal of an 8% maintenance of effort increase. If the legislature approves this request, we , in effect, will be taking another loss. The governor also requested $5.5 million for Medicaid waiver services. These funds include the State match for new services available under all the approved waivers. $2.2 million is targeted for adults with physical disabilities and ICF/MR waivers. $1.0 million is for medically fragile children. The balance of the request is for older Alaskans. Included in DMH/DD Administration budget is a request for five new state positions to implement Project Choice.



HOUSE RESOURCES COMMITTEE

DATE: March 12, 1993

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
1. Wastewater Briefing 8:30
2. HB 201 - Mental Health Lands Trust

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
(6) JEFF JESSEE	ASK	[illegible]	[illegible]		[illegible]	(Y)	N	HB 201
(5) R.B STILES	D+E VENTURES	1227 W 9th #201	99501		276-6818	(Y)	N	HB 201
(1) Ernie Mueller	Water & Wastewater Works Adv. BD	155 S. Seward Jno	99801		780-6888	Y	N	
(2) John Hargesheimer	"	P.O. Box 10134 FBX	99710		452-1414	Y	N	
(3) James Berg	"	18765 May Ct. Circle Eagle River	99577		696-4494	Y	N	
(4) Charles Cole	AG	Dept Law			465-3600	Y	N	
(7) David Walker	Atty for Stiling plaintiffs					Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

TCN: 30400

HOUSE RESOURCES COMMITTEE

DATE: Friday, Mar. 19, 93

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
1. Project Chariot Briefing
2. HB 201

Please Print and fill in all information

	NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
(2)	Douglas Parker	ADEC	1001 Noble St #350, Fairbanks	99701	457-1421	451-2172	Y	N	Project Chariot
(4)	Tom Waldo	SCLDF - Public Interest Intervenors	325 Fourth St, Juneau, ~~AK~~	99801		586-2751	(Y)	N	H.B. 201 available to answer questions
(1)	Meade Treadwell	Deputy Comm. ADEC	410 W. Willoughby Ave. Suite 105	99801-1795		465-5050	(Y)	N	Proj Chariot
(3)	Rick Johnssen	Mtn Rep. Coal Co.	1029 W 3rd Suite 300	99501		279-8561	Y	N	HB 201
(4)	Brian Bjorkquist	AL	1031 W. 4th Suite 200 Anchorage	99501-1994		269-5710	(Y)	N	HB 201
(5)	Roger Burggraf		830 Sharp Creek Rd. FBX	99704		479-2596	(Y)	N	HB 201
(4)	Charlie Bobby C Badie		122 1st Ave #302 FBX	99701		452-2625	Y	N	HB 201
(7)	Harold Gillam		104 2nd Ave FBX	99701		452-2534	(Y)	N	HB 201
							Y	N	
							Y	N	
							Y	N	

Page ___ of ___

HOUSE RESOURCES COMMITTEE

DATE: March 29, 93

PLACE: Capitol, Room 124

SUBJECT OF MEETING:

HB 76
HB 132
HB 201 Mental Health Lands Amendments

Please Print

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Rick Johannsen	Coalition for Alternative Settlement	1029 W Third Ave Suite 300 Anchorage, AK	19501	561-0406	279-8561	(Y)	N	HB201
Angie Wieland	Kachemak Bay Citizens Coalition	1421 N St Anch	99501	276-5477	—	(Y)	N	HB 76
BRIAN ANDREWS	DOR			465-7880		Y	N	HB201 / Questions
RUSSELL HEATH	ALASKA ENVIRONMENT [illegible]	PO Box 22151 Juneau AK	99801	463-3366	463-3366	(Y)	N	HB76
TOM WALDO	SCLOF - Public Interest Intervenor	335 4th St Juneau	99801		586-2757	Y	N	HB 201 / Questions
[illegible]	[illegible]	[illegible]			[illegible]	Y	N	HB 201
[illegible]		[illegible]				Y	N	HB 201
Bruce Phelps	Dept of Law	3601 C St. Ste 680 Anchorage			762-2239	Y	N	
						Y	N	
						Y	N	
						Y	N	

03/19/93
08:49:14

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:30400 SCHEDULED FOR:03/19/93 08:45 TO 10:00
PUBLIC HEARING HOUSE RESOURCES

LTN1150
BY:MAT
FOR:MAT

LOCATION:MATSU

HB 201	MS	HENRIETTA NUGEN	TESTIFY

03/19/93 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
08:51:17 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC
TCN:30400 SCHEDULED FOR:03/19/93 08:45 TO 10:00 FOR:ANC
PUBLIC HEARING HOUSE RESOURCES

LOCATION:ANCHORAGE

HB 201	R.B.	STILES		OBSERVE
HB 201	RICK	JOHANNSEN	COALITION IN SP	TESTIFY
HB 201	BRIAN	BJORKQUIST	ATTY GENERAL	TESTIFY
HB 201	KENT	DAWSON		OBSERVE
HB 201	BILL	BOBRICK		OBSERVE
HB 201	CLIFF	EAMES	AK CNTR ENVIRON	OBSERVE

03/19/93 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
09:04:55 PARTICIPANT LIST (ALL PARTICIPANTS) BY:FBX
TCN:30400 SCHEDULED FOR:03/19/93 08:45 TO 10:00 FOR:FBX
PUBLIC HEARING HOUSE RESOURCES

LOCATION:FAIRBANKS

HB 201	MR.	ROGER	BURGGRAF	SELF	TESTIFY
HB 201	MR.	CHARLIE	BODDY	USIBELLI COAL	TESTIFY
HB 201	MR.	HAROLD	GILLIAM	SELF	TESTIFY