

**ALASKA LEGISLATURE**

**1125**

**HOUSE and SENATE FINANCE COMMITTEE FILES,**

**1993-1994**

99

Page 12, line 29:

Delete "(b)"

Insert "(c)"



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 275-7997 Telephone: (907) 276-0347

April 14, 1994

Honorable Steve Frank  
Honorable Dru Pearce  
Senate Finance Committee  
Juneau, AK 99801

RE: CSSB-67, Mental Health Trust Lands

Dear Senators Frank and Pearce,

The Alaska Miners Association wishes to go on record in support of CSSB-67 regarding Mental Health Trust lands. It is time that this issue be settled and we urge that this bill be passed this session.

One essential point included in this bill is that management of the Mental Health Trust lands will be by the Department of Natural Resources. This applies to both the original Trust lands and the substitute lands. We understand this to mean that Title 38.04 and 38.05 will apply to these lands and that the permitting requirements, access provisions, easement provisions, claim rentals, production royalties, etc. required for state lands will apply to the original and substitute lands. This is extremely important for long term stability for all users of the lands and especially the mining industry.

If we had the choice we would change several items in the bill to clarify the above points. However, we recognize that this bill must be passed this session and we therefore ask that the bill be passed as it now reads.

Thank you for your consideration and for all the work that has gone into settling this important issue. If you have any questions please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Commissioner Noah

Becy 2367 file

# Cordova District Fishermen United



P.O. Box 939

Cordova, Alaska 99574

(907) 424-3447 FAX (907) 424-3430

March 17, 1994

Ron Swanson, Director  
Division of Land  
Department of Natural Resources (DNR)  
3601 C Street, P.O. Box 107005  
Anchorage, AK 99510-7005

MAR 20 1994

Dear Mr. Swanson:

We appreciate the opportunity to comment on the Mental Health Trust land selections. This matter is of great concern to the community of Cordova and the commercial fishermen of Area E. Before explaining our opposition to specific tracts of land in the proposed selections, we need to point out three major areas of concern.

- First, CDFU is strongly opposed to the selection of any lands adjacent to or inclusive of anadromous salmon streams and vital watersheds.
- Second, CDFU is very disturbed by the lack of public notice concerning the comment period for the Mental Health Trust land selection. One set of incomprehensible, incomplete maps mailed to an interim city manager is not sufficient public notice for a land selection of this magnitude.
- Third, how is the public expected to make informed comments on the proposed selections when neither DNR nor the Mental Health Trust plaintiffs are forthcoming with the intended usage of these lands?

Following, in the order of priority, are detailed comments regarding specific Mental Health Trust selections that are of concern to CDFU:

- **C70247 and C20744**  
Our discussions with the local government leaders indicates that these tracts have already been selected by the University of Alaska and are no longer available for selection by the Mental Health Trust. CDFU supports the City of Cordova's position that these parcels should remain in the ownership of the University of Alaska.
- **C20241.002**  
CDFU opposes the selection of this parcel on the grounds that it encompasses an important municipal watershed. It includes Meals Reservoir, a water pipeline which carries water from Heney Creek to the reservoir, and part of the watershed for Murcheson Creek. It is of obvious importance that the city remain in control of its own watershed.
- **C70224**  
This is municipal watershed land that contains Orca Creek which is a very important source of water for the city. For this reason, CDFU opposes the selection of this land.
- **C70241**  
This land is adjacent to Crater Lake and contains several drainages which are also part of the local water supply. CDFU opposes this parcel selection also because it is a high use recreation area for residents of Cordova. It contains the Mt. Eyak Ski Hill which the city operates under lease to the state. This area has also been proposed as a state park.

• C20002, C20039 and C70003 (McCarthy Road selections)

The first two selections are located upslope from the Lakina River, where sockeye and coho salmon pass to enter Long Lake to spawn. This is a major spawning area for Copper River sockeye and coho salmon. Long Lake is a vital rearing habitat for the fry of these two salmon species. This lake also supports populations of steelhead, kokanee, burbot, dolly varden, grayling and other species. Long Lake produces up to 100,000 returning adult sockeye salmon, 60% of which are harvested by commercial, sport, subsistence and personal use fishermen in the Copper River drainage. The development of these parcels will seriously impact the health of these stocks by increasing siltation and contamination, and other types of pollution. Access to the lake shore—a popular public fishing area—will be severely hampered if parcel C70003 is selected. Selection of these parcels is not in the best interests of the state.

• Crosswind Lake

This is a key remote release site for sockeye salmon fry reared at the Gulkana hatchery. According to the ADF&G and Prince William Sound Aquaculture Corporation, approximately 8.4 million fry are released into this lake and contribute an estimated 125,000 adult sockeye salmon to all user groups in the Copper River drainage. Commercial development of the lake shore will adversely affect the water quality in the area and, in turn, risk the health of these stocks. In addition, Crosswind Lake is a high use recreation area.

Many Alaskans and visitors enjoy hiking and camping in the area during the summer, and snow-machining in the winter.

• C20240

This area includes Fleming Spit, a highly used recreation area that is a remote release site for coho and king salmon. This area benefits local sport fishermen and is expected to become a magnet for tourists.

• C70221 and C70235

These parcels represent important subsistence hunting grounds for the residents of Cordova. Sitka Black Tail Deer are an important staple for Cordovans, especially in a time of economic hardship. Cordova is struggling to diversify its economy and is looking at tourism as one means to do so. If these parcels are selected by the Mental Health Trustees for prospective timber harvesting, there will be adverse aesthetic effects. In our experience, tourists do not like clearcuts.

In conclusion, CDFU believes that deletion of the above mentioned parcels from the Mental Health Trust selection is in the best interest of the public, Cordovans, and all users of the fisheries resources along the Copper River. If you have any questions or need additional information, please do not hesitate to contact us any time. Thank you for your consideration.

Sincerely,

CORDOVA DISTRICT FISHERMEN UNITED



Dorne Hawxhurst for the Board of Directors

cc: Commissioner Rosier, ADF&G  
Director Frank Rue, Habitat & Restoration, ADF&G  
City of Cordova  
Wayne Donaldson, ADF&G  
State Senators  
State Representatives

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

(907) 586-3537

DAVID T. WALKER  
GERALD K. DAVIS, JR.

TELECOPIER:  
(907) 586-1050

April 21, 1994

**HAND DELIVERED**

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

Re: Senate Bill 67/Settlement of the  
Mental Health Trust Land Litigation

Dear Senator Pearce:

Senate Bill 67 has been identified as the vehicle for legislation resolving the Mental Health Trust Lands Litigation, Weiss v. State, 4FA-82-2208-Civil. The language of CSSB 67 (2d FIN) has been provided in its entirety by the administration. In presentations to the legislature Attorney General Botelho and Commissioner Noah have discussed the renewed settlement negotiations and the administration's legislative proposal in very positive terms.

As you know, I represent Vern T. Weiss, et al., original Plaintiff and class representative in this class action litigation. I would like to confirm that the parties are actively negotiating for a settlement. We are hopeful that our negotiations will come to fruition and we are all cognizant of the fact that any settlement will require legislation as well as court approval. I know that it will not be helpful for the legislature to learn at the last minute that a measure it has under active consideration is unacceptable to a party to the negotiations. It is for that reason that I write this letter.

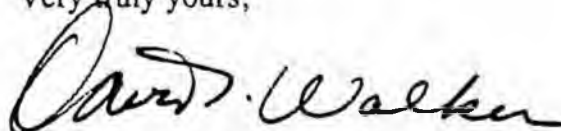
The administration's proposal presented in Chenoweth's work draft CS for Senate Bill No. 67 (2d FIN), is not a settlement. It purports to buy out the Trust by funding the Mental Health program. It unfairly characterizes the beneficiaries and is in fact unacceptable to all the parties who represent beneficiaries. It is unrealistic to think that the measure would be accepted by the Plaintiffs or approved by the court. Any negotiated settlement will be very different from the proposition outlined in SB 67.

I do not wish to cast a pall upon the settlement efforts. I am cautiously optimistic that we will be able to negotiate a settlement and present it to the legislature for consideration this session, but we have a long way to go and little time to do it in. I ask that you share my optimism for settlement

Senator Drue Pearce  
April 21, 1994  
Page 2

while recognizing that the work draft CSSB 67 (2d FIN) presently under consideration by the Committee fails utterly to achieve our goal.

Very truly yours,

A handwritten signature in cursive script that reads "David T. Walker". The signature is written in black ink and is positioned above the printed name.

David T. Walker

DTW:ndp

cc: Committee Members

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, 1994

**HAND DELIVERED**

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

Re: Senate Bill 67/Settlement of the  
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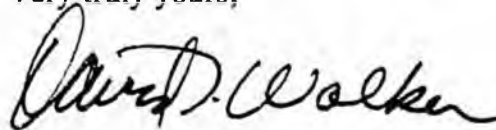
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April 21, 1994  
Page 2

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Very truly yours,

A handwritten signature in cursive script, appearing to read "David T. Walker".

David T. Walker

DTW:ndp

cc: Committee Members

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FAX: (907) 465-3886

APR 21 1994

April 20, 1994

The Honorable Drue Pearce  
The Honorable Steve Frank  
Co-Chairs Senate Finance Committee  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator's Pearce and Frank:

At the hearing on the Mental Health Bill (SB 67) held on April 16, a question was asked about how much original mental health land is located within Legislatively Designated Areas.

The attached chart provides this information.

Please feel free to contact me or Ron Swanson, Director, Division of Land if you have any additional questions.

Sincerely,



Harry A. Noon  
Commissioner

cc: Ron Swanson

**Mental Health Land Located Within Legislatively Designated Areas**

| <b>Game Refuges</b>                          | <b>Acres</b>     | <b>OTL</b> |
|--|------------------|------------|
| Anchorage Coastal Wildlife Refuge            | 32,500           | 780        |
| Creamer's Field Migratory Waterfowl Refuge   | 1,664            | 2.5        |
| Goose Bay State Game Refuge                  | 10,880           | 453        |
| Mendenhall Wetlands State Game Refuge        | 3,800            | 247        |
| Susitna Flats State Game Refuge              | 300,800          | 38,577     |
| Trading Bay State Game Refuge                | 160,960          | 3,840      |
| <b>Critical Habitat Areas</b>                |                  |            |
| Chikot River Critical Habitat Area           | 4,800            | 3,647      |
| Dude Creek Critical Habitat Area             | 4,083            | 3,400      |
| <b>Forestry Designations (AS 41.15-17)</b>   |                  |            |
| Haines State Forest Resource Management Area | 247,000          | 100,000    |
| Tanana Valley State Forest                   | 1,786,000        | 31,955     |
| <b>Park Units (AS 41.21-23)</b>              |                  |            |
| Alaska Chikot Bald Eagle Preserve            | 49,000           | 27,421     |
| Chena River State Recreation Area            | 254,080          | 91,512     |
| Chikot State Park                            | 6,045            | 3,270      |
| Chugach State Park                           | 495,000          | 14,197     |
| Kachemak Bay State Park                      | 165,370          | 7,520      |
| Kenai River Special Management Area          | 2,693            | 872        |
| Nancy Lake State Recreation Area             | 22,685           | 1,709      |
| <b>Other Designations</b>                    |                  |            |
| Matanuska Valley Moose Range                 | 132,500          | 37,529     |
| State Forests                                | 131,955          |            |
| Other LDA's                                  | <u>234,976.5</u> |            |
|  | 366,931.5        |            |

4-15-94  
SFC  
Noah

Handouts To Accompany Comments Made By

Attorney General Bruce Botelho

and

Dept. of Natural Resources Commissioner Harry A. Noah

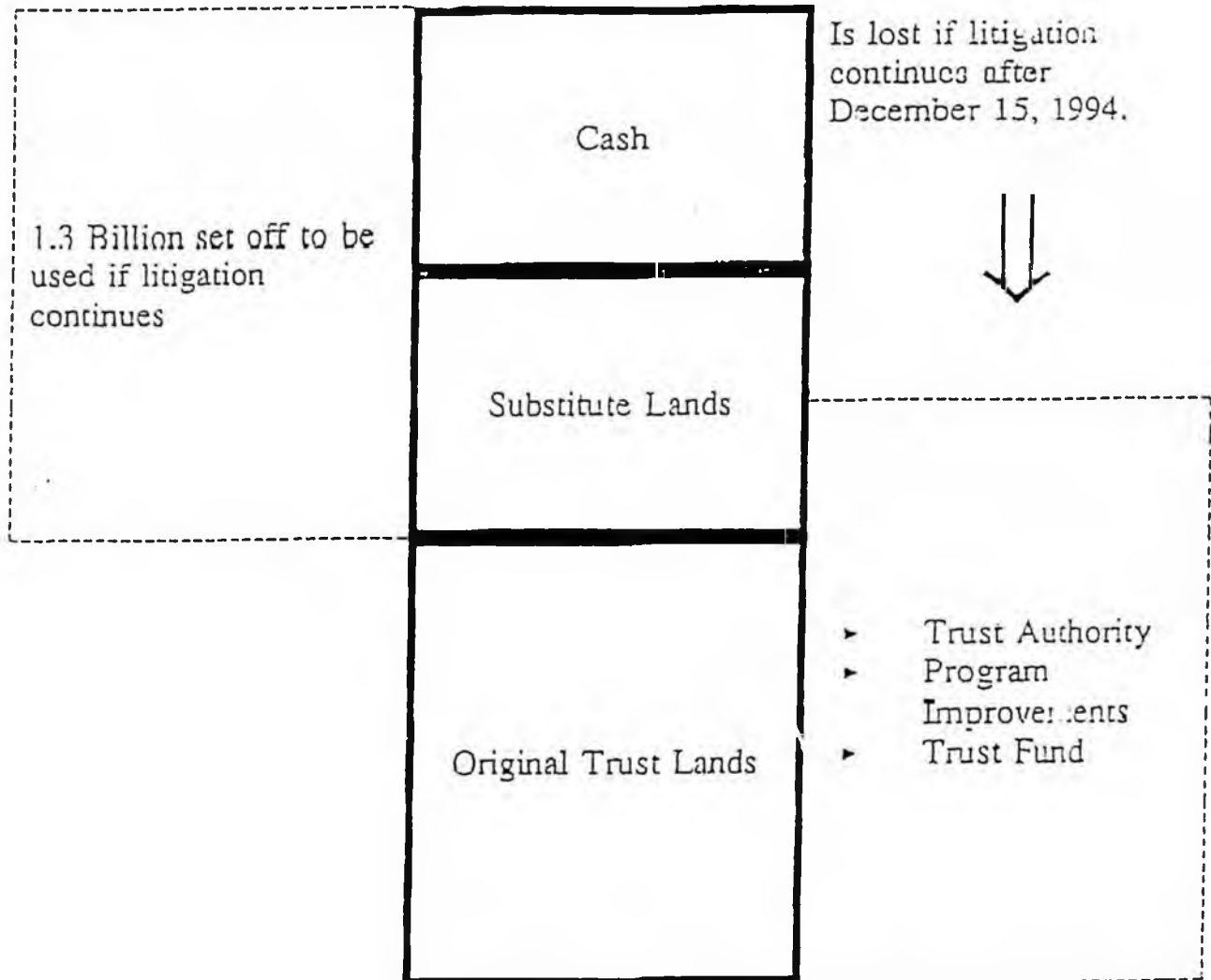
On SB 67

Before Senate Finance Committee

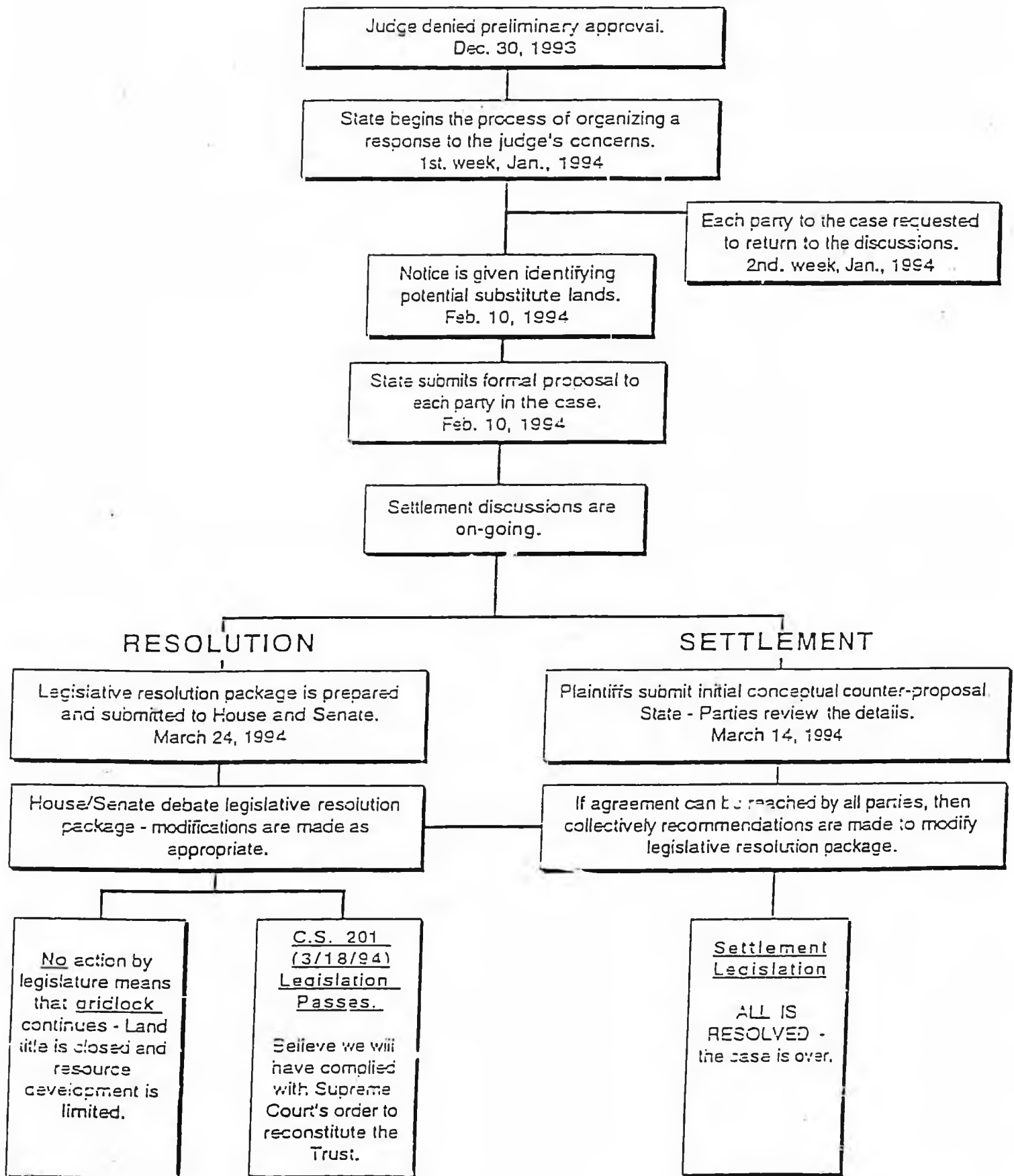
April 12, 1994

# Reconstructed Trust

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# MENTAL HEALTH SCHEDULE of EVENTS



ASSUMPTIONS USED IN RECONSTRUCTION OF  
THE MENTAL HEALTH LANDS TRUST

1. That as much of the original Mental Health Trust Lands available should go back into the trust.
2. That protecting the lands not returnable to the trust is important to a wide range of people and groups throughout the state. (these lands are owned by private individuals, municipalities, and lands set aside for parks, state forests and wildlife refuges).
3. This bill builds on the approach laid out in Chapter 66, to substitute other state lands to act as a portion of the compensation package for the original trust broken up in 1978.
4. The compensation to the trust for subsurface values lost from the original trust has been one of the major sticking points in the long term battle over this issue. This land package addresses that issue by attempting to either return original trust land subsurface estate to the trust or to substitute similar geologic lands to the trust.
5. The administration has not used the 1.3 billion dollar offset \*as part of reconstructing the trust.

\*(the offset was defined by the Supreme Court in 1985 as the money the state has spent on mental health programs since 1978. that amount is approximately 1.3 billion dollars).

SUMMARY OF ACREAGE AND PARCELS  
RECONSTRUCTION OF MENTAL HEALTH TRUST

- Original Entitlement, Mental Health Trust Lnds: 1,000,000 acres
- Land not to be returned to the Mental Health Trust: 530,865 acres

| <u>Land Categories</u>       | <u>Acres</u>  |
|------------------------------|---------------|
| Third Party Purchasers       | 45,845        |
| Municipal Conveyances        | 43,331        |
| University Settlement        | 3,708         |
| CIRI Land Exchange           | 28,449        |
| State Agencies               | 3,565         |
| Native Allotments            | 3,817         |
| LDAs                         | 232,017       |
| State Forests (Haines, TVSF) | 131,955       |
| Chena Condemnation           | 5,335         |
| Other                        | <u>32,843</u> |
| Total                        | 530,865       |

- Land available to be returned to Mental Health Trust from original Entitlement:\*
- |              |         |
|--------------|---------|
| total estate | 466,180 |
|--------------|---------|

- Land proposed to be designated as Mental Health Trust Land: (substitute Lands)

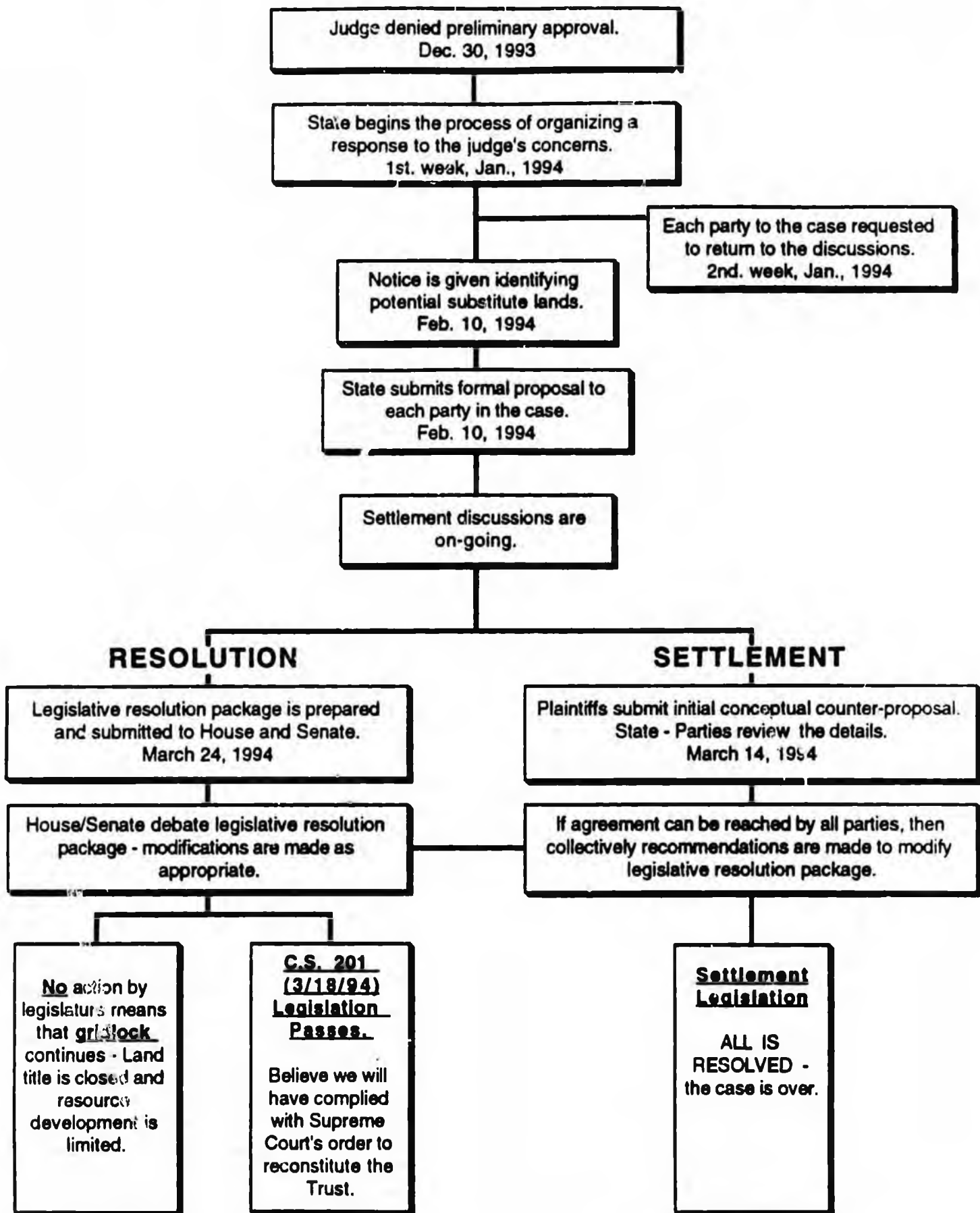
|                                   |                           |
|-----------------------------------|---------------------------|
| Substitute Land<br>(total estate) | 356,884                   |
| Subsurface only                   | <u>127,037</u><br>483,921 |

- \* In addition there are 98,398 acres of subsurface only lands available to be returned to the Trust.

- Total of all lands to be returned or designated as Mental Health Trust Land:

|                        | <u>Acres</u>   |                        | <u>Acres</u>   |
|------------------------|----------------|------------------------|----------------|
| Total estate           |                | Split estate           |                |
| Original Lands         | 446,180        | Original Lands         | 98,398         |
| State Replacement Land | <u>360,184</u> | State Replacement Land | <u>127,037</u> |
| Total                  | 826,364        | Total                  | 225,435        |

# MENTAL HEALTH SCHEDULE of EVENTS



Judge denied preliminary approval.  
Dec. 30, 1993

State begins the process of organizing a  
response to the judge's concerns.  
1st. week, Jan., 1994

Each party to the case requested  
to return to the discussions.  
2nd. week, Jan., 1994

Notice is given identifying  
potential substitute lands.  
Feb. 10, 1994

State submits formal proposal to  
each party in the case.  
Feb. 10, 1994

Settlement discussions are  
on-going.

## RESOLUTION

Legislative resolution package is prepared  
and submitted to House and Senate.  
March 24, 1994

House/Senate debate legislative resolution  
package - modifications are made as  
appropriate.

No action by  
legislature means that gridlock  
continues - Land  
title is closed and  
resource  
development is  
limited.

C.S. 201  
(3/18/94)  
Legislation  
Passes.  
Believe we will  
have complied  
with Supreme  
Court's order to  
reconstitute the  
Trust.

## SETTLEMENT

Plaintiffs submit initial conceptual counter-proposal.  
State - Parties review the details.  
March 14, 1994

If agreement can be reached by all parties, then  
collectively recommendations are made to modify  
legislative resolution package.

Settlement  
Legislation  
  
ALL IS  
RESOLVED -  
the case is over.

**MENTAL HEALTH  
GIVENS**

MARCH 24, 1994

1. The Court and Plaintiffs' lawyers have agreed that the Land Trust would not have been able to fully fund the mental health programs, nor will it in the future.
2. The Legislature will continue to fund mental health programs at appropriate levels given the state's resources.
3. The effort we are focused on is to cure the breach of trust taken in 1978 - NOT to debate the level of funding for the mental health programs.
4. It is in all the parties best interest to bring an end to the Mental Health dispute and, therefore, a fair agreement should be reached.
5. That *settlement* of the case is the best solution and the state is open to discuss settlement options that will fully resolve the case.
6. Because this is a class action lawsuit, any action taken to resolve the issue will have to be reviewed by the courts.

**CONCERNS OF EACH GROUP**  
 March 24, 1994

| Mental Health Lawyers #1   | Mental Health Lawyers #2   | Environmental Groups  | Resource Development Groups   | Municipalities  | Third Party Land Owners |
|--|--|---|---|---|-------------------------|
| <p>*want to reconstruct the trust as close as possible to original</p> <p>*want trust authority to manage lands</p> <p>*want trust authority to determine how money is spent</p> | <p>*wants more assurance that trust will have some cash flow</p> <p>*wants trust authority to determine how money is spent</p> <p>*are worried by the administrative costs of managing trust lands</p> | <p>*do not want additional land to go into the trust</p> <p>*wants some original mental health trust land out of trust</p> <p>*wants DNR management of lands under Title 38</p> | <p>*do not want additional lands to go into the trust</p> <p>*wants lands managed by DNR under Title 38</p> | <p>*to maintain the lands they have received from the state that were mental health lands</p> <p>*to complete their municipal land entitlement selection process</p> <p>*to limit the amount of lands currently selected by the municipalities going into the trust</p> | <p>Free</p>             |

**HOW CS ADDRESSES EACH GROUP'S CONCERNS**  
 March 24, 1994

| Mental Health Lawyers #1   | Mental Health Lawyers #2  | Environmental Groups   | Resource Development Groups   | Municipalities   | Third Party Land Owners   |
|--|---|--|---|--|---|
| <p>*Reconstruct the trust</p> <p>*including substituted lands proposed by this group</p> <p>*maintain those provisions in Chapter 66 which set up trust--allow for say in how money is spent</p> | <p>*State offer cash as part of the settlement</p> <p>*trust authority stays in place</p> <p>*DNR management to address administrative cost issue</p> | <p>*DNR management with current regulatory scheme used to the extent possible under the Mental Health Enabling Act</p> | <p>*eliminates most large projects currently permitted</p> <p>*DNR management with current regulatory scheme used to the extent possible under the Mental Health Enabling Act</p> | <p>*Extension of 2 years to select other lands if land is designated for mental health</p> <p>*clear title will allow current selections to be finalized</p> | <p>*reconstruction of the trust can lead to the clearing of title</p> |

4-15-94  
SFC  
Woon

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 1-A  
Sen. Taylor  
Rep. Williams

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                   | Resource Description                              | Status   |
|---------------------------------------|---|--|
| <u>Ketchikan</u><br>C-20921-Swan Lake | Hydropower facility.                              | Deleted.   |
| C-70932-Leask Lakes                   | Commercial timber, recreation, sensitive habitat. | Deleted.   |
| C-71084-Black Sands Beach             | Community recreation area.                        | Deleted beach area and islands; remainder of parcel to be included in Trust. |
| C-70854-Traitor Cove                  | Remote residential development.                   | Included in Trust; public access retained.                                   |

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels                      | Resource Description | Status             |
|--|----------------------|--------------------|
| <u>Ketchikan</u><br>C-3158-Deer Mountain | Timber, recreation.  | Included in Trust. |

District 1-B  
Sen. Taylor  
Rep. Grussendorf

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                     | Resource Description                   | Status  |
|---|--|---|
| <u>Wrangell</u><br>C-20774-Tyee Lake    | Hydropower facility.                   | Delete.   |
| C-20773-Bradfield Canal                 | Future highway & community, port site. | Included in Trust; public access provided.                        |
| C20767-Earl West Cove                   | Remote residential.                    | Included in Trust.  |
| <u>Petersburg</u><br>C-20604-Thomas Bay | Remote settlement.                     | Included in Trust.  |
| C-20605-Kupreanof-North                 | Remote settlement, habitat.            | Deleted.  |
| C-20709-Wrangell Narrows                | Community development, recreation.     | Included in Trust.  |
| C-20720-Crystal Lake                    | Hydropower facility, hatchery.         | Deleted.  |
| C-20722-Woodpecker Cove                 | Recreation, settlement, timber.        | Deleted.  |
| C-70641-Frederick Point                 | Timber, recreation.                    | Deleted northern part of parcel; southern part included in Trust. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 1-B (cont.)  
Sen. Taylor  
Rep. Grussendorf

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels   | Resource Description   | Status             |
|---|------------------------|--------------------|
| <u>Petersburg</u><br>CRM-2099 and others; east side,<br>Wrangell Narrows  | Community development. | Included in Trust. |
| <u>Kupreanof</u><br>CRM-1999 and others; west side of<br>Wrangell Narrows | Community development. | Included in Trust. |
| <u>Wrangell</u><br>CRM-2406 and others                                    | Community development. | Included in Trust. |

District 3-B & 4-B  
Sen. Duncan  
Rep. Ulmer  
Rep. Hudson

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels  | Resource Description                                     | Status   |
|--|--|--|
| C-20468, 20469, 20471, 20472-<br>Kensington Mine tidelands | Mineral development access, habitat.                     | Deleted.   |
| C-20491-North Douglas Island                               | Community expansion.                                     | Deleted boat launch; remainder<br>included in Trust. |
| C-20493-Juneau Yacht Club<br>parking area                  | Future expansion of boat harbor and<br>support facility. | Deleted.   |
| C-20497-Marine Hwy Bld                                     | State facility.  | Deleted.   |
| C-20499-Juneau Support                                     | State shops, storage, waterfront<br>development.         | Included in Trust.                                   |
| C-20500-Telephone Hill                                     | Community development.                                   | Deleted.   |
| C-20526-Lake Dorothy                                       | Potential hydropower site.                               | Included in Trust.                                   |
| C-20527-Snettisham   | Hydropower site, hatchery.                               | Deleted.   |
| C-70508-Gastineau Channel                                  | Recreation, tidelands and submerged<br>lands.            | Deleted.   |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 5-C  
Sen. Zharoff  
Rep. Mackie

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels  | Resource Description                                | Status  |
|--|---|---|
| <u>Prince of Wales Island</u><br>Numerous small parcels at Edna Bay, Hollis, Naukati, Coffman Cove | Community development, recreation.                  | Deleted parcels with existing or planned community facilities.                                    |
| C-20721-No Name Bay  | Remote settlement.                                  | Deleted.  |
| C-70871-Thorne Bay Timber-POW Island   | Commercial timber.                                  | Included in Trust.  |
| <u>Gustavus</u><br>C-20481-School and other public facilities                                      | Public facilities, NPS facilities.                  | Deleted.  |
| C-21102  | Gustavus airport.                                   | Deleted.  |
| C-70474  | Recreation area, material source.                   | Included in Trust.  |
| <u>Elfin Cove</u><br>C-20513-Elfin Cove  | Community development.                              | Deleted parcels for planned community development; port development tract included in Trust.      |
| <u>Yakutat/Yakataga</u><br>C-20439-City of Yakutat   | Community development.                              | Deleted parcel needed for community development; residential subdivision tract included in Trust. |
| C-70303, C-70307-Coastal strip-Tsiu, Duktoth River   | Commercial, subsistence and sport fishing, habitat. | Deleted.  |
| C-70296 and others-Cape Yakataga timber  | Timber, minerals, habitat.                          | Deleted.  |
| <u>Skagway</u><br>C-20454 and others-river area and upland   | Community development, watershed, gravel source.    | Deleted.  |
| C-20440-20445, C-20455-20459, and others-Dyea historic areas                                       | Historic area.                                      | Deleted.  |
| C-20446, C-20447, C-20456.002-area west of Skagway   | Residential development.                            | Included in Trust.  |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 6-C  
Sen. Zharoff  
Rep. Davidson

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels   | Resource Description | Status   |
|-----------------------|----------------------|----------|
| S-70586 Shuyak Island | Recreation, timber.  | Deleted. |

District 7-D  
Sen. Little  
Rep. Phillips

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels            | Resource Description              | Status   |
|--------------------------------|-----------------------------------|----------|
| S-70212, S-20211.001-Bear Cove | Recreation, settlement, forestry. | Deleted. |

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels                                      | Resource Description | Status             |
|--|----------------------|--------------------|
| <u>Homer area</u><br>CRM-414 and others-Little Tutka Bay | Recreational lots.   | Included in Trust. |
| CRM-422D-J kolof Bay                                     | Recreation, timber.  | Included in Trust. |

District 8-D  
Sen. Little  
Rep. Davis

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                  | Resource Description              | Status   |
|--------------------------------------|-----------------------------------|--|
| S-20100, 70078 and others-Moose Pass | Recreation, settlement, forestry. | Specific parcels near Moose Pass settlement and along the shoreline of Lower and Upper Trail Lakes deleted. Setbacks along Trail River and Trail Lakes established. Parcels south of Moose Pass included in Trust. |
| S-20015-20017, 20023-20027           | Recreation, habitat.              | Specific parcels deleted; public access retained.  |
| S-20175, S-20176-Kenai Lake (west)   | Recreation, settlement.           | Deleted.   |
| S-20110, S-20111-Kenai Lake (east)   | Recreation.                       | Deleted.   |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 9-E  
Sen. Salo  
Rep. Navarre

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                    | Resource Description    | Status   |
|--|-------------------------|----------|
| S-70369 Girdwood Glacier-Winner Creeks | Commercial, recreation. | Deleted. |

District 9E & 36R  
Sen. Salo  
Rep. Navarre  
Sen. Lincoln  
Rep. Nicholia

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels   | Resource Description | Status             |
|-----------------------|----------------------|--------------------|
| S-70437 Granite Point | Potential port site. | Included in Trust. |

District 11-F  
Sen. Pearce  
Rep. Nordlund

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                    | Resource Description      | Status   |
|--|---------------------------|----------|
| S-20633 Anchorage-Sand Lake-Raspberry Road school site | Community development.    | Deleted. |
| S-20451 & 20452 Kincaid Park/International Airport     | Park, airport facilities. | Deleted. |

District 19-J, 22-K  
Sen. Donley  
Rep. Sanders  
Sen. Kelly  
Rep. Barnes

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                        | Resource Description  | Status   |
|--|---|----------|
| S-70482, 20484, 20486 Anchorage-Tudor Road | Settlement, public facilities: National Guard and other state facilities. | Deleted. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 27-N  
Sen. Kertulla  
Rep. Larson

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                | Resource Description                                     | Status                              |
|------------------------------------|--|-------------------------------------|
| S-20568-20569 Wishbone Hill access | Settlement, recreation; access to Wishbone Hill project. | Include in Trust; access protected. |

District 28-N  
Sen. Kertulla  
Rep. Menard

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                  | Resource Description                  | Status   |
|--|---------------------------------------|----------|
| <u>Talkeetna</u><br>S-70621, 20620 Talkeetna Airport | Airport and borough facilities.       | Deleted. |
| <u>Willow</u><br>S20573, 20574 Willow airport        | Airport.                              | Deleted. |
| S20576-S20578 Willow                                 | DOT/PF maintenance facility, airport. | Deleted. |

District 29-0  
Sen. Frank  
Rep. Davies

| Significant Parcels | Resource Description | Status   |
|---------------------|----------------------|--|
| F-70015             | Mineralized area.    | Ft. Knox project area deleted; remainder of tract included in Trust. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 33-Q  
Sen. Miller  
Rep. Therriault

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                  | Resource Description             | Status  |
|--------------------------------------|----------------------------------|---|
| F-20413 Lower Chatanika River        | Recreation, habitat, campground. | Lower Chatanika campground deleted.                                       |
| F-20494-Harding Lake                 | Public recreation-campground.    | Deleted.  |
| F-20601, 20602, 20603-Quartz Lake    | Public recreation-campground.    | Deleted.  |
| F20503-20506-Salcha River:           | Private & public recreation.     | Included in Trust; setback on Salcha River.                               |
| F-70472-Upper Chatanika River        | Public recreation-campground.    | Included in Trust except for campground. 300' setback on Chatanika River. |
| F-20492-Salcha River recreation site | Recreation-campground.           | Deleted.  |

District 34-Q  
Sen. Miller  
Rep. Jones

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels      | Resource Description               | Status             |
|--------------------------|------------------------------------|--------------------|
| F020359-20363 North Pole | Public facilities, MAPCO Refinery. | Deleted.           |
| Denali Borough-numerous  | Community development.             | Included in Trust. |

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels         | Resource Description   | Status             |
|-----------------------------|------------------------|--------------------|
| FM-1266 and numerous others | Community development. | Included in Trust. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 35-k  
Sen. Lincoln  
Rep. Olberg

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels  | Resource Description                | Status   |
|--|-------------------------------------|--|
| <u>Cordova area</u><br>C-70249-Cordova airport                       | Airport, public facility.           | Deleted.   |
| C-70224-Orca Creek   | Watershed; municipal water supply.  | Deleted.   |
| C-70241.002-Mt. Shiels   | Watershed; municipal water supply.  | Deleted.   |
| C-70241-Mt. Eyak   | Recreation.                         | Deleted.   |
| C70220, 70221, 20234, 20235-<br>Hawkins Island                       | Timber, recreation.                 | Deleted.   |
| <u>Valdez area</u><br>C-70216, 20218, 20219-Jack Bay                 | Remote settlement, habitat.         | Included in Trust.                                       |
| C-70199 Anderson Bay   | TAGS Terminal.                      | Deleted.   |
| C70195 Solomon Gulch   | Hydro plant, hatchery.              | Deleted.   |
| C-20134-20137-DOT/PF &<br>Harborview                                 | Public facilities: local and state. | Deleted.   |
| C-70142 Robe Lake (parts)  | Seaplane base, settlement, habitat. | Deleted seaplane base, wetland<br>areas near Robe River. |
| C-21103-Valdez airport   | State airport.                      | Deleted.   |
| <u>Crosswind &amp; Lake Louise</u><br>C-20034, 70028 and many others | Settlement, recreation.             | Included in Trust.                                       |
| <u>Kayak Island</u><br>C20433  | Historic site.                      | Deleted.   |
| <u>Delta Junction</u><br>numerous parcels with public<br>facilities  | Public facilities: local and state. | Deleted.   |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 36-R  
Sen. Lincoln  
Rep. Nicholia

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels  | Resource Description                | Status   |
|--|-------------------------------------|--|
| <u>Tok area</u><br>Numerous parcels with public facilities | Public facilities: local and state. | Deleted.   |
| C-70002, 20039, 70003, 70015, 70016, McCarthy-Long Lake    | Settlement, recreation.             | Deleted specific tracts adjacent to Long Lake and near McCarthy. |
| F-20807 Bettles Field                                      | Settlement, airport.                | Deleted.   |
| F-20694-20696 Yukon Crossing                               | Settlement, transportation.         | Deleted parcel F-20696-transportation facility.                  |
| F-20634 Tanana Airport                                     | State airport.                      | Deleted.   |
| K-70075, 70098, 70132 Nulato area                          | Mineralized area.                   | Deleted.   |

District 36-R, 40-T  
Sen. Lincoln  
Rep. Nicholia  
Sen. Jacko  
Rep. Moses

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                  | Resource Description | Status   |
|--------------------------------------|----------------------|--|
| S-70126 Talarik Creek, Pebble Copper | Access and minerals. | Included in Trust; caribou migration area protected. |

District 37-S  
Sen. Adams  
Rep. MacLean

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels               | Resource Description | Status             |
|-----------------------------------|----------------------|--------------------|
| K-70207, 70220, 70226 Wulik River | Minerals.            | Included in Trust. |
| U20002-Barrow Airport             | State airport.       | Deleted.           |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 38-S  
Sen. Adams  
Rep. Foster

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels              | Resource Description                | Status                                  |
|----------------------------------|-------------------------------------|---|
| K-20037, K-20047, K-20060 - Nome | Public facilities: local and state. | Deleted parcels with public facilities. |

5-5-93  
JFC 93

STATEMENT OF THE ATTORNEY GENERAL  
May 5, 1993

Following receipt of my letter yesterday recommending that the legislature enact amendments suggested to cure the infirmities in Chapter 66, SLA 1991, found by Judge Greene, a number of legislators have asked me the consequences of the legislature taking no action on these proposed amendments at this time. To avoid any misunderstanding of my views, I set them forth in writing.

If no action is taken by the legislature, I would initially urge the plaintiffs in the Weiss litigation to seriously consider the benefits of Chapter 66 even without the amendments. However, both hypothecation and exemption from AS 38.04 and 38.05 were important elements of the settlement from the plaintiffs' standpoint when we entered into it, and everything I have heard suggests that these provisions remain essential ingredients of settlement. As a consequence, if the recommended amendments are not enacted, in my view, a substantial likelihood exists that the plaintiffs will terminate the settlement agreement within the next 70 days.

If they terminate the agreement, the State has no alternative other than to begin implementing the Alaska Supreme Court's mandate to reconstitute the trust and it will promptly take steps to that end. The Court in 1985 instructed the State to reconstitute the trust by means of the following:

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.

State v. Weiss, 706 P.2d 681, 684 (Alaska 1985).

Not everyone agrees as to what the Court's mandate requires. Everyone does agree, however, that implementing the Court's instructions will unquestionably require land title litigation on an unprecedented scale, litigation involving several thousand individual parcels.

If we continue to proceed under Chapter 66, four categories of original mental health land would be released from involvement in this controversy. If Chapter 66 fails and the trust lands are reconstituted as required by the Supreme Court's mandate, these lands would be ensnarled in litigation for years. They are lands: (1) conveyed by the State to individual purchasers ("moms and pops"); (2) conveyed to Alaska Native corporations in litigation settlements and exchanges; (3) conveyed to municipalities; and (4) placed in legislatively designated areas.

All lands in each of these categories would have to be addressed by the court, would require that scores of Alaskans

intervene to protect their individual interests in the subject parcels, and would require huge expenditures of time and money (including significant expenditures of state money). As the Superior Court Judge said in her order denying immediate release from the injunction of the lands sold to the "moms and pops,"

The reconstitution of the trust, as mandated by the Supreme Court, is a herculean task. It will involve litigation in every judicial district in this state. It will necessitate adjudicating private third party rights to up to 3162 parcels of land, involving almost 50,000 acres of land which have been conveyed by the State. It will involve litigation regarding over 83,000+ acres of land conveyed to municipalities in 888 conveyances. The time, money, and effort spent at reaching a negotiated settlement is not unreasonable. It is a fraction of what it would take to litigate this case.

A second consequence of inaction by the legislature on the proposed amendments is that the preliminary injunction currently making it difficult for the State to take actions on original mental health lands would remain in place substantially longer than will be the case if Chapter 66 goes forward.

A third consequence of inaction by the legislature on the proposed amendments is that the 6.7 million acres originally hypothecated will remain embroiled in this case. The settling plaintiffs are virtually certain to appeal Judge Greene's invalidation of the original hypothecation, and Judge Greene or the Supreme Court would likely stay the effect of that invalidation pending appeal. Even if a stay is not entered, a Supreme Court reversal of Judge Greene's determination that hypothecation of the

6.7 million acres was invalid would return the lands to hypothecated status. The only way to reduce the amount of land subject to hypothecation in one way or another is to pass the recommended amendments.

As noted in Dennis Fradley's editorial in today's Anchorage Daily News,

Chapter 66 enjoys an advantage that none of the alternatives do. It has already passed the Legislature once and withstood the review of the Superior Court. Any of the other plans require going back to square one and starting the same process all over again.

This case has gone on too long already. The only way to ensure that we will move forward and not backward is to enact the recommended amendments. I urge that you do just that.

**BURR, PEASE & KURTZ**

A PROFESSIONAL CORPORATION

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TAX ID NO. 82-0037389

**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 99811Re: 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'

Senator Drue Pearce  
Senator Steve Frank  
May 5, 1993  
Page 2

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."

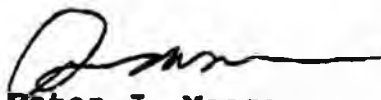
In short, while the settling plaintiffs are apparently assuming that the Cook Inlet leases will be on the reduced Hypothecated List, the State cannot allow those leases to be hypothecated under the "comparability" criteria of Chapter 66 without making a direct and drastic turn-about in its previously 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.

Senator Drue Pearce  
Senator Steve Frank  
May 5, 1993  
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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 State Legislature

Please enter into the record my testimony to the Senate Finance Committee  
 committee name  
 committee on SB 67, dated May 5, 1993  
 bill/subject

I urge the Senate Finance Committee to vote against the administration's amendments to chapter 66.

My main problem w/ the amendments are that they exempt <sup>the process of</sup> reconstitution of the trust from Alaska's land planning and classification laws. As we've witnessed earlier this year with the wolf management issue, dishonoring the public process will not wash in Alaska. I can't believe that the administration wants to leave the public out of important processes such as reconstituting the trust.

A better solution to the mental health dilemma is to return the 500,000 acres of original unencumbered trust land and a percentage of general fund revenues for the land that can't be returned.

Signed: Marie Beaver  
 Testifier

Representing (Optional)  
218 Priverway, Plko AK 99701  
 Address  
452-5021  
 Phone No.

# MEMORANDUM

Department of Natural Resources

State of Alaska

Division of Land

TO: Ron Swanson, Director

DATE: March 30, 1993

TELEPHONE NO.: 762-2239

FROM: Bruce Phelps, Project Manager  
Mental Health Settlement Unit

SUBJECT: Explanation of FY 94 Budget:  
CS FOR SB 67 (JUD)

This memorandum describes the activities associated with the funding provided in the Attachment. The level of effort reflects the trust reconstitution process and land management responsibilities specified under the CS for SB 67 (JUD).

## DIVISION OF LAND

### 7100 Personnel Services

The Division of land will perform extensive title, appraisal, mapping, and land management functions to carry out the requirements of this legislation. Under title activities, it will be necessary to segregate Original Mental Health Trust land (OMHTL) into the conveyable and non-conveyable categories established by the legislation. OMHTL parcels that are identified as non-conveyable must be mapped and included within the Mental Health Sub-system of the Land Administrative System.<sup>1</sup> Conveyable OMHTL must be identified, the terms and conditions of conveyance must be described, and these terms and conditions included within either patent or interim conveyance documents. The results of title research will then be re-written to correspond to the actual language used in Departmental conveyance documents. The results of this effort must be uploaded to the Land Administration System in order to annotate the textual and graphic record. In addition, it will be necessary to undertake limited survey work, and to identify the presence of hazardous substances on conveyable OMHTL. Although the CS for SB 67 eliminates the vast amount of survey work previously required under SB 67, some limited surveying will probably be necessary to establish a datum point. The Department will also actively manage OMHTL, and a new Department Order must be prepared. The requirement to manage conveyable OMHTL will continue in future years, although the need to manage non-conveyable should cease once the latter has been properly identified.

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<sup>1</sup> Although many aspects of the work involved in the Trust reconstitution process conducted under Chapter 66, SLA 1991, can be used, it will still be necessary to re-evaluate the results of this effort against the requirements of any new legislation that may be adopted.

### 7300 Contractual Services

Contractual services will be required for two activities: the inventory of hazardous substances and some limited cadastral survey of certain conveyable OMHTL. The former will identify the presence of such substances, for inclusion in the title conveyance documents.

## LAND RECORD INFORMATION SECTION

### 7100 Personnel Services

The Land Records Information Section (LRIS) will provide computer support extracting and reporting on information contained in the state's Land Administration System, and modifying existing computer systems to properly account for revenues. LRIS will provide geographic mapping at various scales and complexity as required by the project. LRIS will also be responsible for noting the final disposition of all affected lands to the graphic record, and will annotate the textual record on LAS for Legislatively Designated Areas held by the state as collateral.

PROJECT COSTS: MENTAL HEALTH TRUST RECONSTITUTION  
SB 67<sup>1</sup>

DIVISION OF LAND

| 7100 Personnel Services            | FY 94       | FY 95        |
|------------------------------------|-------------|--------------|
| Mental Health Project Team         |             |              |
| (1) Project Manager                | 86.3        | 86.3         |
| (1) Land Manager                   | 59.3        | 59.3         |
| (2) NRO II                         | 130.0       | 130.0        |
| (2) NRO I                          | 109.4       | 109.4        |
| (1) CT III                         | 39.9        | 39.9         |
| (1) DPC II                         | 41.5        | 41.5         |
| (1) College Intern                 | <u>13.5</u> | <u>13.5</u>  |
|                                    | 479.9       | 479.9        |
|                                    |             |              |
| Land & Resource Management         |             |              |
| (1) Cadastral Surveyor III (3 mo.) | 29.5        | 29.5         |
| (1) Cartographer II (3 mo.)        | 12.0        |              |
| Subtotal                           | 521.4       | 509.4        |
|                                    |             |              |
| 7200 Travel                        |             |              |
|                                    |             |              |
| Mental Health Project Team         | <u>1.5</u>  | <u>1.5</u>   |
| Subtotal                           | 1.5         | 1.5          |
|                                    |             |              |
| 7300 Contractual Services          |             |              |
|                                    |             |              |
| Mental Health Project Team         |             |              |
| Hazardous Substance Inventory      | 125.0       | 75.0         |
|                                    |             |              |
| Land & Resources                   |             |              |
| Cadastral Survey                   | <u>50.0</u> | <u>250.0</u> |
| Subtotal                           | 175.0       | 325.0        |
|                                    |             |              |
| 7400 Supplies                      |             |              |

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<sup>1</sup> Based on CS for SB67 (JUD) and HB 201 Resources.

|                            |            |            |
|----------------------------|------------|------------|
| Mental Health Project Team | 5.0        | 5.0        |
| Land & Resources           | <u>1.5</u> | <u>1.5</u> |
| Subtotal                   | 6.5        | 6.5        |
| TOTAL                      | 704.4      | 842.4      |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 8         | 8         |
| Part time           | 2         | 1         |
| Temporary           | 1         | 1         |

SB 67

LAND RECORD INFORMATION SECTION

| Personnel Services                         | FY 94       | FY 95       |
|--|-------------|-------------|
| (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                | <u>35.0</u> | <u>37.0</u> |
| Subtotal                                   | 295.0       | 90.0        |
|  |             |             |
| Contractual Services                       |             |             |
| DOA Data Processing Chargeback             | <u>15.0</u> | <u>0</u>    |
| Subtotal                                   | 15.0        | 0           |
|  |             |             |
| Supplies                                   |             |             |
| Plotter, Micrographic<br>& Office Supplies | <u>10.0</u> | <u>4.0</u>  |
| Subtotal                                   | 10.0        | 4.0         |
|  |             |             |
| TOTAL                                      | 320.0       | 94.0        |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 5         | 2         |

TOTAL PROJECT COSTS

|                              | FY 94        | FY 95       |
|------------------------------|--------------|-------------|
| <b>Personnel Services</b>    |              |             |
| Division of Land             | 521.4        | 509.4       |
| LRIS                         | <u>295.0</u> | <u>90.0</u> |
| Subtotal                     | 816.4        | 599.4       |
| <br>                         |              |             |
| <b>Travel</b>                |              |             |
| Division of Land             | 1.5          | 1.5         |
| LRIS                         | <u>0</u>     | <u>0</u>    |
| Subtotal                     | 1.5          | 1.5         |
| <br>                         |              |             |
| <b>Contractural Services</b> |              |             |
| Division of Land             | 175.0        | 325.0       |
| LRIS                         | <u>15.0</u>  | <u>0</u>    |
| Subtotal                     | 190.0        | 325.0       |
| <br>                         |              |             |
| <b>Supplies</b>              |              |             |
| Division of Land             | 6.5          | 6.5         |
| LRIS                         | <u>10.0</u>  | <u>4.0</u>  |
| Subtotal                     | 16.5         | 10.5        |
| <br>                         |              |             |
| TOTAL                        | 1024.4       | 936.4       |

|                  | FY 94 |      |       | FY 95 |      |       |
|------------------|-------|------|-------|-------|------|-------|
|                  | Land  | LRIS | Total | Land  | LRIS | Total |
| <b>Positions</b> |       |      |       |       |      |       |
| Full time        | 8     | 5    | 13    | 8     | 2    | 10    |
| Part time        | 2     |      | 2     | 1     |      | 1     |
| Temp.            | 1     |      | 1     | 1     |      | 1     |

OUT-YEAR COSTS

|                                   | <u>FY 96</u>       | <u>FY 97</u>       | <u>FY 98</u>       | <u>FY 99</u>       |
|-----------------------------------|--------------------|--------------------|--------------------|--------------------|
| Personnel Services                |                    |                    |                    |                    |
| Division of Land                  |                    |                    |                    |                    |
| Land Manager (2)                  | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> |
| CT III (6 mo.)                    | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  |
| <br>                              |                    |                    |                    |                    |
| LRIS                              |                    |                    |                    |                    |
| NRO I                             | 50.0               |                    |                    |                    |
| DPC I                             | <u>35.0</u>        | ---                | ---                | ---                |
| Subtotal                          | 238.3              | 153.3              | 153.3              | 153.3              |
| <br>                              |                    |                    |                    |                    |
| Travel <sup>1</sup>               |                    |                    |                    |                    |
| Division of Land                  | 0.5                | 0.5                | 0.5                | 0.5                |
| <br>                              |                    |                    |                    |                    |
| Contractual Services <sup>1</sup> |                    |                    |                    |                    |
| Division of Land                  | 0.5                | 0.5                | 0.5                | 0.5                |
| <br>                              |                    |                    |                    |                    |
| Supplies <sup>1</sup>             |                    |                    |                    |                    |
| Division of Land                  | <u>0.1</u>         | <u>0.1</u>         | <u>0.1</u>         | <u>0.1</u>         |
| TOTAL                             | 239.4              | 154.4              | 154.4              | 154.4              |



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### 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.**

## 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 CSSL 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.

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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.<sup>1</sup> 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.<sup>2</sup>

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

<sup>1</sup>We frankly feel that the unenforceability issue is similarly incapable of legislative correction.

<sup>2</sup>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.

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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

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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*.<sup>3</sup>

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.<sup>4</sup> 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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<sup>3</sup>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.

<sup>4</sup>The constitution was ratified in April of 1956 while the Alaska Mental Health Enabling Act was not passed until July of 1956.

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backup<sup>5</sup>, 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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<sup>5</sup>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.

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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.

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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.<sup>6</sup>

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.<sup>7</sup>

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

---

<sup>6</sup>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.

<sup>7</sup>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.

Richard M. Johannsen  
Comments on SB67/HB201  
April 22, 93 Page 7

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.

Richard M. Johannsen  
Comments on SB67/HB201  
April 22, 93 Page 8

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.

Richard M. Johannsen  
Comments on SB67/HB201  
April 22, 93 Page 8

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Richard M. Johannsen  
Comments on SB67/HB201  
April 22, 93 Page 9

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

jg\amha\leg93\zjsb67.ltr

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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PHONE: (907) 465-3600  
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JB 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 delegated the task of preparing a new list with adequate standards, the difficulty would be eliminated.

Memorandum Decision and Order Re: Intervenor's 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.

Hon. Rick Halford, President  
Alaska State Senate

May 4, 1993  
Page 3

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  
Office of the Governor

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

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

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

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 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).

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*Sen. Pearce*  
WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
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*SB67*

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*

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  
Dept. of Natural Resources

Hon. Rick Halford, President  
Alaska State Senate

May 4, 1993  
Page 2

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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)**

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Following "mental health trust":

Delete all material

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Insert the following:

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(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.

**\* Soc. 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

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

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(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).

APR 21 1993

LAW OFFICES  
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DAVID T. WALKER  
GERALD K. DAVIS, JR.

TELECOPIER:  
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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<sup>1</sup> 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.<sup>2</sup> The basic structure of the Chapter 66 reconstitution of the Trust<sup>3</sup> 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<sup>4</sup>, 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.

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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 is 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.<sup>5</sup>

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

---

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),<sup>6</sup> 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.<sup>7</sup> 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.

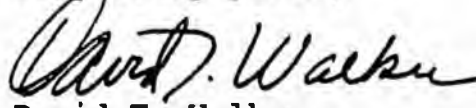
7/ The Department of Law has indicated there is no authority to place such funds in escrow under current law.

Senators Frank and Pearce  
April 21, 1993  
Page 5

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  
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Comparison of Mental Health Trust Resolution Approaches

| PARTY/INTEREST GROUP           | GOALS   | CURRENT SETTLEMENT (Chapter 66) <sup>1</sup>  | LITIGATED RESULT  | SB67/HB201 <sup>2</sup>   |
|--------------------------------|---|---|---|---|
| Beneficiaries                  | <ul style="list-style-type: none"> <li>• Adequate funding for mental health program.</li> <li>• Fair enforceable settlement.</li> <li>• Appropriate Trust management, including expenditures.</li> </ul>                                | <ul style="list-style-type: none"> <li>• No guaranty of adequate funding.</li> <li>• Receive land comparable in earning capacity to the most land that could be obtained in litigation.</li> <li>• Appropriate Trust administration; <b>exceeding what could be obtained in litigation</b> agreed to by all parties.</li> </ul> | <ul style="list-style-type: none"> <li>• No guaranty of adequate funding.</li> <li>• Receive what Trust is entitled to under Alaska Mental Health Enabling Act (whatever land can be recovered).<sup>3</sup> Trust will have what land earns.</li> <li>• Whatever trust management can be forced upon the state.</li> </ul> | <ul style="list-style-type: none"> <li>• No guaranty of adequate funding.</li> <li>• Small amount of high quality land encumbered with restrictions, inappropriate management, and excessive costs; better not to have it at all.</li> <li>• Receipt of a debt that the Trust has no right to enforce and is inadequately secured.</li> </ul> |
| Administration                 | <ul style="list-style-type: none"> <li>• Release Trust's claims to third party interests.</li> <li>• Minimize financial obligations</li> <li>• Promote development (place land in the trust that will increase development).</li> </ul> | <ul style="list-style-type: none"> <li>• Trust's claims to third party interests are released.</li> <li>• State's financial liability to Trust is minimized.</li> <li>• Development is promoted for reconstituted Trust Land.</li> </ul>  | <ul style="list-style-type: none"> <li>• Trust is likely to prevail on many claims. Trust's claims released only after appeals are exhausted.</li> <li>• Financial liability to Trust minimized, unless <u>Weiss</u> overturned.</li> <li>• Development will eventually be promoted, but not very effectively.</li> </ul>   | <ul style="list-style-type: none"> <li>• Trust's claims eventually released.</li> <li>• Financial obligation maximized (except that State can ignore it).</li> <li>• Development is minimized.</li> </ul>   |
| Legislature                    | <ul style="list-style-type: none"> <li>• Resolve problem quickly</li> <li>• Release Trust's claims.</li> </ul>  | <ul style="list-style-type: none"> <li>• All third party interests preserved.</li> <li>• Resolved as soon as possible.<sup>4</sup></li> </ul>   | <ul style="list-style-type: none"> <li>• Maximum time to resolve.</li> <li>• Trust's claims litigated.</li> </ul>   | <ul style="list-style-type: none"> <li>• Private third party titles under a cloud for long time while approval litigated.</li> </ul>  |
| Industry                       | <ul style="list-style-type: none"> <li>• Business as usual (pay less than fair value, non-Trust management).<sup>5</sup></li> <li>• Resolve problem quickly.</li> <li>• Preserve rights.</li> </ul>                                     | <ul style="list-style-type: none"> <li>• All rights preserved.</li> <li>• Discretionary functions determined under trust management principles.</li> <li>• Resolved as soon as possible.</li> </ul>   | <ul style="list-style-type: none"> <li>• Current arrangements upset.</li> <li>• Immediate interference with business likely.</li> <li>• Long time to resolve.</li> </ul>  | <ul style="list-style-type: none"> <li>• All rights preserved.</li> <li>• Long time to resolve.</li> <li>• Managed by DNR under current rules (except unencumbered land).</li> </ul>  |
| Environmental Intervenor       | <ul style="list-style-type: none"> <li>• Prevent/restrict development (minimize Trust land; maximize restrictions).</li> <li>• Preserve 370,000 acres of land put into parks, etc. (legislative designations)</li> </ul>                | <ul style="list-style-type: none"> <li>• Development promoted on reconstituted Trust Land.</li> <li>• Legislative designations preserved.<sup>7</sup></li> </ul>  | <ul style="list-style-type: none"> <li>• Development maximized on land returned to Trust.</li> <li>• Legislative designations may or may not be ordered back into the trust to earn as much \$ as possible.<sup>8</sup></li> </ul>  | <ul style="list-style-type: none"> <li>• Development minimized.</li> <li>• Legislative designations preserved, but at risk upon default.</li> </ul>   |
| Private Third Party Purchasers | <ul style="list-style-type: none"> <li>• Clear title ASAP.</li> </ul>   | <ul style="list-style-type: none"> <li>• Private third party purchaser interests are protected.</li> </ul>  | <ul style="list-style-type: none"> <li>• Land may be taken from third parties and returned to the Trust<sup>9</sup></li> </ul>  | <ul style="list-style-type: none"> <li>• Third party purchasers protected.</li> <li>• Longer than current settlement.</li> </ul>  |
| Municipalities                 | <ul style="list-style-type: none"> <li>• Retain Trust Land given to them.</li> </ul>  | <ul style="list-style-type: none"> <li>• Municipalities' interests in Trust land is preserved.</li> </ul>   | <ul style="list-style-type: none"> <li>• Municipalities' interests in Trust land almost certainly lost.</li> </ul>  | <ul style="list-style-type: none"> <li>• Third party purchasers protected. Will take a long time.</li> </ul>  |

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<sup>1</sup>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.

<sup>2</sup>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.

<sup>3</sup>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).

<sup>4</sup>This is disputed by the opponents of the current settlement.

<sup>5</sup>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.

<sup>6</sup>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.

<sup>7</sup>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.

<sup>8</sup>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.

<sup>9</sup>The Trust has excellent arguments on this issue, but public opinion may cause the courts to look for another result.

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# MENTAL HEALTH LANDS TRUST BRIEFING PAPER

**PACKET  
FROM  
USIBELLI  
COAL**



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         |
| <u>150,000 acres</u> | 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 its 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.