ALASKA LEGISLATURE
HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

9/24/94
Joint
HFC/SFC
Goldstein

Missing Parcels

Category	Missing parcel value as of Sept. 8,1994	Missing parcel value after technical corrections
Total MRTLS Fee Estate	$ 33,216,898.00	$ 26,808,093.00
TPP Oil and Gas Estate	$ 1,138,476.00	$ 466,045.00
AG tracts not in good standing Oil and Gas Estate Only	$ 630,986.00	$ -
Muni ent. and < FMV sales Mineral and Oil and Gas Estates	$ 5,594,895.00	$ 20,288,006.00
Beluga Unleased Fee Estate	$ 26,011,003.00	$ 26,011,003.00
Healy Unleased Fee Estate	$ 13,253,812.00	$ 13,253,812.00
Long term Leases Fee Estate	$ 58,240.00	$ -
Mat Valley Moose Range Mineral and Coal Estates	$ 199,329.00	$ 199,329.00
Uncontested PSLs Fee Estate	$ 6,337,241.00	$ 7,780,744.00
	$ 86,440,880.00	**$ 94,807,532.00**

9/20/94
Walker
Joint
HFC/SFC
MHT
Walker

ANCHORAGE ALLIANCE for the MENTALLY ILL
P.O. BOX 243302
ANCHORAGE, AK 99524-3302

September 23, 1994

Dear Alaskan Senators and Representatives:

The Board of Directors of the ANCHORAGE ALLIANCE for the MENTALLY ILL urge that you incorporate the changes to the Mental Health Lands Trust settlement as recommended by attorneys Gottstein and Walker. Only with those changes can the settlement be an acceptable replacement for the original mental health lands trust as set up by the Federal Government.

As an advocacy group and as family members of the mentally ill we are concerned with the needs of the beneficiaries We do not feel that the Governor's proposed settlement was developed with the original beneficiaries in mind. It seems rather to have been developed to satisfy the lawyers of the "intervenors" and to satisfy those who need clear title to land which has been under a cloud since this lawsuit began in 1982.

Please, as 1994 Alaskan legislators, take this opportunity to correct a wrong done by those legislators who attempted to abolish the trust in 1978. Make this a settlement which can be acceptable to those for whom the trust was originally developed, the mentally ill of Alaska. Incorporate the changes as proposed by attorneys Jim Gottstein and David Walker.

Sincerely,

Gladys Meacock

Gladys Meacock
President

FAIRBANKS ALLIANCE for the MENTALLY ILL

P.O. BOX 72643 • FAIRBANKS, ALASKA 99707 • (907) 457-3733

September 24, 1994

Dear Senators and Representatives:

The Fairbanks Alliance for the Mentally Ill urges you to not to merely rubber stamp the governor's bill but to make the changes recommended by attorneys Gottstein and Walker. As Fred Pratt says in his excellent column in today's Fairbanks Daily Newsminer, this legislation was basically written by the governor's people and the intervenors. Most of the mentally ill citizens of Alaska, their families and advocates feel that this settlement does not replace the original mental health lands trust adequately. It is basically a deal for the intervenors and the state government.

As an advocacy group, we are concerned with the needs of the beneficiaries. The current settlement and the changes recommended by the governor are still not adequate. If you will make the changes recommended by Gottstein and Walker, most beneficiary groups will accept the deal, otherwise we owe it to the beneficiaries to go back to the table. I am enclosing a copy of Fred Pratt's column as he expresses FAMI's position very well.

This trust was given to people with mental illness by the Federal Government. They have a right to have it adequately reconstituted. A legislature took it away and you have an opportunity to restore it. If the changes proposed by Walker and Gottstein are made, FAMI will recommend to its members and other regional alliances , that this settlement be accepted.

I urge you to spend these three days working for your mentally ill constituents.

Sincerely:

Jeanette Grasto

Jeanette Grasto
President

Our new number is 456-4704

Fairbanks Daily News-Miner, Friday, September 23, 1994

Coal leases, contract finality still issues for special session

The Legislature meets to take up the Mental Health Trust issue Monday. The big question is: how far will they go?

The governor called the special session to change three specific things in the settlement act that the Legislature passed last May.

The current settlement proposal is more the governor's than the Legislature's since it was worked out between the governor's people and two of the four attorneys representing the trust's beneficiaries. It was presented to the Legislature at the end of the session and passed without a lot of tinkering by that body. The problems that surfaced during court briefs and hearings this summer could kill the pact.

The Legislature will doubtless pass the governor's proposals, but they are free to add to them. With major groups of plaintiffs still opposing the settlement, the Legislature might decide to sweeten the pot a little and bring them on line.

If the Legislature just rubberstamps the governor's proposed amendments, the settlement might well still die in court this winter.

The opposition to the settlement comes from two lawyers for the original plaintiffs who brought the class action case in 1982, David Walker of Juneau and Jim Gottstein of Anchorage. As long as these people and the various groups dealing with mental illness in our state oppose the settlement, it's very much in question.

The opposition to the settlement comes from two lawyers for the original plaintiffs who brought the class action case in 1982, David Walker of Juneau and Jim Gottstein of Anchorage. As long as these people and the various groups dealing with mental illness in our state oppose the settlement, it's very much in question.

Fred Pratt

Hickel's people negotiated the settlement primarily with two attorneys who represent "intervenors" in the case, alcoholics and others outside a strict meaning of the term "mentally ill" that want to be recognized as beneficiaries of the trust as well.

Gov. Walter Hickel's people negotiated the settlement with the intervenors rather than the core group of beneficiaries. In speeding through this process before the end of the regular legislative session, they made a few errors.

They offered land northeast of Salcha that the state won't own any time soon, and they offered money from a source where there isn't enough money. They also put a strict Dec. 15 deadline on having the court accept the settlement, with a possible extension of only 45 days.

In a way, they painted themselves into a corner. If the court rejects the settlement as unfair to the plaintiffs, as it might in its current form, they would have only the first month of a new Legislature to fix the problems.

Hickel's special session solves this problem, but the basic fairness of the deal remains an issue. The plaintiffs feel they are getting far less than they should to let the state off the hook for its illegal attempt to abolish the trust in 1978.

But if the Legislature wants to tackle the larger issue, they now have an exact prescription from the plaintiffs themselves.

Walker wrote Alaska State Senate President Rick Halford, R-Chugiak, Sept. 5 promising he and Gottstein would support the settlement if only three more changes were made.

The first change they want is to have the legislation formally incorporate commitments made about the settlement in court by the state's attorneys and officials. Primary among these is an understanding that if the Legislature ever amends the settlement in the future the plaintiffs will have the right to re-institute all their current legal claims.

This would be a powerful tool for the benefit of everyone involved. It would enlist the thousands of individuals, businesses and local governments who got trust land on the side of the trust to keep the Legislature from tampering with it again.

Second, Walker wants the original trust land now in state coal leases returned to the trust. Much of this land is leased by the Usibelli Coal Mine, which bought the leases from the Department of Natural Resources and understandably wants to keep that landlord and the terms of those leases it made at the time.

But the 1985 Alaska Supreme Court decision in this case ordered all original trust land to be returned to the trust unless it was "sold", and the plaintiffs maintain "sold" doesn't mean "leased." Walker maintains the only reason the leases were not included in the settlement is because Usibelli lobbied to have them removed.

Third, Walker and Gottstein want some clearer language on how the land is surveyed and identified, and what encumbrances exist on access and use.

If these three changes aren't included, he points out, he can kill the settlement by a late appeal of any ruling for it at the Dec. 15 deadline.

So will the legislators take a few extra days to make these changes, or will they just kick the governor's deal through as fast as they can?

Fred Pratt, a free-lance writer living in Fairbanks, is a reporter and longtime observer of Alaska politics.

Resolution #____-94
Alaska Mental Health Association

Whereas, the Alaska Mental Health Association has identified serious deficiencies in the currently proposed settlement of the Mental Health Trust Lands Litigation, Weiss v. State, 4FA 82-2208 Civ.; and

Whereas a Special Session of the Legislature has been called starting September 26th, for the express purpose of correcting deficiencies in the proposed settlement; and

Whereas failure to address the deficiencies of the proposed settlement identified by the Association will cause the December 15, 1994 deadline to be missed either through denial of approval based upon the opposition to the proposed settlement or appeal from a ruling granting approval,

NOW THEREFORE BE IT RESOLVED, that the Alaska Mental Health Association urges the Legislature and the Administration to address the points set forth in David Walker's letter of September 5, 1994 to the satisfaction of the Association and Vern Weiss; and

BE IT FURTHER RESOLVED THAT THE Alaska Mental Health Association urges all plaintiffs' counsel to oppose approval of the proposed settlement unless these criteria are met and that they use all appropriate means to protect the interests of the beneficiaries.

CERTIFICATION

The undersigned hereby certifies that the foregoing resolution was approved by the Board of Directors of the Alaska Mental Health Association at a meeting held September 13, 1994, duly called, at which a quorum existed and acted throughout.

Dated: 9-13-94

By: Marilyn Talmage
Marilyn J. Talmage,
Secretary

jg/amha94\admin\201stl.res

ANCHORAGE
RESIDENCES for the
MENTALLY
ILL, Inc.

P. O. Box 91641, Anchorage, Alaska 99509-1641
Tel: (907) 277-6361

**FOR DISTRIBUTION TO ALL LEGISLATORS
OF HOUSE AND SENATE**

September 25, 1994

Dear Legislator:

This concerns the question of settlement of the Alaska Mental Health Trust Land litigation and the special session for which you have gathered.

Anchorage Residences for the Mentally Ill, known as ARMI came into existence as a spin-off of the Alaska Alliance for the Mentally Ill (AKAMI), but the views of AKAMI do not represent the views of either ARMI or of the Anchorage Alliance for the Mentally Ill (AAMI).

Many of you know me as Mike Rose, and, as you know, I have testified on this subject before committees of the legislature on a number of occasions over the past several years. I am also a former president of AAMI, and the father of a son who suffered 17 years of mental illness.

You have received a letter from the Fairbanks Alliance of the Mentally Ill (FAMI) with a copy of a September 23, 1994 column by Fred Pratt in the Fairbanks News-Miner. Those two documents fairly represent the views of ARMI.

Essentially the same views were expressed in the September 5 letter from Attorney David Walker to the President of the Senate, Rick Halford. Thus, it is patently incorrect to state that Walker and Jim Gottstein and their clients are opposed to settlement. The three amendments they have proposed are reasonable, and would assure support of the settlement by the great majority, if not all of the beneficiaries.

As I am informed and believe, these views of ARMI are shared at least by the following:

Anchorage Alliance for the Mentally Ill
Fairbanks Alliance for the Mentally Ill
Railbelt Alliance for the Mentally Ill
Kenai Alliance for the Mentally Ill

Wasilla Alliance for the Mentally Ill
Kodiak Alliance for the Mentally Ill
Iris Alliance for the Mentally Ill (Juneau)

In other words, South Central, Kodiak, Fairbanks, and part of Juneau, altogether amounting to somewhere between 80 and 90 percent of the population of Alaska, and thus a similar percentage of the mentally ill, their families and advocates in Alaska. That is the group of primary beneficiaries on behalf of whom the trust was created and the litigation undertaken. Their opposition would weigh heavily on the court.

This offer of support by these beneficiaries represents a considerable compromise from the former unanimous support by all beneficiaries of Senator Duncan's SB 65 of two years ago (not Ch.66, but his original bill). The present settlement, even with the Gottstein/Walker amendments represents a significantly less generous package than Ch.66.

- Please do, for once, put on your trustee hat and do something for the beneficiaries rather than just pass what the Governor and his AG have handed you.

- Legislative settlements have failed each of four prior times.

- The court cannot amend the settlement, it can only approve or disapprove, and approval is doubtful if settlement is not concurred in by a substantial number of the beneficiaries

Wouldn't it make sense to do a little more than the Governor asks and assure yourselves of support by these beneficiaries?

Sincerely,

Nissel A. Rose
Executive Director

Resolution

Kenai Alliance for the Mentally Ill

WHEREAS, the Kenai Alliance for the Mentally Ill is a support and advocacy group for the families and friends of people suffering from mental illness, and

WHEREAS, HB 201, the states proposed settlement for the Mental Health Trust settlement for the Mental Health Trust Lands Litigation, has been signed into law, and

WHEREAS, HB201 contains language that is unreasonable and punitive with the December 15, 1994 date for final approval (if approved after 12-15-94 there would be no $200,000,000., Trust Authority nor program elements), and

WHEREAS, land selected to reconstitute the trust was based on the interests of 3rd parties and the state rather than on the interests of the beneficiaries, and

WHEREAS, HB201 fails to comply with private trust law principles (as has been ruled) and fails to manage the trust solely in the interests of the beneficiaries (nor even substantially in the interests of the beneficiaries).

Now therefore, **BE IT RESOLVED**, that the Kenai Alliance for the Mentally Ill opposes the acceptance of HB201 and urges the removal of the state as trustee to the trust, and

BE IT FURTHER RESOLVED, that the Kenai Alliance for the Mentally Ill urges all plaintiffs' counsel to attempt to ensure that if HB201 is accepted by the court that the beneficiaries will get to keep, through this and future administrations and legislatures, whatever they are granted by this settlement.

DATED: 7-28-94

Coral Allen

Coral Allen President
KENAI ALLIANCE for the MENTALLY ILL

KODIA.. ALLIANCE for the ME..TALLY ILL
BOX 2191
Kodiak, Alaska 99615 Phone # 486-1938

June 11, 1994

NAMI

Al Finneseth, Ph.D., President
Mental Health Association in Alaska
4050 Lake Otis Pkwy, Suite 202
Anchorage, Alaska 99508

Re: Mental Health Trust Litigation

Dear Dr. Finneseth,

I am writing to express K.A.M.I.'s support for the Mental Health Association's long-standing commitment and efforts on behalf of the beneficiaries of the Mental Health Land Trust. We also commend your personal efforts to involve the wider beneficiary and mental health community in the process.

Unless the issues of the extent and legality of Trust Authority control are decided positively and the Trust Authority is to have effective control of Trust assets, the Kodiak Alliance for the Mentally Ill opposes support of the HB 201 proposed settlement. I also believe that the issues raised by Jim Gottstein such as liability for Hazardous Substances must be handled adequately in the settlement agreement.

K.A.M.I. has met and passed the enclosed resolution. If the settlement agreement does not adequately address the concerns expresses in the resolution, K.A.M.I. urges the Mental Health Association to take whatever steps are necessary to oppose the proposed settlement and protect the rights of the beneficiaries.

Thank you again for your efforts.

Sincerely,

Jeanne

Jeanne R. Peschier
President
Kodiak Alliance for the Mentally Ill

cc: Jim Gottstein

Resolution 94-01

KODIAK ALLIANCE for the MENTALLY ILL

Whereas, HB 201 has passed the Alaska Legislature and is expected to be signed into law, and

Whereas, HB 201 contains a deadline of December 15, 1994 for final approval by the courts of its "settlement" provisions (unless extended for up to 45 days by the Governor) or else the provisions of HB 201 that attempt to remove the legal basis for the beneficiaries' claims to Trust property go into effect, and

Whereas, it is questionable whether legislation can remove the beneficiaries' claims to Trust property, and

Whereas, final approval by the courts of a proposed settlement by December 15, 1994 is extremely unlikely, and

Whereas, substantial questions have been raised about the terms, legality and benefit of the "settlement" provisions of HB 201, and

Whereas, K.A.M.I. believes it is not right to support a settlement of the Mental Health Trust Lands Litigation, Weiss v. State, 4FA 82,2208 Civ., unless the over-all settlement is fair, the terms are clear, and the benefits are certain to be received.

NOW THEREFORE BE IT RESOLVED, that K.A.M.I. opposes acceptance of the HB 201 "settlement" unless clarifications can be made in the settlement agreement and anticipated consent decree satisfactory to counsel for Vern Weiss and the Alaska Mental Health Association which fairly reconstitutes the Trust, is enforceable, and ensures that the Trust Authority has the power to effectively manage the Trust,

BE IT FURTHER RESOLVED, that in the event a settlement agreement and consent decree to counsel for Vern Weiss and the Alaska Mental Health Association is not negotiated, counsel for all plaintiffs are urged to use all appropriate means to protect the interests of the beneficiaries.

DATED: 6/11/94 Jeanne L Peschea

P.02

MENTAL HEALTH CONSUMERS OF ALASKA
RESOLUTION

WHEREAS, HB 201 of the 1994 Legislative Session and an associated settlement agreement have been presented to the court as a proposed settlement of the mental health trust litigation, Weiss v. State, 4FA 82-2208 Civ, and

WHEREAS, Mental Health Consumers of Alaska is entirely composed of beneficiaries of the Trust who have received in-patient mental health services or been in need of such services, and

WHEREAS, Mental Health Consumers of Alaska has carefully considered the written and oral presentations made by attorneys supporting and opposing the proposed settlement, and

WHEREAS, the original Trust grant is extremely valuable land that properly managed is likely to adequately fund Alaska's mental health program, and

WHEREAS, the Trust land under the proposed settlement is composed entirely of the less desirable land that no one objected to being in the Trust , and

WHEREAS, DNR management of the land without the clear direction to manage it solely for Trust purposes creates a conflict of interest that will inevitably lead to greatly diminished return from the Trust Land, and

WHEREAS, the income from the $200 million cash payment does not begin to make up the difference or fund an adequate mental health program, and

WHEREAS, the State has reserved the right to unilaterally change the terms of the proposed settlement, and

WHEREAS, the right of the beneficiaries to be placed in exactly the same position as they are in now if the Legislature exercises its right to unilaterally change the settlement is not sufficiently clear to be a deterrent,

NOW THEREFORE BE IT RESOLVED, that Mental Health Consumers of Alaska opposes acceptance of the currently proposed settlement of the mental health trust litigation, and

BE IT FURTHER RESOLVED, that counsel for all plaintiffs are urged to oppose approval of the currently proposed settlement and take all appropriate actions to protect all of the beneficiaries' rights.

Certification

I, Cruz D. Bilbao, acting Secretary of Mental Health Consumers of Alaska hereby certify that the foregoing resolution was properly adopted by Mental Health Consumers of Alaska at its regular board of directors meeting held September 8, 1994 at which a quorum existed and acted throughout.

Post-it® Fax Note 7671 Date 9/15/94 Pages 1

Resolution
RAILBELT ALLIANCE for the MENTALLY ILL

WHEREAS, The Railbelt Alliance for the Mentally Ill is an organization representing a large number of families and consumers of mental health services in the Railbelt who are beneficiaries of the mental health lands trust, and;

WHEREAS, HB 201, which purports to enact a new settlement of the Mental Health Trust Lands Litigation, Weiss v. State, 4FA-82-2208 Civ., has been signed into law, and;

WHEREAS, HB 201 contains a deadline of December 15, 1994 for final approval by the courts of its "settlement" provisions (unless extended for up to 45 days by the Governor) or else the provisions of HB 201 that attempt to remove the legal basis for the beneficiaries' claims to Trust property go into effect, and;

WHEREAS, it is questionable whether legislation can remove the beneficiaries' claims to Trust property, and;

WHEREAS, final approval by the courts of a proposed settlement by December 15, 1994 is extremely unlikely, and;

WHEREAS, there are substantial questions about the terms, legality and benefit of the "settlement" provisions of HB 201;

Now Therefore, BE IT RESOLVED, that the Alliance finds the settlement as currently written is insufficient, and opposes acceptance of a HB 201 "settlement" unless changes are made in the settlement agreement, satisfactory to counsel for Vern Weiss and the Alaska Mental Health Association, to ensure that the settlement fairly reconstitutes the Trust, is enforceable, and that the Trust Authority has the power to effectively manage the Trust; and

BE IT FURTHER RESOLVED, that the Alliance urges all plaintiffs' counsel to oppose preliminary approval of the proposed settlement and to take appropriate steps to protect the rights of the beneficiaries.

DATED: 6/30/94

Jenasy M Jensen, Esq.

DR
Materials

AKAMI

4050 Lake Otis Suite 103
Anchorage, Alaska 99508
(907) 561-3127
FAX (907) 561-2717

September 19, 1994
Patrick E. Murphy
2400 Douglas Hwy., No.2
Juneau, Alaska 99801
907-364-2374

Board of Directors
Alaska Alliance for the Mentally Ill
110 W. 15th Ste. B
Anchorage, AK 907-277-1300

Re: Findings and Recommendations of the Alaska Alliance Evaluation Committee on the Mental Health Lands Trust Proposed Settlement.

Dear Board of Directors,

I was asked by you to chair a committee to do a detailed evaluation of the proposed settlement of the Mental Health Lands Trust case. The case is set for final approval hearings before the Honorable Judge Mary Greene beginning October 24, 1994. My qualifications for this task as stated by the Board at its meeting on September 2, 1994 were my twenty years of practice as an attorney, my prior involvement as co-chair for a time of the Beneficiary Coalition Group that worked on past settlements and my personal involvement with mental health issues due to my son's 12 year bout with mental illness.

The other members of the committee included Dick Wilson (former state-wide mental health board member), Wes Terwilliger, and Tom Ryan (all AKAMI Board Members).

As we all know the Mental Health Trust lands issue is an extremely complex one and has been since the 1985 Alaska Supreme court's decision in State v. Weiss. Three prior major attempts were made at settlement through legislation, in 1987 (chapter 48), 1990 (chapter 210), and 1991 (chapter 66). These settlements all failed because of the complexity of the issues and the many parties involved; the Legislature, Executive branch, all five beneficiary groups, land owners, business groups, and environmental

interests. The present settlement is the fourth attempt which I will call the HB 201 1994 settlement for the rest of this letter.

I have spent approximately 25 hours reviewing all the court documents presented to Judge Greene at the evidentiary hearings between July 12-22, 1994. I also spoke to attorney Jeff Jesse and AKAMI President John Malone who favor the settlement as well as speaking for almost three hours with attorney David Walker and Jim Gottstein who oppose the settlement. Commissioner Harry Noah was next on my list. He is the State's lead representative in this case. The focus of this meeting was the past, current, and future management by the state of Trust lands. Particularly the framework of the management under the new DNR Trust Unit and that unit's relationship with the Trust Authority created under the current settlement.

A breakdown of the players supporting and opposing the HB 201 settlement is as follows:

Supporting	Opposing
Alaska Legislature	Alaska Mental Health Association
Governor	Represented by Attorney Gottstein
Executive Branch	Vern Weiss and Earl Hilliker
Beneficiary Groups -	Represented by Attorney Walker
(except those in the opposition column)	
Environmental groups	
Business, coal, and oil interests	
Land owner groups	

Rather than try to summarize the entire nine years of litigation and all the parties positions in this letter, The committee is going to use the following procedure in an effort to be an "honest broker":

1) Provide each AKAMI Board member and Affiliate President a copy of Judge Greene's excellent 58 page decision that sets out background and history, a detailed summary of the proposed settlement, the standards for approval of a settlement, a detailed discussion of each objection to the settlement raised by attorneys Gottstein and Walker, a discussion of the risks of future litigation and a review of the valuation issues. If we write a letter to all our members we will not be able to include the Judge's decision.

2) Provide each member the August 10, 1994 position paper prepared by those favoring the settlement and the August 26, 1994 position paper prepared by attorneys Gottstein and Walker.

I will say up front that the Alaska Alliance Evaluation Committee favors the HB 201 settlement with the qualifications noted below. We believe the August 10, 1994

position paper by Jeff Jesse to be closer to our own position and more accurately reflects our view of the settlement. So we would ask that anyone receiving this letter to give the August 10, 1994 letter a careful reading. Our committee would also add an important cautionary note to all our members prompted by what we consider to be questionable communication with some of our members by one of the attorneys. This was a pre-filled out response to Judge Greene prepared by Attorney Gottstein and mailed to our members. This complex issue is of the utmost importance to us, and requires careful deliberation. We doubt that forms already filled out by one of the attorneys opposed to the litigation will have much impact on Judge Greene's decision one way or the other. We ask that our members take all views including ours into consideration and make a well-reasoned decision.

Attorneys opposing the settlement raised several valid points before Judge Greene which we have been working to get resolved and included in the settlement. Judge Greene while granting preliminary approval of the settlement on July 29, 1994 was concerned about these particular matters. Attorneys Jesse and Volland and our AKAMI President, John Malone, have been working almost nonstop to resolve these final issues holding up a settlement everyone can live with. As you are aware there will be a special session on September 26-29, 1994 in which the following issues raised by those opposing the settlement will be resolved:

1) Substitute land will be included in the settlement for the 116,000 acres of land in the Salcha area (Fairbanks) which can not be legally conveyed at this time as a part of the settlement.

2) All $200 million of the cash payment will be deposited in the corpus of the trust prior to a final settlement.

3) Technical errors in the list of land to be conveyed will be corrected.

There are three additional issues which have been argued by counsel opposed to settlement which should not impede the HB 201 settlement.

4) If the proposed settlement is not approved by December 15, 1994, certain punitive "cram down" provisions in HB 201 go into effect. In all likelihood these legislative efforts would be held to be invalid by the court. In any case, the parties most likely to invoke them are the two attorneys opposing the settlement. This issue in our minds rates little importance in evaluating the settlement.

5) At the July 1994, hearing before Judge Greene attorneys for the State of Alaska assured Judge Greene in open court and on record "that if there was a material change, the class would have all the claims they have today and would be free to assert them." In other words, Judge Greene asserted in her opinion in case of a breach by the State the beneficiaries would be free to file a new action asserting all claims they have today. Attorneys Walker and Gottstein want these statements

made part of the settlement agreement.

6) Additionally, Commissioner Noah's testimony at this July 1994 hearing that the State had previously not managed the Trust with regard to its fiduciary obligations, has not met these fiduciary obligations in the past but must do so, regardless of this litigation.

Attorneys Walker and Gottstein also want the statements of Commissioner Noah to be made part of the settlement agreement, and we agree. We both support this and we are working to make this happen. We believe that it will happen by the time you receive this letter or by the end of the special session. With these six corrections all requests, except the following two made by the two opposing attorneys, will have been met (see the attached September 5, 1994 letter from attorney Walker to Senate President Halford):

1) They wish to fashion a compromise regarding identification of the encumbrances on and survey the land to be conveyed by the Trust. It must be remembered that most of the land in this State has not been surveyed and the encumbrances are unknown. The State received this land from the Federal government. The Trust is receiving the same degree of title that the State had received from the Federal Government. The Trust will have to resolve the individual survey and encumbrance problems as they arise at the time of disposal. This is not a valid basis for preventing a settlement.

2) They wish to include the coal resources that are a part of the original Trust grant in the reconstruction package. As we know, neither party can get everything they wish in a settlement. Judge Greene made a detailed twelve page analysis of the value being received by the beneficiaries (see page's 45-57) which I am not going to repeat. Our committees' analysis is that the value received outweighs the considerable risk of litigation.

The committee wishes to make two final points. First, we believe Judge Greene has probably overstated what is possible in a case of breach by the State when she said "they would be free to file a new action asserting all the claims they have today." We believe there are certain lands on which we could lose our leverage once this settlement is signed. We believe the following would likely be lost if a future breach occurred:

1) We would not be able to reassert claims to 40,000 acres of "Mom and Pop" land once settlement is completed. However, prior to this settlement Mr. Gottstein had already gone on record indicating the tenuous hold we have on these lands and his willingness to release these "hostages."

2) We may be able to reassert claims on 10,000 acres of Municipal lands.

3) We may be able to reassert claims on the remaining approximately 385,000 acres of legislatively designated lands, as they would remain in State ownership.

Most likely any future court action involving a reassertion of claims on original trust lands due to a material breach of this agreement, would first be viewed by how this litigation is being dismissed. Under the current proposed settlement and statute, we are dismissing "with prejudice." This means that we may have given up the right to reassert claims to the trust lands conveyed under this agreement. (These lands are the previously described 435,000 acres.) Being bound by this prejudice would in all probability be weighed against the enforcement provisions contained in the proposed settlement agreement. This prejudice should not limit or render those provisions meaningless. There is probably no way anyone can say with any degree of certainty, under this or any other settlement, of how we would prevail in the event of future legal action over a material breach in regard to the reassertion of claims to the original trust lands that will be conveyed by this settlement.

However, it must be remembered that we are not without security in the case of a breach by the State. We have 935,000 acres of land, $200 million in cash and the likely right to reassert claims to the 385,000 acres of legislatively designated land, and possibly the 10,000 acres of Municipal lands.

As our second and final point, we favor the settlement because, it is now or never. We say this for the following reasons:

1) If this settlement fails there will not be a "settlement number five." Litigation is then our only recourse.

2) Such litigation would be conducted in a very hostile public, legislative and judicial environment.

3) Any future settlement in this case because of the extreme complexity would be subject to as many, or more problems.

4) Our AKAMI leadership has not been happy with the representation we have received in several instances over the last nine years. "Our attorney" is one of the opposing attorneys and the leadership feels that many times we were not consulted and that our input was disregarded. There is little assurance that we would be treated any differently in the future.

With all of the preceding in mind, we must remain focused on what this settlement really does for us. No one is advocating that this be viewed as a perfect settlement. As previously stated, it is the result of complex negotiations involving very complex issues that necessarily involved a great many players all of whom desired particular outcomes from the negotiations. This would be true of any negotiated settlement in this matter. In our minds, the benefits achieved far exceed any we would receive in a litigated settlement. Reference is made to the August 10, 1994 position paper by Jeff Jesse which is attached to this letter and sets out the list of benefits gained by virtue of the settlement.

settlement. Reference is made to the August 10, 1994 position paper by Jeff Jesse which is attached to this letter and sets out the list of benefits gained by virtue of the settlement.

In conclusion, we must remember that we represent many hundreds of constituents that are direct beneficiaries of mental health services, their families, friends and supporters when we speak. We are all responsible for a well-reasoned position in this matter. Therefore, we urge your support for the HB 201 settlement and ask you to communicate this support through letters and petitions from each AKAMI Affiliate to Judge Greene.

Sincerely,

Patrick E. Murphy

Patrick E. Murphy

Signed by:

Date 9/19/94 Dick Wilson

Date 9-19-94 Wes Terwilliger

Date 9-19-94 Tom Ryan

MEMORANDUM

Department of Natural Resources

State of Alaska

Division of Land

TO: Commissioner Noah

DATE: September 23, 1994

TELEPHONE NO.: 762-2239

FROM: Bruce Phelps, Project Manager
Mental Health Settlement Unit

SUBJECT: Explanation of Land List Revisions

The State and Plaintiffs who favor settlement agreed to review parcels designated or not designated as Trust land to ensure that each side obtained the benefit of the bargain. The parties in the settlement agreed that certain types of land would be designated as Trust land (such as those that are unencumbered, subject only to leases. The parties also agreed that certain types of land would not be designated as Trust land (such as those sold to moms & pops, within LDA's, lands conveyed to municipalities, subject to coal leases, or within an agricultural project.

The land list corrections address parcels which were not correctly identified in the April 28, 1994 list.

The following description is organized by the category of the land list revisions:

OTL - Fee Estate

Additions: 86 parcels, 4,245 acres, were added for the following reasons:

* They were missed or incorrectly identified in the original title research and the parcel is appropriate for conveyance. Examples include parcels that were simply missed or that had been sub-parcelized and the conveyable portion of the parcel was not included.

* The parties agreed that certain parcels containing unused or vacant areas of an area managed by a state agency could be conveyed. Examples include areas of unused land or no longer needed gravel pits.

Deletions: 30 parcels, 3523 acres, were deleted for the folowing reasons:

* Parcels were incorrectly identified as conveyable in the original title research and were later found to be non conveyable. Parcels were conveyed out of state ownership or contained public uses that had been consistently classified as non-conveyable. For example, a QCD was found to exist or a parcel was issued as a community park.

* The parties agreed that certain parcels were appropriate for deletion because they contained sensitive public facilities or areas.

OTL - Hydrocarbon Only

Additions: 10 parcels, 1,508 acres, were added because DNR had agreed to convey the hydrocarbon portion of the mineral estate within those areas of the Cook Inlet Basin south of the Little Susitna River that DNR recognized as having some O&G potential. Ten tracts were missed.

Deletions: 7 parcels, 104 acres, were deleted because certain parcels that had been identified as conveyable hydrocarbon (only) are now included as conveyable under the fee estate. They were deleted from the hydrocarbon list to avoid confusion over which portion of the estate is being conveyed.

BP/0923-hn

OTL - Coal, and O&G Only

Additions: 17 parcels, 687 acres, were added because subsequent title research uncovered that the state still owns the coal, oil and gas portion of the mineral estate to 17 parcels within the Kenai peninsula. These parcels were missed in the 1988 title research and DNR classified this area as conveyable for the hydrocarbon portion of the mineral estate.

OTL - Mineral Estate Only

Deletions: 2 parcels; 56 acres. DNR conveyed only the mineral estate within the Matanuska Valley Moose Range LDA. Recent title research determined that there were two private inholdings within the LDA boundary. Private inholdings are excluded from the LDA.

Other State Land - Fee Estate

Additions: 7 parcels; 34 acres. The parties agreed to re-examine the factual reasons why DNR objected to parcels being added to the Trust. Seven parcels were added because the original reason for the objection was no longer found to be valid or portions of the parcel were appropriate for conveyance.

Deletions: 45 parcels, 8,917 acres. Those parcels containing school trust land were deleted. The State and Plaintiffs who favor settlement did not want to create another trust problem, this time involving the school trust. The previous settling Plaintiffs were not concerned with this potential problem and DNR had consistently used these types of lands in previous settlements and exchanges. In addition, the public use area (C5137 acres) of the Fort Knox mining project in Fairbanks was also deleted. The Plaintiffs, State and Amex (Ft. Knox) had previously agreed that this public use area would not be designated as Trust land.

Other State Land - Hydrocarbon Only

Additions: 1 parcel, 160 acres. A parcel having conveyable hydrocarbon portion of the mineral estate within the Kenai Peninsula was missed. This area had been consistently classified as conveyable (hydrocarbon) only.

Other State Land - Mineral Estate Only

Deletion: The Salcha mineral estate parcel was deleted (117,000 acres) because of a military withdrawal and the presence of a bombing/firing range.

Addition: The Salcha mineral estate replacement parcel was added (184,000 acres) to replace the initial parcel. The additional acreage was required to allow an equal value replacement, required under the Settlement Agreement.

PARCEL/ACREAGE SUMMARY

	Parcels	Acres
Fee Estate		
Additions	93	4,279
Deletions	(75)	(12,440)
Net	18	(8,161)
Mineral Estate		
Additions	30	186,675
Deletions	(9)	(116,906)
Net	21	69,769
Fe Estate & ME		
Additions	123	190,954
Deletions	(84)	129,346
Net	39	(61,608)

** Mental Health PSL/OTL Data -- 21SEP94 --
** summary by election district **

ELECDIST	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
700 (unknown)		0	1	0.00	0.18
A01 Ketchikan		8	5	937.26	1,857.13
A02 Sitka-Wrangell		2	0	4.47	0.00
B03 Downtown Juneau		4	0	4.85	0.00
B04 Mendenhall Valley		2	1	402.32	101.54
C05 Southeast Islands		23	2	362.27	80.24
D07 Homer		6	2	58.09	147.28
D08 Seward-Soldotna		4	5	18.72	138.72
E09 Kenai-Nikiski		20	1	1,047.42	80.00
N27 Palmer		4	3	569.84	71.50
N28 Wasilla-Talkeetna		14	17	1,422.13	380.60
Q29 University-Ester		6	3	696.11	690.31
Q33 NE Fairbanks		13	28	184,599.85 *	118,436.24
Q34 North Pole-Denali		9	13	606.03	2,089.57
R36 Rural Interior		7	4	225.79	136.31
		122	85	190,955.16 **	124,209.62

** Mental Health PSL/OTL Data -- 21SEP94 --
** summary by borough **

BORO1	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
00 (not in Borough)		15	5	300.63	159.26
03 Juneau City & Borough		6	3	407.17	101.54
04 Sitka City & Borough		1	1	2.32	0.18
06 Denali Borough		1	2	7.20	1,280.00
07 Fairbanks North Star Borough		26	41	185,854.41 *	119,936.12
08 Haines Borough		17	1	329.96	57.29
09 Kenai Peninsula Borough		30	8	1,124.23	366.00
10 Ketchikan Gateway Borough		8	5	937.26	1,857.13
13 Matanuska-Susitna Borough		18	20	1,991.97	452.10
		122	84	190,955.16 **	124,209.62

* Increase in acreage (mineral estate only) required for equal value exchange to replace parcel F82863.
** Increase in acreage in large part required for equal value exchange to replace parcel F82863. Only the minteral estate in this estate is being covered.

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BOROI	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
00 (not in Borough)	C20797	1	0	1.29	0.00
	C20798	1	0	1.38	0.00
	C20799	1	0	1.53	0.00
	C20800	1	0	1.11	0.00
	C20817	1	0	14.00	0.00
	C70925	1	0	13.00	0.00
	CRM-1038	0	1	0.00	22.95
	CRM-2086	1	0	2.15	0.00
	FM-1080	1	0	9.55	0.00
	FM-1175	0	1	0.00	119.23
	FM-1175-01	1	0	33.00	0.00
	FM-1175-02	1	0	119.23	0.00
	FM-1176	0	1	0.00	3.33
	FM-1179	1	0	17.91	0.00
	FM-1204	1	0	40.38	0.00
	FM-1415	0	1	0.00	8.75
	FM-1415-01	1	0	19.10	0.00
	FM-1553-02	1	0	24.00	0.00
	FM-1560	0	1	0.00	5.00
	FM-1605	1	0	3.00	0.00
00 (not in Borough)		15	5	300.63	159.26
03 Juneau City & Borough	CRM-0923	1	0	386.20	0.00
	CRM-1138-03	1	0	16.12	0.00
	CRM-1227	1	0	1.05	0.00
	CRM-1229	1	0	1.25	0.00
	CRM-1246	1	0	1.25	0.00
	CRM-1247	1	0	1.30	0.00
	CRM-5029	0	1	0.00	101.54
03 Juneau City & Borough		6	1	407.17	101.54
04 Sitka City & Borough	C20571	1	0	2.32	0.00
	CRM-1594	0	1	0.00	0.18
04 Sitka City & Borough		1	1	2.32	0.18
06 Denali Borough	F20692	0	1	0.00	640.00
	F20698	0	1	0.00	640.00
	FM-1663-02	1	0	7.20	0.00
06 Denali Borough		1	2	7.20	1,280.00
07 Fairbanks North Star Borough	F20284	0	1	0.00	240.00
	F20285	0	1	0.00	80.00
	F20312	0	1	0.00	320.00
	F20444	0	1	0.00	80.00
	F20445	0	1	0.00	4.64
	F20446	0	1	0.00	5.15

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BOROI	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
07 Fairbanks North Star Borough	F20447	0	1	0.00	4.69
	F20448	0	1	0.00	4.64
	F20449	0	1	0.00	4.64
	F20450	0	1	0.00	3.77
	F20451	0	1	0.00	13.86
	F20452	0	1	0.00	6.79
	F20453	0	1	0.00	5.30
	F20454	0	1	0.00	5.00
	F20455	0	1	0.00	5.00
	F20456	0	1	0.00	5.03
	F20457	0	1	0.00	4.13
	F20458	0	1	0.00	4.58
	F20459	0	1	0.00	5.25
	F20460	0	1	0.00	5.03
	F20461	0	1	0.00	5.13
	F20530.001	0	1	0.00	19.46
	F20530.002	0	1	0.00	3.20
	F20530.003	0	1	0.00	400.00
	F70015	0	1	0.00	640.00
	F82863	0	1	0.00	116,745.26
	F82863-R	1	0	184,320.00 *	0.00
	FM-0138	0	1	0.00	7.00
	FM-0138-01	1	0	3.50	0.00
	FM-0138-02	1	0	4.46	0.00
	FM-0160	0	1	0.00	132.96
	FM-0160-01	1	0	132.60	0.00
	FM-0160-03	1	0	0.36	0.00
	FM-0202	0	1	0.00	34.75
	FM-0202-01	1	0	34.75	0.00
	FM-0221	0	1	0.00	57.15
	FM-0221-01	1	0	2.50	0.00
	FM-0221-03	1	0	56.70	0.00
	FM-0221-04	1	0	0.45	0.00
	FM-0231-Z01	1	0	16.80	0.00
	FM-0231-Z02	1	0	15.00	0.00
	FM-0231-Z04	1	0	10.33	0.00
	FM-0389-02	1	0	0.01	0.00
	FM-0429	0	1	0.00	10.00
	FM-0429-02	1	0	7.00	0.00
	FM-0429-03	1	0	2.00	0.00
	FM-0439	0	1	0.00	112.55
	FM-0439-01	1	0	112.54	0.00
	FM-0540	0	1	0.00	6.50
	FM-0690-B	0	1	0.00	2.21
	FM-0691-G	0	1	0.00	127.00
	FM-0691-G01	1	0	14.00	0.00
	FM-0691-G03	1	0	95.00	0.00
	FM-0706	0	1	0.00	238.50
	FM-0706-01	1	0	238.00	0.00
	FM-0718	0	1	0.00	1.49

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ELECDIST	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
700 (unknown)	CRM-1594	0	1	0.00	0.18
A01 Ketchikan	CRM-2617	0	1	0.00	200.37
	CRM-2617-01	1	0	157.00	0.00
	CRM-2950	1	0	20.55	0.00
	CRM-3129-02	0	1	0.00	1,500.88
	CRM-3129-02A	1	0	140.00	0.00
	CRM-3157-02	0	1	0.00	152.00
	CRM-3157-02A	1	0	138.00	0.00
	CRM-3158-01	1	0	473.34	0.00
	CRM-3166	0	1	0.00	3.58
	CRM-3171	1	0	3.67	0.00
	CRM-3392-01	1	0	1.31	0.00
	CRM-3392-02	1	0	3.39	0.00
	CRM-3392-03	0	1	0.00	0.30
A01 Ketchikan		8	5	937.26	1,857.13
A02 Sitka-Wrangell	C20571	1	0	2.32	0.00
	CRM-2086	1	0	2.15	0.00
A02 Sitka-Wrangell		2	0	4.47	0.00
B03 Downtown Juneau	CRM-1227	1	0	1.05	0.00
	CRM-1229	1	0	1.25	0.00
	CRM-1246	1	0	1.25	0.00
	CRM-1247	1	0	1.30	0.00
B03 Downtown Juneau		4	0	4.85	0.00
B04 Hendenhall Valley	CRM-0923	1	0	386.20	0.00
	CRM-1138-03	1	0	16.12	0.00
	CRM-5029	0	1	0.0	101.54
B04 Hendenhall Valley		2	1	402.32	101.54
C05 Southeast Islands	C20797	1	0	1.29	0.00
	C20798	1	0	1.38	0.00
	C20799	1	0	1.53	0.00
	C20800	1	0	1.11	0.00
	C20817	1	0	14.00	0.00
	C70925	1	0	13.00	0.00
	CRM-0022	1	0	36.86	0.00
	CRM-0023	1	0	17.10	0.00
	CRM-0028	1	0	0.29	0.00
	CRM-0029	1	0	11.35	0.00
	CRM-0036	1	0	28.36	0.00
	CRM-0197-02	1	0	20.00	0.00
	CRM-0198-02	1	0	20.00	0.00
	CRM-0199-02	1	0	20.00	0.00

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ELECDIST	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
C05 Southeast Islands	CRM-0206-02	1	0	25.00	0.00
	CRM-0259	1	0	12.08	0.00
	CRM-0377	1	0	3.33	0.00
	CRM-0393-02	1	0	40.00	0.00
	CRM-0505	0	1	0.00	57.29
	CRM-0571	1	0	17.39	0.00
	CRM-0572	1	0	19.34	0.00
	CRM-0605-B	1	0	40.00	0.00
	CRM-0704	1	0	11.37	0.00
	CRM-0723-01	1	0	7.50	0.00
	CRM-1038	0	1	0.00	22.95
C05 Southeast Islands		23	2	362.27	80.24
D07 Homer	S20077	0	1	0.00	120.00
	SM-0315-01	1	0	5.00	0.00
	SM-0342	1	0	0.22	0.00
	SM-0475	0	1	0.00	27.28
	SM-0476	1	0	19.95	0.00
	SM-0484	1	0	27.08	0.00
	SM-5012	1	0	4.61	0.00
	SM-5025	1	0	1.23	0.00
D07 Homer		6	2	58.09	147.28
D08 Seward-Soldotna	S20012	0	1	0.00	120.00
	SM-0494-A	1	1	10.00	10.00
	SM-0699	1	1	2.47	2.47
	SM-0700	1	1	2.70	2.70
	SM-0702	1	1	3.55	3.55
D08 Seward-Soldotna		4	5	16.72	138.72
E09 Kenai-Nikiski	S50219	1	0	160.00	0.00
	SM-0997-B	1	0	120.00	0.00
	SM-1420	1	1	80.00	80.00
	SM-5500	1	0	40.00	0.00
	SM-5501	1	0	39.18	0.00
	SM-5502	1	0	29.61	0.00
	SM-5503	1	0	37.93	0.00
	SM-5504	1	0	20.75	0.00
	SM-5505	1	0	32.18	0.00
	SM-5506	1	0	14.98	0.00
	SM-5507	1	0	80.00	0.00
	SM-5508	1	0	25.17	0.00
	SM-5509	1	0	80.00	0.00
	SM-5510	1	0	37.61	0.00
	SM-5511	1	0	27.93	0.00
	SM-5512	1	0	39.87	0.00
	SM-5513	1	0	40.00	0.00

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BOROI	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
07 Fairbanks North Star Borough	FM-0718-01	1	0	1.34	0.00
	FM-0719	0	1	0.00	1.50
	FM-0719-01	1	0	0.15	0.00
	FM-0749-A	1	0	200.00	0.00
	FM-0788	0	1	0.00	6.25
	FM-0824	0	1	0.00	9.96
	FM-0824-02	1	0	9.96	0.00
	FM-0952-A	0	1	0.00	567.76
	FM-0952-A01	1	0	566.76	0.00
	FM-1008-02	1	0	7.80	0.00
	FM-5003	1	0	2.40	0.00
07 Fairbanks North Star Borough		26	41	185,854.41 **	119,936.12
08 Haines Borough	CRM-0022	1	0	36.86	0.00
	CRM-0023	1	0	17.10	0.00
	CRM-0028	1	0	0.29	0.00
	CRM-0029	1	0	11.35	0.00
	CRM-0036	1	0	28.36	0.00
	CRM-0197-02	1	0	20.00	0.00
	CRM-0198-02	1	0	20.00	0.00
	CRM-0199-02	1	0	20.00	0.00
	CRM-0206-02	1	0	25.00	0.00
	CRM-0259	1	0	12.08	0.00
	CRM-0377	1	0	3.33	0.00
	CRM-0393-02	1	0	40.00	0.00
	CRM-0505	0	1	0.00	57.29
	CRM-0571	1	0	17.38	0.00
	CRM-0572	1	0	19.34	0.00
	CRM-0605-B	1	0	40.00	0.00
	CRM-0704	1	0	11.37	0.00
	CRM-0723-01	1	0	7.50	0.00
08 Haines Borough		17	1	329.96	57.29
09 Kenai Peninsula Borough	S20012	0	1	0.00	120.00
	S20077	0	1	0.00	120.00
	S50219	1	0	160.00	0.00
	SM-0315-01	1	0	5.00	0.00
	SM-0342	1	0	0.22	0.00
	SM-0475	0	1	0.00	27.28
	SM-0476	1	0	19.95	0.00
	SM-0484	1	0	27.08	0.00
	SM-0494-A	1	1	10.00	10.00
	SM-0699	1	1	2.47	2.47
	SM-0700	1	1	2.70	2.70
	SM-0702	1	1	3.55	3.55
	SM-0997-B	1	0	120.00	0.00
	SM-1420	1	1	80.00	80.00
	SM-5012	1	0	4.61	0.00

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BOROI	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
09 Kenai Peninsula Borough	SM-5025	1	0	1.23	0.00
	SM-5500	1	0	40.00	0.00
	SM-5501	1	0	39.18	0.00
	SM-5502	1	0	29.61	0.00
	SM-5503	1	0	37.93	0.00
	SM-5504	1	0	20.75	0.00
	SM-5505	1	0	37.18	0.00
	SM-5506	1	0	14.98	0.00
	SM-5507	1	0	80.00	0.00
	SM-5508	1	0	25.17	0.00
	SM-5509	1	0	80.00	0.00
	SM-5510	1	0	37.61	0.00
	SM-5511	1	0	27.93	0.00
	SM-5512	1	0	39.87	0.00
	SM-5513	1	0	40.00	0.00
	SM-5514	1	0	80.00	0.00
	SM-5515	1	0	26.65	0.00
	SM-5516	1	0	30.56	0.00
09 Kenai Peninsula Borough		30	8	1,124.23	366.00
10 Ketchikan Gateway Borough	CRM-2617	0	1	0.00	200.37
	CRM-2617-01	1	0	157.00	0.00
	CRM-2950	1	0	20.55	0.00
	CRM-3129-02	0	1	0.00	1,500.88
	CRM-3129-02A	1	0	140.00	0.00
	CRM-3157-02	0	1	0.00	152.00
	CRM-3157-02A	1	0	138.00	0.00
	CRM-3158-01	1	0	473.34	0.00
	CRM-3166	0	1	0.00	3.58
	CRM-3171	1	0	3.67	0.00
	CRM-3392-01	1	0	1.31	0.00
	CRM-3392-02	1	0	3.39	0.00
	CRM-3392-03	0	1	0.00	0.30
10 Ketchikan Gateway Borough		8	5	937.26	1,857.13
13 Matanuska-Susitna Borough	S20535	0	1	0.00	40.00
	S20537	0	1	0.00	0.71
	S20538	0	1	0.00	0.71
	S20539	0	1	0.00	0.79
	S20540	0	1	0.00	0.85
	S20541	0	1	0.00	0.77
	S20542	0	1	0.00	0.91
	S20543	0	1	0.00	1.01
	S20544	0	1	0.00	0.63
	S20545	0	1	0.00	0.61
	S20546	0	1	0.00	0.78
	S20547	0	1	0.00	0.84
	S20548	0	1	0.00	0.97

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ELECDIST	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
E09 Kenai-Nikiski	SM-5514	1	0	80.00	0.00
	SM-5515	1	0	26.65	0.00
	SM-5516	1	0	30.56	0.00
E09 Kenai-Nikiski		20	1	1,047.42	80.00
N27 Palmer	S20569	0	1	0.00	15.00
	SM-0018	1	0	315.48	0.00
	SM-0243-02	1	0	14.65	0.00
	SM-0279-A	0	1	0.00	24.00
	SM-0280-A	0	1	0.00	32.50
	SM-5013	1	0	229.71	0.00
	SM-5014	1	0	10.00	0.00
N27 Palmer		4	3	569.84	71.50
N28 Wasilla-Talkeetna	S20535	0	1	0.00	40.00
	S20537	0	1	0.00	0.71
	S20538	0	1	0.00	0.71
	S20539	0	1	0.00	0.79
	S20540	0	1	0.00	0.85
	S20541	0	1	0.00	0.77
	S20542	0	1	0.00	0.91
	S20543	0	1	0.00	1.01
	S20544	0	1	0.00	0.63
	S20545	0	1	0.00	0.61
	S20546	0	1	0.00	0.78
	S20547	0	1	0.00	0.84
	S20548	0	1	0.00	0.97
	S20567	0	1	0.00	320.00
	SM-1624	1	0	0.45	0.00
	SM-1625	1	0	1.27	0.00
	SM-1626	1	0	2.91	0.00
	SM-1627	1	0	3.51	0.00
	SM-1628	1	0	4.89	0.00
	SM-1831	1	0	3.33	0.00
	SM-1845	1	0	475.80	0.00
	SM-1848	1	0	598.87	0.00
	SM-1860	1	0	297.04	0.00
	SM-2004	1	1	5.00	5.00
	SM-2007	1	1	1.01	1.01
	SM-2191	0	1	0.00	5.00
	SM-2503	1	0	16.36	0.00
	SM-5007	1	0	9.76	0.00
	SM-5016	1	0	1.94	0.00
N28 Wasilla-Talkeetna		14	17	1,422.13	380.60
O29 University-Ester	FM-0389-02	1	0	0.01	0.00
	FM-0429	0	1	0.00	10.00

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ELECDIST	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
O29 University-Ester	FM-0429-02	1	0	7.00	0.00
	FM-0429-03	1	0	2.00	0.00
	FM-0439	0	1	0.00	112.55
	FM-0439-01	1	0	112.54	0.00
	FM-0952-A	0	1	0.00	567.76
	FM-0952-A01	1	0	566.76	0.00
	FM-1008-02	1	0	7.80	0.00
O29 University-Ester		6	3	696.11	690.31
Q33 NE Fairbanks	F20284	0	1	0.00	240.00
	F20285	0	1	0.00	80.00
	F20312	0	1	0.00	320.00
	F20444	0	1	0.00	80.00
	F20445	0	1	0.00	4.64
	F20446	0	1	0.00	5.15
	F20447	0	1	0.00	4.69
	F20448	0	1	0.00	4.64
	F20449	0	1	0.00	4.64
	F20450	0	1	0.00	3.77
	F20451	0	1	0.00	13.86
	F20452	0	1	0.00	6.79
	F20453	0	1	0.00	5.30
	F20454	0	1	0.00	5.00
	F20455	0	1	0.00	5.00
	F20456	0	1	0.00	5.03
	F20457	0	1	0.00	4.13
	F20458	0	1	0.00	4.58
	F20459	0	1	0.00	5.25
	F20460	0	1	0.00	5.03
	F20461	0	1	0.00	5.13
	F70015	0	1	0.00	640.00
	F82863	0	1	0.00	116,745.26
	F82863-R	1	0	184,320.00 *	0.00
	FM-0138	0	1	0.00	7.00
	FM-0138-01	1	0	3.50	0.00
	FM-0138-02	1	0	4.46	0.00
	FM-0160	0	1	0.00	132.96
	FM-0160-01	1	0	132.60	0.00
	FM-0160-03	1	0	0.36	0.00
	FM-0202	0	1	0.00	34.75
	FM-0202-01	1	0	34.75	0.00
	FM-0221	0	1	0.00	57.15
	FM-0221-01	1	0	2.50	0.00
	FM-0221-03	1	0	56.70	0.00
	FM-0221-04	1	0	0.45	0.00
	FM-0231-Z01	1	0	16.80	0.00
	FM-0231-Z02	1	0	15.00	0.00
	FM-0231-Z04	1	0	10.33	0.00
	FM-0540	0	1	0.00	6.50

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ELECDIST	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
Q33 NE Fairbanks	FM-5003	1	0	2.40	0.00
Q33 NE Fairbanks		13	28	184,599.85 **	118,436.24
Q34 North Pole-Denali	F20530.001	0	1	0.00	19.46
	F20530.002	0	1	0.00	3.20
	F20530.003	0	1	0.00	400.00
	F20692	0	1	0.00	640.00
	F20698	0	1	0.00	640.00
	F82863	0	1	0.00	0.00
	FM-0690-B	0	1	0.00	2.21
	FM-0691-G	0	1	0.00	127.00
	FM-0691-G01	1	0	14.00	0.00
	FM-0691-G03	1	0	95.00	0.00
	FM-0706	0	1	0.00	238.50
	FM-0706-01	1	0	238.00	0.00
	FM-0718	0	1	0.00	1.49
	FM-0718-01	1	0	1.34	0.00
	FM-0719	0	1	0.00	1.50
	FM-0719-01	1	0	0.15	0.00
	FM-0749-A	1	0	200.00	0.00
	FM-0788	0	1	0.00	6.25
	FM-0824	0	1	0.00	9.96
	FM-0824-02	1	0	9.96	0.00
	FM-1204	1	0	40.38	0.00
	FM-1663-02	1	0	7.20	0.00
Q34 North Pole-Denali		9	13	606.03	2,089.57
R36 Rural Interior	FM-1080	1	0	9.55	0.00
	FM-1175	0	1	0.00	119.23
	FM-1175-01	1	0	33.00	0.00
	FM-1175-02	1	0	119.23	0.00
	FM-1176	0	1	0.00	3.33
	FM-1179	1	0	17.91	0.00
	FM-1415	0	1	0.00	8.75
	FM-1415-01	1	0	19.10	0.00
	FM-1553-02	1	0	24.00	0.00
	FM-1560	0	1	0.00	5.00
	FM-1605	1	0	3.00	0.00
R36 Rural Interior		7	4	225.79	136.31
		122	85	190,955.16 **	124,209.62

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** Mental Health PSL/OTL Data -- 21SEP94 --
** summary by borough **

BOROI	PARCEL	PRCL_ADD	PRCL_DEL	ACREADD	ACREDEL
13 Matanuska-Susitna Borough	S20567	0	1	0.00	320.00
	S20569	0	1	0	15.00
	SM-0018	1	0	315.4	0.00
	SM-0243-02	1	0	14.65	0.00
	SM-0279-A	0	1	0.00	24.00
	SM-0280-A	0	1	0.00	32.50
	SM-1624	1	0	0.45	0.00
	SM-1625	1	0	1.27	0.00
	SM-1626	1	0	2.91	0.00
	SM-1627	1	0	3.51	0.00
	SM-1628	1	0	4.89	0.00
	SM-1831	1	0	3.33	0.00
	SM-1845	1	0	475.80	0.00
	SM-1848	1	0	598.87	0.00
	SM-1860	1	0	297.04	0.00
	SM-2004	1	1	5.00	5.00
	SM-2007	1	1	1.01	1.01
	SM-2191	0	1	0.00	5.00
	SM-2503	1	0	16.36	0.00
	SM-5007	1	0	9.76	0.00
	SM-5013	1	0	229.71	0.00
	SM-5014	1	0	10.00	0.00
	SM-5016	1	0	1.94	0.00
13 Matanuska-Susitna Borough		18	20	1,991.97	452.10
		122	84	190,955.16 **	124,209.62

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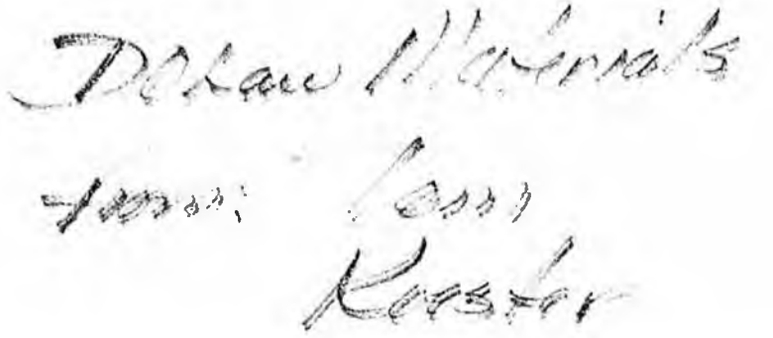

September 21, 1994, 5:00 p.m.

SECTION-BY-SECTION ANALYSIS OF SPECIAL SESSION SUBSTANTIVE BILL

Sections 1 and 17 change the name of the new account into which trust income will be deposited and from which the Trust Authority will fund grants and contracts (AS 37.14.036) from "mental health trust income account" to "mental health trust settlement income account." This will distinguish that new account from the old mental health trust income account (AS 37.14.011) that will be repealed when it is no longer needed to fund existing mental health appropriations. **Section 19** gives these sections a December 16, 1994 effective date.

Section 2 provides that the deadline for dismissal of the case applies only to proceedings in the superior court and not to appeals or a petition for certiorari to the United States Supreme Court. This will prevent a party using the delay inherent in appeals or certiorari to prevent the settlement taking effect. **Sections 14 and 15** provide for the repeal of the settlement incentive provisions in the unlikely event the superior court's dismissal of the case is reversed on appeal or on a petition for certiorari to the United States Supreme Court; in other words, the plaintiffs will not get the benefits of the settlement unless the state and the public also get the benefits of the settlement. In the unlikely event the superior court's dismissal is reversed, **section 16** ratifies any grants and contracts made by the Trust Authority and transfers the responsibility for administering them to the Department of Health and Social Services.

Sections 3 and 18 reinstate the mental health trust income account (AS 37.14.011(a)) as of June 24, 1994 (the date of its repeal under ch. 5, FSSLA 1994). That account is the funding source for $33,000,000 of the $200,000,000 appropriation to capitalize the mental health trust fund (AS 37.14.031) under ch. 6, FSSLA 1994, and for other mental health capital and operating appropriations. This will ensure that those appropriations have a valid funding source. **Section 12** repeals the account when it is no longer needed to fund those appropriations.

Sections 4, 6, and 7 incorporate the additions to and deletions from the lists of lands to be conveyed to the trust. The additions and deletion cure the Salcha problem and correct other errors on the original land lists. **Section 5** makes a conforming amendment to ensure that the new land added to the trust remains subject to valid existing rights.

Sections 8, 9, 10, 11, and 13 repeal the governor's authority to extend the December 15, 1994 deadline. That authority is no longer necessary in light of the change made by section 2.

Section 20 gives everything but sections 1 and 17 an immediate effective date (under section 19, they take effect December 16, 1994).

September 21, 1994, 5:00 p.m.

SECTION-BY-SECTION ANALYSIS OF SPECIAL SESSION APPROPRIATION BILL

Sections 1, 2, 3, and 4 provide that, to the extent there are amounts exceeding the amounts already coming from mental health land revenue on deposit in the general fund and the mental health trust income account, those amounts may be used as supplemental funding sources to make up any shortfalls from the funding sources for the $200,000,000 appropriation in ch. 6, FSSLA 1994, to capitalize the mental health trust fund (AS 37.14.031). **Section 1** also provides that the deadline for dismissal of the case applies only to dismissal by the superior court.

Section 5 appropriates from the general fund the amount necessary to fund appropriations from the mental health trust income account if there is not enough in that account to fund them.

Section 6 provides that any balance in the mental health trust income account on the date of its repeal is transferred to the general fund, and that any unexpended, unobligated, and unencumbered balances of appropriations from that account that lapse after the repeal of that account lapse into the general fund.

Section 7 ratifies all expenditures made in accordance with law from the mental health trust income account after June 24, 1994 (the date of its repeal under ch. 5, FSSLA 1994) and the effective date of this Act.

Section 8, 9, 10, and 13 provide that, in the unlikely event the superior court's dismissal is reversed on appeal or on a petition for certiorari to the United States Supreme Court, the $200,000,000 appropriation to capitalize the mental health trust fund (AS 37.14.031) and any additional amounts attributable to inflation proofing that $200,000,000 is appropriated to the general fund. They also provide, in that unlikely event, that any remaining balance in the mental health trust fund (AS 37.14.031) and the unexpended and unobligated balance in the mental health trust settlement income account (AS 37.14.036) are appropriated to the mental health trust income and proceeds account (AS 37.14.023).

Section 11 repeals the governor's authority to extend the December 15, 1994 deadline by forty-five days.

Section 12 makes sections 1 - 7 and 11 retroactive to June 24, 1994, the effective date of ch. 6, FSSLA 1994.

Section 14 gives everything but sections 8 and 9 an immediate effective date (under sections 10 and 13, sections 8 and 9 take effect only upon the superior court's dismissal of the case being reversed on appeal or on a petition for certiorari).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated; ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, and GABRIEL MAYOC; and H.L., M.K., and ALASKA ADDICTION REHABILITATION SERVICES,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 Civil

MEMORANDUM DECISION AND ORDER RE: PRELIMINARY APPROVAL OF HB 201 PROPOSED SETTLEMENT AGREEMENT

TABLE OF CONTENTS

I. INTRODUCTION

Two motions for preliminary approval of a new proposed settlement agreement, filed June 10, 1994, are before the court. The court held an evidentiary hearing and oral argument on July 12 - 22, 1994, regarding whether the proposed settlement should be preliminarily approved. Plaintiffs Anita Bosel, Frances Doulin, Sharon Goodwin, and Gabriel Mayoc ["Bosel"], H.L., M.K., and Alaska Addiction Rehabilitation Services ["H.L."] and defendant State of Alaska ["State"] urge the court to grant preliminary approval of the proposed settlement. Plaintiffs Vern Weiss and Earl Hilliker ["Weiss"], and the Alaska Mental Health Association, Mary C. Nanuwak, and John Martin ["AMHA"] oppose preliminary approval of the settlement.

Alaska Center for the Environment, Alaska Sportfishing Association, Lynn Canal Conservation, Northern Alaska Environmental Center, Sierra Club, Southeast Alaska Conservation Council, Susitna Valley Association, and Trout Unlimited ["Public Interest Intervenors"] filed a memorandum supporting the proposed settlement. Marathon Oil Company and Union Oil Company of California ["Oil Company Intervenors"] also filed a response supporting preliminary approval of the proposed settlement.

II. BACKGROUND

This class action began in November 1982, with allegations that the State had breached its obligations to the beneficiaries of the mental health lands trust.

The mental health lands trust was created by Congress in the Alaska Mental Health Enabling Act of 1956 ["Enabling Act"]. Pub. L. No. 84-830, 70 Stat. 709 (1956). The Enabling Act transferred responsibility for mental health programs from the federal government to the Territory of Alaska and granted one million acres of land to the Territory to aid in the financial support of a comprehensive mental health program.[1] Pub. L. No. 84-830, §§ 101, 202, 70 Stat. 709 (1956). Section 202(e) stated:

> All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be disposed of in such a manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

Section 6(k) of the Alaska Statehood Act confirmed and transferred the mental health trust to the State. Pub. L. No. 85-508, § 6(k), 72 Stat. 339 (1958).

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[1]In 1956 no mental health program existed in Alaska; the federal government transported mentally ill and mentally retarded people in need of hospitalization to the Morningside Hospital in Portland, Oregon. The history surrounding passage of the Enabling Act was discussed in the court's Memorandum Decision and Order of April 27, 1988, which analyzed congressional intent regarding the beneficiaries of the trust.

The State of Alaska managed the mental health lands without maintaining separate accounting for the trust. In the 1970's there was pressure on the legislature to convey state-owned land to private individuals and municipalities. Because the mental health trust lands were some of the first land parcels to be selected by Alaska, trust lands were among the most attractive state lands for both private development and public purposes. In 1978, the legislature removed mental health lands from trust status and redesignated them as general grant lands.[2] Ch. 181, § 3(a), SLA 1978. A percentage of all State land revenue was to be paid to the mental health trust fund to compensate the trust, but no money was ever appropriated by the legislature to the fund. See Ch. 181 § 4, SLA 1978.

The State proceeded to transfer large amounts of original trust land after the redesignation legislation. A large amount of original mental health trust land was set aside for public purposes such as parks, recreation, and wildlife habitat. Much of the trust land located within municipal boundaries was transferred to municipalities, who later sold some land to private individuals. Many of the trust lands most suitable for development were sold to private individuals through the State's land sale programs. Overall, up to 50,000 acres were conveyed to private individuals, over 40,000 acres were conveyed to municipalities, and over 350,000

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[2]State general grant lands are those granted to Alaska through subsections (a) and (b) of Section 6 in the Alaska Statehood Act. Pub. L. No. 85-508, § 6(a) and (b), 72 Stat. 339 (1958).

acres were placed in legislatively designated areas[3] such as state forests, parks, and wildlife areas. Only about 35-40% of the original one million acres of trust land remain unencumbered and in unfettered state ownership.

Weiss and Hilliker, the original named plaintiffs, filed this lawsuit as a class action on November 26, 1982. They claimed that the State breached the trust by failing to account for trust revenues, using the revenue from trust lands for purposes other than mental health services, and redesignating trust lands as general grant lands. In January 1983, the suit was certified as a class action, and the class was defined as "all persons who are residents of the State of Alaska and who will require mental health services in the future which are not available in the State of Alaska."[4] Weiss v. State, 4FA-82-2208, Order Certifying Action (Super. Ct. Jan. 26, 1983) (Judge Taylor). AMHA intervened in 1986 and added claims that the conveyances of trust land to third parties were invalid. In March 1987, Bosel intervened to represent

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[3]Legislatively designated areas are lands designated by law as a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range. See Ch. 66, §§ 54(6), 55(b), SLA 1991.

[4]The beneficiaries of the trust are composed of at least "those individuals suffering from psychiatric illness who may require hospitalization and the mentally defective and retarded" as well as "chronic alcoholics suffering from psychoses and senile people who as a result of their senility suffer major mental illness." Memorandum Decision and Order, at 17 (April 27, 1988).

mentally defective and mentally retarded individuals. H.L. intervened in June 1987 to represent chronic alcoholics.

In October 1985, the Alaska Supreme Court upheld the superior court's finding that the State breached its trustee obligations under the mental health land trust. State v. Weiss, 706 P.2d 681, 684 (Alaska 1985). The Supreme Court also invalidated the 1978 legislation redesignating mental health trust lands as general grant lands and held that, to the extent possible, the trust should be returned to its position prior to the legislation.[5] The court specifically declined to rule on questions regarding the title to

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[5]Specifically, the Supreme Court stated:

> It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.
>
> Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of the lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.

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

mental health lands held by third parties.[6] See Weiss, 706 P.2d at 684 n.4.

The parties have struggled to agree on an adequate remedy since the Supreme Court decision. Major attempts at settlement were made through legislation in 1987 (Chapter 48), 1990 (Chapter 210), and 1991 (Chapter 66). None of these proposed settlements has obtained preliminary approval.

Chapter 48 involved the concept of the State "renting" mental health lands from the trust. The trust was to be reconstituted entirely with land within legislatively-designated areas and the original trust lands not in legislatively-designated areas were to be released from trust status. The reconstituted trust was to have the same fair market value as the original one million acres of mental health lands. The State was to compensate the trust by "renting" the reconstituted trust lands at an annual amount of

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[6]This issue was raised in AMHA's complaint after the Supreme Court's decision. The plaintiffs and the State disagree on which trust lands have been "sold" within the meaning of the court's opinion. The State contends that any disposition, even designation as a park, means the land has been "sold." Plaintiffs have argued that the term "sold" applies only to land conveyed to bona fide purchasers, which of course would not include municipalities. They contend that this lawsuit was sufficiently well-known that all or nearly all purchasers had at least constructive notice of the trust's interest and the State's breach of trust. See Settling Plaintiffs' Memo. Supporting Motion for Preliminary Approval, at 8 (July 1, 1992). Since it is possible that the amount of the State's past mental health expenditures exceed the value of "sold" trust land, it is possible that the trust would not receive any cash reimbursement even if substantial amounts of land were "sold." It is in the interest of the State to maximize the amount of lands "sold" and the amount of past mental health expenditures. It is in the interest of the trust to minimize both categories.

eight percent of the fair market value of trust lands with the value of the lands to be redetermined every five years. Until fair market value of the lands was established, five percent of the State's unrestricted general fund revenues was deemed to be the income of the trust. Chapter 48 also created an Alaska Mental Health Board to determine the needs of the mental health program and transmit funding recommendations to the governor and legislature.

Chapter 48 failed as a possible settlement because the parties could not determine fair market value of the trust lands. The fair market value of trust lands was estimated according to procedures approved by the Interim Mental Health Trust Commission[7] at $2.243 billion. The State considered this figure much too high. The Commissioner of the Department of Natural Resources wrote to the Alaska Mental Health Board on April 17, 1990, announcing that the department would not follow the procedures. Impasse resulted.

The legislature then enacted a different settlement proposal in Chapter 210, which eliminated the need for a land value determination. Chapter 210 provided for compensation to the trust in the amount of six percent of the State's unrestricted general revenues. Plaintiffs rejected this proposal because State revenues were expected to fall to a level at which the trust was unlikely to receive fair compensation for the value of trust lands. The

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[7]The Interim Mental Health Trust Commission was originally established under Chapter 132, SLA 1986.

court held that the legislature could not settle the lawsuit unilaterally with such legislation, particularly in view of the Supreme Court's mandate to reconstitute the trust "to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective." Memorandum Decision and Order, at 8-9 (July 9, 1990).

Plaintiffs obtained an injunction prohibiting the State from taking any further action on mental health lands. See Memorandum Decision and Order (July 9, 1990). The plaintiffs also filed lis pendens on all original mental health lands. Around 6,000 land transactions were affected by the injunction and/or lis pendens. This placed many purchasers of small parcels in a difficult position: they made all of their payments to the State for land purchased in a state land sale, but were still unable to obtain patent to the land. Because of the cloud on their title, many of these individual purchasers have found themselves unable to sell the land or obtain financing for construction. Certain developments on state land, such as mining operations, also have been delayed due to the uncertainty of title.

In May 1991, after negotiations between the State and class counsel, the Alaska Legislature passed Chapter 66. The legislation contained amendments to the state's mental health program and established a process to select land for an entirely land-based reconstitution of the mental health land trust. On April 6, 1992, a proposed settlement agreement, incorporating Chapter 66,

was signed by the State and three of the four class counsel.[8] Because of H.L.'s allegations of improprieties during negotiations, an evidentiary hearing regarding settlement negotiations was held in September 1992, and continued in January 1993.

The legality of portions of Chapter 66 dealing with reconstitution of the mental health land trust was challenged by the Public Interest Intervenors. The portions of the Chapter 66 settlement affecting Cook Inlet oil and gas leases on state land were challenged by Marathon Oil Company and Union Oil Company of California ("Oil Company Intervenors"). The Public Interest Intervenors' challenge to Chapter 66 was addressed in the court's Memorandum Decision and Order regarding Public Interest Intervenors' Complaint (April 26, 1993). The Oil Company Intervenors' challenge to provisions in the proposed settlement which effected their oil and gas leases on state land in Cook Inlet was addressed in the court's Memorandum Decision and Order (May 14, 1993). Both decisions were appealed.[9]

On October 4, 1993 the court denied a motion made by H.L. and Bosel for partial summary judgment and held that intervening plaintiff class members have the same status as original named

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[8]Counsel for Bosel, Jeff Jessee, withdrew from the Chapter 66 settlement in December 1992.

[9]If this settlement is approved, the Oil Company Intervenors plan to file motions to the Alaska Supreme Court requesting dismissal of their appeals as moot and vacation of the orders on which the appeals are based. Response of Oil Company Intervenors, at 4 (July 1, 1994).

plaintiffs and class members. If a settlement receives final approval, all members of the class will be bound by that decision.[10]

On December 30, 1993, the court refused to grant preliminary approval to the Chapter 66 settlement. See Memorandum Decision and Order, at 122 (Dec. 30, 1993). The court found that the proposed settlement had serious deficiencies because the agreement permitted any party to terminate the settlement agreement even after final approval and dismissal of this case. See Memorandum Decision and Order, at 121 (Dec. 30, 1993).

Negotiations of a new settlement started in January 1994. In a special session following the 1994 legislative session, HB 201 and HB 371 were passed amending Chapter 66 and establishing a new settlement.[11]

The HB 201 settlement includes more cash and less land than the Chapter 66 settlement. It is supported by the State, Bosel, and H.L. It is opposed by Weiss and AMHA. The settlement is supported by the Public Interest Intervenors, who participated in negotiations concerning land to be included in the reconstituted trust. The Oil Company Intervenors support HB 201, but declined

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[10]Of course class members who object to a settlement may appeal any decision granting final approval.

[11]HB 201 has became Chapter 5, FSS SLA 1994, and the accompanying appropriations bill, HB 371, became Chapter 6, FSS SLA 1994, after Governor Hickel signed the bills on June 23, 1994. Because the settlement legislation has been called "HB 201" in most of the documents submitted to the court, this memorandum will continue to use the terms "HB 201" and "HB 371."

to sign the settlement agreement due to a disagreement with the State over provisions relating to attorneys' fees.[12]

The HB 201 settlement is summarized below. Additional information regarding the settlement and the negotiation process will be discussed as it relates to specific issues raised by the factors the court must consider in making the preliminary approval decision.

III. SUMMARY OF THE PROPOSED SETTLEMENT

The settlement components of HB 201 are contained in sections 2 through 9, 12 through 41, 43, 46, 47, 50, and 51. A proposed settlement agreement submitted with H.L.'s Motion for Preliminary Approval has been signed by the State, H.L., and Bosel. Settlement Agreement and Stipulation to Terms of Dismissal (June 10, 1994). HB 201 to a great extent incorporated the Chapter 66 provisions that are designed to improve the mental health program for beneficiaries, but section 39 of HB 201 repeals the trust reconstitution provisions of Chapter 66. HB 201 reconstituted the trust with a specific land package and a $200 million cash payment.

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[12]The Oil Company Intervenors do not support Section VI, paragraph 4 of the settlement, which states:

> Attorney fees and costs shall be awarded and paid as determined by the court. Paragraph 6(e) requires dismissal of appeals to the Supreme Court because they are moot. The parties request that attorney fees be awarded as if the orders had not been appealed.

Oil Company Intervenors' Response, at 3-4 (July 1, 1994).

Most of the settlement terms become effective only if this action is dismissed and any appeals are resolved by December 15, 1994.[13] HB 201 §§ 37.

Chapter 66 was a "process" settlement, which set guidelines for choosing the lands for return to the trust; HB 201 is a "product" settlement with lands already selected and a definite amount of money ($200 million) appropriated in HB 371 for the trust fund.[14] Section 40(a) of HB 201 returns approximately 568,000 acres of original trust land to the reconstituted trust and designates approximately 353,000 acres of other state land as substitute trust land to replace original trust land that will not be returned to the trust. The original trust land to be reconstituted into the trust includes approximately 435,000 acres in fee, approximately 55,000 acres of mineral estate, and approximately 78,500 acres of oil and gas interests. See Aff. Harry A. Noah (State M/Prelim. Appr., at 3 n.4, Exh. A). Lands returned to the trust will include only the mineral estate or oil and gas interests where the surface has been conveyed to third parties or is within legislatively designated areas such as the Matanuska

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[13]The governor may extend the deadline for up to 45 additional days. HB 201 § 47.

[14]Section 1 of HB 371 provides that the Mental Health Trust Fund, established by section 12 of HB 201, is funded by: (1) $33 million from the existing mental health trust income account; (2) $11.7 million from the Department of Natural Resources (DNR) trust income account in the general fund; (3) $25 million from sale of DNR land sale contracts; and (4) $130.3 million from the constitutional budget reserve fund.

Valley Moose Range. H.L. and Bosel Mem. Sup. M/Prelim. Appr., at 5 (June 10, 1994). Other state land to be transferred includes 111,000 acres in fee,[15] 217,000 acres of mineral estate,[16] and approximately 25,000 acres of oil and gas interests.[17] See Aff. Harry A. Noah (State M/Prelim. Appr., at 3 n.5, Exh. A).

The reconstituted land trust will consist of a total of 930,000 acres, the value of which is estimated by H.L. and Bosel to be between $1.0 and $1.1 billion. H.L. and Bosel Mem. Sup. M/Prelim. Appr., at 2, 4, 6-7 (June 10, 1994). Weiss and AMHA estimate the value of the lands to be $560 million. Weiss Opp. to Prelim. Appr., at 6 (July 1, 1994).

A mental health trust fund will be established to receive revenues attributable to the principal of the trust. HB 201 §§ 12-14. As compensation for the original trust lands not returned to the trust, the fund will start with the $200 million cash payment appropriated in HB 371. The Alaska Permanent Fund Corporation will manage the trust fund. HB 201 §§ 3, 4. HB 201 provides that the

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[15]Of this "other state land" to be conveyed in fee, approximately 41,000 acres was selected for its surface value, 4,252 acres for timber value, and approximately 65,000 acres for its mineral potential, including approximately 9,077 acres adjacent to the Fort Knox mining project. H.L. M/Prelim. Appr., at 6.

[16]Approximately 116,000 acres of this land is located near Salcha and has been selected by the state but not tentatively approved by the federal government. It is part of a military withdrawal. Unless the military withdrawal is released, it is not likely that this land could be conveyed to the trust in the foreseeable future.

[17]The oil and gas interests are located in the lower Kenai peninsula and lower Susitna Valley.

"cash principal of the mental health trust fund shall be retained perpetually in the fund for investment by the Alaska Permanent Fund Corporation." HB 201 § 14 (to be codified as AS 37.14.035(a)).

Earnings from the trust fund along with trust land revenues not attributable to principal will be deposited in a mental health trust income account.[18] HB 201 §§ 3, 14, 15. The income account will be administered by the Alaska Mental Health Trust Authority.[19] HB 201 § 16 (to be codified as AS 37.14.039(a)). Money in the trust income account may be used by the Trust Authority for: (1) awarding grants and contracts to ensure an integrated comprehensive mental health program for the state;[20] (2) obtaining private and federal grants for the above purpose; (3) soliciting gifts, bequests, and contributions for the above purpose; (4) reimbursing the Alaska Permanent Fund Corporation and DNR for the cost of managing trust assets; (5) offsetting the effects of inflation on

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[18]At the end of each fiscal year, the Alaska Permanent Fund Corporation must transfer the net income of the trust fund to the mental health trust income account. HB 201 § 14 (to be codified at AS 37.14.035(b)). In addition, money deposited prior to December 15 in the existing mental health trust income and proceeds account will be deposited in either the income account or trust fund established by HB 201. Settlement Agreement, art. V, sec. 5 (June 10, 1994).

[19]The Alaska Mental Health Trust Authority is created by section 26 of Chapter 66, SLA 1991. A seven-person board of trustees will govern the Trust Authority. Ch. 66 § 26, SLA 1991. Board members must be appointed by the governor and confirmed by the legislature. HB 201 § 24. The board has the duty to preserve and protect the trust corpus under AS 37.14.009, which is added by section 10 of Chapter 66 and amended by section 9 of HB 201.

[20]Section 16 of HB 201 also adds AS 37.14.045, which specifies the terms under which grants and contracts may be added.

the trust fund; and (6) meeting the necessary administrative expenses of the Trust Authority. HB 201 § 16 (to be codified as AS 37.14.041(a) and AS 37.14.045). The proposed settlement agreement states directly that the Trust Authority may use the money in the trust income account for these purposes without further legislative appropriation.[21] Settlement Agreement, art. V, sec. 4, at 12 (June 10, 1994). If money in the income account is not needed for the necessary expenses of the state's mental health program, the Trust Authority is required to transfer the money to the unrestricted general fund for other purposes.[22] HB 201 § 16 (to be codified as AS 37.14.041(b).

The governor is required to submit to the legislature a separate appropriations bill limited to the state's integrated comprehensive mental health program and similarly the legislature is required to make appropriations for the mental health program in a separate bill. HB 201 §§ 4, 7. The bill must be accompanied by a report explaining the differences between the appropriations proposed by the governor and the Trust Authority's recommendations for expenditures from the general fund for the state's mental health program. HB 201 § 5. HB 201 also provides that if the governor vetoes any appropriations for the mental health program, the governor's veto message must explain the vetoes in light of the

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[21]It is not known whether this is permissible under the Alaska Constitution.

[22]Such a transfer is permitted by the Enabling Act. P.L. 84-830, § 202(e), 70 Stat. 709 (1956).

Trust Authority's recommendations for expenditures from the general fund for the mental health program. HB 201 § 6.

Under HB 201, the reconstituted land corpus of the trust will be managed by the Department of Natural Resources ("DNR"). HB 201 § 17. Section 17 of HB 201 describes the standards applicable to DNR's management of trust lands:

> (a) Mental health trust land shall be managed consistent with the trust principles imposed on the state by the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956).
>
> (b) Subject to (a) of this section, the department
>
> (1) shall manage mental health trust land under those provisions of law applicable to other state land;
>
> (2) may exchange other state land for mental health trust land under the procedures set out in AS 38.50;
>
> (3) may correct errors or omissions in the legal descriptions of mental health trust land.
>
> (c) The commissioner shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section. The regulations adopted under this subsection must, at a minimum, address
>
> (1) maintenance of the trust land base;
>
> (2) management for the benefit of the trust;
>
> (3) management for long-term sustained yield of products from the land; and
>
> (4) management for multiple use of trust land.

Thus, to the extent that trust principles imposed by the Enabling

Act do not conflict, general state land law will apply. The regulations which are to be adopted must address the four listed management provisions.[23] HB 201 requires that a separate unit of DNR be established whose responsibility is to manage the trust land.[24] HB 201 § 22. The land management provisions in sections 17-18 and 22 take effect immediately and remain in effect whether or not the settlement is approved by the December 15 deadline. See HB 201 §§ 17, 22, 48, 52.

HB 201 purports to confirm and ratify the 1978 redesignation of original trust lands not returned to the reconstituted trust. See HB 201 § 41. HB 201 also provides the legislature's estimate of the amount for past mental health expenditures. HB 201 § 42.[25]

The improvements to Alaska's mental health program enacted under Chapter 66 are made effective by the settlement provisions of HB 201 with only a few amendments. See HB 201 §§ 19-21, 30-36, 37; Ch. 66 § 26-48. The program portion of the Chapter 66 settlement has involved little controversy; most regard the program

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[23]These four management principles are derived from a monograph entitled "The School Trust Lands: A Fresh Look at Conventional Wisdom" by Fairfax, Souder, and Goldenman. Exh. B (evidentiary hearing). The article is published at 22 Environmental Law 797.

[24]The proposed settlement agreement requires that during the development of the initial policies and procedures for the separate DNR unit managing trust land, DNR will consult with a transition team of representatives from the beneficiary community. Settlement Agreement, art. V, § 6, at 13-14 (June 10, 1994). Commissioner Noah testified that he is doing so.

[25]This provision becomes importar only if this attempt at settlement does not succeed.

portion as a valuable addition to state law.

IV. STANDARD FOR PRELIMINARY APPROVAL

Under Alaska Civil Rule 23(e), a "class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Alaska R. Civ. P. 23(e). Because the Alaska rule is identical to the federal rule, federal cases may provide guidance in its application to the present case. See State v. Alex, 646 P.2d 203, 213 (Alaska 1982). The settlement approval process in class actions is composed of four parts: (1) preliminary approval of the settlement by the court; (2) notice to the class; (3) a formal fairness hearing; and (4) final approval by the court. See Manual for Complex Litigation, Second § 30.43, at 241 (West 1985) ["MCL 2d]". The primary purpose behind court approval of the settlement of a class action is the protection of class members "whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Service Comm'n, 688 F.2d 615, 624 (9th Cir. 1982).

The standard for preliminary approval includes an inquiry into both the fairness and the adequacy of the proposed settlement. In re Mid-Atlantic Toyota Antitrust Litigation, 564 F. Supp. 1379, 1383 (D. Md. 1983). The court must make a preliminary evaluation of the fairness of the proposed settlement agreement by considering

whether the proposed settlement:

(1) appears to be the product of serious, informed, noncollusive negotiations;

(2) has no serious deficiencies;

(3) does not improperly grant preferential treatment to class representatives or segments of the class; and

(4) falls within the range of possible approval.

MCL 2d § 30.44, at 241. Preliminary approval is not a finding that the settlement is actually fair, reasonable, and adequate.[26] In re Mid-Atlantic Toyota Antitrust Litigation, 564 F. Supp. 1379, 1384 (D. Md. 1983). Final approval of the settlement remains discretionary with the court even after preliminary approval. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1291 (9th Cir. 1992); S.E.C. v. Randolph, 736 F.2d 525, 529 (9th Cir. 1984); Newberg on Class Actions, Third Edition § 11.41, at 11-88 (3d ed. December 1992 & Supp. June 1993) ["Newberg on Class Actions 3d"]. The purpose of preliminary approval is to ascertain whether there is any reason to expend the time and money to notify class members of the proposed settlement and proceed with a formal fairness hearing. Armstrong v. Board of School Directors, 616 F.2d 305, 314

[26]The settlement must be "fair, adequate, and reasonable" in order to receive final court approval. E.g., Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1291 (9th Cir. 1992); MCL 2d, § 30.44, at 242 ("The settlement must be fair, reasonable, and adequate under the circumstances.").

(7th Cir. 1980). Notice and a formal fairness hearing would be "futile gestures," if the court did not find the settlement to be within the range of possible approval.[27] Newberg on Class Actions 3d § 11.25, at 11-36; see In re Mid-Atlantic Toyota Antitrust Litigation, 564 F. Supp. 1379, 1384 (D. Md. 1983).

The court may only approve or disapprove a settlement agreement. MCL 2d § 30.41, at 237. The court may make suggestions for changes, but has no authority to directly amend a settlement. See Id. However, "[n]othing prevents the court from receiving successive settlement proposals or from submitting successive settlement proposals to the class for its evaluation." Newberg on Class Actions 3d § 11.25, at 11-37 to 11-38.

The burden is on the proponents to show that a proposed settlement should be approved. See MCL 2d § 30.44, at 241-42; Newburg on Class Action, Third Edition § 11.42, at 11-94 (1992).

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[27]However, where a court rejects a settlement, it "may indicate what modifications would make the settlement acceptable to it." Little Rock School District v. Pulaski County, 921 F.2d 1371, 1388 (8th Cir. 1990). If changes for the proposed settlement are suggested in the court's decision, the parties may be able to agree on appropriate changes before notice is given to the class. See MCL 2d, § 30.41, at 237 n. 88. If substantial changes are made, the agreement may be resubmitted for preliminary approval, additional notice to the class, and another hearing. Id.

V. DISCUSSION

A. Is the Proposed Settlement the Product of Serious, Informed, Noncollusive Negotiations?

1. Factual background

On December 30, 1993, the court denied motions for preliminary approval for the Chapter 66 settlement. As early as January 6, 1994, the State began exploring the possibility of a new settlement. After a January 25, 1994 meeting, Mr. Volland believed that a mixed land and cash settlement was possible.[28] Aff. Volland ¶ 6.

The State presented plaintiffs with an initial offer in mid-February. The plaintiff groups and third-party intervenors discussed the State's proposal several times. The State invited counterproposals from any of the plaintiff attorneys. On March 14, Mr. Volland submitted a counteroffer to the State that involved the formation of a permanent endowment fund for the state's mental health program. See Aff. Volland ¶ 14. Although Mr. Volland submitted the counteroffer on behalf of his clients alone, meetings with counsel and representatives for other plaintiff groups convinced him that the principles of his counteroffer were generally acceptable to plaintiff groups. Aff. Volland, ¶¶ 14-16. Neither Mr. Walker nor Mr. Gottstein presented a counteroffer to the State.

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[28]The Chapter 66 settlement was a land-based settlement without any significant cash component. The State refused to consider a settlement with a large cash component during the negotiations which led to the enactment of Chapter 66.

Mr. Volland involved other interest groups in the negotiations. The Public Interest Intervenors played an active role in negotiating the contents of the list of lands to be included in the reconstituted trust under HB 201. Public Interest Intervenors' Response, at 4 (July 1, 1994). Representatives from the coal industry and oil and gas industry were also involved in the negotiation process. Mr. Volland sought to involve affected parties so that if a settlement was reached, it would be accepted broadly and would not suffer the attacks from non-parties which plagued the Chapter 66 settlement.

A series of meetings ensued among the State, plaintiffs' attorneys, and attorneys for third-party intervenors. See Aff. Volland, ¶¶ 16-19 (filed June 10, 1994); Aff. Harry Noah, ¶¶ 5-6 (filed June 10, 1994); Aff. Brian Bjorkquist, ¶ 7 (filed June 10, 1994). By March, negotiations over land focused on identifying lands from those which had been proposed as substitute lands during the Chapter 66 settlement implementation which would also satisfy the concerns of the Public Interest Intervenors. Aff. Volland, ¶ 16. Negotiations also dealt with the desire of Weiss and AMHA to expand the list of returnable original trust lands. Id.

Numerous meetings between the various parties occurred, primarily to negotiate land issues. See Aff. Volland, ¶¶ 18-20. On April 15, the State responded to the counterproposal with additional changes, including management of trust land by DNR.

Aff. Volland ¶ 20. Discussions during mid-April also appear to have frequently involved the cash endowment. Aff. Volland, ¶ 21-23.

Mr. Volland apparently interpreted a letter sent to him by Mr. Gottstein dated April 19th as supporting his counterproposal and authorizing him to pursue settlement on those terms. See Aff. Volland ¶ 21. On the other hand, Mr. Gottstein viewed the letter as confirming an actual agreement between plaintiffs' counsel made at a previous meeting. See Aff. Gottstein, at ¶ 9, Exh. A (filed July 1, 1994); H.L. M/Prelim. Appr., Exh. D (June 10, 1994).

On April 25, Mr. Volland attended a meeting with representatives of beneficiaries; they were generally supportive of the proposal with the exception of certain land management provisions. Aff. Volland ¶ 25. Around April 22, Mr. Walker and Mr. Gottstein announced they would not recommend the proposed settlement to their clients. Aff. Volland, ¶ 24.

Because all counsel for the plaintiffs did not agree to the basic terms of the settlement, the State was unwilling to completely abandon its pursuit of an independent legislative resolution of the litigation. Aff. Volland, ¶ 27. For this reason, HB 201 has different effective dates and conditions for the various provisions. As a result of efforts by counsel for Weiss and AMHA, last minute amendments to the bill included section 47, which permits the governor to extend the December 15th deadline by 45 days if the extension is made by November 30, 1994.

Between late January and the final negotiations for HB 201 in May, plaintiffs' counsel held several meetings with members of the mental health community to discuss the settlement proposal. Although not all settlement negotiation sessions were attended by all counsel, counsel for all plaintiffs and third parties were kept informed about negotiations and were invited to attend sessions appropriate to their interests. There have been no allegations of exclusion from negotiations.

2. Serious, informed, noncollusive negotiations

In order to warrant preliminary approval, settlement negotiations must be serious, informed, and noncollusive. MCL 2d § 30.44, at 241. Weiss and AMHA concede that "the negotiations were conducted seriously by all parties in the sense that everyone worked very hard at it" and H.L and Bosel "were earnest negotiators." Weiss Opp. to Prelim. Appr., at 8. However, Weiss and AMHA assert that this proposed settlement was not the product of serious, informed, noncollusive negotiations.

Weiss and AMHA assert that the negotiations were not serious because (1) Bosel and H.L. did not pay appropriate attention to detail, and (2) the State insisted on pursuing its legislation to attempt to improve its litigation position.[29] The court disagrees.

[29]HB 201 contains many provisions designed to assist the State in litigation. Section 1 contains a long list of legislative findings which essentially set out the State's litigation posture. The non-settlement provisions would reconstitute the mental health lands trust with certain original mental health trust lands and

The court finds that Bosel and H.L. paid attention to detail. Mr. Volland carefully considered the proposals made by Mr. Walker and Mr. Gottstein. Except where he disagreed with the analysis, Mr. Volland actively attempted to include their suggestions in the ultimate product. He was not always successful. However, the essential characteristic of negotiation and settlement is that everyone makes some concessions and no one gets everything desired. The State's insistence on pursuing the non-settlement provisions of HB 201 does not mean the negotiations were not serious. When it was apparent that not all of the plaintiffs' attorneys were willing to enter into the agreement, the State recognized that final approval could be denied. The State went forward with its contingency plan. The State submitted the first settlement proposal in February and later responded to plaintiffs' counterproposal. While parts of the legislation obviously were intended to pressure plaintiffs to agree to a settlement and to discourage challenges to the settlement agreement and appeals from approval if obtained, this does not mean the State was not serious in negotiations.

Weiss and AMHA assert that attorneys for H.L. and Bosel were not sufficiently informed about land issues to the extent

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substitute lands (the same lands as those in the settlement), and declare a set-off of $1.32 billion from 1978 to 1994. HB 201 §§ 40-42. If valid, the result of litigation would be reconstitution of the trust with the same lands contained in this settlement. There would be no other benefits to the class and no cash component for the fund.

necessary to negotiate the complex land issues in the interest of the class. Weiss and AMHA assert that Mr. Gottstein is the most knowledgeable about land issues among plaintiffs' attorneys. They argue that Mr. Volland and Mr. Jessee used improper valuation numbers in evaluating the proposal. They argue that it was error to include 116,000 acres in the Salcha area that has only been selected by the State and is subject to a military withdrawal. They argue that the failure to include favorable terms from the Chapter 66 settlement such as survey at state expense and warranty of title demonstrate that counsel were not sufficiently informed.

The court disagrees and finds that Mr. Volland and Mr. Jessee were sufficiently informed. It is true that they do not have the most experience in these land issues among plaintiffs' attorneys. However, they did not operate in a vacuum. They made extensive use of the expertise found in the Mental Health Trust Lands Project.[30] The vast majority of lands to be included in the reconstituted trust under this proposed settlement agreement were lands proposed for inclusion in the reconstituted trust under the Chapter 66 proposed settlement by Weiss and AMHA.[31] Moreover, all attorneys, including Mr. Gottstein, were involved in the negotiation of the

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[30]The Mental Health Trust Lands Project was established by Mr. Walker and Mr. Gottstein for implementation of the Chapter 66 settlement. The Project had many land experts employed. It also contracted with other experts.

[31]Of the land types listed in Exhibit A (evidentiary hearing) to be in the trust only four categories were not substitute lands proposed by the Lands Project under Chapter 66 implementation. They total one percent of estimated value.

land list for this proposed settlement. The questioned values were ones supplied by the Lands Project; they were not ones developed by Mr. Volland or Mr. Jessee. Finally, no agreement of this magnitude is perfect and in settlement no one gets everything desired. The court does not believe that any purported "errors" were the result of counsel not being informed.[32]

Counsel for Weiss and AMHA contend there are indications of collusion between the State and counsel for H.L. and Bosel. Weiss Opp. to Prelim. Appr., at 11. They contend that counsel for H.L. and Bosel violated an agreement with counsel for Weiss and AMHA

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[32]It is true that the inclusion of the 116,000 acre Salcha parcel is problematic. At least part of the problem was recognized in the proposed settlement agreement. The provision states:

> d. Replacement of Mineral Estate Only Parcel from "Other State Land To Be Designated as Mental Health Trust Land, April 28, 1994"
>
> The State and beneficiary plaintiffs who are parties to the Settlement Agreement shall by August 1, 1994, identify for purposes of replacing land, an area of mineral estate only land at least equal in acreage and at least equal in revenue generating capability (i.e. estimated mineral value) to the land to be replaced within portion(s) of the approximate 116,000 acre Salcha mineral estate only parcel F-82863 (with errors or omissions in the legal description, if any, corrected) listed in "Other State Land To Be Designated as Mental Health Trust Land, April 28, 1994" that are now known to be contaminated with or affected by hazardous substances, (i.e. the Stewart Creek Impact Zone, which is generally identified on the map attached as Exhibit 2), unless otherwise agreed to by the parties. The parties shall also attempt to minimize the impact, if any, the replacement of land may have on the development potential of the Salcha mineral estate only parcel F-82863.

Attachment B to Settlement Agreement, at 1 (June 10, 1994).

set out in Mr. Gottstein's letter of April 19. Aff. Walker, ¶¶ 132-34 and Exh. 36 (filed July 1, 1994). They assert that counsel for H.L. and Bosel gave up the requirement of adequate funding from the general fund for the mental health program and then negotiated away the "endowment concept" for the trust. They assert that supporting legislation with the December 15 deadline is collusive, especially in light of the known constitutional issue regarding the Trust Authority's ability to spend the income of the trust without further legislative authorization.[33] They assert that the negotiation of a "confusing" agreement is further evidence of collusion.

The court disagrees and finds that the agreement is not the product of collusion. The court finds that the attorneys had legitimate disagreements over the interpretation of their April agreements. The court finds that counsel for Bosel and H.L. negotiated in good faith with the interests of the class in mind. Moreover, counsel for Weiss and AMHA were free to negotiate directly with the State throughout the process. There can be disagreement about the result, but the process was fair and non-collusive.

In summary, the court concludes that the proposed settlement is the product of serious, informed, noncollusive negotiations.

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[33]The point is that the deadline precludes testing the constitutionality of the Trust Authority's power in the Alaska Supreme Court.

B. Is the Proposed Settlement without Serious Deficiencies?

Weiss and AMHA have raised seven points which they assert are serious deficiencies which should preclude preliminary approval: (1) termination by appeal; (2) unenforceability of the settlement; (3) indefinite terms; (4) invalidity of the land lists; (5) difficulties with DNR's work; (6) illegality of the management regime; and (7) lack of effective control by the Trust Authority. Each issue will be discussed.

The settlement provisions of HB 201 and HB 371 are effective only if the December 15 deadline is attained for dismissal of this action and the conclusion of all appeals. HB 201 §§ 37, 48-51. The proposed settlement agreement provides that if this court dismisses this action after final approval of the settlement, but the deadline is missed because of an appeal, any party can seek relief under Alaska Civil Rule 60(b)(6). Moreover, the parties have agreed that "the failure of the settlement provisions of HB 201 and HB 371 to become effective would justify seeking relief from judgment and no party shall oppose such a motion." Settlement Agreement, art. VI, sec. 7, at 17 (June 10, 1994). Weiss and AMHA argue that any party's ability to terminate the agreement by filing an appeal is a serious deficiency.

The court agrees that the effect of appeal on the settlement provisions is problematic. In essence, despite the investment of many hours and significant money by everyone in the approval

process, any party can destroy the settlement by filing an appeal from a grant of final approval.[34] Nevertheless, the court does not see this as a problem sufficient to warrant denial of preliminary approval. Although time and money will be wasted if the process fails because of a missed deadline, the claims of the class will not be adversely impacted. They will be in the same position that they would be if preliminary approval was denied. Moreover, if the settlement fails for this reason, it will be known soon -- no later than the end of January 1995. The lost time should not adversely impact the class or its claims.

Weiss and AMHA's second point relates to the enforcement of the settlement. They question the enforceability of three aspects of settlement: (1) the "endowment concept";[35] (2) correction of land list problems; and (3) the payment of the $200 million to the trust, especially the $25 million designated to come from the sale of DNR's land sale contract portfolio [see HB 371 § 1(a)].

It is true that there is no guarantee in this proposed

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[34]The parties favoring settlement informed the court at the evidentiary hearing that they are looking for a solution to the problem. However, the court doubts a solution can be found. Assuming the court issues and distributes a decision granting final approval on the date scheduled (November 15), a dissenter could wait until December 15 to file a notice of appeal. Even if the governor had opted for the permissible 45 day extension of the deadline, the Supreme Court would have only 45 days to act. There are few cases in the history of the state which have been decided within 45 days of the date the notice of appeal was filed.

[35]The court understands this term as used here to mean a Trust Authority with freedom to spend trust income without legislative approval.

settlement that the Trust Authority's power or, indeed, its existence will not be changed by a future legislature. It is important to focus on what remedy is provided if the legislature makes a material change in the provisions of HB 201 which create the Trust Authority. The portions of HB 201 which create the Trust Authority are incorporated into the proposed settlement agreement.[36] Settlement Agreement, art. I, sec. 1. If the legislative change was material, the class would be entitled to invoke the remedy found in art. VI, sec. 5: they would be free to file a new action asserting all the claims they have today.[37] While there are no guarantees, the fact that this litigation would begin anew should provide a reason for future legislatures not to act detrimentally to the class. There are risks associated with this which should be analyzed by the class; the court does not believe the risks are so great so as to require denial of preliminary approval.

Weiss and AMHA point out that there are known and identified problems with the land list to reconstitute the trust adopted by the legislature in HB 201. They assert that those problems can only be corrected with legislation. Since no one can say what the legislature will do, there are no guarantees that the changes will

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[36]The Settlement Agreement does not use the word "incorporate." However, at the evidentiary hearing, the court ensured that incorporation was the intent of the agreement.

[37]The court ensured at oral argument that it was the State's intent that if there was a material change, the class would have all claims they have today and would be free to assert them.

be made. The State acknowledges that some of the identified problems may require new legislation to correct.

Exhibit 2 to the Wareham affidavit (filed 7/1/94) lists many "errors and omissions" in the land lists on which the settlement is based. Some of the problems are serious, e.g., the 116,000 acre parcel near Salcha which is not likely to be conveyed, other problems are insignificant, e.g., listing a parcel on both the conveyable list and the non-conveyable list.[38] There are certainly a number of technical corrections which need to be made; it is possible that many will require new legislation. Some errors may be corrected under DNR's authority to exchange trust land with other state land and to "correct errors or omissions in the legal descriptions of mental health trust land." HB 201 § 17 (to be codified as AS 38.05.801(b)(2) and (3)).[39] However, it is likely

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[38]The court views this as insignificant because the list that controls should be the conveyance list.

[39]Article III of the Proposed Settlement Agreement provides a process for correction of technical problems with the lands list:

> 1. The parties agree that any omissions, overinclusions, inconsistencies or errors now known or discovered in the lists of original and substitute trust lands transferred to the trust pursuant to Sections 40(a)(1)&(2) of HB 201 shall be resolved as follows:
>
> (a) The State and the plaintiffs, and the State and the Trust Authority, once established, shall identify to the other party any omissions, overinclusions, inconsistencies or errors in the lists of original and substitute trust lands as soon as such problems are known or discovered, along with such information or other explanation as is necessary to determine the reason for the claimed omission or error.
>
> (b) Any errors or omissions to the legal descriptions of the lists of original and substitute lands submitted pursuant to Sections 40(a)(1)&(2) of HB

that not all problems can be corrected without new legislation.

The court views this as a problem. It is essential that the beneficiaries obtain the benefit of their bargain. The beneficiaries are not assured of the benefit of the bargain if they are dependent on an act of a future legislature. The parties favoring settlement have advised the court that they are looking for a solution. The court believes they should have an opportunity to find one. If they have not found a solution by the time of the final approval hearing, the court (and the beneficiaries) will be forced to examine the degree of risk posed by the problem and the impact on the settlement if no solution is found.[40] However, the court will not deny preliminary approval on

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> 201 necessary to accomplish the intent of the parties shall be corrected by the Department of Natural Resources (DNR) pursuant to the authority granted DNR under Sec. 17 of HB 201.
>
> (c) Any additions, deletions, or substitutions to the list of original and substitute lands transferred to the trust pursuant to Sections 40(a)(1)&(2) necessary to accomplish the intent of the parties shall be obtained by legislative amendment or by transfer, exchange, or conveyance.
>
> (d) As of the date of executing this agreement, the parties have identified in Attachment B the initial omissions, overinclusions, or substitutions to the lists of original and substitute lands transferred to the trust pursuant to Sections 40(a)(1)&(2) which they agree to correct pursuant to the terms of (b) and (c) above.

Settlement Agreement, at 5-6.

[40]It is certainly possible that failure to find a solution to the problem associated with the Salcha property could lead to non-approval. The acreage is large -- 116,000 acres, over 10% of the reconstituted trust acreage. The court does not know the value of the parcel, but assumes it may also be significant.

this basis.

The final enforcement issue raised by Weiss and AMHA relates to the enforceability of the "promise to pay the $200 million." Weiss Opp. at 17 (filed July 1, 1994). Weiss and AMHA argue that unless the full $200 million is in the trust fund at the time of dismissal, the State's promise to pay is unenforceable under article IX, section 13 of the Alaska Constitution. Weiss Opp. at 17. The constitutional provision states:

> No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

Alaska Const., art. IX, § 13.

HB 371 appropriated $200 million to the "mental health trust fund" from these sources in these amounts:

Mental health trust income account balance on 6/30/95	$ 33 million
DNR - mental health trust income in the general fund	$ 11.7 million
Proceeds from sale of DNR land sale contracts portfolio	$ 25 million
Budget reserve fund	$130.3 million

These funds were appropriated. Moreover, section 1(e) of HB 371 provides that the appropriations "do not lapse." Thus, the only way the fund would not receive the sums is if they do not exist. The only item whose future existence is questioned is the proceeds from DNR land sale contract portfolio. DNR is currently in the beginning stages of offering the portfolio for sale. Commissioner

Noah has recently begun inquiries regarding other sources of revenue to replace this item if it is unavailable. The court views the possible unavailability of the $25 million as a problem. However, there is a reasonable probability that it will be resolved by the time of final approval. If it is not resolved, the court and class members will have to evaluate the agreement in that light. The court does not find the problem to be a deficiency which precludes granting preliminary approval, but it may be an issue for consideration at final approval.

The third "serious deficiency" argued by Weiss and AMHA relates to their criticism that the proposed settlement agreement "is very unclear as to very critical terms." The court disagrees. To the extent that important issues were highlighted at the evidentiary hearing, the questions of interpretation were resolved by ascertaining the intent of the parties.[41] In light of the fact that the assumed ambiguities were resolved in the beneficiaries' favor, there is no risk to the class from them.

Weiss and AMHA next assert that the land lists are of "questionable validity." Weiss Opp. at 18 (filed July 1, 1994). The claim is made that the land lists do not identify the boundaries of a large number of parcels. Admittedly, the lists do

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[41]Specifically, the State stated its intent was (1) that the trust would not be charged for access to state land; (2) that it intended that the settlement provisions of HB 201 were incorporated into the agreement; and (3) that if the remedy provisions of art. VI, sec. 5 were invoked, the plaintiffs could reassert all claims they have today.

not contain legal descriptions. The court does not find that to be a serious deficiency. The court expects further evidence if the parties actually believe that approval should be denied on this basis.

Weiss and AMHA assert that "DNR is unlikely to accomplish the required land work accurately or in a timely manner." Weiss Opp. at 19 (filed July 1, 1994). This argument is not supported by any admissible evidence.[42] At this point it would be mere speculation to conclude that DNR cannot do the job it is required to do.

Weiss and AMHA argue that the management regime under the proposed settlement is illegal. They assert that the settlement would have to have the standard that the trust be "managed solely in the best interests of the beneficiaries under private trust law principles." Weiss Opp. at 20 (filed July 1, 1994).

HB 201 requires that trust land be "managed consistent with the trust principles imposed on the state by the [Enabling Act]," but specific trust management standards are not specified in either HB 201 or the proposed settlement agreement. HB 201 § 17. To the extent not inconsistent with the Enabling Act, the trust lands are subject to the same provisions of law applicable to other state lands. Id. HB 201 requires DNR to adopt management regulations which must address at least four management principles:

> (1) maintenance of the trust land base;
> (2) management for the benefit of the

[42]The opposition referred to the affidavit of Ms. Hayes, which was struck because she was unavailable for cross-examination.

trust;
(3) management for long-term sustained yield of products from the land; and
(4) management for multiple use of trust land.

HB 201 § 17 (to be codified as AS 38.05.801(c)).[43] DNR is required to consult with the trust authority before adopting regulations under AS 38.05.801(c). HB 201 § 9 (to be codified as AS 37.14.009(a)).

The statute and agreement are intentionally vague on the issue of the required management standard. In order to assure the support of the environmental and resource industry interest groups, language acceptable to all was adopted. The battle, if there is to be one, was reserved for the regulatory process. It is important that the class understand that it may require more litigation to ensure that regulations actually comply with the Enabling Act. Of course, it is possible that DNR will adopt regulations that satisfy the Act. It is also possible that all interest groups can be accommodated in the regulatory process. However, there are risks of future litigation presented by this approach.

The court disagrees with Weiss and AMHA regarding the illegality of the standard. What the class is entitled to is management under the requirements of the Enabling Act. This

[43]These standards were promoted by Mr. Volland based on the article by Fairfax, et al. discussed earlier. If there is legislative history to the effect that the Fairfax article was considered by the legislature, the court's concerns about the standards would be greatly alleviated.

legislation cannot diminish those requirements because of the supremacy of federal law; this statute does not purport to diminish those requirements. If the Enabling Act requires management solely in the interest of the beneficiaries and under private trust principles, HB 201 does not displace that standard. The treatment of the issue in the settlement means that it may require further litigation to achieve the result. The court does not believe this is a serious deficiency. It is an issue which the class and court must analyze in final approval.

Finally, Weiss and AMHA argue that "lack of effective control of trust management by the Trust Authority is a serious deficiency." Weiss Opp. at 20 (filed July 1, 1994). Essentially, they argue that DNR management of trust lands without more control and supervisory authority by the Trust Authority results in a serious deficiency.

The court agrees with Weiss and AMHA that DNR's past trust management has been substandard. DNR generally has managed the lands as if there was no mental health lands trust and as if DNR had no fiduciary obligations to the beneficiaries of the trust. However, there are certain factors which indicate that past behavior may not be the best indicator of the future.

HB 201 requires DNR to establish a separate trust management unit to manage the reconstituted mental health trust lands. Personnel in the separate trust unit will be applying only trust management principles and working under one set of policies and

regulations. Management of trust land through this separate unit should make DNR more cognizant of its fiduciary responsibilities with regard to trust lands.

Commissioner Noah has acknowledged that with or without settlement DNR must change its management of trust lands. For the first time in the court's memory, someone in authority in DNR has acknowledged DNR's fiduciary obligations toward the trust regardless of this litigation and that DNR has not met those obligations in the past. To the extent that acknowledgement is the first step to cure, this is a hopeful sign.

The court concludes that this is not a serious deficiency in the settlement. It may be a concern for the class, but it does not automatically bar approval in the court's analysis. First, the court sees the hopeful signs noted. Second, if this case goes to litigation, the class will likely have DNR management of trust land.[44]

The court has also examined the settlement for serious deficiencies. None has been found.

For these reasons, the court concludes that the settlement does not have serious deficiencies which would preclude preliminary approval.

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[44]It is possible that the "trustee" could be removed. However, the court is not aware of any instance where the trustee of a public land trust has been removed by a court.

C. Is the Proposed Settlement without Improper Preferential Treatment of Segments of the Class?

The program portion of the settlement has changed little since the Chapter 66 proposal, and the court previously found no preferential treatment in that settlement. See Memorandum Decision and Order at 103-07 (Dec. 30, 1993). The program priorities in Chapter 66 do not favor any of the four major subgroups within the class. Memorandum Decision and Order at 104 (Dec. 30, 1993). No funds will be distributed directly to class representatives or other class members. The trust will be managed for the benefit of all trust beneficiaries.

Disparate treatment is possible, although not probable, under the HB 201 funding scheme. H.L. and Bosel expect the grants and contracts issued directly by the Trust Authority using money from the trust income account to fund services or programs which supplement the state's basic mental health program rather than for the basic program itself. See H.L. M/Prelim. Appr., at 19, 23. Assuming that to be true, if membership on the board of trustees of the trust authority becomes unbalanced, it is possible that some beneficiary groups might receive preferential treatment. However, this is mere speculation. A balanced membership within the Trust Authority's board of trustees should result in a balanced distribution among beneficiary groups of money from the trust

income account.[45]

The court concludes that the proposed settlement does not contain any preferential treatment of a segment of the class to an extent that would preclude preliminary approval.

D. Does the Proposed Settlement Fall within the Range of Possible Approval?

There is no purpose in sending notice of a proposed settlement to the class if it does not appear preliminarily to be within the range of approval. Liebman v. J.W. Petersen Coal & Oil Co., 73 F.R.D. 531, 535 (N.D. Ill. 1973). In order to determine whether a settlement is within the range of possible approval, the court must make a preliminary evaluation based on the general standards for final approval of "fairness" and "adequacy" within the unique context of preliminary approval. In re Mid-Atlantic Toyota Antitrust Litigation, 564 F. Supp. 1379, 1383-85 (D. Md. 1983). Final approval requires a finding that the settlement as a whole is "fair, adequate, and reasonable." Class Plaintiffs v. City of Seattle, 955 F.2d at 1291; Newberg on Class Actions 3d § 11.41, at 11-91; MCL 2d § 30.44, at 242. However, a "settlement need not

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[45]Weiss and AMHA argue that the Trust Authority could spend trust income for the benefit of someone other than the beneficiaries. The court concludes that the money could only be spent in furtherance of the integrated comprehensive mental health program and, thus, that is not legally possible. See HB 201 § 16 (to be codified as AS 37.14.041(a)(1) and AS 37.14.045(a)). As well, the Trust Authority has the duty to deal with trust beneficiaries impartially. HB 201 § 8 (to be codified as AS 37.14.007(b)(12)).

provide the best or speediest relief imaginable to be fair, adequate, and reasonable." Officers for Justice, 688 F.2d at 636; see also 2 H. Newberg, Newberg on Class Actions, Second § 11.45, at 460-61 (2d ed. 1985 & Supp. 1992) ("[a] settlement does not have to be a brilliant one in order to secure judicial approval").

The most important factor in evaluating fairness is a comparison between the likely result of litigation and the remedy provided in the settlement. See Carson v. American Brands, Inc., 450 U.S. 79, 88 n.14, 67 L.Ed.2d 59, 67 n.14 (1981); Armstrong, 616 F.2d at 314; Newberg on Class Actions 3d § 11.41, at 11-93 to 11-94; MCL 2d, § 30.44, at 242 ("whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued"). Other factors the court may consider in final approval include:

(1) Expense, complexity, and likely duration of further litigation;

(2) Extent of discovery completed;

(3) Experience and views of counsel;

(4) Amount of opposition to the settlement;

(5) Defendant's ability to pay (what constitutes a feasible remedy);

(6) Presence of collusion in reaching a settlement.

Class Plaintiffs v. City of Seattle, 955 F.2d at 1291; Armstrong, 616 F.2d at 314; Newberg on Class Actions 3d § 11.43, at 11-97. The court also must consider whether the interests of the class

were adequately represented by the named plaintiffs and counsel. Malchman v. Davis, 706 F.2d 426, 433 (2nd Cir. 1983). The relative importance of the various factors depends upon the nature of the claims, type of relief sought, and the unique circumstances of an individual case. Class Plaintiffs v. City of Seattle, 955 F.2d at 1291; Officers of Justice, 688 F.2d at 625. In evaluating the fairness of a settlement, the court as well as the parties must remember that "compromise is the essence of a settlement." S.E.C. v. Randolph, 736 F.2d 525, 529 (9th Cir. 1984); Cotton, 559 F.2d at 1330. A settlement may compromise some potential remedies available to the class, if as a whole the settlement is fair, reasonable, and adequate. Armstrong, 616 F.2d at 315, 317.

Although this is only the preliminary approval stage, it is useful to examine whether the agreement is within the range of acceptable results, considering those factors that would be examined at the final approval stage.

1. Comparison with further litigation

The HB 201 settlement would reconstitute the trust with land in the form of 550,000 acres in fee and 378,000 acres of subsurface estate plus $200 million cash.

The agreement purports to require most of the land to be conveyed to the trust authority prior to final approval of the settlement.[46] Settlement Agreement, art. IV, § 1, at 6-7. The

[46]The proposed settlement agreement provides:

1. Transfer of Land by Quitclaim Deed And Delivery

proposed settlement agreement states that prior to dismissal of the action, the State will tender to the court the deeds for conveying the listed state lands to the Trust Authority.[47] Settlement Agreement, art. IV, § 1, at 6-7.

Mental health trust land selections not yet conveyed to the State by the federal government will be conveyed as the State receives them. DNR will consult the Trust Authority when it

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> of Conveyances. Land and interests in land conveyed to the Trust Authority shall be granted in trust to the "Alaska Mental Health Trust Authority, trustee" by quitclaim deed. On or before the entry of any order for dismissal, the State shall tender to the Superior Court the required deeds conveying to the Trust Authority the appropriate State interest in the lands designated as mental health lands pursuant to Sections 40(a)(1)&(2). Upon approval of this settlement by the court and dismissal of this action, the deeds shall be placed in escrow for delivery to the Authority upon its request. The parties recognize that certain of these deeds will use parcel numbers which reference the State maps that describe the lands in Attachment A in lieu of full legal descriptions and, accordingly, may not be in recordable form at the time they are tendered to the court. The State agrees to use its best efforts and to work with the Authority to complete the preparation of recordable deeds for delivery to the Authority as soon as practicable after dismissal.

Settlement Agreement, art. IV, § 1, at 6-7 (June 10, 1994).

[47] The conveyances from DNR to the Trust Authority probably will not be complete before the case is dismissed under the present compressed schedule. See Weiss Opp. at 19. The HB 201 settlement agreement acknowledges that full legal descriptions may not be available at the time the deeds are tendered to the court. Settlement Agreement, art. IV, § 1, at 7 (June 10, 1994). Some parcels are likely to be described only with parcel numbers corresponding to numbered parcels on DNR maps. Id. The State "agrees to use its best efforts and to work with the [Trust] Authority to complete the preparation of recordable deeds for delivery to the Authority as soon as practicable after dismissal." Settlement Agreement, art. IV, § 1, at 7 (June 10, 1994).

determines the annual conveyance priorities submitted to the Bureau of Land Management. Settlement Agreement, art. IV, § 9, at 11 (June 10, 1994). In addition, if the land parcels eventually conveyed to the State from the federal government are different from those described on the lists referenced in HB 201, the State will compensate the trust with other land of a similar character, equal value, and similar revenue-producing potential. Settlement Agreement, art. IV, § 2 (June 10, 1994).

The Settlement Agreement contains no provision to compensate the trust for encumbrances that are inconsistent with the revenue-producing mandate of the trust. Settlement Agreement, art. IV, § 3, at 8 (June 10, 1994). The State will bear the recording costs for all documents required by the agreement, but there is no requirement that the State pay surveying costs. See Settlement Agreement, art. IV, § 5 (June 10, 1994). Costs could be quite high for surveying parcel boundaries, easements, and other encumbrances. The Trust Authority will obtain quitclaim deeds only, but in the settlement agreement the State warranted that "it has the legal authorization necessary to convey the land or interest in land" for lands to be conveyed. Settlement Agreement, art. IV, sec. 2, at 7 (6/10/94). The agreement provides for compensation with other land if the warranty is violated. Id.

An appropriation bill, HB 371, has already been passed to fund the $200 million payment into the trust fund created by section 12 of HB 201. This monetary corpus will be managed by the Alaska Per-

manent Fund Corporation, which has demonstrated acceptable management of the permanent fund for the state's oil revenues. Income from investment of the trust fund will provide some trust revenue even without land development. Thus, at least some income stream is assured from the beginning for the Trust Authority's use in making grants and contracts under section 16 of HB 201.

In addition, the HB 201 settlement includes the program improvements contained in the Chapter 66 settlement with few changes.[48] A Trust Authority would be created whose duties include ensuring that trust assets are managed consistent with the Enabling Act [HB 201 § 9]. The Trust Authority's purpose is to ensure an integrated comprehensive mental health program. The Trust Authority would have the power to spend income from the trust without further legislation.[49] The Trust Authority must develop a budget for the integrated comprehensive mental health program. HB 201 § 27 (to be codified as AS 47.30.046(a)).

HB 201 strengthens the budgeting process for the mental health program. First, a budget for general fund appropriations is prepared by the Trust Authority as noted above. Second, if the governor's appropriations bill for funding the mental health program differs from the Trust Authority's budget, the governor

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[48]The program improvements contained in Chapter 66 will be repealed automatically if the deadline for dismissal is not met. See HB 201 § 48.

[49]The class should be aware that this provision may not withstand a constitutional challenge should one be raised. It is a risk to be evaluated by the class.

must provide a report which explains the reasons for the differences. HB 201 § 5 (to be codified as AS 37.14.003(b)). Third, in the event of a veto of an appropriation, the governor must explain the veto in light of the Trust Authority's recommendations. HB 201 § 6 (to be codified as AS 37.14.003(c)). Fourth, appropriations for the mental health program must be made in a separate bill limited only to those appropriations. HB 201 § 7 (to be codified as AS 37.14.005(b)). Fifth, the legislature must issue a report explaining any differences between the Trust Authority's recommended general fund budget and the appropriation bill passed. Id. at AS 37.14.005(c).

In summary, the proposed settlement would provide: (1) reconstitution of the trust with some original mental health trust lands, some substitute lands, and $200 million; (2) program improvements; (3) the Trust Authority; and (4) budget process advantages.

Litigation results are, of course, unknown. However, it is very clear that program improvements, the Trust Authority, and budget process advantages could not be obtained through litigation.[50]

It is difficult to compare the results of litigation versus the settlement results with respect to the trust corpus. The task

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[50]It is possible that the court could order that DNR be removed as trustee of the lands. However, it is unclear what trustee would be appointed. Moreover, it would be an extraordinary act to remove a trustee of a public trust named by the Congress.

is difficult in part because of the difficulties of assessing litigation risk for lands to be returned to the trust, and more importantly, because of problems with valuation. The court will analyze the issues from various perspectives.

If HB 201 is valid, the result of further litigation is clear. The trust would be reconstituted with exactly the same lands as those in the settlement. The trust would be managed by DNR. The class would not receive the other benefits of the settlement: $200 million, the Trust Authority, the program enhancements and the budget advantages. If HB 201 is valid, it is clear that the class would benefit from the settlement. However, this court has once before questioned the legislature's ability to settle the case unilaterally. See Memorandum Decision and Order Re: Preliminary Injunction, at 8-9 (July 10, 1990). Therefore, it is also important to look at results of litigation if HB 201 is not valid.

In a best-case scenario, in litigation the trust would be reconstituted with all of the original mental health trust lands. DNR would manage the trust, unless removed as trustee by the court. There would be no warranty of title or survey beyond that done before federal patent.[51] If the plaintiffs succeeded in having all the original trust lands returned to the trust, the trust would not

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[51]The court understands the surveys to have been large "four-corners" surveys.

receive any cash compensation.[52] The best-case scenario is not very likely because it is likely that some of the original land would be classified as "sold."

In a worst-case scenario, in litigation the trust would receive the original mental health lands that are undisputedly not "sold." It is entirely possible, if not likely, that there would be no cash component.[53] This worst-case scenario would not occur unless HB 201 was declared invalid.

The court concludes that the likely result is somewhere between the best and worst-case scenarios. It is likely that some of the lands which the State maintains have been "sold,"[54] would not be returned to the trust. It is also likely that the set-off would be large enough that the trust would not receive cash

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[52]The State has to pay cash only to reimburse the trust for original trust lands "sold" by the State after the 1978 legislation. See Weiss v. State, 706 P.2d at 684. This scenario hypothesizes that no land would be classified as "sold."

[53]The court's analysis is that it is likely that the State's set-off will exceed the value of lands which the court determines were "sold." In order for the trust to receive cash as a result of litigation, the value of the lands "sold" would have to be more than the State's set-off for expenditures on the mental health program since 1978. See Weiss v. State, 706 P.2d at 684. The State has expended a substantial sum of money on the mental health program since 1978, though the parties dispute what sums should be included. In HB 201, the legislature set the amount at more than $1.3 billion. The most generous estimates of value of the entire original mental health trust lands are in the range of $1.9 - 2.0 billion.

[54]The State maintains that sales to third-party purchasers, the Cook Inlet Regional Corporation exchange, lands used by other state agencies, and lands in legislatively designated areas ["LDA's"] were "sold."

compensation for those "sold" lands. One valuation[55] would place these values on those disputed lands:

Third-party purchasers	$150 million
CIRI	45 million
State agencies	15 million
LDA's	200 million
TOTAL	$410 million

If that valuation is correct, there is $410 million worth of land which distinguishes the best and worst case scenarios. Of course, this analysis suffers from the same problem as most others: whether the valuation is correct.

There has been substantial dispute about the value of these lands from the beginning of settlement attempts. Questions over value led to the demise of the Chapter 48 settlement attempt. The Interim Mental Health Trust Commission placed a value on original mental health trust lands at about $2.2 billion in 1989; the State valued the lands at about $564 million. See Interim Mental Health Trust Commission Final Report (Dec. 20, 1989) (filed April 3, 1990). The valuation question has not disappeared.

The court believes that two principles are important to apply in evaluating the valuation questions with respect to the settlement versus the result of litigation: (1) in comparing the original trust with the reconstituted trust, it is most important to use the same assumptions and approach; and (2) all valuations

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[55]The court believes this valuation to be made under Chap. 66 assumptions, but it is not clear.

of the land value are based on probabilities.[56] In light of the first principle, the court will examine the various methods under the same assumptions.

Substantial valuation work was done by the Mental Health Lands Project to value original trust lands and proposed substitute lands under the Chapter 66 implementation efforts. These valuations were made assuming the provisions of the Chapter 66 settlement and therefore the values may not be sound for this settlement. Under Chapter 66 assumptions, the value of the original trust lands totalled $1.9 billion. Using those same assumptions, the reconstituted trust is valued at $1.1 billion. In light of the litigation risks associated with recovering all of the original lands, and the addition of $200 million and the other benefits of the settlement, the court concludes that evaluated this way, this settlement is within the range of acceptable settlements.

Mr. Erickson, an expert retained by Weiss and AMHA, asserts that the provisions of this settlement make the land much less valuable than it would have been under the provisions of Chapter 66. He has made discounts for (1) DNR management,[57] (2) quitclaim deeds versus warranty deeds, (3) lack of survey, and (4) split

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[56]The most significant field in anyone's valuation is for mineralized lands. However, very little is actually known about the lands. While the original lands have been the subject of geological survey, very little core drilling has been done. Thus all values are guesses, educated guesses, but guesses nonetheless.

[57]Mr. Erickson assumes the worst: the trust will be managed under the rules applicable to other state lands with no concern for the fact it is trust land.