

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

1531.5 SCOMM-56A: JNT. SPEC. MENTAL HEALTH-TRUST LAND, 1987

387

DATE: 01/7/80
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 38
TOTAL ACRES
PAT & TA

S012N012W27	MH	71			
S012N012W28	MH	71			
S012N012W28	MH	58	640		640
S012N012W29	MH	58	640		640
S012N012W29	MH	71			
S012N012W30	MH	71			
S012N012W30	MH	58	603		603
S012N012W31	MH	58	605		605
S012N012W31	MH	71			
S012N012W32	MH	71			
S012N012W32	MH	58	640		640
S012N012W33	MH	58	640		640
S012N012W33	MH	71			
S012N012W34	MH	71			
S012N012W34	MH	58	540		540
S012N013W01	MH	59	640		640
S012N013W02	MH	59	640		640
S012N013W03	MH	59	640		640
S012N013W04	MH	59	640		640
S012N013W05	MH	59	640		640
S012N013W06	MH	59	599		599
S012N013W07	MH	59	601		601
S012N013W08	MH	59	640		640
S012N013W09	MH	59	640		640
S012N013W10	MH	59	640		640
S012N013W11	MH	59	640		640
S012N013W12	MH	59	640		640
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S012N013W18	MH	59	603		603
S012N013W19	MH	59	605		605
S012N013W20	MH	59	640		640
S012N013W21	MH	59	640		640
S012N013W22	MH	59	640		640
S012N013W23	MH	59	640		640
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S012N013W27	MH	59	640		640
S012N013W28	MH	59	640		640
S012N013W29	MH	59	640		640
S012N013W30	MH	59	606		606
S012N013W31	MH	59	608		608
S012N013W32	MH	59	640		640
S012N013W33	MH	59	640		640
S012N013W34	MH	59	640		640
S012N013W35	MH	59	640		640
S012N013W36	MH	59	640		640
S013N001W05	MH	154		40	40
S013N001W06	MH	154		276	276
S013N003W07	MH	76	28		28
S013N003W09	MH	151	40		40

DATE: 01/3
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 39
TOTAL ACRES
PAT & TA

S013N003W18	MH	2	1	1
S013N003W21	MH	152	40	40
S013N003W28	MH	89	10	10
S013N003W28	MH	1	70	70
S013N003W33	MH	143	300	300
S013N003W34	MH	174	20	20
S013N010W04	MH	57	640	640
S013N010W05	MH	57	640	640
S013N010W06	MH	57	630	630
S013N010W07	MH	57	632	632
S013N010W08	MH	57	640	640
S013N010W09	MH	57	640	640
S013N010W16	MH	57	640	640
S013N010W17	MH	57	640	640
S013N010W18	MH	57	634	634
S013N010W19	MH	57	636	636
S013N010W20	MH	57	640	640
S013N010W21	MH	57	640	640
S013N010W28	MH	57	640	640
S013N010W29	MH	57	640	640
S013N010W30	MH	57	637	637
S013N010W31	MH	57	639	639
S013N010W32	MH	57	640	640
S013N010W33	MH	57	640	640
S013N011W01	MH	61	640	640
S013N011W02	MH	61	640	640
S013N011W03	MH	61	640	640
S013N011W04	MH	61	640	640
S013N011W05	MH	61	640	640
S013N011W06	MH	61	630	630
S013N011W07	MH	61	632	632
S013N011W08	MH	61	640	640
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S013N011W17	MH	61	640	640
S013N011W18	MH	61	634	634
S013N011W19	MH	61	636	636
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S013N011W22	MH	61	640	640
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S013N011W26	MH	61	640	640
S013N011W27	MH	61	640	640
S013N011W28	MH	61	640	640
S013N011W29	MH	61	640	640
S013N011W30	MH	61	627	627
S013N011W31	MH	61	639	639

DATE: 01/30/00
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 40
TOTAL ACRES
PAT & TA

S013N011W32	MH	61	640	640
S013N011W33	MH	61	640	640
S013N011W34	MH	61	640	640
S013N011W35	MH	61	640	640
S013N011W36	MH	61	640	640
S013N012W01	MH	63	640	640
S013N012W02	MH	63	640	640
S013N012W03	MH	63	640	640
S013N012W04	MH	63	640	640
S013N012W05	MH	63	640	640
S013N012W06	MH	63	630	630
S013N012W07	MH	63	632	632
S013N012W08	MH	63	640	640
S013N012W09	MH	63	640	640
S013N012W10	MH	63	640	640
S013N012W11	MH	63	640	640
S013N012W12	MH	63	640	640
S013N012W13	MH	63	640	640
S013N012W14	MH	63	640	640
S013N012W15	MH	63	640	640
S013N012W16	MH	63	640	640
S013N012W17	MH	63	640	640
S013N012W18	MH	63	634	634
S013N012W19	MH	63	636	636
S013N012W20	MH	63	640	640
S013N012W21	MH	63	640	640
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S013N012W26	MH	63	640	640
S013N012W27	MH	63	640	640
S013N012W28	MH	63	640	640
S013N012W29	MH	63	640	640
S013N012W30	MH	63	637	637
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S013N012W35	MH	63	640	640
S013N012W36	MH	63	640	640
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S013N013W02	MH	65	640	640
S013N013W03	MH	65	640	640
S013N013W04	MH	65	640	640
S013N013W05	MH	65	640	640
S013N013W06	MH	65	630	630
S013N013W07	MH	65	632	632
S013N013W08	MH	65	640	640
S013N013W09	MH	65	640	640
S013N013W10	MH	65	640	640
S013N013W11	MH	65	640	640
S013N013W12	MH	65	640	640
S013N013W13	MH	65	640	640
S013N013W14	MH	65	640	640

DATE: 01/10/94

SECTION MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 41
TOTAL ACRES
PAT & TA

SO13N013M15	MH	65	640	640	640
SO13N013M16	MH	65	640	640	640
SO13N013M17	MH	65	640	640	640
SO13N013M18	MH	65	634	634	634
SO13N013M19	MH	65	636	636	636
SO13N013M20	MH	65	640	640	640
SO13N013M21	MH	65	640	640	640
SO13N013M22	MH	65	640	640	640
SO13N013M23	MH	65	640	640	640
SO13N013M24	MH	65	640	640	640
SO13N013M25	MH	65	640	640	640
SO13N013M26	MH	65	640	640	640
SO13N013M27	MH	65	640	640	640
SO13N013M28	MH	65	640	640	640
SO13N013M29	MH	65	640	640	640
SO13N013M30	MH	65	637	637	637
SO13N013M31	MH	65	639	639	639
SO13N013M32	MH	65	640	640	640
SO13N013M33	MH	65	640	640	640
SO13N013M34	MH	65	640	640	640
SO13N013M35	MH	65	640	640	640
SO13N013M36	MH	65	640	640	640
SO14N002M13	MH	56	40	40	40
SO14N002M14	MH	56	257	257	257
SO14N002M15	MH	56	320	320	320
SO14N002M24	MH	56	480	480	480
SO14N004M04	MH	86	617	617	617
SO14N004M05	MH	86	640	640	640
SO14N004M06	MH	86	616	616	616
SO14N004M07	MH	86	618	618	618
SO14N004M08	MH	86	640	640	640
SO14N004M09	MH	86	626	626	626
SO14N004M12	MH	170	14	14	14
SO14N004M16	MH	86	640	640	640
SO14N004M17	MH	86	640	640	640
SO14N004M18	MH	86	620	620	620
SO14N004M19	MH	86	622	622	622
SO14N004M20	MH	86	640	640	640
SO14N004M21	MH	86	640	640	640
SO14N004M30	MH	86	431	431	431
SO14N004M31	MH	170	290	290	290
SO14N004M31	MH	86	151	151	151
SO14N004M32	MH	170	40	40	40
SO14N004M34	MH	170	80	80	80
SO14N004M35	MH	170	40	40	40
SO14N005M01	MH	86	640	640	640
SO14N005M02	MH	86	640	640	640
SO14N005M03	MH	86	640	640	640
SO14N005M04	MH	86	640	640	640
SO14N005M05	MH	86	640	640	640
SO14N005M06	MH	86	620	620	620
SO14N005M07	MH	86	622	622	622
SO14N005M08	MH	86	620	620	620
SO14N005M09	MH	86	640	640	640
SO14N005M10	MH	86	640	640	640

DATE: 01/7/77
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 42
TOTAL ACRES
PAT & TA

S014N005W11	MH	86	640	640
S014N005W12	MH	86	640	640
S014N005W13	MH	86	640	640
S014N005W14	MH	86	640	640
S014N005W15	MH	86	640	640
S014N005W16	MH	86	640	640
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S014N005W19	MH	86	625	625
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S014N005W21	MH	86	640	640
S014N005W22	MH	86	640	640
S014N005W23	MH	86	640	640
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S014N005W27	MH	86	640	640
S014N005W28	MH	86	640	640
S014N005W29	MH	86	640	640
S014N005W30	MH	86	627	627
S014N005W31	MH	86	480	480
S014N005W32	MH	86	400	400
S014N005W33	MH	86	413	413
S014N005W34	MH	86	540	540
S014N005W35	MH	86	491	491
S014N005W36	MH	86	586	586
S014N006W01	MH	86	150	150
S014N006W12	MH	86	236	236
S014N012W01	MH	67	640	640
S014N012W02	MH	67	640	640
S014N012W03	MH	67	640	640
S014N012W04	MH	67	640	640
S014N012W05	MH	67	640	640
S014N012W06	MH	67	620	620
S014N012W07	MH	67	622	622
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S014N012W22	MH	67	640	640
S014N012W23	MH	67	640	640
S014N012W24	MH	67	640	640
S014N012W25	MH	67	640	640
S014N012W26	MH	67	640	640
S014N012W27	MH	67	640	640

DATE: 01/7/86
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 43
TOTAL ACRES
PAT & TA

S014N012W28	MH	67	640	640
S014N012W29	MH	67	640	640
S014N012W30	MH	67	627	627
S014N012W31	MH	67	629	629
S014N012W32	MH	67	640	640
S014N012W33	MH	67	640	640
S014N012W34	MH	67	640	640
S014N012W35	MH	67	640	640
S014N012W36	MH	67	640	640
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S014N013W25	MH	69	640	640
S014N013W26	MH	69	640	640
S014N013W27	MH	69	640	640
S014N013W34	MH	69	640	640
S014N013W35	MH	69	640	640
S014N013W36	MH	69	640	640
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S015N003W06	MH	146	204	204
S015N003W08	MH	146	163	163
S015N003W09	MH	141	32	32
S015N003W10	MH	141	19	19
S015N003W18	MH	146	406	406
S015N003W19	MH	146	47	47
S015N004W05	MH	86	640	640
S015N004W06	MH	86	604	604
S015N004W07	MH	86	606	606
S015N004W08	MH	86	640	640
S015N004W17	MH	86	640	640
S015N004W18	MH	86	608	608
S015N004W19	MH	86	610	610
S015N004W20	MH	86	640	640
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S015N004W30	MH	86	616	616
S015N004W31	MH	86	618	618
S015N004W32	MH	86	640	640
S015N005W01	MH	87	640	640
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S015N005W04	MH	87	640	640
S015N005W05	MH	87	640	640
S015N005W06	MH	87	609	609
S015N005W07	MH	87	611	611
S015N005W08	MH	87	640	640
S015N005W09	MH	87	343	343

DATE: 01/16/86
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE: 44
TOTAL ACRES
PAT & TA

S015N005W09	MH	86	315	315
S015N005W10	MH	86	65	65
S015N005W10	MH	87	577	577
S015N005W11	MH	87	640	640
S015N005W12	MH	87	640	640
S015N005W13	MH	87	640	640
S015N005W14	MH	87	605	605
S015N005W14	MH	86	36	36
S015N005W15	MH	87	118	118
S015N005W15	MH	86	502	502
S015N005W16	MH	87	5	5
S015N005W16	MH	86	640	640
S015N005W17	MH	87	439	439
S015N005W17	MH	86	219	219
S015N005W18	MH	87	613	613
S015N005W19	MH	87	537	537
S015N005W19	MH	86	80	80
S015N005W20	MH	86	601	601
S015N005W20	MH	87	36	36
S015N005W21	MH	86	640	640
S015N005W22	MH	86	640	640
S015N005W23	MH	86	460	460
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S015N005W24	MH	87	626	626
S015N005W24	MH	86	16	16
S015N005W25	MH	86	394	394
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S015N005W26	MH	86	640	640
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S015N005W28	MH	86	640	640
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S015N005W30	MH	87	236	236
S015N005W30	MH	86	415	415
S015N005W31	MH	86	565	565
S015N005W31	MH	87	42	42
S015N005W32	MH	86	640	640
S015N005W33	MH	86	640	640
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S015N005W35	MH	86	640	640
S015N005W36	MH	87	39	39
S015N005W36	MH	86	601	601
S015N006W36	MH	86	8	8
S016N002W05	MH	169	40	40
S016N003W02	MH	160	250	250
S016N003W03	MH	160	40	40
S016N003W03	MH	139	10	10
S016N003W06	MH	160	60	60
S016N003W09	MH	160	5	5
S016N003W10	MH	160	120	120
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S016N003W13	MH	160	40	40
S016N003W14	MH	160	40	40
S016N003W15	MH	160	120	120
S016N003W23	MH	160	160	160
S016N003W27	MH	160	40	40

S016N003W34	MH	160	40	40
S017N001W05	MH	164	120	120
S017N001W18	MH	164	38	38
S017N002W02	MH	165	161	161
S017N002W03	MH	165	40	40
S017N002W06	MH	165	198	198
S017N002W08	MH	165	80	80
S017N002W08	MH	139	4	4
S017N002W12	MH	165	40	40
S017N002W13	MH	165	40	40
S017N002W14	MH	165	80	80
S017N002W17	MH	165	40	40
S017N002W19	MH	165	158	158
S017N002W21	MH	165	80	80
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S017N004W06	MH	55	626	626
S017N004W07	MH	55	632	632
S017N004W08	MH	55	640	640
S017N004W09	MH	55	640	640
S017N004W10	MH	55	640	640
S017N004W11	MH	55	275	275
S017N004W12	MH	55	309	309
S017N004W13	MH	55	322	322
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S017N004W15	MH	55	534	534
S017N004W16	MH	55	640	640
S017N004W17	MH	55	640	640
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S017N004W21	MH	55	640	640
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S017N004W25	MH	55	15	15
S017N004W26	MH	55	48	48
S017N004W2	MH	55	223	223
S017N004W28	MH	55	263	263
S017N004W29	MH	55	624	624
S017N004W30	MH	55	536	536
S017N004W31	MH	55	507	507
S017N004W32	MH	55	234	234
S017N004W33	MH	55	503	503
S017N004W34	MH	55	265	265
S017N004W35	MH	55	65	65
S018N001W05	MH	167	643	643
S018N001W06	MH	167	618	618

DATE: 01/3
SECTION

MH CASE WITH TA OR PAT

ACRES PAT

ACRES TA

PAGE:
TOTAL ACRES
PAT & TA

46

S018N001W07	MH	167	618		618
S018N001W29	MH	167		55	55
S018N001W32	MH	167	25		25
S018N002W28	MH	157	130		130
S018N002W34	MH	157	1		1
S018N002W35	MH	157	40		40
S018N003W05	MH	161	80		80
S018N003W07	MH	161	463		463
S018N003W08	MH	161	80		80
S018N003W20	MH	161	80		80
S018N003W21	MH	161	160		160
S018N003W23	MH	161	80		80
S018N003W25	MH	139	10		10
S018N003W28	MH	161	480		480
S018N003W29	MH	161	160		160
S018N003W30	MH	161	392		392
S018N003W35	MH	161	40		40
S018N003W35	MH	139	16		16
S020N004W07	MH	158	16		16
S020N004W08	MH	158	80		80
S020N004W09	MH	158	160		160
S020N004W17	MH	158	40		40
S020N004W18	MH	158	70		70
S020N004W30	MH	158	160		160
S020N004W31	MH	158	271		271
S020N004W34	MH	158	160		160
S020N004W35	MH	158	240		240
S020N005W12	MH	168	97		97
S021N004W05	MH	159	120		120
S021N004W06	MH	159	40		40
S021N004W07	MH	159	78		78
S021N004W08	MH	159	80		80
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S026N005W23	MH	45	53		53

DATE: 12/20/85

PAGE:

1

SECTION MH CASE WITH SELECTION

C023S022E04 MH	136
C023S022E05 MH	136
C023S022E06 MH	136
C028S053E14 MH	5
C028S053E15 MH	5
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C029S057E30 MH	5

DATE: 12/20/85

PAGE: 2

SECTION MH CASE WITH SELECTION

029S057E31 MH	5
C029S057E32 MH	5
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C029S057E35 MH	5
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C056S063E03 MH	47
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F001N006E08 MH	111
F001N006E09 MH	111
F001N006E16 MH	111
F001N006E17 MH	111
F001N006E18 MH	111

DATE: 12/20/85

PAGE:

SECTION MH CASE WITH SELECTION

F001N006E19	MH	111
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F001S003E24	MH	30
F001S003E25	MH	30
F001S003E26	MH	30
F001S003E27	MH	30

DATE: 12/26/85

PAGE:

4

SECTION MH CASE WITH SELECTION

F001S003E34 MH	30
F001S003E35 MH	30
F001S003E36 MH	30
F001S004E03 MH	28
F001S004E10 MH	28
F006S004E02 MH	44
F006S004E10 MH	44
F006S004E11 MH	44
F006S004E12 MH	44
F006S004E13 MH	44
F006S004E25 MH	44
F001S002W12 MH	126
F001S002W13 MH	126
F001S002W14 MH	126
F001S002W23 MH	126
F001S003W01 MH	126
F001S003W09 MH	126
F001S003W13 MH	126
F002S005W26 MH	9
F006S007W01 MH	35
F006S007W02 MH	35
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F006S007W33 MH	35
F006S007W34 MH	35
F006S007W35 MH	35
F006S007W36 MH	35
F006S008W04 MH	34

DATE: 12/20/85

PAGE:

5

SECTION MH CASE WITH SELECTION

F006S008W09 MH	34
F006S008W15 MH	34
F006S008W16 MH	34
F006S008W17 MH	34
F006S008W19 MH	34
F006S008W20 MH	34
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F006S008W27 MH	14
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F010S006W28 MH	36
F012S007W08 MH	121
F012S007W17 MH	121
F012S007W20 MH	121
F012S007W28 MH	121
F012S007W29 MH	121
F012S007W32 MH	121
F018S008W01 MH	149
F018S008W02 MH	149

DATE: 12/20/85

PAGE:

5

SECTION MH CASE WITH SELECTION

F018S008W03 MH	149
F018S008W04 MH	149
F018S008W05 MH	149
F018S008W06 MH	149
F018S008W07 MH	149
F018S008W08 MH	149
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F001N003W20 MH	126
S015N002E01 MH	176
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S015N002E11 MH	176
S015N002E12 MH	176
S015N002E13 MH	176
S015N002E14 MH	176
S015N002E15 MH	176
S015N002E16 MH	176
S015N002E17 MH	176
S015N002E18 MH	176
S015N002E19 MH	176
S015N002E20 MH	176

DATE: 12/20/85

PAGE:

7

SECTION MH CASE WITH SELECTION

S015N002E21 MH	176
S015N002E22 MH	176
S015N002E23 MH	176
S015N002E24 MH	176
S015N002E26 MH	176
S015N002E27 MH	176
S015N002E28 MH	176
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S019N003E24 MH	124
S020N006E35 MH	124
S004S001E04 MH	156
S003S001W25 MH	156
S003S001W35 MH	156
S003S001W36 MH	156
S004S001W01 MH	156

DATE: 12/20/85

SECTION MH CASE WITH SELECTION

S004S001W02	MH	156
S004S001W11	MH	156
S004S001W12	MH	156
S004S001W13	MH	156
S007S013W22	MH	129
S007S013W25	MH	39
S007S013W26	MH	39
S007S013W35	MH	39
S008S013W01	MH	39
S008S013W02	MH	39
S008S013W11	MH	39
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S008S013W23	MH	39
S008S013W24	MH	39
S008S013W25	MH	39
S009S015W33	MH	15
S027S021W07	MH	175
S027S021W18	MH	175
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S012N013W20	MH	60

No
selection
Classified
12/21/85

DATE: 12/20/85

PAGE:

9

SECTION MH CASE WITH SELECTION

S012N013W21 MH	60
S012N013W28 MH	60
S012N013W29 MH	60
S012N013W30 MH	60
S012N013W31 MH	60
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S013N011W28 MH	62

SECTION MH CASE WITH SELECTION

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SECTION MH CASE WITH SELECTION

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S014N012W28	MH	68
S014N012W29	MH	68
S014N012W30	MH	68
S014N012W31	MH	68
S014N012W32	MH	68

DATE: 12/20/85

PAGE: 12

SECTION MH CASE WITH SELECTION

S014N012W33 MH	68
S015N004W30 MH	104
S015N004W31 MH	104
S015N005W09 MH	104
S015N005W10 MH	104
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S016N001W34 MH	90
S016N001W36 MH	90
S016N003W34 MH	147

TYONEK
LAWSUIT

ANCSA/Mental Health Land Lawsuit

In 1977 the Seldovia Native Association and Cook Inlet Region, Inc., filed a lawsuit for review of a 1976 Alaska Native Claims Appeals Board decision. That decision stated that mental health lands were not considered withdrawn under Section 11(a)(1) of the Alaska Native Claims Settlement Act (ANCSA) and therefore were unavailable for selection by Native corporations. The Salamatof Native Association, Tyonek Native Association and Eklutna, Inc. later joined in this lawsuit.

Out of court settlements were made with Seldovia, Salamatof and Eklutna. Litigation continues with both Tyonek Native Association and Cook Inlet Region, Inc.

On February 21, 1986 the United States District Court issued an opinion and order in this case. The court held that lands selected under the Mental Health Enabling Act were not available for selection under the Alaska Native Claims Settlement Act. Tyonek Native Corporation and Cook Inlet Region, Inc. have appealed that judgement.

More details on this case can be found in the attached opinion and order.

Chambers of
Rudi M. Brewster
Judge

United States District Court
Southern District of California
San Diego, California 92189

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To: Russ Winner, Esq.
Bruce Landon, Esq. ✓
Elizabeth Barry, Esq.

From: Thomas Long, Law Clerk to the TLL
Honorable Rudi M. Brewster

Re: Tyonek Native Corporation vs. Secretary of the
Interior
No. A77-207 Civ.

Date: February 24, 1986

Attached please find a courtesy copy of the Opinion and Order issued by Judge Brewster in the above-captioned case. You should be receiving shortly a file-stamped copy showing the date of entry of the order from the Clerk's office in Anchorage.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TYONEK NATIVE CORPORATION, and
COOK INLET REGION, INC.,

Plaintiffs,

vs.

SECRETARY OF THE INTERIOR OF
THE UNITED STATES OF AMERICA
and ALASKA NATIVE CLAIMS APPEAL
BOARD,

Defendants.

and

STATE OF ALASKA,

Intervenor Defendant.

NO. A77-207 Civ.

OPINION AND ORDER

1 On these cross-motions for partial summary judgment,
2 the issue is whether native village corporations created
3 under the Alaska Native Claims Settlement Act (hereafter
4 ANCSA), 43 U.S.C. sections 1600-1628, are entitled to select
5 for ownership lands that the State of Alaska had previously
6 selected under the authority of the Mental Health Enabling
7 Act, Pub. L. No. 830, 70 Stat. 709 (1956), but which,
8 although "tentatively approved", have not yet been patented
9 to the state. The court holds that Congress did not intend
10 such lands to be available for selection by native village
11 corporations and accordingly grant partial summary judgment
12 in favor of defendants.

13 I. BACKGROUND

14 A chronological outline of the relevant events is
15 necessary to understand the issue before the Court. On July
16 28, 1956, Congress enacted the Mental Health Enabling Act
17 (hereafter MHEA). Section 202 of the MHEA granted to the
18 Territory of Alaska the right to select within ten years one
19 million acres of federal land to be administered as a public
20 trust to finance treatment of the mentally ill in Alaska.

21 On July 7, 1958, Congress enacted the Alaska Statehood
22 Act, Pub. L. 85-508, 72 Stat. 339 (1958). Sections 6(a) and
23 6(b) of that Act made land grants to the new state of
24 800,000 and 102,550,000 acres respectively. The state's
25 selections were to be made within 25 years after Alaska's
26 admission into the United States. Section 6(k) provided
27 that "[g]rants previously made to the Territory of Alaska
28

1 are hereby confirmed and transferred to the State of
2 Alaska."

3 On August 29, 1960, the state filed an application with
4 the Federal Bureau of Land Management (hereafter BLM) for
5 approximately 10,000 acres of land, which includes the land
6 at issue here. The letter to the BLM stated that the
7 selection was made "[u]nder the provisions of the Act of
8 July 28, 1956, as supplemented." See Ex. A to Plaintiffs'
9 Supplemental Reply Brief. In the early 1960's, the BLM
10 "tentatively approved" the state's selection. These lands
11 have not yet been patented to the state. The state's right
12 to select lands under MHEA expired on July 28, 1966.

13 Congress enacted ANCSA on December 18, 1971. Plaintiff
14 Tyonek Native Corporation (hereafter Tyonek) is a native
15 village corporation formed pursuant to section 8 of ANCSA,
16 and Plaintiff Cook Inlet Region, Inc. (hereafter CIRI) is a
17 Native regional corporation formed pursuant to section 7.

18 Section 12(a) of ANCSA authorizes Native village
19 corporations to select within three years a prescribed
20 acreage of lands in the vicinity of their villages.¹ Those
21 selections must be made from lands "withdrawn" by section
22 11(a), 43 U.S.C. § 1610(a), which provides in relevant part:

23 Sec. 11(a)(1). The following public lands are
24 withdrawn, subject to valid existing rights, from
25 all forms of appropriation under the public land
26 laws ... and from selection under the Alaska
27 Statehood Act, as amended:
28

. . . .

1 (A) The lands in each township that encloses
2 all or part of any Native village identified
3 pursuant to subsection (b);

4 (B) The lands in each township that is
5 contiguous to or corners on the township that
6 encloses all or part of such Native village; and

7 (C) The lands in each township that is
8 contiguous to or corners on a township containing
9 lands withdrawn by paragraph (B) of this
10 subsection.

11 (2) All lands located within the townships
12 described in subsection (a)(1) hereof that have
13 been selected by or tentatively approved to, but
14 not yet patented to, the State under the Alaska
15 Statehood Act are withdrawn, subject to valid
16 existing rights, from all forms of appropriation
17 under the public lands laws(emphasis
18 added)

19 The "public lands" referred to in section 11(a)(1) are
20 defined in section 3(e), 43 U.S.C. § 1602(e), as:

21 all Federal lands and interests therein located in
22 Alaska except (1) the smallest practicable tract,
23 as determined by the Secretary, enclosing land
24 actually used in connection with the
25 administration of any Federal installations, and
26 (2) land selections of the State of Alaska which
27 have been patented or tentatively approved under
28 section 6(g) of the Alaska Statehood Act, as

1 amended . . . , or identified for selection by the
2 state prior to January 17, 1969. (emphasis added)

3 On December 17, 1974, pursuant to section 12(a), Tyonek
4 filed with the BLM an application for approximately 9800
5 acres of land. It is undisputed that all 9800 acres fall
6 within Tyonek Native village's so-called core and ring
7 township areas described in section 11(a)(1)(A)-(C). These
8 9800 acres comprise the bulk of the 10,000-acre August 29,
9 1960 land selection made by the state under the MHEA.

10 Another Native village corporation, Seldovia Native
11 Association, Inc. also selected mental health lands that had
12 yet to be patented to the state. The BLM rejected
13 Seldovia's application and Seldovia appealed. The Secretary
14 of the Department of the Interior, acting through defendant
15 Alaska Native Claims Appeals Board (ANCAB), affirmed BLM's
16 decision in In re Appeal of Seldovia Native Association,
17 Inc., ANCAB VLS 75-3 (July 1, 1976).

18 ANCAB rejected Seldovia's arguments that the mental
19 health lands were withdrawn for selection by Native village
20 corporations by section 11(a). First, ANCAB determined that
21 the mental health lands were not "public lands" withdrawn
22 under 11(a)(1) since they were not federal lands or
23 interests therein as required by section 3(e). Second,
24 ANCAB found that the mental health lands were not "lands
25 selected by or tentatively approved to the State under the
26 Alaska Statehood Act" and thus were not withdrawn by section
27 11(a)(2).
28

1 On August 4, 1976, BLM rejected Tyonek's 9800 acre
2 application in its entirety, relying on ANCAB's Seldovia
3 decision. Tyonek appealed and, on November 29, 1976, all of
4 the parties to Tyonek's appeal stipulated that the
5 dispositive issues in that case were identical to the
6 dispositive issues in Seldovia. Accordingly, on January 10,
7 1977, ANCAB entered a final order in Tyonek's appeal
8 adopting the conclusions in Seldovia. Tyonek and CIRI ²
9 appeal this final order of ANCAB.

10 The parties have cross-moved for partial summary
11 judgment on the statutory interpretation issues involved in
12 the case.

13 II. STANDARD OF REVIEW

14 Agency interpretations of statutes they administer are
15 generally entitled to deference. See, e.g., Udall v.
16 Tallman, 380 U.S. 1, 16 (1965); State of Washington v.
17 United States Environmental Protection Agency, 752 F.2d
18 1465, 1469 (9th Cir. 1985); Doyon, Ltd. v. Bristol Bay
19 Native Corp., 569 F.2d 491, 497 (9th Cir.), cert. denied,
20 439 U.S. 954 (1978) (Secretary of Interior's interpretation
21 of ANCSA found entitled to "great weight"). However, the
22 amount of deference to the agency interpretation is
23 influenced by a number of factors, one of which is the
24 principle that legislation passed for the benefit of Natives
25 should be liberally construed in their favor. See, e.g.
26 Choate v. Trapp, 224 U.S. 665, 675 (1912); Alaska Public
27 Easement Defense Fund v. Andrus, 435 F. Supp. 664, 671 (D.
28 Alaska 1977) (hereafter APEDF). The court in APEDF stated

1 that its approach was to resolve any ambiguities remaining
2 after examining the statutory language and legislative
3 history of the ANCSA provision at issue in favor of the
4 Natives. APEDF, 435 F. Supp. at 671.

5 Balancing these countervailing principles regarding the
6 standard of review, however, does not affect the disposition
7 of these motions. This court's agreement with ANCAB's
8 determination is based on a de novo review of the statutory
9 language and legislative history as applied to the
10 undisputed facts of this case.

11 III. ANALYSIS

12 A. Introduction

13 No provision in ANCSA explicitly states that lands
14 selected by, but not yet patented, to the state pursuant to
15 the MHEA are eligible for Native selection. Plaintiffs
16 advance two arguments for their position that Congress
17 intended to make mental health lands available for Native
18 selection. Their principal contention is that Congress
19 intended section 11(a)(2)'s withdrawal of lands that "have
20 been selected by, or tentatively approved to, but not yet
21 patented to, the State under the Alaska Statehood Act" to
22 include mental health lands. Plaintiffs urge that mental
23 health selections became selections "under the Alaska
24 Statehood Act" by virtue of section 6(k) of that Act, which
25 provides: "Grants previously made to the Territory of Alaska
26 are hereby confirmed and transferred to the State of Alaska
27 upon its admission." In the alternative, plaintiffs argue
28 that the mental health lands satisfy section 3(e)'s

1 definition of "public lands" and that the mental health
2 lands are thus withdrawn under section 11(a)(1).

3 Plaintiffs' arguments confront an immediate obstacle.
4 To adopt their interpretation, the court must find that
5 Congress intended to permit possible divestiture from the
6 state of a portion of the 1,000,000 acres granted to it in
7 the MHEA. At the time of the passage of ANCSA in December
8 1971, the state had received patent to about 785,000 acres
9 of its mental health selections and thus was awaiting the
10 patent of about 215,000 additional acres. See Ex. 1 to
11 Memorandum in Support of State's Motion for Summary
12 Judgment. As noted above, the period for making mental
13 health selections had expired in 1966. Consequently, if in
14 ANCSA Congress allowed Native village corporations to select
15 unpatented mental health selections, the state would be
16 prevented from making up any resulting shortfall in its
17 1,000,000 acre entitlement.

18 In contrast, Congress's explicit authorization in
19 section 11(a)(2) of Native selection of unpatented Statehood
20 Act selections did not require the state to relinquish any
21 of the 103,350,000 acres granted by the Statehood Act. The
22 state's 25 years for making Statehood Act selections did not
23 expire until 1984, ten years after the 1974 termination of
24 the ANCSA section 11(a)(2) three-year selection period. See
25 ANCSA, § 12(a)(1), 43 U.S.C. § 1611(a)(1). Thus, the state
26 had ample time under the Statehood Act to replace any lands
27 selected by Native villages with new selections.

28

1 The plaintiffs assert that Congress can be presumed to
2 have understood that the state had overselected its MHEA
3 entitlement by about 110,000 acres. This speculation is
4 unsupported. The plaintiffs rely on a July 18, 1974 BLM
5 memorandum, but concede that when ANCSA was enacted in 1971
6 BLM did not keep records on the status of MHEA selections.
7 There is no documentation to support and little reason to
8 believe that Congress was aware of the status of the state's
9 MHEA selections when it enacted ANCSA. Plaintiffs are
10 unable to point out any legislative history to this effect.
11 A more contemporaneous document, prepared by the state for
12 the week ending December 24, 1971, shows that the state had
13 only applied for about 37,000 acres in excess of its total
14 MHEA entitlement. See Ex. 1 to State's Memorandum in
15 Support of Motion for Summary Judgment. Again, there is no
16 indication Congress was aware of this document, but, even if
17 it were, it appears that far more than 37,000 acres of
18 unpatented MHEA selections would be vulnerable to Native
19 selection under plaintiff's interpretation of ANCSA.
20 Plaintiffs do not dispute the affidavit submitted by the
21 federal defendants averring that at least 100,000 acres of
22 the unpatented MHEA selections fall within the core and ring
23 township acres surrounding Native villages identified for
24 potential Native selection in section 11(a)(1). See Ex. 3
25 to Federal Defendants' Cross-Motion for Summary Judgment.

26 The court concludes that, to accept plaintiffs'
27 interpretation of ANCSA, the court must find that Congress
28 intended the state potentially to forfeit a significant

1 portion of its 1,000,000 acre MHEA grant. Since there is no
2 explicit ANCSA provision that mental health lands are
3 eligible for Native selection, plaintiffs must bear the
4 burden of demonstrating that Congress intended by
5 implication to repeal a portion of its prior land grant to
6 the Territory and State of Alaska. This they have not done.

7 B. Section 11(a)(2)

8 ANCAB found that the mental health lands at issue
9 were not "selected by, or tentatively approved to, but not
10 yet patented to, the State under the Alaska Statehood Act,"
11 notwithstanding the fact that section 6(k) of the Statehood
12 Act "confirmed and transferred" to the state grants
13 previously made to the Territory. The court agrees with
14 ANCAB's determination that these selections cannot be said
15 to be made "under the Statehood Act."

16 Most important, by its terms, section 6(k) merely
17 confirms and transfers Territorial grants to the state upon
18 its admission. It does not purport to transform the MHEA
19 land grant into a grant under the Statehood Act. It only
20 vests the state with the authority to execute the powers and
21 responsibilities conferred to the Territory by the MHEA.

22 Plaintiffs' interpretation would render superfluous the
23 words "under the Alaska Statehood Act" in section 11(a)(2).
24 If Congress had intended to make all unpatented state lands
25 available for Native selection, there would have been no
26 need for the reference to the Statehood Act. Plaintiffs'
27 contention that Congress added the phrase to exclude from
28 the operation of section 11(a)(2) lands conveyed to the

1 state from third parties is specious. Congress would have
2 no reason to exclude from the section 11(a)(2) withdrawal
3 any lands that the state had received from sources other
4 than the federal government because Congress would have no
5 power to deal with those lands. The interpretation of
6 section 11(a)(2) that gives meaning to all the words used by
7 Congress -- that only unpatented Statehood Act selections
8 are withdrawn -- must be favored. See e.g., Reiter v.
9 Sonnetone Corp., 442 U.S. 330, 339 (1979); 2A Sands,
10 Sutherland Statutory Construction § 46.06 (4th ed. 1984).

11 Plaintiffs find it significant that the BLM and the
12 state sometimes referred to "tentative approvals" of state
13 mental health selections, even though the MHEA does not
14 require tentative approval. Plaintiffs argue that, since
15 the Statehood Act does require tentative approvals of
16 selections under that Act, this administrative practice is
17 evidence of a recognition by the BLM and the state that the
18 mental health lands were selected under the Statehood Act.
19 This contention is unconvincing. It is more likely that
20 Congress was more familiar with the statutory language of
21 the MHEA and the Statehood Act than it was of the
22 administrative practices of the BLM and the state. Thus,
23 the fact that the Statehood Act requires the tentative
24 approval of land selections, and the MHEA does not,³ only
25 buttresses the defendants' interpretation that section
26 11(a)(2)'s withdrawal of unpatented lands that have been
27 "tentatively approved to" the state under the Statehood Act
28 does not include mental health lands.

1 As secondary arguments, both sides contend that
2 regulations promulgated by the Department of the Interior
3 after the enactment of the Statehood Act support their
4 interpretation of section 11(a)(2). The court concludes
5 that, on balance, the regulations cited by both sides
6 provide further support for the defendants' view. The most
7 significant regulation is 43 C.F.R. § 76.9(a)(1) (1963),
8 promulgated in 1959,⁴ which required all state mental
9 health selection applications to contain "a reference to the
10 Act of July 28, 1956 [the MHEA] . . ., as supplemented."⁵
11 Thus, construing the Statehood Act shortly after its
12 enactment, the Secretary of Interior did not treat mental
13 health selections as selections under the Statehood Act.
14 This contemporaneous construction of the effect of the
15 Statehood Act on the MHEA is entitled to great weight.
16 Udall v. Tallman, 380 U.S. 1, 16 (1965).

17 C. Section 11(a)(1)

18 Plaintiffs' argument that the unpatented mental
19 health selections are "public lands" withdrawn by section
20 11(a)(1) focuses attention on section 3(e)'s definition of
21 "public lands". ANCAB concluded that the definition was not
22 satisfied because the mental health lands are not "Federal
23 lands" or "interests therein." The court agrees with
24 ANCAB's conclusion that the mental health lands at dispute
25 are not "public lands," but for a different reason. The
26 unpatented mental health lands fall within the second
27 exception to the definition of public lands set forth in
28 section 3(e)(2).⁶

1 Section 3(e)(2) excepts from "public lands":

2 (2) land selections of the State of Alaska which
3 have been patented or tentatively approved under
4 section 6(g) of the Alaska Statehood Act, . . . or
5 identified for selection by the State prior to
6 January 17, 1969 (emphasis added).

7 Significantly, the underlined phrase is not qualified
8 by a reference to the Statehood Act, in contrast to the
9 preceding phrase. If Congress wanted to limit the effect of
10 this second exception to section 3(e)(2), it easily could
11 have added "under the Statehood Act" after the words
12 "identified for selection." Thus, all state selections
13 prior to January 17, 1969, including the mental health
14 selections at issue here, are expressly excluded from the
15 definition of "public lands."

16 A contrary interpretation of section 3(e) would mean
17 mental health lands are withdrawn by section 11(a)(1) and
18 would lead to results that Congress probably did not intend.
19 Section 12(a)(1) provides that no village corporation may
20 select more than 69,120 acres from lands withdrawn by
21 section 11(a)(2). There is no such limit on the acreage
22 that village corporations may select from public lands under
23 section 11(a)(1), except for federal lands within the
24 National Wildlife Refuge System or in a National Forest. In
25 addition, section 22(h)(2) provides that the withdrawal of
26 lands made by section 11(a)(2) terminates within three
27 years. In contrast, the withdrawal under section 11(a)(1)
28 lasts for four years. ANCSA § 22(h)(1). It is doubtful

1 that Congress intended mental health selections to be
2 available for Native selection without the protection of the
3 section 12(a)(1) acreage limitation that applies to
4 selections of unpatented Statehood Act lands under section
5 11(a)(2). It is also highly unlikely that Congress would
6 establish a longer withdrawal period for unpatented mental
7 health lands than unpatented Statehood Act selections.

8 These other provisions of ANCSA make it apparent that
9 Congress purposefully made two independent withdrawals in
10 sections 11(a)(1) and 11(a)(2), instead of one integrated
11 withdrawal of lands within the core and ring township areas.
12 Congress intended to deal with federal lands in section
13 11(a)(1) and with lands in which the State had an interest
14 in section 11(a)(2). If Congress intended to withdraw
15 unpatented mental health lands, it would have done so in
16 section 11(a)(2).

17 Plaintiffs contend that Congress was not referring to
18 unpatented mental health selections when it excepted lands
19 "identified for selection by the State prior to January 17,
20 1969" from the definition of public lands. They argue that
21 this phrase is aimed only at massive state selections under
22 the Statehood Act made just prior to a "land freeze" ordered
23 by the Secretary of the Interior, which became effective
24 January 17, 1969. The court cannot accept this argument.
25 While the effective date of the land freeze undoubtedly is
26 responsible for the use of that date in section 3(e)(2),
27 this is no reason to conclude that Congress intended the
28 exception to apply only to Statehood Act selections. The

1 period for making mental health selections ended in 1966.
2 As noted above, if Congress wanted to limit the exclusion to
3 Statehood Act selections, it could have added this
4 limitation. Plaintiffs have not cited any persuasive
5 legislative history supporting their view of section
6 3(e)(2).

7 D. Legislative History

8 The legislative history of ANCSA provides some
9 support for both sides. On balance, however, it provides no
10 conclusive evidence indicating that Congress implicitly
11 intended tentatively approved but as yet unpatented mental
12 health lands to be available for Native selection. In fact,
13 the court finds it to be more supportive of defendants'
14 position.

15 The most significant feature of the legislative history
16 is that it contains virtually no clear reference to the one
17 million acre MHEA land grant. This fact alone strongly
18 suggests that Congress either was under the misconception
19 that all the state's MHEA selections had been patented to
20 the state already or was unaware that such a land grant
21 existed. It seriously undermines the view that Congress
22 implicitly intended a partial repeal of the MHEA grant.

23 Before delving deeper into the legislative history, a
24 brief summary of the process that yielded the final ANCSA
25 legislation is in order. Bills addressing Alaskan Native
26 claims were first introduced in 1967. ANCSA was ultimately
27 the product of a House-Senate Conference Committee
28 resolution of H.R. 10367, the bill passed by the House, and

1 S. 35, passed by the Senate. H.R. 10367 was introduced by
2 Representative Aspinall on August 4, 1971. It provided that
3 Native village corporations could select a limited amount of
4 lands tentatively approved to the state "under the Alaska
5 Statehood Act" within 25 townships of a Native village. S.
6 35, however, did not allow Natives to select land previously
7 tentatively approved to the state. The Conference Committee
8 basically adopted the House bill's approach on this issue.
9 See Conf. Rep. No. 746, 92d Cong., 1st Sess. 43, reprinted
10 in 1971 U.S. Code Cong. & Ad. News 2247, 2256.

11 The strongest support for plaintiffs' interpretation
12 comes from acreage figures cited by key legislators when
13 discussing the number of acres granted the state under the
14 Statehood Act. The figures appear to include the one
15 million acre MHEA grant. One such acreage reference was
16 made by Representative Haley⁷ at the time the House was
17 considering enactment of H.R. 10367:

18 Under the Alaska Statehood Act the state is
19 entitled to select and get patent to about 104
20 million acres of land.
21

22

23 The state will participate in the land part of the
24 settlement by allowing the Natives to get some of
25 the land near their villages which the state has
26 already selected under the Statehood Act.

27 117 Cong. Rec. 36857 (1971). The plaintiffs infer that
28 Representative Haley must have believed mental health lands
were granted "under the Statehood Act," as that term is used

1 in section 11(a)(2), since he could not have arrived at the
2 104½ million acre figure without including the one million
3 acre MHEA entitlement.

4 In addition, House Conference Report No. 746, 92d
5 Cong., 1st Sess. 39, reprinted in 1971 U.S. Code Cong. &
6 Ad. News 2247, 2252, stated:

7 State selections made before the date of the
8 Secretarial Order imposing a "land freeze",
9 amounting to about 26 million acres, are protected
10 against Native selection, except that a Native
11 village (not the Regional Corporations) may select
12 from the area surrounding the Village not to
13 exceed three townships of the lands previously
14 selected by the state.

15 Plaintiffs note that the land freeze referred to in the
16 Conference Report went into effect on January 17, 1969 and
17 that, according to a document prepared by Alaska's
18 Department of National Resources for activity ended January
19 24, 1969, the state had applied for 26,018,873.47 acres
20 under all land entitlement programs including the MHEA.⁹
21 Plaintiffs infer from the Conference Report that Congress
22 intended state MHEA, as well as Statehood Act, selections to
23 be eligible for limited selection by Native village
24 corporations.

25 Closer examination of the legislative history suggests,
26 however, that it would be wrong to assume that the
27 legislators were that precise in their use of numbers. A
28 more complete look at Representative Haley's comments

1 suggests that he did not intend to include the MHEA land
2 grant when he spoke of the state's entitlement to 104
3 million acres under the Statehood Act. His next sentence
4 was: "This is a large amount, and it was granted by
5 Congress because the State needed that land as a capital
6 asset to use in developing the State's economy." 117 Cong.
7 Rec. 36857 (1971). This description does not fit the MHEA
8 land grant. As noted above, the purpose of that grant was
9 the raising of revenues to finance mental health care for
10 Alaska residents.

11 Furthermore, while the use of the 26,000,000 acre
12 figure in the House Conference Report suggests an intent to
13 make all those acres available for limited selection by
14 Native village corporations, this plainly was not Congress's
15 desire. The 26,000,000 acres included lands that had
16 already been patented to the state under the Statehood Act,
17 the MHEA and other land grant programs.¹⁰ It is undisputed
18 that Congress did not intend to divest the state of patented
19 lands in favor of Natives. Since there is no evidence that
20 the acreage figures cited by plaintiffs were precisely
21 accounted for, and in fact the evidence is to the contrary,
22 those figures cannot afford a basis for adopting plaintiffs'
23 interpretation.

24 In a post-hearing submission, plaintiffs argue that
25 statements made by Senators Stevens and Jackson on the
26 Senate floor immediately prior to the passage of the Alaska
27 National Interest Lands Conservation Act (ANILCA), Pub. L.
28 No. 96-487, 94 Stat. 2371 (1980), demonstrate that the

1 unpatented MHEA selections were selected "under the Alaska
2 Statehood Act":

3 Mr. STEVENS. There has been some question raised
4 as to whether the lands conveyed to the State of
5 Alaska under the university, school land and
6 mental health grants are State lands under the
7 definition of the Statehood Act and this act. I
8 would like to clarify that these lands are State
9 lands and are subject to the same protection and
10 status of any lands conveyed under the Alaska
11 Statehood Act.

12 Mr. JACKSON. The Senator is correct. We clearly
13 intended at the passage of the Alaska Statehood
14 Act that such lands conveyed to the State of
15 Alaska or its political subdivisions, including
16 the University of Alaska, would be considered
17 State lands for purposes of Federal law. This
18 bill reaffirms that status of these lands.

19 126 Cong. Rec. 21884 (1980). Just prior to this exchange,
20 Senator Stevens stated:

21 It is my understanding that nothing in this title
22 is intended to affect in any way pending
23 litigation regarding the selectability under ANCSA
24 of any particular tract of land including lands
25 previously reserved to or selected by the
26 Territory or State of Alaska under any provisions
27 of Federal law.
28

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1 MR. JACKSON. The Senator is correct. We do not
2 intend to affect pending litigation on such
3 questions by the passage of title IX of this bill.

4 Id.

5 The plaintiffs' reading of these comments -- that
6 Senator Stevens was clarifying that the mental health lands
7 should be treated as lands conveyed under the Statehood Act
8 for purposes of ANCSA -- is plausible. However, it is at
9 least as plausible that the senators were merely clarifying
10 that university, school land, and mental health grants --
11 land grants made to the Territory of Alaska -- should be
12 treated as state land as opposed to federal land. It is far
13 from clear that the senators are addressing the meaning of
14 the phrase "under the Statehood Act" in ANCSA section
15 11(a)(2). In fact, their assurances that Title IX of ANILCA
16 is not intended to affect pending litigation regarding the
17 selectability of lands under ANCSA suggests the opposite.
18 It is unlikely that the senators would be careful to clarify
19 that Title IX of ANILCA, a well-scrutinized piece of
20 legislation, was not meant to affect pending litigation and
21 then attempt to resolve the issue in this litigation in a
22 few sentences spoken on the Senate floor. In sum, this
23 subsequent legislative history is too ambiguous to conclude
24 that Congress intended in section 11(a)(2) to treat MHEA
25 selections as selections under the Statehood Act.¹¹

26 IV. CONCLUSION

27 Neither the statutory language nor the legislative
28 history of ANCSA manifest Congressional intent to repeal a

1 portion of the one million acre MHEA land grant and make
2 unpatented MHEA lands available for Native selection.
3 Accordingly, the plaintiffs' motion for partial summary
4 judgment is denied and the defendants' cross motion for
5 partial summary judgment is granted.

6 V. ENTRY OF JUDGMENT UNDER RULE 54(b)

7 This decision rejects the ANCSA interpretation
8 claim raised in counts one through four and count seven of
9 the amended complaint filed August 31, 1982. These summary
10 judgment motions do not involve the remaining three counts
11 of the amended complaint. Pursuant to Fed. R. Civ. Proc.
12 54(b) the court finds that there is no just reason for
13 delaying the entry of judgment as to the ANCSA interpreta-
14 tion claim, following the standard enunciated in
15 Morrison-Knudsen Co. v. Archer, 655 F.2d 962 (9th Cir.
16 1981).

17 Specifically, the court finds that the unresolved
18 claims for relief are factually and legally distinct from
19 the ANCSA interpretation claim. Counts five and six allege
20 that the state selections at issue in this case are invalid
21 because the state has overselected its one million acre MHEA
22 entitlement and that these land selections are of lower
23 priority than the selections necessary to reach the one
24 million acre limit. Count eight alleges that the state has
25 forfeited its rights to the lands at issue, because it has
26 breached its MHEA trust obligation by treating the MHEA
27 selections the same as Alaska Statehood Act section 6(b)
28 lands. Resolution of these claims will require a wholly

1 different factual and legal analysis from the statutory
2 interpretation issue presented by these summary judgment
3 motions.

4 The court further finds that final resolution of
5 this ANCSA interpretation question will have a significant
6 impact on other similar pending claims to unpatented MREA
7 lands by other native corporations. In addition, should the
8 court of appeals disagree with this court's determination,
9 the plaintiffs undoubtedly would not pursue their remaining
10 claims. Based on the foregoing, the court concludes that
11 the ANCSA interpretation issue is pivotal to this case and
12 other pending cases, and its resolution should not be
13 delayed. Pursuant to Rule 54(b), the clerk is directed to
14 enter judgment for the defendants on the statutory interpre-
15 tation issue decided herein. The time for appeal of this
16 decision will begin with the entry of this opinion and
17 order.

18 ORDER

19 Based on the foregoing opinion, it is hereby
20 ordered that:

21 (1) Defendants' motion for partial summary
22 judgment is GRANTED.

23 (2) Plaintiffs' motion for partial summary
24 judgment is DENIED.

25 (3) The Clerk shall enter judgment, pursuant to
26 Fed. R. Civ. Proc. 54(b), for the defendants on the
27 statutory interpretation claim raised in counts one through
28

1 four and count seven of the amended complaint filed August
2 31, 1982.

3 DATED: 2-21-86
4

5 
6 UNITED STATES DISTRICT JUDGE
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FOOTNOTES

1/

Section 12(a), 43 U.S.C. § 1611(a), provides in relevant part:

During a period of three years from the date of enactment of this Act, the Village Corporation for each Native village identified pursuant to section 11 shall select, in accordance with rules established by the Secretary, all of the township or townships in which any part of the village is located, plus an area that will make the total selection equal to the acreage to which the village is entitled under section 14. The selection shall be made from lands withdrawn by subsection 11(a). . . .

2/

CIRI's interest in this litigation arises from section 14(f), 43 U.S.C. § 1613(f), which, in general, grants to the regional corporation in which the lands are located the patent to the subsurface estates of any lands patented to a village corporation under ANCSA.

3/

Section 6(g) of the Statehood Act provides in relevant part:

Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but

1 prior to the issuance of final patent, the State
2 is hereby authorized to execute conditional
3 leases. . . .

4 Section 202(d) of the MHEA contains an
5 almost identical provision except that
6 there is no tentative approval requirement:

7 (d) Following the selection of lands by the
8 Territory pursuant to subsection (b), but prior to
9 the issuance of final patent, the Territory shall
10 be authorized to lease. . . .

11 4/

12 24 Fed. Reg. 4657 (1959).

13 5/

14 The State's August 29, 1960 application for the parcel
15 containing the lands at issue here contained this reference.

16 6/

17 Thus, the court does not reach the question of whether
18 the unpatented mental health selections constitute "Federal
19 lands" or "interests therein."

20 7/

21 Rep. Haley was Chairman of the House Subcommittee on
22 Indian Affairs of the Committee on Interior and Insular
23 Affairs, which favorably reported out H.R. 10367.

24 8/

25 As noted above, sections 6(a) and 6(b) of the Statehood
26 Act granted 103,550,000 acres to the state.
27
28

1 9/

2 The document shows that the state had made land
3 selections as follows:

4 State Selection	24,660,394.75
5 Mental Health	1,037,215.15
6 School Lands	107,235.54
7 University Grant	99,303.32
8 Other Grants	<u>114,724.71</u>
9 Total	26,018,873.47

10 10/

11 Of the 26,018,873.47 acres the state had selected by
12 January 24, 1969, 5,594,885.91 acres had already been
13 patented to the state in the following categories:

14 State Selection	4,644,927.78
15 Mental Health	734,215.75
16 School Lands	100,202.26
17 University Grant	99,414.57
18 Other Grants	<u>16,125.55</u>
19 Total	5,594,885.91

20 11/

21 None of plaintiffs' other ANCSA legislative history
22 arguments come close to demonstrating that Congress intended
23 mental health lands to be available for Native selection.
24 For example, plaintiffs highlight the fact that none of the
25 State of Alaska maps used by Congress distinguished between
26 Statehood Act and MHEA selections; instead they treated as
27 one category lands tentatively approved to the state. This
28 fact, however, only confirms the likelihood that Congress

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either believed all the state's MHEA selections had been
patented already or was unaware of the existence of the
MHEA.

LAW OFFICES OF
RUSSELL L. WINNER
DENALI TOWERS NORTH, SUITE 702
2550 DENALI STREET
ANCHORAGE, ALASKA 99503
(907) 277-9522

ATTORNEYS FOR Plaintiffs

RECEIVED
Department of Law

MAY 8 1986

FILED

MAY - 5 1986

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TYONEK NATIVE CORPORATION and
COOK INLET REGION, INC.,

Plaintiffs,

vs.

No. A77-207 Civ.

SECRETARY OF THE INTERIOR OF THE
UNITED STATES OF AMERICA and
ALASKA NATIVE CLAIMS APPEAL BOARD,

Defendants,

and

STATE OF ALASKA,

Intervenor Defendant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that plaintiffs Tyonek Native Corporation and Cook Inlet Region, Inc. appeal to the United States Court of Appeals for the Ninth Circuit from the United States District Court for the State of Alaska's partial judgment, pursuant to Fed. R. Civ. P. 54(b), filed March 7, 1986.

DATED this 5th day of May, 1986 at Anchorage, Alaska.

LAW OFFICES OF RUSSELL L. WINNER
Attorneys for Plaintiffs
Tyonek Native Corporation and
Cook Inlet Region, Inc.

By:

R L W
Russell L. Winner

cy: Russ Winner
Bruce Landon (DOJ)
✓ Elizabeth Barry (St of AK)
Judge Brewster
9CCA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

HAROLD M. BROWN
ATTORNEY GENERAL

Elizabeth J. Barry
Assistant Attorney General
1031 W. 4th Ave., Suite 200
Anchorage, Alaska 99501

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TYONEK NATIVE CORPORATION
and COOK INLET REGION, INC.

Appellant,

vs.

SECRETARY OF THE INTERIOR OF
THE UNITED STATES OF AMERICA
and ALASKA NATIVE CLAIMS
APPEAL BOARD,

and

STATE OF ALASKA,

Appellees.

No. 86-3827

ENTRY OF APPEARANCE

Please take notice that Elizabeth J. Barry, Assistant Attorney General, Department of Law, 1031 W. 4th Avenue, Suite 200, Anchorage, Alaska 99501, telephone: 907/276-3550, hereby enters her appearance as counsel of record in the above-captioned matter on behalf of appellee, State of Alaska.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

Copies of all notices, motions and pleadings should be sent to the address referenced above.

DATED this 30th day of May, 1986, at Anchorage, Alaska.

HAROLD M. BROWN
ATTORNEY GENERAL

By: *Elizabeth J. Barry*
Elizabeth J. Barry
Assistant Attorney General

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
P.O. Box 547
San Francisco, CA 94101

Rec'd 5/12/86
4:24 PM
EJB

Court of Appeals Docket Number
86-3827
(if known)

**CIVIL APPEALS
DOCKETING STATEMENT**

Case Name: Tyonek Native Corp. and CIRI v. Secretary of Interior, et al.
District Court/Agency: U. S. District Court, District of Alaska
District Court/Agency Docket No.: A77+207 District Judge: Brewster
Party filing appeal/petition: Tyonek Native Corporation and Cook Inlet Region, Inc.

A. Timeliness of Appeal or Petition for Review or Enforcement:

- (1) Date of entry of judgment or order: March 7, 1986
(2) Service date of any post-judgment motion: n/a
(3) Date of entry of order deciding post-judgment motion: n/a
(4) Date notice of appeal or petition filed: May 5, 1986
(5) Time limit for filing appeal or petition: 60 days
(6) Authority fixing time limit for filing appeal or petition:
Fed. R. App. P. 4(a)(1) X Fed. R. App. P. 4(a)(4) _____
Fed. R. App. P. 4(a)(2) _____ Fed. R. App. P. 4(a)(5) _____
Fed. R. App. P. 4(a)(3) _____ Other _____

B. Appeal from District Court:

- (1) Is the order appealed from a final order (i.e., does it dispose of the action as to all claims by all parties)? No
(2) If the order is not a final disposition as to all claims by all parties, did the district court direct the entry of judgment in accordance with Fed. R. Civ. P. 54(b)? Yes
(3) If not final, is the order properly appealable as the grant or denial of an injunction under 28 U.S.C. § 1292(a)(1)? n/a
(4) If none of the above applies, what is the basis for seeking appellate review? n/a

C. Review of Agency Decision: If the appeal is from an agency decision, what statute or other authority grants this court power to review that decision?
28 U.S.C. 1331

D. Related Cases: List all related cases pending in this court as defined in Ninth Circuit Rule 13(b)(4):

None

E. Nature of Relief Sought Below:

() Damages: amount sought \$ _____ amount granted \$ _____
() Injunctive Relief: () preliminary () permanent
() granted () denied
(x) Declaratory Relief: () granted () denied
() Attorney Fees: amount sought \$ _____ amount granted \$ _____
() Other (specify) _____

F. Nature of Disposition Below:

() Bench Trial () Dismissal:
() Jury Verdict () Lack of Jurisdiction
(x) Summary Judgment () Failure to State a Claim
() Grant/Denial of Injunction () Failure to Prosecute
() Default Judgment () Other _____
() Agency Order () Other _____

G. Length of Trial or Hearing: Equivalent of _____ 2 _____ full days

H. Preparation of Reporter's Transcript:

- (1) Do you intend to order any portion of the reporter's transcript for the appeal? Yes _____ No X _____
- (2) If so, have all necessary arrangements been made for preparation of the transcript? Yes _____ No _____ n/a
- (3) Estimated date of completion of transcript (if known): _____ n/a

PLEASE CONFINE YOUR RESPONSES TO I, J, AND K TO THE SPACE PROVIDED.

I. Brief Description of the Nature of the Action and the Result Below:

The U. S. Department of Interior denied Tyonek Native Corporation's application for lands tentatively approved to the State of Alaska under the Mental Health Enabling Act, 70 Stat. 709, as ratified and confirmed by section 6(k) of the Alaska Statehood Act, 72 Stat. 339, deciding that these lands were not "tentatively approved . . . to the state under the Alaska Statehood Act" under section 11(a)(2) of the Alaska Native Claims Settlement Act, 43 USC 1601, 1610(a)(2). On cross motions for summary judgment, the court upheld the administrative decision.

N. Attorney(s) Representing Appellee(s)/Respondent(s)

Attorney Russell L. Winner Telephone (907) 277-9522

Firm Law Offices of Russell L. Winner

Address 2550 Denali Street, Suite 702, Anchorage, Alaska 99503

Client Tyonek Native Corporation and Cook Inlet Region, Inc.

Attorney Elizabeth Barry, Esq. Telephone (907) 276-3550

Firm Alaska Attorney General

Address 1031 W. 4th Ave., Suite 200, Anchorage, Alaska 99501

Client State of Alaska

Attorney Bruce M. Landon, Esq. Telephone (907) 271-5452

Firm Land & Natural Resources Division, Department of Justice

Address 701 "C" Street, Box 69, Room F-249, Anchorage, Alaska 99513

Client Secretary of the Interior of the United States of America and Alaska Native Claims Appeal Board
(List additional counsel on separate sheet if necessary)

O. Attorney or Appellant (if pro se) Filing Docketing Statement

Name Russell L. Winner Telephone (907) 277-9522

Firm Law Offices of Russell L. Winner

Address 2550 Denali Street, Suite 702, Anchorage, Alaska 99503

Check one: ☒ Attorney ☐ Appellant pro se

 5/28/86
Signature Date

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet accompanied by a certification that they concur in the filing of this statement.

A copy of the judgment or order appealed from and of any opinion, findings of fact and conclusions of law supporting the judgment or order must be attached to all copies of the Docketing Statement.

Proof of service on opposing counsel must be attached to all copies of the Docketing Statement.

J. Issues to be Raised on Appeal:

Are lands tentatively conveyed to the Territory of Alaska pursuant to the Mental Health Enabling Act, 70 Stat. 709, as confirmed by Section 6(k) of the Alaska Statehood Act, 72 Stat. 339, 48 USCA Prec. 21, land "tentatively approved to . . . the State under the Alaska Statehood Act" under section 11(a)(2) of the Alaska Native Claims Settlement Act (ANCSA), 43 USC 1601, 1610(a)(2), and thus selectable by appellant Tyonek Native Corporation, a Native village corporation created under ANCSA?

**K. Standard of Appellate Review as Defined in Ninth Circuit Rule 13(b)(2)
(Specify the proper standard of review to be applied by the court for each issue to be raised, citing relevant authority):**

De novo review

**L. Do you believe that settlement is feasible in this case? Yes _____ No X
Why or why not?**

The parties have been unable to settle this matter after several discussions on this subject.

**M. Would a prebriefing conference be useful in this case? Yes _____ No X
Why or why not?**

Briefing and argument on this case should be straightforward; the case presents no unusual aspects in this regard.

A.G.

OPINION

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BOX 2170 - JUNEAU

WILLIAM A. EGAN, GOVERNOR

Duplicate
Trust Land
AG Opinion

SEP 17 1964
RECEIVED
JUNEAU ALASKA

1964 Opinions of the
Attorney General No. 7

September 14, 1964

The Honorable Phil R. Holdsworth
Commissioner
Department of Natural Resources
Juneau, Alaska

Re: Selection of Mental Health School
and University Lands by Boroughs

Dear Commissioner Holdsworth:

You have asked whether a borough may select Mental Health School and University lands pursuant to AS 07.10.150. It is our opinion that these lands are not subject to selection by a borough pursuant to AS 07.10.150, which provides:

"An organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located in its boundaries within five years after the date of availability of state lands in the borough. Nothing in this section affects any valid existing claim, location, or entry under the laws of the state or the United States, whether for homestead, mineral, right-of-way, or other purposes, or affects the rights of any owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied."

AS 07.10.150 permits a borough to select 10 per cent of the vacant, unappropriated and unreserved State lands within the borough. This limitation on selection of State lands by a borough protects State lands which have been set aside for some special purpose from being used for other than that special

The Honorable Phil R. Holdsworth
Juneau, Alaska

September 14, 1964

-2-

purpose without referring to those special purposes individually. The question presented is whether the State's Mental Health School and University lands are lands set aside for special purposes which are therefore within the limitation of AS 07.10.150.

Section 07.10.150 prohibits a borough from selecting "reserved land." "Reserved land" is defined in Black's Law Dictionary (4th Ed. 1951) as follows:

"Public land that has been withheld or kept back from sale or disposition."

Similarly, Black's Law Dictionary (4th Ed. 1951) defines "appropriation of land" as follows:

"The act of selecting, devoting, or setting apart land for a particular use or purpose." Ibid.

Mental Health School and University lands are, in our opinion, appropriated and reserved lands within the meaning of the definitions quoted above and AS 07.10.150. Several statutes have established the status of Mental Health School and University lands. Mental Health lands in Alaska were established under a Federal grant which directed that the lands be administered as a public trust and the income therefrom "be applied to meet the necessary expenses of the Mental Health program of Alaska." (70 Stat. 709, 711). Similarly, School and University lands were established by a Federal grant which directed that such lands "shall be reserved" for the support of schools. An additional grant of Federal lands was made "for the exclusive use and benefit of" the university. (38 Stat. 214 as amended by 48 Stat. 153). The grants by the Federal Government of School and University lands and Mental Health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under Section 6K of the Alaska Statehood Act (72 Stat. 339), with the express proviso that they be used for the purposes for which they were reserved.

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

Opinion No. 7

The Honorable Phil R. Holdsworth
Juneau, Alaska

September 14, 1964

-3-

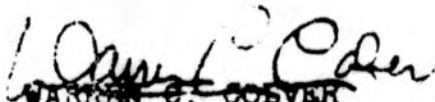
"select, administer, and dispose of
mental health lands for the support of the
mental health program;" (Emphasis added)

The Legislature has clearly established a policy that Mental Health lands continue to be dedicated for the support of the Mental Health program. Similarly, School and University lands are dedicated for the purpose of supporting schools. See Title 11, Alaska Administrative Code, Sec. 202.012-014.

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

I trust this answers your question.

Yours very truly,


~~WARREN G. COOVER~~
ATTORNEY GENERAL

WCC/rgg

cc: William A. Egan
Governor

Floyd L. Guertin, Commissioner
Department of Administration

1001

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STATE OF ALASKA

DEPARTMENT OF LAW

WALTER J. HICKEL, GOVERNOR

OFFICE OF THE ATTORNEY GENERAL POUCH K, STATE CAPITOL — JUNEAU 99801

February 10, 1967

DEPARTMENT OF
NATURAL RESOURCES

M E M O R A N D U M

TO: Phil R. Holdsworth, Commissioner
Department of Natural Resources

FROM: D. A. Burr
Attorney General

By: Edward J. Reasor
Deputy Attorney General

RE: Mental Health Lands Exchange

FEB 13 1967

RECEIVED
JUNEAU, ALASKA

You have asked whether the Division of Lands has the authority to exchange mental health lands for general grant lands in order to aid the borough selection program. The answer is that mental health lands may be exchanged for general grant lands when: Such an exchange is carried out under the auspices of the state in furtherance of a legitimate state purpose, e.g., aiding the borough selection program; the integrity of the mental health trust is preserved, i.e., the trust receives lands of at least equal value in exchange; and the exchange, at least in part, supports the mental health program.

The original grant of mental health lands to the Territory of Alaska is found in Title II, § 202 of Public Law 820, 84th Congress, 2nd Session. Subsection (e) of that section reads as follows:

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the

Memo to Phil R. Holdsworth, Commissioner
Page Two

February 10, 1967

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.

Such grants were continued after statehood under the same terms and conditions as existed before statehood by virtue of § 6(k) of the Alaska Statehood Act, Public Law 85-500 which reads in part: "Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission."

The United States Supreme Court dealt with a similar proposition in the recent case of Lassen v. Arizona, Opinions of the U.S. Supreme Court No. 84, October Term 1966 (Decided January 10, 1967). In that case the State of Arizona sought to acquire certain lands for highway purposes which had been granted to the State by the federal government for the support of education. The terms of the grant were extremely restrictive, much more so than the mental health grant to Alaska, and authorized disposal of such lands by sale or lease at public auctions only. The court found that the purpose of such provisions was "to guarantee, by preventing particular abuses through the prohibition of specific practices, that the trust received appropriate compensation for trust lands." The court reasoned: "We see no need to read the Act to impose these restrictions or transfers in which the abuses they were intended to prevent are not likely to occur, and in which the trust may in another and more effective fashion be assured full compensation." "The trust will be protected, and its purposes entirely satisfied, if the State is required to provide full compensation for the land it uses." In light of their language and the more liberal provisions of the mental health grant, it would seem consonant with the duties of the State of Alaska with respect to the trust terms, to exchange mental health lands for other lands of equal value, especially where the borough selection program, so vital to the future growth of the State, would be aided.

There is, however, an additional limitation imposed on such an exchange contained in AS 38.05.035(13) which, apparently, is not, in light of the Lassen case (supra), imposed by virtue of the terms of the original grant.

AS 38.05.035(13), implementing in part the provisions of the grant, provides that the Director of the Division of Lands shall "select, administer, and dispose of mental health lands for the support of the mental health program." It seems clear that an exchange of lands is permissible under this section with the limitation that such exchange be "for the support of the mental health program." That is, an exchange of mental health lands cannot be solely for the benefit of the borough

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Memo to Phil R. Holdsworth, Commissioner
Page Three

February 10, 1967

selection program. On the other hand, it is not necessary that such an exchange solely benefit the mental health program, and, indeed, it would be advantageous and desirable if such an exchange benefited all programs concerned.

Edward J. Reaso
DAB:EJR:amt

MCR

NOTED
FEB 14 1967
PHIL R. HOLDSWORTH
Commissioner

9201

TO: Members, Ad Hoc Land
Advisory Panel

DATE: February 8, 1977

FILE NO:

TELEPHONE NO:

FROM: Thomas E. Meacham
Assistant Attorney General
Anchorage - AGO

SUBJECT: Brief Synopsis of School,
University and Mental
Health Trust Land Statutes

I have been requested by members of the panel to prepare an outline of the legal constraints presently placed upon lands conveyed from the federal government to the former Territory of Alaska, and later the State, for specific support of school, university and mental health programs. This outline will discuss each of the three land grant programs separately, though several of their aspects are similar. An extensive discussion of the legal precedents applicable to administration of these programs will not be attempted, though some significant legal point will be mentioned. Some of the material in this outline was abstracted from Alaska's School, University and Mental Health Lands, by Ronald L. McCowan, a 1975 legal intern with the Division of Lands.

I

UNIVERSITY LANDS

A. Federal Law. University lands were first granted to the Territory of Alaska by the Act of March 4, 1915, 48 U.S.C. Sec. 353, which states at Sec. 353:

Reservation of lands for educational purposes; proceeds or income set aside; lands excluded. When the public lands of the Territory of Alaska are surveyed, under direction of the Government of the United States, sections numbered 16 and 36 in each township in said Territory shall be reserved for the sale or settlement for the support of common schools in the Territory of Alaska; in section 33 of each township in the Tanana Valley between parallel 64, 65 north latitude, and between the 145th and 152nd degrees west longitude (meridian of Greenwich) shall be reserved from sale or settlement for the support of a Territorial agricultural college and school of mines established by the legislature of Alaska

FILE # 9201

upon the tracts granted in Section 354 of this title; provided, however, that if settlement with a view toward homestead entry has been made upon any part of the section reserved by . . . other lands may be designated and reserved thereof in the manner and reserved thereof in the manner and reserved in lieu thereof in the manner provided in sections 851 and 852 of Title 3; provided further, that the Territory may, by general law, provide for leasing said land in area not to exceed one section to any one person, association or corporation for not longer than ten years at any one time; and provided further, that the entire proceeds or income derived from said reserved lands are appropriated and set apart as separate and permanent funds in the Territorial treasury, to be invested and the income from which shall be expended only for exclusive use and benefit of the public schools of Alaska or of the agricultural college and school of mines, respectively, in such a manner as the Legislature of Alaska may by law direct. . . .

Section 354 of the same act granted Section 6, T 1 South, R. 1 West, Section 31, T. 1 North, R. 1 West, Section 1, T. 1 South, R. 2 West, and Section 36, T. 1 North, R. Two West, Fairbanks Meridian, to the Territory of Alaska, under the express conditions that they " . . . shall be forever reserved and dedicated to use as a site for an agricultural college and school of mines; . . . "

It is clear from the quoted statute that the university lands granted by the federal government to the Territory were to be subject to lease only, and that the "entire proceeds or income derived" were to be appropriated as a permanent fund for the university under the direction of the territorial legislature; and as to the enumerated sections of land transferred by Section 354, they were to be used exclusively as the physical location of the university.

On January 21, 1929, another federal act was adopted which granted additional lands to the Territory of Alaska for university purposes. 48 U.S.C. Sec. 354(a) states:

Agricultural college and school of mines; additional grant of public lands; conditions and limitations. In addition to the provision made by Sections 353 and 354 of this title, for the use and benefit of the agricultural college and school of mines, there is granted to the Territory of Alaska for the exclusive use and benefit of the agricultural college and school of mines, one hundred thousand acres of vacant non-mineral surveyed unreserved public lands in the Territory of Alaska, to be selected, under the direction and subject to the approval of the Secretary of the Interior, by the Territory, and subject to the following conditions and limitations:

(a) the college and school provided for in this section shall forever remain under the exclusive control of the said Territory, and no part of the proceeds arising from the sale or disposal of any lands granted herein shall be used for the support of any denominational or sectarian college or school.

(b) It is declared that all lands granted to said Territory and especially transferred and confirmed to the said Territory and shall be by the said Territory held in trust, to be disposed of, in whole or in part, only in the manner herein provided, and for the objects specified in the granting provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. Disposition of any of said lands or of any money or thing of value directly or indirectly derived therefrom or any object other than that for which such particular lands or the lands from which such money or thing of value shall be derived or granted or in any manner contrary to the provisions of this section shall be deemed a breach of trust.

(c) No mortgage or other encumbrance of said lands shall be valid in favor of any persons for any purpose or any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest bidder at public auction, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with full description of the lands to be offered, published once each week for not less than ten successive weeks in a newspaper of general circulation, published regularly at the capital and in a newspaper of like circulation which shall then be regularly published nearest to the location of the land so offered; nor shall any sale or contract for the sale of any timber or natural product of such lands be made, save at the place, in the manner and after the notice is thus provided for sales and leases of the lands themselves; provided however, that nothing herein contained shall prevent said territory from leasing any of said lands referred to in this section for a term of five years or less without such advertisement herein required.

(d) All lands, leasehold, timber and other products of the land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration of less than a value so ascertained, nor, in the case of the sale of the land, less than a minimum price of \$5 per acre . . .

(e) A fund shall be established in the Territorial treasury to carry out the purposes of this section, . . . the Territorial treasurer shall keep all such money invested in sale interest bearing securities . . . the income from said fund may and shall be used exclusively for the purposes of such agricultural and school of mines, providing that no portion of said income shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair or any building or buildings.

(f) Every sale, lease, conveyance, or contract of or concerning any of the lands granted or confirmed or the use thereof of the natural products thereof, not made in substantial conformity with the provisions of this section, shall be null and void. It shall be the duty of the Attorney General of the United States to prosecute in the name of the United States and in its courts such proceedings at law or in equity as may from time to time be necessary to enforce the provisions thereof relative to the application and disposition of the said lands and the products thereof, and the funds derived therefrom.

This act, unlike the Act of 1915, permitted the sale of university lands received under it, provided that proper notice, appraisal and sale procedures were first used. Like the 1915 act, the 1929 act required the holding of all income derived from university lands or from products of university lands to be placed in trust for the support of the university, with only the income earned by that trust account available for expenditures to support the university.

According to figures compiled in 1975, university lands applied for by the Territory under the 1915 act, (which granted Sections 33 only) totalled 11,000.43 acres with 8,666.8 acres of that total patented to the Territory. Under the 1920 additional university land grant, application had been made for 99,303.3 acres and patent had been received for 99,414.5 acres, the difference in acreage being accounted for by correction of surveys after patent was received.

On July 7, 1958, the Alaska Statehood Act was passed, which stated in Section 6(k):

Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, Section 1 of the Act of March 4, 1915 [the school and university lands act], as amended, . . . [is] repealed and all lands therein reserved under the provisions of Section 1 as of the date of this Act, shall, upon the admission of said

state into the Union, shall be granted to such state for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license or contract issued under said section 1, as amended, where any rights or powers with respect to such lease, permit, license, or contract, shall not effect the disposition of the proceeds or income derive prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter, from any disposition of reserved lands or interest therein made prior to such repeal.

This grant to the State of the university lands "for the purposes for which they were reserved" is the grant under which the State of Alaska presently administers the university lands. It is important to note that the "purposes" for which the lands were first reserved were preserved by the Statehood Act, but the explicit conditions under which the Territory was required to manage the lands were not expressly continued into statehood, and were arguably repealed by repeal of the underlying act.

On September 19, 1966 Public Law 89-588, 80 Stat. 811, an act which repealed sections 3 through 7 of the 1929 University Land Grant Act (which include paragraphs (b) through (f) quoted previously). The purpose of this repeal was to give the State and the university more freedom in administering and disposing of lands granted by the 1929 act, without being constrained by the restrictive conditions imposed by the original act, a purpose which was previously achieved by Section 6(k) of the Statehood Act with regard to the 1915 university and school land grant act.

B. State Constitution and Statutes

Article VIII, Section 6 of the Alaska Constitution states:

State public domain. Lands and interest therein, including submerged and tide lands, possessed or acquired by the state and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the state by the United States and for the administration of the state public domain.

Article VIII, Section 8 of the Alaska Constitution states:

Leases. The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses . . .

Article VIII, Section 9 of the Alaska Constitution states:

Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sale procedures. All sales or grants shall contain such reservations to the State of all resources as shall be required by Congress or the State and shall provide for access to these resources . . .

Article VIII, Section 10 of the Alaska Constitution states:

Public Notice. No disposal of leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Thus, subject to any reservations prescribed by Congress, university lands are subject to lease and sale under procedures adopted in conformity with the Constitution.

Article VII, Section 2 of the Alaska Constitution states:

The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

AS 38.05.365(16) defines "state lands" as follows:

'State lands' or 'lands' means all lands including shore, tide and submerged lands, or resources belonging to or acquired by the state.

AS 38.05.370(20) defines "university lands" as:

'University lands' means all Sections 33 reserved to the university under 38 Stat. 1214, as amended, 48 U.S.C. 353 and all lands granted to or reserved for the benefit of the university.

AS 38.05.020, concerning the authority and duties of the Commissioner of the Department of Natural Resources, contains the following provision:

- (a) The commissioner shall supervise the administration of the land division.

AS 38.35.035 concerning the powers and duties of the Director of the Division of Lands, contains the following provisions:

- (a) The director shall . . . (2) manage, inspect or control state lands and improvements on them belonging to the state and under the jurisdiction of the division . . .

- (4) prescribe application procedures and practices for the sale, lease or other disposition of available lands, resources, property, or interest in them; . . .

- (6) Under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interests in them;

- (7) Have jurisdiction over state lands, except for those lands acquired by the Alaska World War II Veterans' Board and the Agricultural Loan Board . . .

Section 38.05.030, which is an exception to the general statutory provisions regarding the sale or lease of state lands, states as follows:

- (a) The sale, lease or other disposal of university lands shall be made by the commissioner in accordance with the provisions of this chapter. University lands may be exchanged for (1) state lands; (2) privately owned lands; (3) vacant, unappropriated and unreserved public lands; and (4) lands owned by a city, borough or other public entity. However, all lands exchanged for other university lands must have the same fair market value as the other university lands. No sale, lease, or other disposal of university lands may be made without the approval of the Board of Regents of the University of Alaska.

AS 14.40.350, regarding the authority of the University Board of Regents, states:

Sec. 14.40.350. Board of Regents authorized to lease lands. The Board of Regents may execute leases for mining, agriculture, or other purposes to the lands granted for the benefit of an agricultural college and school of mines for Alaska by the Act of Congress approved March 4, 1915, for such time and at such rent or royalty as may seem just and as provided by law.

AS 14.40.360 states:

Sec. 14.40.360. Board of Regents authorized to select and to sell or lease lands granted by Act of Congress. The Board of Regents may select the lands granted to Alaska by the Act of Congress approved January 21, 1929, and may sell or lease them and deposit the proceeds in the state treasury in conformity with that Act.

Pursuant to the statutes, regulations have been adopted providing for the sale or lease of state land, with appropriate provisions where university lands may be involved. It is evident that the state statutes have been interpreted to require management of the university lands, together with other state lands, by the Department of Natural Resources and the Division of Lands.

II

School Lands

A. Federal Statutes. The federal statute granting surveyed sections 16 and 36 to the Territory of Alaska (48 U.S.C. Sec. 353) has been previously quote with regard to university lands granted by the same act. That statute, as originally enacted in 1915, provided only for the lease of such lands, and did not specifically allow the Territory to sell school lands. Further, the income derived from the lease of school lands was to be appropriated for the permanent fund, and only the income earned by that fund was to be used for school purposes.

Pursuant to the school grant, by 1975 Alaska had applied for 110,905.2 acres of federal lands, and had received patent to 100,202.3 acres.

In 1958, the Alaska Statehood Act was adopted, and provided in Section 6(k), as previously quoted, that grants previously made to the Territory were to be confirmed and transferred to the State of Alaska upon its admission, to the Union, repealing the Act of March 4, 1915 and granting them to the State "for the purposes for which they were reserved".

B. State Constitution and Statutes. The State constitutional provisions regarding the State public domain and the sale and lease of State lands, quoted previously in the context of university lands, are equally applicable to school lands received by the State.

The state statutes at Title 38, pertaining to the duties of the Commissioner of Natural Resources and the Director of the Division of Lands, quoted in the context of the university lands, apply equally to the administration of school lands. In addition, other state statutes specifically concern school lands. AS 38.05.365(14) states:

'School lands' means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under Section 6(k), Alaska Statehood Act, 72 Stat. 339, and any other lands designated solely for school revenues.

AS 35.05.030(e), pertaining to exceptions to the general sale and lease policy of the State, states:

The sale, lease or other disposal of school land under the jurisdiction of the Department shall be made by the commissioner in accordance with the provisions of this chapter. However, disposal of school lands, under this subsection, other than disposal by lease for a term of years, shall be made only for sites for school facilities or for public park and public recreation purposes. School lands may be exchanged for (1) state lands; (2) vacant, unappropriated and unreserved public lands, and (3) lands owned by a city, borough or other public entity. In the case of unequal value, cash may be used to equalize land values. If the Department determines that it is in the best interest of the State to dispose of the school lands located in Sections 16 and 36 in an organized borough or city of any class,

the borough or city is authorized, and has preference for six months after notice, to acquire the land at the appraised value by purchase or exchange of land acceptable to the Department. No sale, lease, exchange or other disposal of school lands may be made without the approval of the State Board of Education. The State Board of Education shall act as a trustee of school lands. The Board may obtain private counsel or other professional assistance when necessary, to carry out its duties as a trustee.

AS 38.05.032 states:

SCHOOL LAND DISPOSITION PROCEDURES.

(a) Before the sale, lease or other disposal of school land, the director shall

(1) cause the preparation of a development plan which adequately describes the manner in which the land will be developed or utilized; however, no development plan is required for an exchange of school land to a public entity;

(2) make notice under sec. 345 of this chapter of the proposed development plan, stating that a disposal of the land for such use is under consideration, and that interested persons may make comments and submit alternative proposals for development and use within 30 days of the last publication of notice; and

(3) notify municipalities as provided in sec. 305 of this chapter at the same time notice is published or posted under (2) of this subsection; no further notice to municipalities need be given at the time of disposal.

(b) In the case of school land to be disposed of within municipalities, no disposal may be made until the municipal planning authority has held a public hearing on development plans and applications relating to the land

to be disposed of. The director shall make development plans and applications available to municipal planning authorities for this purpose. No disposition of land may be made sooner than three weeks after a hearing held under this subsection. No disposition of land may be made unless the development plan is approved by the municipal planning authority.

AS 38.05.070(c) states:

A lease may be issued for a period up to 55 years . . . However, a nonrenewable lease for school lands may be issued for a period not to exceed 99 years.

School lands have been subject to lease for a term longer than the ten-year term originally set by the federal law in 48 U.S.C. Sec. 353, and such lands have also been subject to disposal by sale. It is thus clear that the interpretation given Section 6(a) of the Alaska Statehood Act is that upon confirmation of the grants previously received by the Territory for school and university purposes, the federal statute (48 U.S.C. Section 353-354 was repealed in its entirety, and only the purposes of the original grants, and not the conditions limiting the disposal of the original grants remained to govern State administration of these lands after statehood.

III

MENTAL HEALTH LANDS

A. Federal Law. On July 28, 1956, Public Law 830 (70 Stat. 709, 48 U.S.C. Sec. 46-3), entitled "Authority of the Territory of Alaska in the Field of Mental Health", was enacted. Title 2 of that Act made certain special grants to the Territory of Alaska for support of the mental health program, including certain land grants contained in Section 202 of the Act, in the following language:

- (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States and Alaska which are vacant, unappropriated, and unreserved at the time of their selection . . .

- (b) The lands authorized to be selected by the Territory of Alaska by Subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. . . .
- (c) All grants made or confirmed under this section shall include mineral deposits; providing, however, that mineral deposits in lands which on January 1, 1956 were subject to Public Land Order No. 82 of January 22, 1942, shall not be included.
- (d) Following the selection of lands by the Territory pursuant to Subsection (b), but prior to the issuance of final patents, the Territory shall be authorized to lease and make conditional sales of selected lands.
- (e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall be first 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 a manner as the legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such 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.

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The Alaska Statehood Act at Section 6(k), quoted previously, confirmed this grant of lands to the State of Alaska. However, the 1956 Mental Health Act was not repealed by the Statehood Act, since at that time Alaska had approximately eight years remaining within which it was permitted to select lands under the Act. As of 1975, Alaska had selected 1,026,147.9 acres of land under its mental health grant, and had obtained patent to 787,532.8 acres. In addition, it had obtained tentative approval to 187,294.1 acres of mental health selections.

Lands selected and tentatively approved to the State under the Mental Health Act have also been selected by various Native Village corporations under the Alaska Native Claims Settlement Act. The Alaska Native Claims Appeal Board has ruled that those Native selections are not valid, since mental health lands did not "pass to" the State of Alaska pursuant to ANCSA, but were a previous grant prior to Statehood, and thus not subject to selection under ANCSA. It is expected that further Court proceedings may be anticipated to resolve this issue.

B. State Constitution and Statutes. The State constitutional provisions applicable to mental health lands, as part as the State public domain, have been previously quoted in the section discussing university lands. State statutory provisions concerning the authority of the Commissioner of Natural Resources and the Director of the Division of Lands, quoted previously, apply with equal force to the management of mental health lands, with some additions. AS 38.05.365(8) states:

'Mental Health Lands' means
lands granted under Title II,
Section 202, of Public Law 830,
84th Congress, 2nd Session, as
heretofore or hereafter amended.

AS 38.05.035, regarding the powers and duties of the Director of the Division of Lands, states in subsection (a)(13) that the Director shall:

select, administer and dispose
of mental health lands for the
support of the mental health program,
except that no mental health lands
may be disposed of without the
approval of a board composed of the
director of the Division of Mental
Health, Chairman of the Mental Health
Advisory Council, and the Commissioner
of Revenue.

IV

COURT DECISIONS

There have been no Supreme Court decisions in Alaska regarding an interpretation of the trust status of school, university or mental health lands. A 1975 Alaska Supreme Court case had the opportunity to examine the specific deed restrictions imposed on university lands granted for the site of the University. U. of Alaska v. National Aircraft Leasing, Inc., 536 P.2d 121 (1975). A 1964 opinion of the Attorney General, which has some persuasive effect but which does not have the force of law, determined that trust lands, after they are transferred to the State of Alaska, under the Alaska Statehood Act, were subject to the express proviso that they be used for the purpose for which they were originally reserved. A copy of this Opinion of the Attorney General is attached hereto.

State courts in other states have discussed the trust responsibilities of states regarding lands granted to them under the terms of a particular federal act, and have generally held that the administration of the lands must conform to the grant, and to the acceptance of that grant by the State. Magnolia Petroleum Co. v. Price, 206 P. 1033 (Okla. 1922); State Highway Commission v. State, 297 N.W. 194 (N.D. 1941); Application of Dasburg, 1133 P.2d 569 (N.M. 1941). This subject has also been discussed by the Supreme Court of the United States in Lassen v. Arizona, 385 U.S. 458, 17 L.Ed. 2d 515 (1967).

This brief discussion of applicable case law is not intended to be exhaustive or analytical, but merely to indicate that there is general case-law support for the position that the administration of school, university and mental health trust lands is a trust responsibility, and is governed to a degree by the language and conditions of the original statutory grant of lands. The extent to which such original grant still controls details of the methods and terms under which such lands may be leased or sold, however, is not discussed here, as it is a subject upon which there are no clear guidelines in Alaska at the present time.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 -- JUNEAU

1964 Opinions of the
Attorney General No. 7

September 14, 1964

The Honorable Phil R. Holdsworth
Commissioner
Department of Natural Resources
Juneau, Alaska

Re: Selection of Mental Health School
and University Lands by Boroughs

Dear Commissioner Holdsworth:

You have asked whether a borough may select Mental Health School and University lands pursuant to AS 07.10.150. It is our opinion that these lands are not subject to selection by a borough pursuant to AS 07.10.150, which provides:

"An organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located in its boundaries within five years after the date of availability of state lands in the borough. Nothing in this section affects any valid existing claim, location, or entry under the laws of the state or the United States, whether for homestead, mineral, right-of-way, or other purposes, or affects the rights of any owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied."

AS 07.10.150 permits a borough to select 10 per cent of the vacant, unappropriated and unreserved State lands within the borough. This limitation on selection of State lands by a borough protects State lands which have been set aside for some special purpose from being used for other than the special

The Honorable Phil R. Holdsworth
Juneau, Alaska

September 14, 1964
-2-

purpose without referring to those special purposes individually. The question presented is whether the State's Mental Health School or University lands are lands set aside for special purposes which are therefore within the limitation of AS 07.10.150.

Section 07.10.150 prohibits a borough from selecting "reserved land." "Reserved land" is defined in Black's Law Dictionary (4th Ed. 1951) as follows:

"Public land that has been withheld or kept back from sale or disposition."

Similarly, Black's Law Dictionary (4th Ed. 1951) defines "appropriation of land" as follows:

"The act of selecting, devoting, or setting apart land for a particular use or purpose." Ibid.

Mental Health School and University lands are, in our opinion, appropriated and reserved lands within the meaning of the definitions quoted above and AS 07.10.150. Several statutes have established the status of Mental Health School and University lands. Mental Health lands in Alaska were established under a Federal grant which directed that the lands be administered as a public trust and the income therefrom "be applied to meet the necessary expenses of the Mental Health program of Alaska." (70 Stat. 709, 711). Similarly, School and University lands were established by a Federal grant which directed that such lands "shall be reserved" for the support of schools. An additional grant of Federal lands was made "for the exclusive use and benefit of" the university. (38 Stat. 214 as amended by 48 U.S.C. 353). The grants by the Federal Government of School and University lands and Mental Health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under Section 6K of the Alaska Statehood Act (72 Stat. 339), with the express proviso that they be used for the purposes for which they were reserved.

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