

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 **00/2**

3545 HRES HB 128 (FILE 1) - HB 142

401



LAND EXCHANGE FACT SHEET

The disposal of state land or interests in state land by exchange is governed by Alaska Statutes - Title 38.50 and Alaska Administrative Code - 11 AAC 67.200 to 11 AAC 67.280. These statutes and regulations ensure that the commissioner may exchange state land or interests only to achieve public purposes, after proper consideration of alternatives, agency coordination, public notice and public hearing(s). Unless the land or interests which the state receives in an exchange equals, or exceeds, the appraised fair market value of the land or interests exchanged by the state, the Alaska legislature must approve the exchange. Legislative review is also necessary if a exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000.

The land exchange process is usually detailed and time consuming. The department must adhere to the following chronological regulatory steps in order to complete a land exchange:

1. Initial pre-application discussions.
2. Application filed with department.
3. Department reviews application and responds within 60 days.
4. Land status checked.
5. Preliminary exchange agreement signed.
6. Notation of state title records to segregate land from third-party interests.
7. Fair market value appraisal report initiated.
8. Mineral closing order.
9. Land classification action.
10. Land survey completed, if necessary.
11. State agency coordination.
12. Appraisal report completed, reviewed and approved.
13. Preparation of alternative findings and exchange report.
14. Public notice.
15. Public hearing(s) and comment period.
16. Final exchange agreement signed.
17. Deed preparation and review.
18. Execution of exchange.

In addition, if the exchange requires legislative approval, the governor must transmit the proposal to the legislature within ten days of the convening of a regular legislative session. The department is authorized to conclude the exchange upon approval by the legislature of the proposed exchange agreement.

The commissioner may also revise a proposed land exchange to reflect comments or other information provided through the agency and public comment period [AS 38.50.130(b)].

Land Exchange Fact Sheet

Page 2

Land exchange application forms may be obtained and submitted at any of the Division of Land and Water's Regional Offices located in Anchorage, Fairbanks or Juneau. If the exchange proposal involves a small tract of state land it will usually be negotiated directly by the applicable regional office. If, however, the exchange proposal involves either a large tract of state land, a federal government agency or Native corporation, or is considered by the department to be unusually complex or sensitive, the exchange will be negotiated by the division's Central Office Land Management Section.

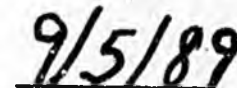


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H B

128

File #2

HOUSE

COMMITTEE REPORT

JUDICIARY

(7)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: March 25, 1986

The RESOURCES Committee has considered SSHB 128

"An Act relating to the interim management of mental health trust land; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS for SSHB 128 (Resources) same title
- new title

and recommends No recommendation

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

~~_____~~ *Dick Stultz*

~~_____~~ *Bette Cato*

~~_____~~ *F. Kay Wallis*

~~_____~~ *David W. Thompson NO REC*

~~_____~~ *Alfred Serreman No Rec.*

~~_____~~ *John ...*

~~_____~~ *Dick Stultz*



THE ALASKA
ALLIANCE FOR THE MENTALLY ILL

"An affiliate of the National Alliance for the Mentally Ill"

March 11, 1986

Honorable Don Bennett
President of Alaska State Senate
Alaska State Legislature
Juneau, Alaska 99801

Dear Senator Bennett and Members of the Senate:

The Alaska Alliance for the Mentally Ill believes it is essential that some legislation address the mental health lands dispute this session and appreciates the opportunity to present its position to the members of the Senate.

In addition to the proposed interim joint committee (either SCR 36 or HCR 50) the Alliance supports HB 128 as a further vehicle needed for resolution of the mental health lands dispute. Basic concepts embodied in this bill which we believe are essential to this or any other legislation are:

- The direction of the Supreme Court to reconstruct the trust must be implemented.
- A process for resolution of the mental health lands dispute must be set in motion
- Authority must be vested in an independent interim board to direct the necessary appraisals, inventories, and research; to oversee the management of the trust lands; draft proposed settlement legislation acceptable to all parties; and conduct other trust responsibilities.
- Representatives of the plaintiffs and intervenors (as well as legislators) must be part of the interim board and be funded sufficiently to responsibly review the State's audits, appraisals, and program expenditures and participate in consensus building efforts between the mental health community and the State.
- Sufficient funding must be made available for the departments of Natural Resources and Health and Social Services to conduct the necessary appraisals, audits, research and inventories required by the court order.
- Increased funding for the Division of Mental Health to address needs through the operation budget and SB 388/HB 412 initiating programs for the chronically mentally ill to demonstrate the legislature's intent to correct past inadequacies in mental health programming.

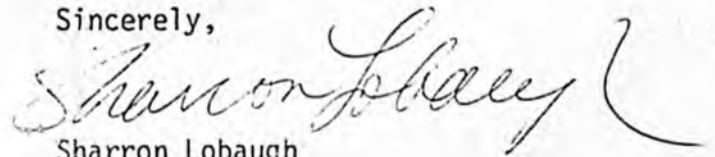
Our overall goal in resolving the mental health lands issue is to develop a

trust of sufficient size to adequately fund mental health programs for future generations.

The Alliance has voted to endorse the transfer of representation for the class from William Council to David T. Walker both of Juneau. The Alliance has agreed to serve as advisory to Mr. Walker on behalf of the class and are working closely with him on this issue. If you have any questions regarding the legal issues of this legislation, please contact him at 586-3537.

This session, Pat Clasby (789-2317) and George Rogers (586-1202) are legislative liaisons for the Alliance. We also have active professionals and family members statewide who are available to participate at any time. Please feel free to contact me if there are further questions.

Sincerely,



Sharron Lobaugh
Vice President, Alaska Alliance
for the Mentally Ill

cc: Representatives:
Pignalberi, Miller, Gruenberg
Office of the Governor
Commissioners HESS and DNR
Alaska Mental Health Association
David Walker
Alliance Chapters

POSITION OF THE ALASKA ALLIANCE ON MENTAL HEALTH LANDS

Before transferring care of the mentally ill to Alaska, Congress in 1956 provided \$12.5 million in transition appropriations and one million acres of land to be managed as a "public trust" to carry out "plans for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment." This would be the basis for determining "necessary expenses" which had a first claim on the proceeds of the trust.

Except 1977-81 Alaska operated without a plan, the program simply being budgeted annually without needs assessments or program priorities. Without a plan there is no basis for a mental health program or its "necessary expenses."

Furthermore, mental health lands were treated as general lands without separate accounting. This was formalized by 1978 legislation redesignating these lands as general grant lands. This was challenged in 1982 and on October 4, 1985 the Alaska Supreme Court ruled that the trust established by the Congress had been breached and ordered it reconstituted.

The Legislature has recognized the necessity for responding to the issues raised by the court's order and the past mismanagement of the trust lands both in protecting the welfare of mentally ill Alaskans and removing restraints on future land management. There is need, however, to make a choice among the several proposals under consideration and the Alaska Alliance for the Mentally Ill and its community alliances has its recommendations.

The Legislature recognizes the complexity of problems thirty years in the making and that their resolution cannot be arrived at within one session. Accordingly each house has introduced concurrent resolutions (SCR 36 and HCR 50) to create an interim joint committee to study and propose resolution of the trust litigation and recommend an adequate mental health program. These are very similar, but the Alliance has a preference for the Senate version.

The Legislature also recognizes that at present there is no statutory authority providing for interim management of the trust lands as a trust and two proposals have been introduced to meet this need. HB 651 proposes a non-paid six member management commission within the Department of Natural Resources to manage the lands and seek to maximize the income. HB 128 proposes an interim and independent commission which in addition to these trust responsibilities would also carry out all the necessary inventory, accounting and appraisal functions necessary for settlement of the litigation. The Alliance recommends passage of HB 128 because it holds the greatest promise for a resolution in keeping with the original intent of the Congress and the Court.

The lack of an appropriate mental health program for Alaska is being addressed by the Department of Health and Social Services in a five year plan currently being drafted and in two companion bills (HB 412 and SB 388) providing for community based and locally or regionally coordinated care and treatment. This legislation is critically needed and the Alliance urges its passage this session.

George W. Rogers

Geo. W. Rogers
March 11, 1986

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 128
 Title : Interim Mental Health Land Management Commission

Sponsor : Pignalberi
 Requestor House Resources
 Date of Request : 3-24-86

FISCAL DETAIL

Agency Affected DNR
 BRU : Land/Water Mgmt.

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		198.4	160.6			
TRAVEL		25.0	24			
CONTRACTUAL		302.0	17.8			
SUPPLIES		4.6	1.4			
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		531.9	203.8			

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		531.9	203.8			

POSITIONS :

FULL-TIME		5	4			
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : Mike Vediner Phone : 465-2400
 Division : Commissioner's Office Date : _____

Approved by Commissioner : Wm D Amiel Date : 3/24/86
 Agency : Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Natural Resources
3-24-86
CSSSHB 128
Fiscal Note Addendum

Analysis

Several detailed reports, audits, and appraisals would be required under this bill, and indeed are required under the Supreme Court decision in Weiss v. Alaska, as interpreted by the Attorney General's Office. No funding is included for contracting with the plaintiffs and intervenors in the case.

FY 87

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: \$40,800.

We estimate that 4,650 cases (2,370 land conveyances, 1,370 mining claims, 390 rights-of-way, 275 land leases, 25 timber or material sales, 110 oil and gas or coal leases, and 110 miscellaneous cases) will have to be audited to determine the amount received and/or appraised. Land discounts will have to be accounted for during this process. This process will take a Natural Resource Officer I approximately one year (37.8 personal services; 1.0 travel; 1.5 contractual; 0.5 commodities).

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: \$304,800.

These appraisals will be performed contractually. However, the department must prepare reports and maps containing information about each parcel before the contract can be let. We also note that these appraisals cover only those mental health parcels that are no longer in trust status. The approximately 700,000 acres in trust status are not to be appraised. If section 3(b) of the bill intends that all mental health land be appraised, then the cost will be \$1,206,100.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services (9.5 personal services; .5 contractual; .2 commodities).

The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. In

addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is \$79,600.

In meeting the court stipulated appraisal for mental health land values as of July 19, 1978, the department used an Opinion of Value Panel approach which has subsequently caused the plaintiffs and intervenors much concern. Using this approach here, the estimate for appraisals reduces to \$28,000.

3. Provide management oversight of all transactions and account for funds received from mental health lands.
Estimated costs: \$142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately \$1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Line items in this total are: 124.0 personal services; 6.0 travel; 11.3 contractual; and, 1.4 commodities.

4. Provide administrative support to the commission.
Estimated costs: \$53,600.

The department would need to provide administrative support to the commission which includes arranging meetings, preparing briefing packets, documenting meeting results, and clerical support. The Natural Resource Officer I listed in item 3 above could assist with the details of action review and a Clerk Typist III would be needed to assist with typing and organization of meetings. Contractual monies would cover duplication costs, phone charges, postage, etc. Travel and per diem funding is for meetings of the commission. Commodities money is to cover routine supplies and maps (27.1 personal services; 18.0 travel; 6.0 contractual; 2.5 commodities).

FY 88

All anticipated court ordered reports will be completed in FY 87. Therefore, FY 88 costs will be substantially reduced. Support for the commission will include 3 months of an NRO I, the clerk typist III, and similar support costs (36.6 personal services; 18.0 travel; 6.5 contractual; 2.7 commodities).

The department would continue to provide the oversight function described in item 3 for FY 87 with costs of 124.0 personal services, 6.0 travel, 11.3 contractual, and 1.4 commodities.

BACK-UP FOR CSSSHB 128

PRESENTED TO HOUSE RESOURCES COMMITTEE MARCH 24, 1986

BY REPRESENTATIVE MARCO A. PIGNALBERI

C O N T E N T S

<u>Tab</u>	<u>Description</u>
A	Proposed Committee Substitute SSHB 128
B	Sectional Summary: Proposed CSSSHB 128
C	Supreme Court of Alaska Opinion: <u>State of Alaska v. Vern T. Weiss, et al</u>
D	Components of Recommended Committee Bill: Submitted by the Alaska Alliance For the Mentally Ill to House Resources - 03/24/86
E	DNR Memo: Bob Arnold to Max Gruenberg: Budget for court ordered mental health land activities
F	HSS Memo: Millie D. Duxbury, Audit Manager to Karen Perdue, Assistant Commissioner HSS: Estimated cost of mental health program audit
G	Intervenor Budget estimate for Alaska Mental Health Lands Project
H	Plaintiff Budget estimate for involvement in mental health lands trust settlement

CS128PAK.MHL

A

Bradley
3/21/86

Original sponsors: Pignalberi, Gruenberg,
Boucher, et al

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the interim management of mental
7 health trust land; and providing for an effective
8 date."

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

10 * Section 1. The legislature finds that

11 (1) the Congress granted 1,000,000 acres of land to the Terri-
12 tory of Alaska to be administered as a public trust for the necessary
13 expenses of the support of mental health in the territory;

14 (2) the land authorized to be granted to the Territory of Alaska
15 has been selected by the territory and since statehood by the state and
16 most of the 1,000,000 acres has been conveyed to the state;

17 (3) the Alaska Supreme Court ruled in State v. Weiss, 706 P.2d
18 681 (Alaska 1985) that the legislation redesignating mental health trust
19 land as general grant land had actually breached the trust established by
20 Congress and the court ordered the trust reconstituted;

21 (4) there is presently no statutory authority providing for the
22 management of the mental health trust land as trust land;

23
24 (5) the Alaska Mental Health Association as the original sponsor
25 of the litigation regarding the management of the mental health trust land,
26 more recently participating as intervenor in the litigation, and the plain-
27 tiffs have performed and continue to perform an important public function
28 in their efforts to reconstitute the mental health trust land and to pro-
29 vide for the proper management of the trust land;

1 (6) there is an immediate need for funds to facilitate the
2 reconstruction of the trust land and to conclude the litigation over the
3 status of the mental health trust land; and

4 (7) there is an immediate need for the interim management of the
5 trust land as a public trust.

6 * Sec. 2. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED. (a)
7 The interim mental health trust land commission is established in the
8 Department of Natural Resources.

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

13 (1) a member representing the plaintiffs, appointed by the
14 governor from a list of three names submitted to the governor by the plain-
15 tiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

16 (2) a member representing the intervenors, appointed by the
17 governor from a list of three names submitted to the governor by the inter-
18 venors in State v. Weiss, 706 P.2d 681 (Alaska 1985); and

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

22 (c) The members of the commission shall elect a presiding officer. A
23 majority of the commission constitutes a quorum. The affirmative vote of
24 three members is required to take official action. A vacancy does not
25 impair the power of the remaining members to exercise the powers of the
26 commission.

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

(g) The commission may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

1 (e) The commission shall meet at least once a month.

2 (f) The commission may employ an executive director and staff to
3 assist it in fulfilling its responsibilities under this Act.

4 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
5 THE COMMISSION. (a) The commissioner of natural resources ^{shall} inventory and
6 catalog the mental health trust land of the state, and appraise at fair market value
7 each land transaction involving land that has been part of the mental health trust
8 land of the state, and determine the status of mental health trust land on
9 the effective date of this Act under procedures and guidelines established
10 by the commissioner of natural resources with the approval of the commis-
11 sion. In the exercise of the commission's responsibilities under this
12 section, the commission may review the records of the Department of Natural
13 Resources.

14 (b) The commissioner of natural resources shall, with the approval of
15 the commission, retain an appraiser ^{or appraisers} to appraise all or a portion of land
16 that, at any time, was part of the mental health trust land of the state.
17 The commissioner shall provide the appraiser conducting the appraisal with
18 written procedures and instructions that have been approved by the commis-
19 sion.

20 (c) The commissioner of natural resources is responsible for the
21 management of the mental health land of the state as a public trust under
22 P.L. 84-830, 70 Stat. 709, under the direction of the commission.

23
24 The commissioner of natural
25 resources may not sell, lease, or exchange mental health trust land of the
26 state or an interest in the mental health trust land of the state without
27 the prior approval of the commission. The commissioner of natural re-
28 sources shall sell, lease, and exchange mental health trust land of the
29 state as directed by the commission. In managing the trust and the trust

1 land the commission and the commissioner shall seek to maximize the income
2 earned and received by the trust consistent with a trustee's obligation to
3 protect and perpetuate the trust.

4 (d) The proceeds from the management of the mental health trust land
5 of the state shall be deposited in a special trust account in the general
6 fund of the state and may be appropriated by the legislature for the sup-
7 port of the mental health program in the state.

8 * Sec. 4. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
9 SERVICES AND THE COMMISSION. (a) The commissioner of health and social
10 services, with the approval of the commission, shall

11 (1) select an independent auditor to audit the state's mental
12 health program;

13 (2) establish the procedures and guidelines to guide the auditor
14 selected under this subsection;

15 (3) propose the guidelines and procedures to be used in de-
16 termining a range of expenditures for mental health programs necessary to
17 comply with the state's comprehensive mental health plan.

18 (b) The commission may review the records of the Department of Health
19 and Social Services that involve mental health expenditures under the
20 state's comprehensive mental health plan.

21 * Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
22 sion shall make an annual report to the legislature on matters of concern
23 to it including recommendations of the commission for amendment of the laws
24 relating the management of mental health trust, the mental health trust
25 land, and the mental health program of the state.

26 * Sec. 6. DEFINITION. In secs. 2 - 5 of this Act "commission" means
27 the interim mental health trust land commission established in sec. 2 of
28 this Act.

29 * Sec. 7. Sections 1 - 6 of this Act are repealed July 1, 1988.

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* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

B

SECTIONAL SUMMARY PROPOSED CS SSB 128

Section 1.: Legislative Findings

States that there is currently no statutory authority for the management of the 1,000,000 acres of mental health trust land granted by Congress to the territory of Alaska and conveyed to the state and that there is an immediate need to provide interim management during the process of reconstituting the trust.

Section 2.: Interim Mental Health Trust Land Management Commission

Establishes a five-member commission within the Department of Natural Resources consisting of the Commissioner of the Department of Natural Resources, the Commissioner of the Department of Health and Social Services, and three members appointed by the governor as follows: one member from lists of three submitted by the plaintiffs, the intervenors, and the Governor's Mental Health Advisory Board. Members of the commission are to serve without compensation, but are entitled to per diem and travel expenses.

The commission shall meet at least once a month, may employ an executive director and staff and may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

Section 3.: Responsibilities of the Commissioner of Natural Resource and the Commission

Subsection (a): Assigns the Commissioner of DNR the responsibilities of inventorying and cataloging the mental health trust land of the state as well as auditing and appraising at fair market value every transaction involving the land and the current status of the land, all under the prior approval of the commission.

Subsection (b): Gives the commission prior approval in DNR's retention of appraiser or appraisers.

Subsection (c): Gives the commission power to direct the Commissioner of DNR to manage the mental health trust lands as a public trust under P.L. 84-859, 70 Stat. 709. Specifies maximization of income earned and received by the trust, consistent with a trustee's obligation to protect and perpetuate the trust, as management objective.

Subsection (d): Requires that the proceeds from mental health trust land shall be deposited in a special trust account and states that such funds may be appropriated by the legislature for state mental health program support.

Section 4.: Responsibilities of the Commissioner of Health and Social Services and the Commission

Requires the Commissioner of Health and Social Services with prior approval of the commission to select and establish guidelines for an independent auditor who will audit the state's mental health program. The Commissioner, with prior approval of the commission is also instructed to propose guidelines and procedures for determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

Section 5.: Additional Responsibilities of the Commission

The commission shall make an annual report to the legislature of its findings.

Section 6.: Definition of "commission"

Section 7.: Provides for termination of commission July 1, 1988.

Section 8.: Immediate effective date

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,)
)
Appellant/Cross-Appellee,)
)
v.)
)
VERN T. WEISS, et al.,)
)
Appellee/Cross-Appellant.)
_____)

File Nos. S-653/678

O P I N I O N

[No. 2987 - October 4, 1985]

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

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

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

COMPTON, Justice.

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

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

I. FACTUAL AND PROCEDURAL BACKGROUND

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

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

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

(a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

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

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

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

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

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

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

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

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

A. Nature of the Trust.

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

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

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

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

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

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

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

B. Remedy.

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

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

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

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

524 P.2d at 816.

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

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

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

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

★
CSHB128
Commission
would be
responsible
for approving
the state's
actions in
carrying
out the
activities
directed
herein.

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

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

ORDER

Pursuant to Appellate Rules 503(e) and
(1) (1), attorney fees of \$1,000.00 are
awarded to appellee and
the appellee shall serve and
file with this court an itemized and verified
cost bill by 10-14-85 Entered
by direction of Justice Compton
Dated 10-2-85 Deputy: C. H. [Signature]

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

A

COMPONENTS OF RECOMMENDED COMMITTEE BILL
Submitted by the Alaska Alliance For the Mentally Ill to
House Resources
03/24/86

ESTABLISH INTERIM LAND MANAGEMENT COMMISSION (Charged with these duties):

<u>Responsible Department</u>	<u>Purpose</u>	<u>Budget</u>
DNR	Identify, survey, appraise, mental health land inventory status, etc	1 304,000
DNR	Account for all funds or lands from 1978-1985	2 40,800
DNR	Provide management oversight on all transactions and funds received: Approve all land actions	3 142,700
DOR	Establish trust account fund	0
HSS	Oversee audit of mental health program expenditures 1978-1985	4 21,000
HSS	Oversee the department of Health and Social Services determination of the necessary expenditures for the Mental Health Program	0
HSS	Contract for Plaintiff and intervenor involvement in resolution process	5 146,000
Estimated Sub-total:		\$ 654,500

ADMINISTRATION OF COMMISSION:

<u>Responsible Department</u>	<u>Purpose</u>	<u>Budget</u>
DNR	The department shall provide the administrative support	
	Provide for monthly meeting	6 15,000
	(Composition: 1 representative each from a list of three nominated by the plaintiffs, intervenors, and governor's advisory on mental health and the commissioners of: Health and Social Services and Natural Resources)	

DNR	Travel and per diem for five com- mission members	7 18,000
DNR	Executive Director and other staff as necessary to meet responsibilities of the commission	8 150,000
	Estimated Sub-total: \$	<u>183,000</u>
		<u> </u>
	Estimated Total: \$	837,500

1-3

Budget figures taken from 10/27/86 DNR memo to
Representative Gruenberg

4

Budget figure from 02/05/86 HSS Audit Department memo to
Karen Perdue, p.4

5

Budget figure is sum of plaintiff and intervenor projected
settlement budgets

6-8

Budget figures reflect estimated costs associated with
CSSSHE 128 Interim Commission (DNR fiscal note pending)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

February 27, 1986

The Honorable Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

During our meeting this week on the subject of mental health lands legislation, you asked that I provide you with a list of the tasks required of the department by the Supreme Court in its decision in Weiss v. Alaska, and an estimate of the funding required to accomplish these tasks. Although our budget amendment is yet to be submitted, I am pleased to provide you with our estimates.

Of the tasks identified by the Department of Law as required by the court, two will be accomplished during the current fiscal year. These are (1) to identify all mental health lands returned to the trust; and (2) to identify all existing encumbrances for mental health lands, such as interagency land management assignments, parks, and refuges.

Tasks also required by the court, for which no funding is presently available, are as follows:

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: \$40,800.

BUDGET
ITEM # 2

We estimate that 4,650 cases (2,370 land conveyances, 1,370 mining claims, 390 rights-of-way, 275 land leases, 25 timber or material sales, 110 oil and gas or coal leases, and 110 miscellaneous cases) will have to be audited to determine the amount received and/or appraised. Land discounts will have to be accounted for during this process. This process will take a Natural Resource Officer I approximately one year.

February 27, 1986

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: \$304,800.

BUDGET
ITEM # 1

These appraisals will be performed contractually. However the department must prepare reports and maps containing information about each parcel before the contract can be let.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services.

The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. In addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is \$79,600.

BUDGET
ITEM #3

3. Provide management oversight of all transactions and account for funds received from mental health lands. Estimated costs: \$142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately \$1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Please let me know if there is additional information I might provide you.

Sincerely,



Robert D. Arnold
Deputy Commissioner

F

MEMORANDUM

State of Alaska

TO Karen Perdue, Assistant Commissioner
Department of Health & Social Services

DATE February 5, 1986

FILE NO

TELEPHONE NO

465-3120

FROM Millie D. Duxbury, CPA, Audit Manager
Audit - Office of the Commissioner
Department of Health & Social Services

SUBJECT: Mental Health Audit

You requested an estimate of the cost of an independent audit of State mental health expenditures from July 1, 1978 through June 30, 1986.

Based on a discussion with Tom Koester of the Attorney General's Office, it was decided that I should give you two estimates which hinge on the definition of "mental health expenditures".

Tom feels that we should request an audit of all expenditures which could conceivably be construed as having been made for mental health purposes. Such costs would include, but not be limited to, the following expenditures:

- I. Department of Health and Social Services
 - A. Department of Mental Health and Developmental Disability - Operating and Capital expenditures for:
 1. Community Mental Health Programs;
 2. Developmental Disability Programs;
 3. Alaska Psychiatric Institute;
 4. Harborview;
 5. Regional Administration (not currently funded as such); and
 6. Fairbanks Mental Health Services Complex
 - B. Division of Family and Youth Services
 1. Adult Residential Care Program;
 2. Child Residential Care Programs - some portions thereof;
 3. Foster Care - some portions thereof;
 4. Youth Services BRU - purchase of psychological services and psychiatric services; and
 5. Preventive Services - some portions
 - C. State Office of Alcoholism and Drug Abuse - some portions thereof
 - D. Division of Medical Assistance - payments to private providers under the GRM program for generic mental health services.

II. Department of Public Safety

- A. Violent Crimes Compensation Board - portions of programs covered thereunder
- B. Council on Domestic Violence and Sexual Assault - portions thereof

III. Department of Administration

- A. Division of Pioneers' Benefits - Care of persons occupying long term care beds in Pioneer homes who are being treated for Alzheimer's Disease
- B. Older Alaskan Commission - portions of programs

IV. Department of Corrections

- A. Payments for psychological and psychiatric care of inmates
- B. Costs associated with facility operations where persons are held as a result of mental health related problems

V. Department of Education

- A. Division of Education Program Support - Special Education Programs
- B. Division of Vocational Rehabilitation - some portions thereof

VI. Community and Regional Affairs

- A. Revenue Sharing Programs
 - 1. Portion thereof relating to money expended for mental health services in the health care centers which are part of the revenue sharing formula
 - 2. Pass through money used for mental health care related services

VII. Department of Law

- A. Costs of litigation related to mental health lands

VIII. Department of Natural Resources

- A. Costs associated with Mental Health Lands Management

IX. Specific Designated Grants to Native Corporations used for mental health:

- A. Maniilaq
- B. Norton Sound Health Corporation
- C. Tanana Chiefs Conference

X. Governor's Council on the Handicapped and Gifted

Costs outlined above would be separately presented by the CPA firm in order to allow the costs to be examined on their own merit as to whether or not they fall within the definition of "mental health expenditures".

I would estimate that an audit of all the above expenditures for the eight year period ended June 30, 1986 would require 1000 hours to complete and would cost \$81,000 or \$101,250 including Department of Law litigation costs. The estimate is broken down as follows:

Audit

Partner's Time - 100 hours @ \$125	= \$	12,500
Senior's Time 600 hours @ \$ 65	=	39,000
Junior's Time 300 hours @ \$ 45	=	13,500
Out of pocket expenses for travel, per diem, telephone	=	<u>16,000</u>

Total Estimated Audit Costs	81,000
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<u>Litigation Costs</u> by Dept. of Law-	
25% of Audit	<u>20,250</u>

Total Amount Required	<u>\$ 101,250</u>
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The second estimate is based on the assumption that mental health is the primary presenting condition which allows an individual to fall within the doors of the State. In that instance "mental health expenditures" would be interpreted as those funds appropriated by the Legislature to the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities. The scope of an audit of those expenditures would be clearly defined and would probably be completed in 200 hours.

I estimate the cost of this audit to be \$16,500 or \$21,000 with litigation costs by Department of Law. The estimate is broken down as follows:

Audit

Partner's Time - 20 hours @ \$125	=	\$ 2,500
Senior's Time 120 hours @ \$ 65	=	7,800
Junior's Time 60 hours @ \$ 45	=	2,700
Out of pocket expenses for travel, per diem, telephone	=	<u>3,500</u>

Total Estimated Audit Costs		16,500
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<u>Litigation Costs by Dept. of Law-</u> 27% of Audit		<u>4,500</u>
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BUDGET
ITEM #4

Total Amount Required		<u>\$ 21,000</u>
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These estimates have been discussed with Tom Koester and he feels they are reasonably accurate. Based on the quality of work I've seen done on other audits of governmental units and non-profits, I would recommend the bids for this work go out to the following CPA firms in Anchorage:

Arthur Young
Coopers Lybrand
Ernst & Whinney

Should you have further questions, please call.

G

1986 BUDGET
for
ALASKA MENTAL HEALTH LANDS PROJECT

SALARIES/FEES:

Land Status & Management Review/Support Staff \$50,000

OFFICE:

Supplies and equipment \$13,000

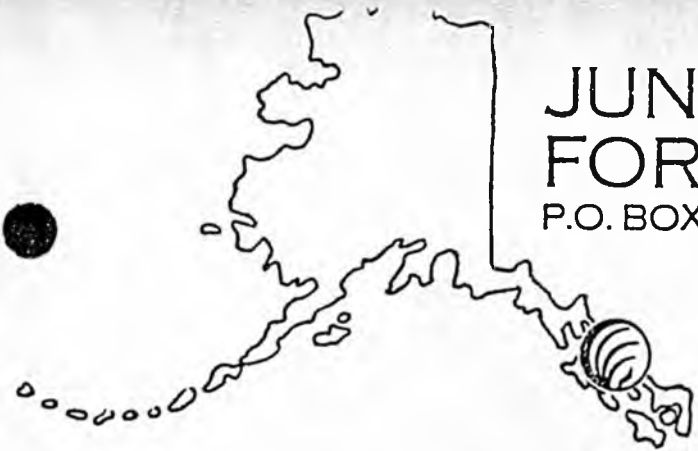
Rent DONATED

Utilities, including telephone \$ 3,500

Printing and copies/Records \$ 5,000

Travel \$ 3,500

TOTAL 1986 BUDGET \$75,000



PLAINTIFF

H

**JUNEAU ALLIANCE
FOR THE MENTALLY ILL**
P.O. BOX 211247, AUKE BAY, AK 99821. (907) 789-5028

HALF OF BUDGET ITEM #5

PROPOSED BUDGET FOR INVOLVEMENT IN MENTAL HEALTH
LANDS TRUST SETTLEMENT

STAFF		
Research Coordinator		\$32,000.
Clerical (part-time)		12,000.
TRAVEL		
Meetings of Alliance Board (4/year)		12,000.
OFFICE		
Rental, Equipment, Supplies		12,000.
COMMUNICATIONS		
Telephone, Teleconference, Mailings		<u>3,600.</u>
	TOTAL	\$71,600.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 21, 1986

The Honorable Dick Shultz
The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

I am writing to provide comments on SSHB 128, which creates an interim mental health trust land commission. The bill is scheduled for hearing in your committee on Monday, March 24, 1986.

Although we have no objection to oversight of this department's administration of mental health lands, SSHB 128 is unclear regarding the roles of the commission and the department. For example, the bill would assign the commission its responsibilities for trust land management. Indeed, one provision would allow the commission to contract with the intervenors for the performance of its duties. The same section, however, implies that management is the responsibility of the department, with the additional requirement that all actions obtain the approval of the commission and counsel for the plaintiffs and intervenors, or approval by the court. If the department retains management responsibility, the multiple approvals required would likely cause substantial delay, possibly to the detriment of the trust as well as to citizens generally.

Four responsibilities that would be assigned to the commission (inventory, catalog, audit transactions of, and determination of status of mental health land) are presently being carried out by the department and, except for the audit, will be accomplished this fiscal year; other tasks required by the Supreme Court's decision would apparently be performed by the department since they are not listed in the bill.

It should be noted that this bill would assign all proceeds to a fund for appropriations to support mental health programs, but the federal enabling legislation allows the use of such funds for other public purposes once mental health needs are funded.

Hon. Rep. Shultz
Hon. Rep. Herrmann

-2-


March 21, 1986

In a letter to Representative M. Mike Miller, a copy of which is enclosed, we commented on HB 651 which is similar to SSHB 128 in that it would create a commission for mental health land management. However, the commission established under HB 651 is established within the Department of Natural Resources and may include persons with necessary land management expertise. The commission formed under SSHB 128 however is not within the department and its membership includes the commissioners of health and social services and revenue and three members from mental health advocacy groups with no required land management experience.

Our understanding of this bill suggests there would be no fiscal impact upon the department arising from its passage.

Please let me know whether there is further information I might provide.

Sincerely,


for Esther C. Wunnicke
Commissioner

Enclosure

cc: The Honorable Marco Pignalberi
The Honorable M. Mike Miller
SSHB 128 Sponsors
Tom Koester
Molly McCammon
Dana Latour
Karen Perdue
Norm Cohen
Tom Hawkins

Bradley
3/21/86✓

Original sponsors: Pignalberi, Gruenberg,
Boucher, et al

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of mental
7 health trust land; and providing for an effective
8 date."

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

10 * Section 1. The legislature finds that

11 (1) the Congress granted 1,000,000 acres of land to the Terri-
12 tory of Alaska to be administered as a public trust for the necessary
13 expenses of the support of mental health in the territory;

14 (2) the land authorized to be granted to the Territory of Alaska
15 has been selected by the territory and since statehood by the state and
16 most of the 1,000,000 acres has been conveyed to the state;

17 (3) the Alaska Supreme Court ruled in State v. Weiss, 706 P.2d
18 681 (Alaska 1985) that the legislation redesignating mental health trust
19 land as general grant land had actually breached the trust established by
20 Congress and the court ordered the trust reconstituted;

21 (4) there is presently no statutory authority providing for the
22 management of the mental health trust land as trust land, Weiss et al. v.
23 State, + FA 82 2208 CIV;

24 (5) the Alaska Mental Health Association as the original sponsor
25 of the litigation regarding the management of the mental health trust land,
26 more recently participating as intervenor in the litigation, and the plain-
27 tiffs have performed and continue to perform an important public function
28 in their efforts to reconstitute the mental health trust land and to pro-
29 vide for the proper management of the trust land;

1 (6) there is an immediate need for funds to facilitate the
2 reconstruction of the trust land and to conclude the litigation over the
3 status of the mental health trust land; and

4 (7) there is an immediate need for the interim management of the
5 trust land as a public trust.

6 * Sec. 2. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED. (a)
7 The interim mental health trust land commission is established in the
8 Department of Natural Resources.

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

13 (1) a member representing the plaintiffs, appointed by the
14 governor from a list of three names submitted to the governor by the plain-
15 tiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

16 (2) a member representing the intervenors, appointed by the
17 governor from a list of three names submitted to the governor by the inter-
18 venors in State v. Weiss, 706 P.2d 681 (Alaska 1985); and

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

22 (c) The members of the commission shall elect a presiding officer. A
23 majority of the commission constitutes a quorum. The affirmative vote of
24 three members is required to take official action. A vacancy does not
25 impair the power of the remaining members to exercise the powers of the
26 commission.

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

1 (e) The commission shall meet at least once a month.

2 (f) The commission may employ an executive director and staff to
3 assist it in fulfilling its responsibilities under this Act.

4 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
5 THE COMMISSION. (a) The commissioner of natural resources inventory and
6 catalog the mental health trust land of the state, shall audit each land
7 transaction involving land that has been part of the mental health trust
8 land of the state, and determine the status of mental health trust land on
9 the effective date of this Act under procedures and guidelines established
10 by the commissioner of natural resources with the approval of the commis-
11 sion. In the exercise of the commission's responsibilities under this
12 section, the commission may review the records of the Department of Natural
13 Resources.

14 (b) The commissioner of natural resources shall, with the approval of
15 the commission, retain an appraiser to appraise all or a portion of land
16 that, at any time, was part of the mental health trust land of the state.
17 The commissioner shall provide the appraiser conducting the appraisal with
18 written procedures and instructions that have been approved by the commis-
19 sion.

20 (c) The commissioner of natural resources is responsible for the
21 management of the mental health land of the state as a public trust under
22 P.L. 84-830, 70 Stat. 709, under the direction of the commission. The
23 commission may contract with the plaintiffs or the intervenors for the
24 performance of functions assigned to it. The commissioner of natural
25 resources may not sell, lease, or exchange mental health trust land of the
26 state or an interest in the mental health trust land of the state without
27 the prior approval of the commission. The commissioner of natural re-
28 sources shall sell, lease, and exchange mental health trust land of the
29 state as directed by the commission. In managing the trust and the trust

1 land the commission and the commissioner shall seek to maximize the income
2 earned and received by the trust consistent with a trustee's obligation to
3 protect and perpetuate the trust.

4 (d) The proceeds from the management of the mental health trust land
5 of the state shall be deposited in a special trust account in the general
6 fund of the state and may be appropriated by the legislature for the sup-
7 port of the mental health program in the state.

8 * Sec. 4. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
9 SERVICES AND THE COMMISSION. (a) The commissioner of health and social
10 services, with the approval of the commission, shall

11 (1) select an independent auditor to audit the state's mental
12 health program;

13 (2) establish the procedures and guidelines to guide the auditor
14 selected under this subsection;

15 (3) propose the guidelines and procedures to be used in de-
16 termining a range of expenditures for mental health programs necessary to
17 comply with the state's comprehensive mental health plan.

18 (b) The commission may review the records of the Department of Health
19 and Social Services that involve mental health expenditures under the
20 state's comprehensive mental health plan.

21 * Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
22 sion shall make an annual report to the legislature on matters of concern
23 to it including recommendations of the commission for amendment of the laws
24 relating the management of mental health trust, the mental health trust
25 land, and the mental health program of the state.

26 * Sec. 6. DEFINITION. In secs. 2 - 5 of this Act "commission" means
27 the interim mental health trust land commission established in sec. 2 of
28 this Act.

29 * Sec. 7. Sections 1 - 6 of this Act are repealed July 1, 1988.

1 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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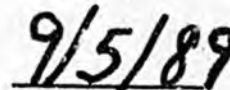


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

TESTIMONY TO HOUSE RESOURCE COMMITTEE

Representative Shultz, Co-Chairman
Representative Herrmann, Co-Chairman
Members of House Resources Committee
February 20, 1985

HB 44 MARINE PARKS

Paula Burgess, Regional Manager
Southeast Region, Division of Land and Water Management
Department of Natural Resources

I am Paula Burgess, Southeast Regional Manager for the Division of Land and Water Management. I am the primary individual responsible for state land sales in Southeast Alaska. One of the goals of my job is to offer a reasonable number of acres of land each year for private ownership.

I operate a land sale program in Southeast Alaska that is balanced. In identifying land and planning a sale I attempt to balance local desires with statewide interests, habitat issues with human needs, and park lands with private ownership. I believe that there is enough land in Southeast Alaska to supply all of these demands.

The state has received selection approval, tentative approval, or patent to 162,000 acres from the Tongass National Forest.¹ Of that land base, 36,000 acres are scheduled for conveyance to municipalities, and 26,000 acres are in public use (as parks, road rights-of-way, or public facilities).

Of the remaining 100,000 acres of state land, we have transferred 8,000 acres to private ownership since the disposal program began in earnest in 1979. That leaves 92,000 acres as a state land base to be retained and managed for parks and other public uses, or to be sold for private ownership. Less than one-third of this total will prove to be suitable for settlement, the remainder being too steep, too rocky, or too wet.

When I look over the state land base to identify land for sale, I look first for land that is within commuting distance of jobs in an existing

1. The state selected an additional 21,000 acres from the Tongass which was rejected by the Forest Service. That rejection was appealed by the state, and the issue is still in court (Alaska v. Block).

community. If none is available, I look for land near private holdings where a community and jobs may someday develop. The least desirable land sales are those that create strips of private ownership sprinkled along the coastline, where the residents have no means of making a living, and no one has the opportunity to leave development behind.

Unfortunately, this latter type of land sale, with sparse and scattered pockets of settlement along the coast, has the highest rate of success. This type succeeds where the first two types fail, because no one lives there yet. Residents and property owners in the vicinity of a land sale inevitably object. They fear that having neighbors will alter their quality of life. One question to be asked is: How much say should a few people have about the use of state land around them? How many of us would be here if the first people here weren't willing to share what they enjoyed?

The state selected 162 acres at Funter Bay from the Forest Service in 1977. We selected that land at the request of three people that had permits from the Forest Service for cabins in the bay, and wanted to purchase the land their cabins were on. The selection was made so that these people could get title to their land, and with the understanding that the state would offer additional land for private ownership. Now all seven of the property owners in Crab Cove oppose that sale, including the people that we helped get title to their land.

Funter Bay is an example of a proposed land sale that makes sense from a land management point of view. The bay has a few current residents, and additional land in private ownership that will someday be developed. The site that we propose for sale is ideal for a few additional lots, but it is not ideal for a marine park. It is already somebody's front yard. We propose to sell 60 acres (about 20 lots)², amidst the existing private development in the bay. The lots will probably develop as recreational cabin sites now, but may someday be part of a small community. (See the attached photographs.)

2. The lots in Funter Bay will be sold at fair market value, producing revenue for the state.

I recognize that Funter Bay is an ideal spot for a marine park because of its natural amenities, and its proximity to Juneau. Therefore, I would propose to select an additional 240 acres of the nicest land in the bay from the Forest Service for a marine park. That site, at Coot Cove, would include two miles of undeveloped shoreline, a salmon stream, seven small islands, and a seal rookery on the outer coast.

I understand the desire of the Funter Bay people to protect their quality of life, and I have spent hours with several of the residents in order to design the kind of disposal they would find most acceptable. The state has more than 150 acres in the bay, and we want to sell less than 60 acres. We are also willing to select an additional 240 acres for a marine park.

Because we plan to sell only 60 acres in Funter Bay, you might wonder why I have chosen to defend the sale as strongly as I have. Perhaps it is because this sale, when compared to many others, makes sense. If Funter Bay isn't the proper place to sell land in Southeast, then where can we sell it?

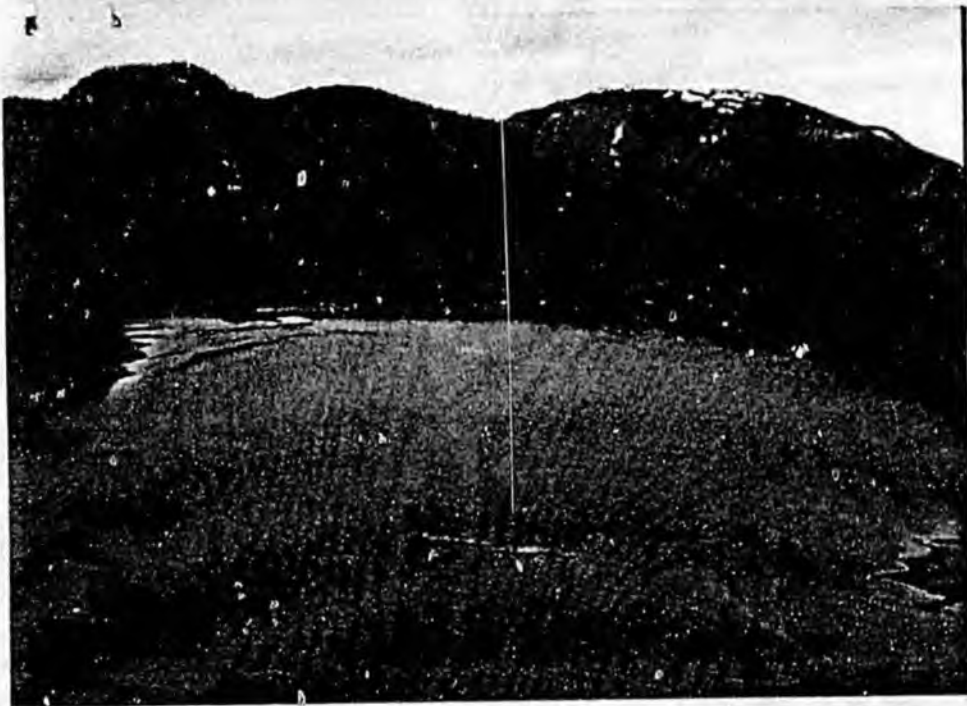
My office went through all of the legal descriptions in HB 44 very carefully. Our revised legal descriptions, for the most part, do not represent major changes but necessary clean-up. We removed Forest Service lands, private parcels, and existing subdivisions, and added tide and submerged lands which are essential to a marine park. DNR's revised legal descriptions resolve the Forest Service objections to Taku Harbor, Thoms Lake, and Traitor's Cove. There are only two substantive changes:

- 1) The alternate Funter Bay proposal; and
- 2) The exclusion of Traitor's Cove. (The state's tentative approval from the federal government recognizes the right of the Forest Service to carry out their long term timber sale plans.)

The sites, as we have revised them, would make excellent parks and would allow our balanced disposal program in Southeast Alaska to continue.

Attachments: Photographs

Summary and Control Index showing the original reason for most of the selections



CRAB COVE

Looking into Crab Cove.
Cabins and other structures already
dominate the cove. State land
is to the right of existing
settlement.



Standing in the proposed
marine park looking toward
the head of the bay.



Standing in the proposed marine
park. The creek, which is very
close to existing development
would be the only running water
in the 65 acre marine park.



Anadromous salmon stream at
the head of cove.



Old ship skeleton, with salmon
stream in background. Mussels
and clams on beach.



The view toward Mt. Robert Barron
from the head of the cove.

SUMMARY AND CONTROL INDEX

NATIONAL FOREST LAND SELECTIONS

(ALASKA STATEHOOD ACT SEC. 6(a))

KEY TO PURPOSES OF SELECTION:

- A - Expansion of established community
- B - Development of established community
- C - Established community recreation
- D - Suitable for prospective community center
- E - Suitable for prospective recreational area
- F - Suitable for fish hatchery

A. Tongass National Forest

VICINITY	LOCATION	GROSS LAND AREA (ACRES)	NATIONAL FOREST LAND (ACRES)	PURPOSES OF SELECTIONS
Juneau	Southwest Douglas ¹	5610	5516.08	A, B
	Shelter Is. South	830	488.79	A, B
	Shelter Is.	898	888.74	C
	Montana Creek	2160	1988	C, E
	Douglas Is. -			
	Eaglecrest	3880	3880	C, E
	Taku Harbor	688	624.52	C, E
	Taku River	2640	2610.005	C, E
	S. Gastineau Channel	895	788.28	A, B
	Berners Bay	7207.31	6876.79	C, D
	subtotal	24808.31	23661.20	
Petersburg	Rock Pit	160	160	B
	S. Mitkof Is.	4015	4015	D, E
	Frederick Point	2921	2921	A, B
	Wrangell Narrows	4723	4723	A, B, D, E
		subtotal	11819	11819
Upreanof	Coho Creek	3515	3515	A, B

Goldbelt Corp. Selection lies within this selection and takes precedence over it.
 Goldbelt Corp. Selection lies within this selection and takes precedence over it.

December, 1977

Sitka	Goddard Hot Springs	3731	3694.41	C,E
	Starrigavin	480	455	A,B
	subtotal	4,211	4,149.41	
Wrangell	E. Passage -			
	Zimovia Strait	10985	10853	A,B,D
	Olive Cove	520	514.13	A,B
	Thoms Place	2531	2527.23	A,B,C
	Thoms Lake	2520	2520	C,E
subtotal	16,556	16,394.36		
Port Alexander	Port Alexander	405	326.64	A,B
Elfin Cove	Elfin Cove	7	7	A,B
Pelican	Pelican	2038	1950.98	A,B
Funter Bay	Funter Bay ³	1,236.1	162.511	A,B
Hoonah	Hoonah	1106	1056.52	A,B
Thomas Bay	Thomas Bay	2280	2280	D
Chilkat Peninsula	Upper Excursion Inlet	390	295.18	A,B
	Excursion Inlet	2530	2579.33	A,B
	St. James Bay	3683	3683	E
	Swanson Harbor	1095	1095	E - DISAPPROVED
	subtotal	7,698	7,452.51	
Kosciusko Is.	Edna Bay	7283	7043	D
Hyder	Hyder	1090	952	A,B

³This is a revision of NFCG 18

Ketchikan	(Dall Head	917	850.22	A, B, C
	Settlers' Cove	325	275	C
	Blank Inlet	9747	8429	C, D
	Manzanita Bay	384	384	E
	Carroll Point	1102	1085.49	A, B
	Herring Cove	770	755	A, B
	Mountain Point	600	326	A, B
	White River Loop	480	480	A, B, C
	Lake Harriet Hunt	400	400	C
	First Waterfall Cr.	1295	990	A, B
	Whipple Cr.	1750	1641	A, B
	Whipple Cr. Addition	5.35	5.35	A, B
	Vallena Bay	4632	3801	A, B
	Upper George Inlet	2903	2903	A, B
	Traitors Cove	562	362	A, B, C
	subtotal	25,672.35	22,687.06	

Prince of				
Wales Island	Port Protection	1550	1260.62	A, B
	Waterfall	1540	1530.71	D
	Hollis	4910	4339.467	A, B
	Whale Passage	2348	2348	A, B, F
	Thorne Bay	6850	6789.11	A, B
	Niblack Anchorage	1003	982	E, F
	Salmon Bay	192	192	E
	Grindell Is.	515	515	E
	So. Arm Chomondeley	568	568	F, E
	subtotal	19,476	18,524.91	

Revillagigedo				
Is.	Shrimp Bay	860	860	F, E
	Neets Creek	350	350	F, E
	Alava Bay	631	631	E
	subtotal	1,841	1,841	

1,045.00 11/179

Cleveland Peninsula	Port Stewart	310	310	E	DISAPPROVED
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Etolin Is.	McHenry Anchorage	805	805	E	DISAPPROVED
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December, 1977

Dixon Entrance	Foggy Bay	1006	1006	E	DISAPPROVED
Frederick Sound	Read Island	705	705	E	DISAPPROVED
	Le Conte Bay	242	242	E	
	subtotal	947	947		
Stephens Passage	Hobart Bay	95	95	E	DISAPPROVED
	Sundown	445	440.10	E	DISAPPROVED
	subtotal	540	535.10		
Kuiu Island	Security Bay	515	515	E	DISAPPROVED
	Explorers Basin	2350	2350	E	
	subtotal	2,865	2,865		
Lynn Canal	Chilkat Islands	540	540	E	
	Sullivan Is.	639	639	E	
	subtotal	1,179	1,179		
North Kruzof	Kalinin Bay	831	831	E	DISAPPROVED
Behm Canal	Burroughs Bay	326	326	E	DISAPPROVED
Rocky Pass	High Island	607	607	E	
Baranof Is.	Kasnyku Bay	297	297	E	DISAPPROVED
	Red Bluff Bay	1088	1088	E	
	Betty Lake	420	416	F,E	
	Deep Cove	495	495	F,E	
	Shamrock Bay	515	515	F,E	
	subtotal	2,815	2,811		

Chichagof					
Is.	Pavlov Harbor	543	543	E	DISAPPROVED
	Cape Bingham	1112	1112	E	-
	Goulding Harbor	862	862	E	DISAPPROVED
	Lake Anna	545	545	E	
	subtotal	<u>3,062</u>	<u>3,062</u>		
	TONGASS SPRINGS	4,369			
		<u>7,431</u>			
Admiralty					
Is.	Gambier Bay	857	857	E	
	Chaik Bay	388	388	E	
	Pleasant Bay	530	530	E	
	Windfall Harbor	576	576	E	
	Oliver Inlet	365	365	E	
	Pybus Bay	919	886.41	E	
	subtotal	<u>3,635</u>	<u>3,602.41</u>		

Total Selections from Tongass National Forest

gross 148,806.02 acres
 net 142,689.41 acres



Official Business

Alaska State Legislature


House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

MEMO

DATE: Feb. 7, 1985

TO: Natural Resources Committee members

FROM: Rep. Sam Cotten 

RE: HB 142, Kroto-Deshka Public Use Area

HB 142 would create the Kroto-Deshka Public Use Area, to protect the habitat and recreation values of state land along Kroto Creek (also known as the Deshka River) in the southern Susitna Valley. The river is the prime king salmon sport fishery in the Matanuska and Susitna drainages, and used heavily by residents of Southcentral Alaska.

The bill would raise the level of protection of the land from administratively classified (that could be administratively reclassified) to a legislative designation that could be changed only by the legislature.

Recently there has been some controversy over land uses within the area that have not been resolved by the existing planning effort or classification. HB 142 would require concurrence of the two principal resource agencies, the Department of Natural Resources and the Department of Fish and Game, to develop a plan to resolve these land use conflicts.

The public use area concept is basically a multiple use land principle with strong emphasis and priority on public uses, and prohibits any sale or long-term leasing of the land.

I urge consideration and passage of HB142.

HB 142 Sectional Analysis

- (1) Section 41.21.876
States the purpose of the bill, which is to legislatively designate the land to be managed for the purposes of preserving and protecting habitats and public uses for land along Kroto Creek (Desnka River).
- (2) Section 41.21.878
 - (a) States that the Department of Natural Resources is to manage the land resources and the Department of Fish and Game will manage the wildlife resources.
 - (b) DNR is to develop a plan, which may be a revision of an existing or proposed plan, with the concurrence of DF&G;
 - (c) that mineral leases may be issued by DNR when when not inconsistent with the purposes of the protection of wildlife
 - (d) that the area is closed to mining claims;
 - (e) that short-term leases may be issued;
 - (f) that DNR is prohibited from selling land;
 - (g) that the state may not condemn, but may otherwise acquire land within the area.
- (3) Section 41.21.880
Establishes the area and defines the land subject to the bill (see map attached).

Introduced: 2/4/85
Referred: Resources and
Finance

1 IN THE HOUSE

BY COTTE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act creating the Kroto-Deshka Public Use Area."

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

8 * Section 1. AS 41.21 is amended by adding new sections to read:

9 ARTICLE 7A. PUBLIC USE AREAS.

10 Sec. 41.21.876. PURPOSE. The purpose of AS 41.21.876 - 41.21.-
11 880 is to establish the area described in AS 41.21.880 as the Kroto-
12 Deshka Public Use Area. The Kroto-Deshka Public Use Area is estab-
13 lished to

14 (1) protect and maintain fish and wildlife habitat and
15 populations, waterfowl nesting areas, and other important habitats for
16 moose, bear and other furbearers;

17 (2) perpetuate public uses of fish and wildlife and their
18 habitat including fishing, hunting, trapping, viewing, photography,
19 and general public recreation in a high quality environment;

20 (3) allow other public uses of the area when compatible
21 with the purposes specified in (1) and (2) of this section.

22 Sec. 41.21.878. MANAGEMENT. (a) Management of the surface and
23 subsurface estate of the Kroto-Deshka Public Use Area is the respon-
24 sibility of the Department of Natural Resources. After adequate
25 public hearings the Department of Natural Resources shall develop and
26 adopt and may revise a management plan for the Kroto-Deshka Public Use
27 Area with the concurrence of the Department of Fish and Game.

28 (b) The Department of Fish and Game is responsible for the
29 management of fish and game resources and public use of fish and

1 wildlife in the Kroto-Deshka Public Use Area consistent with the
2 purposes of AS 16.20.400.

3 (c) The Kroto-Deshka Public Use Area is open to mineral leasing
4 under AS 38.05.135 - 38.05.184 if the commissioner of natural re-
5 sources determines that mineral leasing is not inconsistent with the
6 purposes specified in AS 41.21.876. Each valid existing mining lease
7 and multiple land use permit remains valid and shall continue in full
8 force and effect according to its terms.

9 (d) The Department of Natural Resources may issue surface leases
10 under AS 38.05.070 - 38.05.105 for a term not to exceed five years
11 within the Kroto-Deshka Public Use Area. The Department of Natural
12 Resources may not sell land under AS 38.05.045 - 38.05.069 within the
13 Kroto-Deshka Public Use Area and the land within the Kroto-Deshka
14 Public Use Area is closed to mineral entry under AS 38.05.185 - 38.-
15 05.275.

16 (e) The state may not acquire by eminent domain privately owned
17 land within or abutting state-owned land described in AS 41.21.880 but
18 may acquire privately owned land by purchase, exchange, or otherwise
19 for inclusion in the Kroto-Deshka Public Use Area.

20 (f) The Department of Natural Resources may adopt regulations to
21 implement the provisions of AS 41.21.876 - 41.21.880.

22 Sec. 41.21.880. KROTO-DESHKA PUBLIC USE AREA ESTABLISHED. The
23 state-owned land and water and all that acquired in the future by the
24 state, lying within the boundaries described in this section, are
25 designated as the Kroto-Deshka Public Use Area, are reserved from all
26 uses incompatible with their primary function as public use lands, and
27 are assigned to the Department of Natural Resources for control,
28 development, and maintenance:

29 Township 19 North, Range 6 West, Seward Meridian

1	Section 2 W1/2
2	Section 3
3	Sections 10 - 11
4	Section 14
5	Section 15 E1/2
6	Section 22 E1/2
7	Section 23
8	Section 26
9	Section 27 E1/2
10	Section 34 E1/2
11	Section 35
12	Township 20 North, Range 6 West, Seward Meridian
13	Section 4
14	Section 5 E1/2
15	Section 8 E1/2
16	Section 9
17	Section 15 W1/2
18	Section 16
19	Section 21 E1/2, N1/2NW1/4, SE1/4NW1/4
20	Section 22
21	Section 27
22	Section 34
23	Township 21 North, Range 6 West, Seward Meridian
24	Sections 3 - 4
25	Sections 8 - 10
26	Section 15 W1/2
27	Section 16
28	Section 20 E1/2
29	Section 21

1 Section 28
2 Section 29 E1/2
3 Section 32 E1/2
4 Section 33
5 Township 22 North, Range 6 West, Seward Meridian
6 Section 4 W1/2, W1/2E1/2
7 Section 5 W1/2
8 Sections 6 - 7
9 Section 8 W1/2
10 Section 9
11 Section 16 W1/2, W1/2E1/2
12 Sections 17 - 18
13 Sections 20 - 21
14 Section 27 W1/2
15 Section 28
16 Section 29 NE1/4
17 Section 33 E1/2
18 Section 34

