

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8009 HOUSE RESOURCES

274

Overview

Men. Health

Lands Trust

Settlement

2-3-93

PRINCIPLES OF ALTERNATIVE SETTLEMENT

1. The following land will be returned to trust status: Land originally granted to the State under the Alaska Mental Health Enabling Act which (a) has not been conveyed or encumbered by the State or reserved by law from public domain, (b) is subject only to oil and gas leases, coal leases or other leases, timber contracts, mining claims, or mineral sales, (c) is not necessary to carry out the purposes of an interagency land management agreement, (d) is subject only to a land use or right-of-way permit issued by the Department, and (e) has not been approved or disapproved as a Municipal selection.

This description of land to be returned to the Trust is different than that provided in Sec. 54 of Ch. 66 SLA 1990. It deletes the Haines State Forest and Tanana Valley forest from the list of land returned to the Trust and does not provide for the "replacement" of land.

2. Principles of ownership, management and disposition of the land described in paragraph 1 will remain as embodied in Ch. 66 SLA 1991. This means that the land will be conveyed in fee, including subsurface rights, to the Alaska Mental Health Trust Authority. In the context of this settlement, the ACE intervenors agree that, except for the public notice requirements of AS 38.05.945(b) and (c), management and disposition of this land will be as private land and not be subject to the provisions of AS 38.04 and AS 38.05.

3. The State will make an annual payment equal to six percent (6%) of the unrestricted general revenue of the State during each fiscal year as compensation for land which is not returned to trust status. This money will be allocated to the Mental Health Trust Income Account established by Sec. 11 of Ch. 66 SLA 1991.

4. From the funds allocated to the Mental Health Trust Income Account, including proceeds earned from the management of the land, amounts will be appropriated each year to meet the necessary expenses of a comprehensive mental health program. The responsibilities of the Trust Authority, the Governor, and Legislature in carrying out these obligations, the mechanisms for determining annual expenses, and participation by various advisory boards, and the principles governing use of Trust funds will remain as defined in Ch. 66 SLA 1991.

5. To secure the State's obligation to make annual payments from the unrestricted general revenue of the State each year, land that was granted to the State under the Alaska Mental Health Enabling Act and that is designated by law as a State Park, State Forest, State Game Refuge, State Wildlife Refuge, State Game Sanctuary, State Recreational Area, State Recreational River, State Wilderness Park, State Maritime Park, State Special Management Area, State Public Use Area, Critical Habitat Area, Bald Eagle Preserve, Bison Range, or Moose Range will be pledged as security to the Mental Health Trust.

6. Management of and title to the land described in paragraph 5 will remain with the State and income from the land shall be deposited in the General Fund and considered unrestricted general income of the State. In the event that the State forfeits on its obligation to deposit 6% of unrestricted general income in the Mental Health Trust Income Account, the Trust may elect to foreclose upon the land pledged as security. Any action for foreclosure shall be filed in the Supreme Court which shall retain jurisdiction of all issues related to foreclosure, including the transfer of title, the parcels to be foreclosed, and the laws applicable to management of the foreclosed land.

7. The undersigned support S.B. 469 as introduced, incorporating these changes and repealing certain provisions of Ch. 66 SLA 1991.

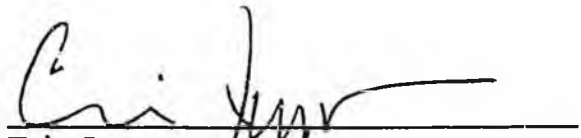
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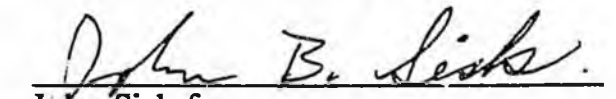
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8. Upon the effective date of legislation incorporating this settlement, the ACE intervenors would dismiss their complaint in intervention and support immediate lifting of the injunction and lis pendens, and the objecting plaintiffs would withdraw their opposition to Ch. 66 SLA 1991.

We agree with these principles:


Eric Jorgensen
Sierra Club Legal Defense Fund, Inc.,
for ACE Intervenors


John Sisk for
Southeast Alaska Conservation Council

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

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Anita Bosel, et al.

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

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

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 Civil

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

Under the terms of the settlement embodied in Chapter 66,
SLA 1991 and the settlement agreement, the State of Alaska will
convey certain real property to the Alaska Mental Health Trust
Authority. The form for those conveyances are provided in Exhibits

D and E of the Settlement Agreement. The parties to the settlement agreement desire to revise the settlement agreement concerning the applicability of Section 6(i) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 ("Section 6(i)") to Original Trust Lands. It is the parties' intent and interpretation of the Alaska Statehood Act and the Alaska Mental Health Enabling Act that the provisions of Section 6(i) are not applicable to Original Trust Land. The parties recognize that others may argue to the contrary. Consequently, the parties desire to modify the form conveyance documents for Original Trust Land contained in Exhibits D and E to make it clear that the Mental Health Trust Authority will not be required to comply with the provisions of Section 6(i) unless a court determines, as a matter of law, that Section 6(i) applies to Original Trust Land.

The parties hereby amend the Original Trust Land patents and interim conveyances contained in Exhibits D and E of the settlement agreement as follows:

[insert the underlined language]

Subject to . . . The restrictions imposed by Section 6(i) of the Alaska Statehood Act, Pub. L. 85-508 (72 Stat. 339) to the extent those provisions are determined to apply as a matter of law; and

The parties agree to jointly seek from the court a determination of whether Section 6(i) of the Alaska Statehood Act, Pub. L. 85-508 (72 Stat. 339) applies to Original Trust Land.

The parties also desire to amend Article III, Section 12(g)(iii) to make it clear that, because the trust is compensated in the reconstitution process for diminishment of value associated with mining claims and mining leases, the Mental Health Trust Authority will be bound by the terms applicable to state mining claims and mining leases. The parties hereby amend Article III, Section 12(g)(iii) as follows:

[add the underlined language]

Original Trust Land subject to state administered mining leases or mining claims which the Plaintiffs elect for conveyance to the Trust shall be considered to have returned one-fourth of the comparable value of the mineral estate of such parcel to the Trust and, as provided in Article III, Section 9 of this Settlement Agreement, the Trust Authority shall be bound by and be entitled to enforce the terms applicable to such mining leases and claims, provided however, that prior to the reconstitution of the parcel subject to the mining claim or lease, the mining claimant or mining lessee may negotiate different terms with the Plaintiffs, and if such different terms are negotiated, then the Original Trust Land subject to such negotiated state administered mining leases or mining claims shall be considered to have returned 100 percent of the comparable value of the mineral

estate to the trust.

DATED this 22nd day of June, 1992.

PLAINTIFFS:

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and Attorney for Plaintiffs Vern T.
Weiss, father and next friend of
Carl Weiss, a minor child, and Earl
Hilliker, on behalf of themselves
and all others similarly situated

By:

David T. Walker
David T. Walker

JAMES B. GOTTSTEIN, ESQ., Attorney
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Nanuwak, and John Martin on behalf
of themselves and all others
similarly situated

By:

James B. Gottstein
James B. Gottstein

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Goodwin, and Gabriel Mayoc

By:

Jeffrey L. Jessee
Jeffrey L. Jessee

STATE:

CHARLES E. COLE
ATTORNEY GENERAL

By:

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Attorney for Plaintiffs
Anita Bosel, et al.

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

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

Plaintiffs,)

vs.)

STATE OF ALASKA,)

Defendant.)

Case No. 4FA-82-2208 CIVIL

SETTLEMENT AGREEMENT

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

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

Plaintiffs,)

vs.)

STATE OF ALASKA,)

Defendant.)

Case No. 4FA-82-2208 CIVIL

SETTLEMENT AGREEMENT

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

RECITALS

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

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

WHEREAS, Section 58 of Chapter 66 provides:

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

and

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

NOW THEREFORE, IT IS AGREED:

**ARTICLE I.
DEFINITIONS.**

The following words and phrases shall have the following meanings:

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

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

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

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

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

(f) "Encumbered Original Trust Land" means land granted under the Enabling Act and that is subject to a lease, permit, oil and gas lease, mining claim or mining lease, coal lease, easement or right-of-way, timber sale, material sale contract, land sale contract, interagency land management assignment, or some other encumbrance of a similar nature not contained in the grant from the federal government or to which that grant was subject.

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

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

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

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

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

(l) "Plaintiffs" means VERN T. WEISS, father and next friend of CARL WEISS, minor child, and EARL HILLIKER, on behalf

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

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

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

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

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

(q) "Trust Authority" means the Alaska Mental Health Trust Authority established under Section 26 of Chapter 66 or any

successor entity or person that may subsequently be assigned one or more of the responsibilities of the Trust Authority imposed by Chapter 66 and this Settlement Agreement.

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

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

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

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

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

**ARTICLE II.
INCORPORATION OF CHAPTER 66.**

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

ARTICLE III.
TRUST RECONSTITUTION.

The Trust will be reconstituted in accordance with the provisions of Sections 54 -- 57 of Chapter 66 and this Settlement Agreement. In doing so, the undersigned parties agree as follows:

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

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

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

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

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

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

Non-Reconstituted Trust Land and Encumbered Original Trust Land subject to Section 54(4) of Chapter 66 or election by the Plaintiffs under Section 54(6) of Chapter 66 and Article III, Section 8 of this Settlement Agreement, (4) value, if already existing; (5) revenue history; (6) revenue projections, if already existing; (7) physical characteristics; (8) natural resource features; (9) current use to the extent existing files contain such information; (10) past use to the extent existing files contain such information; and (11) allowable uses;

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

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

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

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

2. Confidential Information. Except for confidential information developed in the course of or in anticipation of other litigation, the information described in Article III, Section 1, to be provided by the parties includes confidential information (but not analyses), but its confidential nature shall

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

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

4. Reducing Amount of Original Trust Land Used by State Agencies. Original Trust Land or interests therein used by any State agency (Agency) under a lease, permit, interagency land

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

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

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

be reserved in lieu of full title if the Commissioner determines that an easement affords sufficient protection, is customary for the particular use, and would further the objectives of Chapter 66.

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

- (i) the function and scope of the Agency's use of the parcel;
- (ii) a legal description of the lands in actual use;
- (iii) a list of structures or other alterations to the character of the land and their function, their location on the tract, and date of construction;
- (iv) a description of the use and function of any unaltered land;
- (v) a list of any rights, interests, or permitted uses that the Agency has granted to others or that have been granted to the Agency by others, along with dates of issuance and expiration and copies of any relevant documents. The Department of Natural Resources shall assist the Agency in determining any rights, interests, or permitted uses that the Department of Natural

Resources has granted to others for the parcel being used by the Agency; and

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

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

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

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

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

- (i) land in Legislatively Designated Areas, except for the Tanana Valley State Forest and the Haines State Forest Resource Management Area;
- (ii) land in which title has been conveyed out of State ownership;
- (iii) land selected by a municipality under AS 29.65 or under former AS 29.18.190 -- 29.18.200 and which selection has been approved by the director of the division of lands, Department of Natural Resources on or before the effective date of Chapter 66 (which approvals were enjoined by a preliminary injunction entered on July 9, 1990, and no further approvals may be made without a modification of the preliminary injunction) and has not been mutually agreed by the parties to be returned to the State by a municipality for return to the Trust;
- (iv) land subject to contracts of sale (including leases which have been or may be converted to contracts of sale);
- (v) land properly entered under homesite, h. mestead, open to entry, or remote parcel entry programs prior to July 9, 1990;
- (vi) land subject to the Chena River Condemnation; or
- (vii) land subject to conveyance under land exchange and litigation settlement agreements entered into prior to July 9, 1990,

such land is Non-Reconstituted Trust Land and the parties shall proceed under Section 55 of Chapter 66 to identify Substitute

Land to convey to the Trust under Sections 54(7) and 55 of Chapter 66 and Article III of this Settlement Agreement.

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

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

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

(ii) Leases, by calculating the leasehold value (the present value of the difference between market rent and con-

- tract rent), if any, using a 10% discount rate and conveying Substitute Land to the Trust under Sections 54(7) and 55 of Chapter 66 and Article III of this Settlement Agreement, equal to such leasehold value.
- (iii) Land use permits not terminable at will, by conveying Substitute Land to the Trust Authority under Sections 54(7) and 55 of Chapter 66, and Article III of this Settlement Agreement, equal to the leasehold value of the Permit (the present value of the difference between market rent and the contract rent), if any. Leasehold value will be determined by using a discount rate of 10%, and annual rental rate of 8% of the fair market value of the land estate, for the length of the permit.
- (iv) Subdivision roads (defined as internal roads within a tract of Original Trust Lands created during the subdivision process to provide access to lots within the tract of Original Trust Land), if less than all of the lots in the subdivision are conveyed to the Trust by conveying Substitute Land as provided in Subsection (i). If all of the lots in such a subdivision are conveyed to the Trust, no compensation shall be due.
- (v) Material sales by payment to the Trust of all payments due under the material sale beginning July 1, 1991.
- (vi) Other encumbrances, by conveying Substitute Land to the Trust Authority as provided in Sections 54(7) and 55 of Chapter 66 and Article III of this Settlement Agreement as provided in subsection (i), provided, however, that

nothing herein prevents the parties from agreeing to other procedures for determining how to compensate the Trust for such other encumbrances, similar to those procedures provided in (i) - (v) of this Subsection.

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

9. Encumbered Land Remains Subject to Encumbrances. Encumbered Original Trust Land that is conveyed to the Trust under Chapter 66 and this Settlement Agreement shall be conveyed subject to the terms of any valid existing encumbrance and the Trust Authority shall abide by and be entitled to enforce the terms of such encumbrance, except where the Trust is compensated with land under Article III, Subsection 7 (b) (i) of this Settlement Agreement, in which case the State may elect to retain the right to enforce the terms of such encumbrances. For the purpose of this

Section, possible inconsistency with the Enabling Act is not grounds to challenge the validity of an encumbrance.

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

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

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

have the right to select which Proposed Substitute Land shall be removed.

12. Developing Exchanges.

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

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

and more favorable development characteristics (soils, slope, drainage), while 160 acre parcels shall be those in a remote location with less desirable development characteristics. Settlement development trends and local land regulations (zoning) shall also be considered in the classification of parcels into 40 and 160 acre sizes. This classification process shall be conducted jointly by the State and Plaintiffs and the parceling results shall be mutually agreed to by the parties. These procedures shall also apply to Proposed Substitute Land.

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

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

(e) Revenue Generating Capacity of Substitute Land. When considering specific exchanges, if there is no Proposed Substitute Land comparable to the Non-Reconstituted Trust Lands for which the Proposed Substitute Land is to be compensation under Section 55 of Chapter 66, other land owned by the State may be

proposed as Substitute Land, but only so long as its revenue generating history and/or potential is comparable to the revenue generating history and/or potential of the Non-Reconstituted Trust Land.

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

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

- (i) De Minimus Mineral Estate Values. When developing exchange proposals for Non-Reconstituted Trust Land, if the parties agree that there is no indication that the mineral estate is of particular value, exchanges shall be developed without formally determining the value of the mineral estates of the Non-Reconstituted Trust Land and the proposed Substitute Land. In determining whether there is no indication that the mineral estate is of particular value, the parties shall consider whether the land was selected for mineral values, whether there have been any mineral closing orders applying to such land and the reasons for such closures, whether the geologic terrane is favorable for mineral value, and other available information.
- (ii) Mineral Exchanges. Exchanges of the mineral estate of Non-Reconstituted Trust Land where the land is not considered to have a de minimus mineral value under Subsection (g) (i) shall be accomplished as provided in Sections 55 (c) -- (e) of Chapter 66 employing the following criteria and as specified in Exhibit C:
- A. geologic characteristics;
 - B. mineral characteristics;
 - C. mineral economic valuation estimates using practical methods considering available data;
- and

- D. differences in the states of knowledge of the mineral endowment of the respective lands.
- (iii) Original Trust Land subject to state administered mining leases or mining claims which the Plaintiffs elect for conveyance to the Trust shall be considered to have returned one-fourth of the comparable value of the mineral estate of such parcel to the Trust.
- (iv) The economic impact of the existence of mineral encumbrances on Substitute Lands shall be considered prior to comparison with Non-Reconstituted Trust Lands and exchanges shall then be conducted as provided in Subsection (g) (ii) without further adjustment under Subsection (g) (iii).
- (v) The exchange process will be based upon comparability as near as practicable. Differences in comparable character shall be resolved through selecting Substitute Land with different geologic and mineral characteristics as agreed to by the parties. Differences in states of knowledge shall be resolved through negotiation between the parties.
- (vi) If agreement between both parties regarding the evaluation process or procedures cannot be attained, it shall be subject to review by a Technical Review Committee (TRC). The TRC will consist of five members, two selected by the State, two by the Plaintiffs, and one by the four so selected, consisting of recognized experts from industry, government, and academia.

Rather than selecting a TRC, both parties may elect to use the Alaska Minerals Commission for this purpose. After review by the TRC or Alaska Minerals Commission, any remaining dispute shall be resolved by the court under Section 57 of Chapter 66.

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

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

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

(i) in its sole discretion, shall elect to either (A) clean up the parcel to a standard mutually agreeable to the State and Plaintiffs, or (B) not convey the parcel and compensate the Trust with Substitute Land equal in fair market value to the parcel without the Hazardous Sub-

stance, as provided in Section 55 of Chapter 66 and Article III of this Settlement Agreement; or

- (ii) if mutually acceptable to the State and Plaintiffs, need not clean up the parcel and convey the parcel subject to an indemnification from the State in favor of the Trust for any claim or loss resulting from the presence of Hazardous Substances.

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

- (i) be responsible to the Trust Authority for response actions that are consistent with the National Contingency Plan, 40 CFR Part 300, and in accordance with all applicable provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq., AS 46.03.822, and all other similar environmental statutes or regulations as may now be or subsequently become applicable; and
- (ii) indemnify the Trust Authority for other claims, losses, judgments, damages, and costs (including attorney and consultant fees) resulting from the presence of a Hazardous Substance which came to be located on Reconstituted Trust Land prior to its conveyance to the Trust Authority,

PROVIDED, HOWEVER, that an environmental site assessment, appropriate in scope to the location and present and past use of

the land, and acceptable to the Plaintiffs or Trust Authority (as appropriate) and the State, shall be conducted as follows:

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

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

14. Notice of Proposed Exchange. When the State and Plaintiffs have agreed upon an exchange, or prior to submitting a proposed exchange to the court under Section 55(h) of Chapter 66, the State shall provide notice of the proposed exchange in accordance with AS 38.05.945(b) and (c) and furnish a copy thereof to Plaintiffs. The notice shall identify the Proposed Substitute

Land and the Non-Reconstituted Trust Land, and state that an exchange is proposed under Section 54(7) of Chapter 66. Either party may modify its position on a proposed exchange as a result of the response to the public notice.

15. Conveyances of Land to Reconstitute the Trust.

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

(b) The State, at its expense, may defend the status of title as set forth in Subsection (a) of this Section. For Reconstituted Original Trust Land, if the status of title, as of the date of the conveyance document, with respect to interests creat-

ed by the State subsequent to the State receiving management authority over such land whether by conveyance of such land from the federal government, by approval for conveyance or patent, or otherwise, is different than as set forth in Subsection (a) of this Section, the State shall compensate the Trust for the difference as provided in Article III, Section 7 of this Settlement Agreement. For Substitute Land, if the status of title as of the date of the conveyance document is different than as set forth in Subsection (a) of this Section, the State shall compensate the Trust for the difference as provided in Article III, Section 7 of this Settlement Agreement. The remedies provided in this Subsection are exclusive.

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

17. Releases of Non-Reconstituted Trust Lands. For Non-Reconstituted Trust Lands that have been exchanged for Substitute Land, the Plaintiffs and the Trust Authority will, if requested,

assist in the preparation of and will execute releases of interest from "the Alaska Mental Health Trust Authority and Beneficiaries of the trust created by Section 202(e) of the Alaska Mental Health Enabling Act of 1956, PL. 84-830, 70 Stat. 709 (1956), represented by the named plaintiffs in Weiss et. al. v. State, 4FA 82-2208 Civ.," to the "State of Alaska," in the form attached hereto as Exhibit F, at the time the patent or interim conveyance of the Substitute Land is issued.

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

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

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

- (i) only the provisions of Sections 54 -- 57 of Chapter 66 and the provisions of this Settlement Agreement apply;
- (ii) except for (A) AS 38.05.945(b) and (c), and (B) as otherwise specifically provided herein, the provisions of State law that otherwise apply to the conveyance of state lands do not apply to the conveyance of lands to the Trust under this Settlement Agreement, provided, however, that access to or along navigable or public waters may be reserved from conveyances of Substitute Land to the Trust (with the value of the Substitute Land taking into account such reservations); and
- (iii) lands are not required to be in a disposal classification in order to be conveyed to the Trust.

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

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

final order requires the application of any other State law, the parties may apply to the court for appropriate relief.

21. Release from Hypothecation. As the Trust is reconstituted by Substitute Land being conveyed to the Trust by the interim conveyances or patents specified in Article III, Section 15 above, the State may request that Plaintiffs execute a release from hypothecation of specified parcels of Hypothecated Lands from the Hypothecated Lands List in the form attached hereto as Exhibit G, provided, however, that the lands remaining on the Hypothecated Lands List shall at all times be sufficient to provide security for the remaining exchanges to be accomplished under Section 55 of Chapter 66 and this Settlement Agreement. In the event of a dispute between the parties with respect to the release of lands from the Hypothecated Lands List, the dispute shall be resolved by the court as provided in Sections 55 -- 57 of Chapter 66.

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

Commission, and the Alaska Native Health Board. Any disagreement as to whether reconstitution of the Trust has been completed shall be determined by the court under Section 57 of Chapter 66.

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

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

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

| FISCAL YEAR ENDING | PERCENT OF UNRESTRICTED STATE REVENUE |
|--------------------|---------------------------------------|
| June 30, 1992 | six percent |
| June 30, 1993 | six percent |
| June 30, 1994 | five percent |
| June 30, 1995 | five percent |
| June 30, 1996 | four percent |

| | |
|---------------|---------------|
| June 30, 1997 | four percent |
| June 30, 1998 | three percent |
| June 30, 1999 | three percent |
| June 30, 2000 | two percent |
| June 30, 2001 | two percent |
| June 30, 2002 | one percent |
| June 30, 2003 | one percent |

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

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

26. General Remedies for Breach of Reconstitution Provisions. In the event of a breach of the terms of Chapter 66 and this Settlement Agreement pertaining to the reconstitution of the Trust, either party may seek appropriate equitable relief to compel the other party to comply with the terms of Chapter 66 and this Settlement Agreement. If a party seeks equitable relief under this Section, the other party will not assert as a defense to the action that there exists an adequate legal remedy.

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

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

(b) If Plaintiffs are unable to validly and effectively require reconstitution of the Trust as contemplated under Chapter

66 and this Settlement Agreement, the Plaintiffs may apply to the court for any other appropriate relief.

29. Foreclosure as Remedy. Plaintiffs are not required to foreclose on the Hypothecated Lands prior to seeking any other relief available to Plaintiffs. In the event of foreclosure, (1) the parcels to be foreclosed and manner of foreclosure, and (2) entitlement to the future rents, proceeds, products, and profits derived from the Hypothecated Lands, shall be determined by the court under Sections 56 and 57 of Chapter 66.

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

- (i) the extent to which the Trust has been reconstituted;
- (ii) the likelihood that the Trust will be reconstituted as contemplated under Chapter 66 and this Settlement Agreement if the settlement is not terminated;
- (iii) the amount of work completed and funds expended toward reconstitution of the Trust as provided in Chapter 66 and this Settlement Agreement;
- (iv) the good faith of the parties;
- (v) the prejudice to the parties if the settlement is or is not terminated; and
- (vi) other appropriate considerations.

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

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

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

Upon final approval of this Settlement Agreement and Chapter 66 taking effect, all such third party rights are validated and the need to litigate issues relating to title is eliminated. The length of time, however, to obtain approval may cause substantial hardship to certain third parties who have received patents or who have entered into contracts to receive title to Original Trust Lands from the State or municipalities. Therefore, upon presentation of this Settlement Agreement to the court for approval, the State and the Plaintiffs executing this Settlement

Agreement through counsel shall immediately move for cancellation of the re-notice of lis pendens and modification to remove the preliminary injunction with respect to Original Trust Lands in which the State or any municipality conveyed or agreed to convey title to a third party in the form attached hereto as Exhibit H. For purposes of this Section, a conveyance or agreement to convey by the State to a municipality is not one to a third party.

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

(c) If the court denies the motion or if an order approving the motion for cancellation of the re-notice of lis pendens and for modification to remove the preliminary injunction set forth in subsection (a) is not entered within 4 months of the date the motion is submitted to the court for decision, the parties shall have 60 days to arrive at a mutually agreeable way to address the

interests of such third parties and the Trust in the parcels of Original Trust Lands. In the event the parties are unable to arrive at such an agreement, either party may terminate this Settlement Agreement.

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

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

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

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

- (i) when exercising any discretion under Chapter 66 pertaining to the Trust, to do so properly as provided in Chapter 66;
- (ii) assuring that Trust Property and Trust Funds are administered properly;
- (iii) assuring that the Trust corpus is preserved and protected;
- (iv) assuring that all revenue derived from Trust Property is deposited into the Mental Health Trust Fund or the Mental Health Trust Income Account as either corpus or

income, as appropriate, pursuant to AS 13.38.010 et. seq.;

- (v) assuring that Trust Funds are spent solely for Trust purposes as provided in Chapter 66, unless an excess is properly determined to exist under Chapter 66; and
- (vi) assuring that grantees of and contractors being paid with Trust Funds spend Trust Funds in accordance with Chapter 66, and the terms of the grant or contract.

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

- (i) when exercising any discretion under Chapter 66 pertaining to the Trust, to do so properly as provided in Chapter 66; and
- (ii) appropriating Trust Funds solely for Trust Purposes properly as provided in Chapter 66, unless an excess is properly determined to exist under Chapter 66.

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

- (i) when exercising any discretion under Chapter 66 pertaining to the Trust, to do so properly as provided in Chapter 66;
- (ii) assuring that Trust Funds are spent solely for Trust purposes as provided for in Chapter 66, unless an excess is properly determined to exist under Chapter 66; and

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

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

- (i) the preparation, revision, or amendment of the integrated comprehensive mental health program plan;
- (ii) the planning of expenditures from the Mental Health Trust Account; and
- (iii) the implementation of the integrated comprehensive system of care established under the Enabling Act, as determined by the plan.

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

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

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

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

- (i) the preparation, revision, or amendment of the integrated comprehensive mental health program plan;
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(c) If the State asserts that disclosure of information requested by the Trust Authority is prohibited by law or otherwise need not be made, it shall provide the Trust Authority with the identity of the source and a description of the nature of the information withheld, and the Trust Authority may seek appropriate judicial relief to compel disclosure of the information.

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

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

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

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

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

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

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

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

10. Competing Native Allotments. (a) The State and the Plaintiffs support the prompt adjudication and approval of valid Native allotment applications. The State shall determine whether to challenge the validity of any Native allotment application on Original Trust Lands, Hypothecated Lands, and other State lands identified as Substitute Land or Proposed Substitute Land. The State shall notify Plaintiffs of the State's determinations, which shall be final and not reviewable by the court under Sections 55(h) and 57 of Chapter 66.

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

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

the Plaintiffs and the State shall jointly determine those lands that are most likely to be conveyed under the Enabling Act instead of the Native Allotment land.

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

11. Funding of Mental Health Program from General Fund.

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

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

The parties recognize that Chapter 66 imposes certain interim obligations and responsibilities upon the State and Plaintiffs

during the period of implementing the Trust reconstitution. In recognition of those interim obligations, the parties agree:

1. Plaintiffs Will Be Funded by the State. (a) Plaintiffs are entitled to receive from the State sufficient funds to adequately perform the responsibilities imposed upon the Plaintiffs in the reconstitution process under Chapter 66 and this Settlement Agreement. As a general principle, the State and the Plaintiffs shall receive equal funding for equal work effort to be performed under Chapter 66 and this Settlement Agreement. Equal funding for equal work effort to be performed shall take into consideration the different types of work, the different amounts of work, the different costs associated with different types of personnel employed to perform the work, and similar considerations. The intent of this provision is to ensure that neither party obtains a financial advantage over the other. The parties recognize, however, that the scope of the work performed by one party may differ significantly from that performed by the other, and that different amounts of funds may be provided to the parties to reflect this fact.

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

(c) The parties recognize that there may be some delay in obtaining approval of the settlement embodied in Chapter 66 and this Settlement Agreement, but that work to implement the settlement must begin immediately to ensure that the Trust is

reconstituted in a timely manner. Funding for such work will be provided in accordance with this subsection. Before October 1, the parties will meet to seek agreement on funding for the following fiscal year. If agreement is not reached, or if the legislature appropriates less than the agreed upon amount, the Plaintiffs may apply to the court (1) to determine whether the amount appropriated is reasonable to permit Plaintiffs to perform their responsibilities under the settlement embodied in Chapter 66 and the Settlement Agreement, and (2) if it is not, to determine the appropriate remedy. Nothing in this subsection precludes the State from arguing that the amount appropriated is reasonable in light of all the circumstances. This Subsection is effective as of the date of this Settlement Agreement.

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

- (i) the State and the Plaintiffs may agree to sell, lease, exchange, or otherwise enter into transactions with respect to parcels of such land or any interest therein, provided, however, that prior to completing any such transaction, any notice required under AS 38.05.945 shall be given;
- (ii) any transaction with respect to such parcel requires the written consent of the Plaintiffs, and any transaction consummated without such consent is void;

(iii) all revenue received beginning July 1, 1991 from each such parcel shall be separately accounted for, and all such revenue from each parcel ultimately conveyed to the Trust shall be deposited into the Mental Health Trust Fund or Mental Health Trust Income Account as either corpus or income pursuant to AS 13.38.01C et seq.; and

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

3. Management of Land After Conveyance. After a parcel of Original Trust Land or Substitute Land has been conveyed to the Trust Authority as provided in Article III, Section 15 hereof, all management authority for that parcel is transferred to the Trust Authority. After an exchange has been completed with respect to a parcel of Non-Reconstituted Trust Land for which the Trust is not to receive title, all management authority for that parcel of Non-Reconstituted Trust Land is transferred to the

State. Nothing herein shall be deemed to prevent the Trust Authority from entering into one or more agreements with the State to manage Trust Lands after management authority has been transferred to the Trust Authority.

4. Land Closed to Mineral Entry. Until such time as a parcel of Original Trust Land has been conveyed to the Trust Authority, or an exchange has taken place with respect to such parcel of Original Trust Land, such parcels of Original Trust Land shall remain closed to mineral entry under State law, and any interests claimed or granted in contravention of this Section are void.

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

- (i) any transaction with respect to such parcel will be subject to a finding that it is consistent with hypothecation of the parcel, which will include that no substantial devaluation of the parcel for purposes of Trust ownership will result; the preliminary finding will be given to the Plaintiffs at the time notice of the proposed action is circulated for agency review;
- (ii) the State, at its expense, will take all practical steps to protect Hypothecated Lands from damage to the same extent that it takes such steps with respect to State general grant land; and

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

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

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

ARTICLE VI.
EXERCISE OF REMEDIES FOR BREACH OR DEFAULT.

1. Remedies for Breach of Responsibilities and Obligations.

The parties agree that each provision of Chapter 66 and this Settlement Agreement are of material importance to this settlement. In the event of:

- (i) a breach by the State or Plaintiffs of any provision, term, or covenant of this Settlement Agreement;
- (ii) a failure of a party or the Trust Authority to comply with any applicable provision of Chapter 66 or this Settlement Agreement; or

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

the parties shall be entitled to pursue, in addition to any specific remedies provided herein for breach of particular terms, covenants, or conditions, any remedies that may be available to them under this Settlement Agreement, or otherwise in law or equity, including declaratory relief or injunctive relief and including specific performance of their rights and obligations hereunder and under Chapter 66.

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

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

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

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

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

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

(b) After notice of reconstitution of the Trust pursuant to Article III, Section 22, of this Settlement Agreement, any remaining responsibilities assigned to the Plaintiffs under this

Settlement Agreement are transferred to the Trust Authority and the Trust Authority may exercise rights and remedies pertaining to the reconstitution of the Trust.

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

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

ARTICLE VII. INTERPRETATION.

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

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

Counsel of record for the Plaintiffs shall designate one of their number as lead counsel and provide that designation to the Attorney General and the Commissioner. Plaintiffs warrant to the State that the designation of lead counsel confers upon lead counsel all authority necessary to implement the provisions of this Settlement Agreement relating to the reconstitution of the Trust under Chapter 66 and this Settlement Agreement on behalf of all the Beneficiaries, and to sign documents on behalf of and binding upon all Beneficiaries. Plaintiffs' counsel may change the designation of lead counsel at any time, but such a change in designation will not become effective until served upon the Attorney General and the Commissioner. If lead counsel ceases to represent at least one Plaintiff, counsel for Plaintiffs shall immediately designate a new lead counsel and serve that designation on the Attorney General and the Commissioner. Lead counsel may designate one or more co-counsel to exercise specific authority under this Section and shall notify the Attorney General and the Commissioner of such designation.

**ARTICLE IX.
MODIFICATION; AMENDMENT.**

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

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

- (i) the compensation to the Trust;
- (ii) the obligations of the State with respect to providing services to the Beneficiaries from Trust Income under Chapter 66, or
- (iii) the rights of the State, the Plaintiffs, the Trust Authority, and the Beneficiaries of the Trust to fully enforce the terms hereof.

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

3. Agreement to Amend Settlement Agreement Prior to Reconstitution. Amendment to this Settlement Agreement by the parties is effective only as hereinafter provided. Prior to the giving

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

4. Agreement to Amend Settlement Agreement After Reconstitution. After the giving of notice under Article III, Section 22 that reconstitution of the Trust has been completed, and except as provided in Article IX, Section 2 of this Settlement Agreement, this Settlement Agreement may only be amended by the court with the approval of the Trust Authority or the Beneficiaries, and notice thereof having been given by publication in newspapers of general circulation throughout the State, and upon approval by the court under such conditions as may be ordered by the court, which may include notice to the Beneficiaries under Civil Rule 23.

**ARTICLE X.
INDEMNIFICATION.**

- (a) The State shall indemnify, defend, and hold harmless:
 - (i) Plaintiffs and Beneficiaries from and against any liability (excluding liability for death, bodily injury, physical property damage, or punitive damages) for entering into this Settlement Agreement or from acts or omissions in performing Plaintiffs' and Benefi-

ciaries' responsibilities and obligations under this Settlement Agreement; and

- (ii) Plaintiffs, counsel for Plaintiffs, and Beneficiaries from and against any liability (excluding punitive damages) for death, bodily injury, or physical property damage in connection with Original Trust Land, Hypothecated Land or Proposed Substitute Land and arising from the entering into or implementing of this Settlement Agreement, PROVIDED, HOWEVER, that for lands over which Plaintiffs have concurrence authority under Article V, Section 2 of this Settlement Agreement, the State and Plaintiffs' counsel take all commercially reasonable steps to obtain a similar indemnity and adequate evidence of financial responsibility from any private party seeking to use such land, which indemnity and financial responsibility shall be primary to the State's indemnity under this subsection;

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

- A. grossly negligent or reckless acts or omissions, or intentional misconduct of the Plaintiffs, counsel for Plaintiffs, Beneficiaries, or their employees and agents,
- B. the improper disclosure of confidential information;

- C. workers' compensation or other insurance or workplace statutes or regulations;
- D. employment disputes or other alleged civil rights violations under state or federal law, including, without limitation, claims for wrongful termination, claims under 42 U.S.C. Secs. 1983, 1985, 2000(e), AS 18.80, the Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327, the Age Discrimination and Employment Act, 29 U.S.C. Secs. 621 et. seq., and the Age Discrimination Act, 42 U.S.C. Secs. 6101 et. seq.; or
- E. claims or demands made by the State against the Plaintiffs, counsel for Plaintiffs, or Beneficiaries under this Settlement Agreement.

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

State within 30 days of first knowledge of a claim shall relieve the State of any obligation under this Article.

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

**ARTICLE XI.
GENERAL PROVISIONS.**

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

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

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

4. Entire Agreement. This is the entire agreement of the parties pertaining to the subject matter hereof and supersedes

all or any other prior agreements and understandings between the parties, representing full and final disposition of the pending claims in this case.

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

**ARTICLE XII.
SETTLEMENT OF ACTION.**

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

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

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

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

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

DATED this 6th day of April, 1992.

PLAINTIFFS:

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

By: David T. Walker
David T. Walker

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

By: James B. Gottstein
James B. Gottstein

JEFFREY L. JESSEE, ESQ., Attorney
for Intervening Plaintiffs ANITA
BOSEL, FRANCES DOULIN, SHARON
GOODWIN, and GABRIEL MAYOC

By: Jeffrey L. Jessee
Jeffrey L. Jessee

STATE:

CHARLES E. COLE
ATTORNEY GENERAL

By: Charles E. Cole

APPROVED BY STATE OF ALASKA

WALTER J. HICKEL
GOVERNOR

By: Walter J. Hickel
Walter J. Hickel

HAROLD C. HEINZE
COMMISSIONER OF NATURAL RESOURCES

By: Harold C. Heinze
Harold C. Heinze

LIST OF EXHIBITS

- EXHIBIT A: Chapter 66, SLA 1991
- EXHIBIT B: List of Lands Hypothecated to the Mental Health Trust, May 1991 (as refined)
- EXHIBIT C: Mineral Exchange Criteria
- EXHIBIT D: Form State of Alaska Patent
- EXHIBIT E: Form State of Alaska Interim Conveyance
- EXHIBIT F: Release of Interest
- EXHIBIT G: Release from Hypothecation
- EXHIBIT H: Motion and Order to Modify July 1, 1990 Preliminary Injunction and to Cancel Re-Notice of Lis Pendens with respect to Lands Conveyed to Third Parties
- EXHIBIT I: Department Order
- EXHIBIT J: Notice of Cancellation of Lis Pendens

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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SOURCE: David T. Walker
Counsel for Vern T. Weiss
Mental Health Trust Lands Lit.

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

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

Plaintiffs,)

vs.)

STATE OF ALASKA,)

Defendant.)

Case No. 4FA-82-2208 Civil

MEMORANDUM DECISION AND ORDER

This case comes before the court on two motions for preliminary injunction. On March 5, 1990, the State of Alaska, defendant, requested a preliminary injunction restraining the plaintiffs, intervenors, and all members of the classes they represent ("plaintiffs") from (1) challenging the current record title to any lands selected by and patented to the state under the Alaska Mental Health Enabling Act, P.L. 84-830; (2) filing lis pendens with the state recorder with respect to any such lands; and (3) taking any other action which would cast a legal cloud on the current record title to any such lands, whether that

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STATE OF ALASKA
FOURTH DISTRICT

CLERK OF COURTS
JUDICIAL DEPARTMENT

legal title be in the state, political subdivisions of the state, or third parties. On June 25, 1990, plaintiffs moved for a preliminary injunction and temporary restraining order prohibiting the State of Alaska from issuing any patents or any other documents or taking any further steps which convey or transfer mental health trust lands or any interest or interests therein, including without limitation, any permits to use or occupy mental health trust lands, or extract resources from any mental health trust lands, pending final resolution of this litigation. On June 29, 1990, the court granted the temporary restraining order associated with the second motion which is valid until July 9, 1990. The court indicated that this decision would issue on July 9, 1990.

To understand the current conflict, it is necessary to understand the history behind this litigation and the activities which have brought us to this point.

In 1956, the Congress of the United States enacted the Alaska Mental Health Enabling Act (AMHEA) in which Congress granted the Territory of Alaska one million acres of federal land to be held as a public trust whose proceeds and income were to be first applied to meet the necessary expenses of the comprehensive mental health program of Alaska. The state managed the lands without maintaining separate accounting until 1978. See State v. Weiss, 706 P.2d 681, 682 (Alaska 1985). In 1978, the Alaska State Legislature in Chapter 181, redesignated the mental health

lands which had been patented or approved for patent to the state as general grant land to be managed as all other state lands.

In 1982, the original Weiss plaintiffs filed this class action asserting that the state breached this public trust by failing to account for revenues realized, using revenues for purposes other than mental health care, and redesignating the mental health lands as general grant land. When first before it, the superior court ruled that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that the trust was to recover from the state an amount equal to the fair market value of lands conveyed from the trust as of the date of conveyance plus prejudgment interest from the date of each conveyance. Additionally, the court ordered a set-off for all monies spent by the state on mental health care. Both sides appealed from that decision. In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the state breached the public trust created by Congress when it redesignated property in the trust as general grant land. The court thus invalidated the redesignation statute, Chapter 181, Section 3(a) SLA 1978. The Alaska Supreme Court, however, disagreed with the remedy proposed by the superior court. Instead, the court held "that the trust must be reconstituted to match as nearly as possible the holdings which compromised the trust when the 1978 law became effective." 706

P.2d at 684. The Alaska Supreme Court provided the following guidance to the trial court:

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 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 the sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.

706 P.2d at 684. The court specifically declined to rule on questions raised by the amicus regarding the title held by conveyancees and bona fide purchasers of mental health lands. See Weiss, 706 P.2d at 684 n.4.

Following the Alaska Supreme Court's remand to this court, the parties engaged in complex negotiations in an attempt to settle the lawsuit. These negotiations led to the enactment of Chapter 48, SLA 1987. Chapter 48 provided a mechanism for reconstituting the trust and settling this litigation. In essence, four elements were involved. The first element involved the determination of fair market value of the original one million acre mental health land grant as of September 7, 1987, the effective date of Chapter 48. The second element involved an

exchange of those original mental health lands not in legislatively designated areas such as parks and wildlife refuge areas for lands of equal value within such areas so that the reconstituted mental health trust corpus would consist entirely of lands within areas such as parks and refuges. The original mental health lands not in such areas were to be released from trust status. The third element involved the state's rental of the reconstituted mental health trust corpus for eight percent of its fair market value to compensate the trust for administering the lands for legislative purposes. The fourth part was a transitional provision effective until the corpus of the trust was reconstituted. During this transitional period, the state is to compensate the trust by annually paying an amount equal to five percent of the state's unrestricted resources. Section 9 of Chapter 48 provided for the Interim Mental Health Trust Commission to assist in the valuation process.

The valuation process designed in Chapter 48 has broken down. Each side blames the other for problems. Whatever the source of the problems, the parties are at impasse. On November 7, 1989, the Interim Mental Health Trust Commission approved its final procedures for valuing mental health trust lands and on December 20, 1989 it issued its final report. On April 17, 1990, the Commissioner of the Department of Natural Resources wrote to the Chair of the Alaska Mental Health Board

announcing that the Department would not follow the procedures adopted by the Commission. The Commissioner declared an impasse.

During the final days of the legislative session in 1990, a bill was passed which modifies the procedures of Chapter 48. That bill, House Committee substitute for Committee substitute for Senate Bill 493(Fin) [SB 493], deletes the valuation step and ties rents not to the land value but to the state's gross revenues.

In January 1990, plaintiffs sent letters to various interested parties urging these parties to support plaintiffs' position in the political process. The letters indicate a possible intent to challenge title to about 750,000 acres of land.

On March 27, 1990, the Department of Natural Resources advised counsel for plaintiffs that it intended to issue 23 patents to various parcels of mental health trust lands. After that date, the Department announced its intent to issue patents and take other actions such as mineral sales, mining permits, and lease assignments, with respect to various other parcels of mental health trust lands. The Department intended to take these actions on June 30, 1990. On June 29, 1990, the court issued a temporary restraining order forbidding the Department from doing so.

Preliminary injunctions are designed to maintain the status quo pending the final resolution of a case where the

equities of the situations balance in favor of maintaining that position. Preliminary injunctions are not designed to be a final resolution of the legal issues involved in a case nor are they a final resolution of factual matters. As the parties have noted, it is not for the court at this time to determine the final law which will be applied to this case nor to determine which side should ultimately prevail.

While decisions involving preliminary injunctions are frequently difficult ones, the law regarding preliminary injunctions is fairly straight forward. In deciding whether to issue a preliminary injunction, the court must consider three factors: (1) the irreparable harm faced by the party requesting the preliminary injunction; (2) adequate protection for the party opposing the preliminary injunction; and (3) whether serious and substantial questions going to the merits of the case have been raised by the proponent of the preliminary injunction.¹ See, e.g. Betz v. Chena Hot Springs Group, 657 P.2d 831, 837 (Alaska 1982); Alaska Public Utilities Commission v. Greater Anchorage Borough, 534 P.2d 549, 554 (Alaska 1975). The court must balance the hardships by weighing the harm that will be suffered by the

¹It is arguable that a fourth element must be considered: the public interest. See Betz v. Chena Hot Springs Group, 657 P.2d 831, 837 (Alaska 1982); Powell v. Anchorage, 536 P.2d 1228, 1229 n.2 (Alaska 1973). The court concludes that this factor has not been adopted by the Alaska Supreme Court in light of its failure to mention it in recent cases. See, e.g., Messerli v. Department of Natural Resources, 768 P.2d 1112, 1122 (Alaska 1989).

proponent if an injunction is not granted against the harm that will be imposed upon the party opposing the injunction by the granting of the injunction. See A.J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537, 540 (Alaska 1970).

The two motions for preliminary injunction pending before the court are related in that each involves the creation of third-party rights in lands which were originally mental health trust lands prior to the 1978 redesignation. The state's principal arguments in each are that (1) the subsequent acts of the legislature in the enactment of Chapter 48 and the 1990 amendments in Senate Bill 493 have changed the situation so that the state is no longer in breach of its fiduciary duty to the trust, and (2) that the plaintiffs' sole remedy for breach of the trust is the payment of compensation given the subsequent actions of the legislature. The fallacy of these arguments is that they ignore the fact that the state may not unilaterally settle this lawsuit. The parties in this action and this court are under the mandatory remand of the Alaska Supreme Court in State v. Weiss, 706 P.2d at 684, to "reconstitut[e] to match as nearly as possible the holdings which compromise the trust when the 1978 law became effective." Moreover, the law of this case is that for the original breach a compensation remedy is not adequate. Id. This lawsuit will not come to its conclusion until a final adjudication on the merits reconstituting the trust is reached or a bilateral settlement is reached which is approved

by the court under the provisions of Alaska R. Civ. P. 23(e). The court is not yet persuaded by the State's arguments that all its actions must be judged under the new legislative standards. While it is true that Chapter 48 as amended is the law, it is equally true that where an appellate court issues a specific mandate, a trial court has no authority to deviate from it. See, e.g., Gaudiane v. Lundgren, 754 P.2d 742, 744 (Alaska 1988). With these principles in mind, the court turns to the specific issues raised by each motion for preliminary injunction.

In its March 5, 1990 motion for preliminary injunction, the state asked this court to issue an anti-lawsuit injunction barring the plaintiffs from challenging title to any mental health lands, filing lis pendens as to such lands, or taking any other action which would cause a legal cloud on the current record title to such lands. The state argues that the irreparable harm which it faces is the potential for political pressure brought by such litigation. The state argues that the use of litigation actions to influence the political process would be an abuse of process. The court concludes that this is not irreparable harm. In essence, the state is arguing that it might take precipitous actions favorable to plaintiffs without regard to the substantive merit of those actions because of the political pressure which may result from the multitudinous lawsuits which could be filed by plaintiffs. However, given the supreme court's decision in Weiss and the court's specific reservation as to the title held