

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8026 HOUSE RESOURCES

1 department shall

2 (1) comply with AS 38.05.285; however, the authority and the  
 3 department are excused from complying with the requirements of AS 38.05.285  
 4 if disposal or use of state land in conformity with that section would conflict with  
 5 a power, duty, or responsibility of the trustee set out in AS 37.14.007 or 37.14.009;

6 (2) give public notice in the manner provided under AS 38.05.945(b)  
 7 and (c)

8 (A) of a preliminary decision to dispose of trust land and  
 9 consider any written comments submitted within 30 days of the giving of  
 10 the public notice before making a final decision; and

11 (B) of a final decision to dispose of trust land [, BUT IS NOT  
 12 OTHERWISE BOUND BY THE PROVISIONS OF AS 38.04 OR AS 38.05].

13 \* Sec. 4. AS 37.14.009, added by sec. 10, ch. 66, SLA 1991, is amended by adding a new  
 14 subsection to read:

15 (c) In exercising its power under (a)(1) - (4) and (b) of this section with  
 16 respect to land or minerals where there is a protected interest under AS 38.05.802, the  
 17 authority or, to the extent that it is managing or disposing of the land or minerals of  
 18 the trust under (a)(4) of this section, the Department of Natural Resources shall comply  
 19 with all statutes, regulations, and the common law applicable to conflicts between  
 20 different owners of the land and mineral interests in the same land.

21 \* Sec. 5. AS 37.14.036(c), added by sec. 11, ch. 66, SLA 1991, is repealed and reenacted  
 22 to read:

23 (c) As compensation (1) for the land and minerals, or interests in them, that  
 24 constituted the trust established by the enabling Act and that are not reconstituted as  
 25 part of the mental health trust corpus established under AS 38.05.800, and (2) for any  
 26 reduction in value to the trust resulting from the management or disposal of land or  
 27 minerals under AS 38.05.802, the state shall make an annual payment of three percent  
 28 of the unrestricted general fund revenue of the state during each fiscal year. The  
 29 commissioner of revenue shall annually allocate that amount from the general fund to  
 30 the mental health trust income account established in (a) of this section. In this  
 31 subsection, "unrestricted general fund revenue of the state" means all the categories of

1 accounting for money accruing to the state general fund that, under the statewide  
2 accounting system as established on the effective date of ch. 66, SLA 1991, were  
3 identified as revenue that was not restricted by law to a specific use.

4 \* Sec. 6. AS 37.14.036, added by sec. 11, ch. 66, SLA 1991, is amended by adding new  
5 subsections to read:

6 (d) To secure the allocation of amounts required under (c) of this section,  
7 except for land and minerals identified in AS 38.05.800(a)(1), land and minerals  
8 granted to the state under the enabling Act, and that are, on the effective date of ch.  
9 66, SLA 1991, designated by law as a state park, state forest, state game refuge, state  
10 wildlife refuge, state game sanctuary, state recreational area, state recreational river,  
11 state wilderness park, state marine park, state special management area, state public  
12 use area, critical habitat area, bald eagle preserve, bison range, or moose range, are  
13 pledged as security to the mental health trust. Title to this land and minerals remains  
14 in the state and

15 (1) notwithstanding the grant of the land and minerals to the state under  
16 the enabling Act or the pledge of the land and minerals as security, the state may  
17 continue to conduct all activities on the land and minerals that are authorized by law;  
18 and

19 (2) so long as a default does not exist under (c) of this section, income  
20 from that land and minerals shall be deposited in the general fund and considered  
21 unrestricted general funds of the state.

22 (e) Upon default, the foreclosure of the land and minerals pledged as security  
23 under (d) of this section, including the parcels to be foreclosed and the manner of  
24 foreclosure, shall be determined by the superior court.

25 \* Sec. 7. AS 38.04.045(b) is amended to read:

26 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent  
27 for state land, an official cadastral survey shall be accomplished, unless a comparable,  
28 approved survey exists that has been conducted by the federal Bureau of Land  
29 Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08,  
30 or AS 38.09, an official rectangular survey grid shall be established. The rectangular  
31 survey section corner positions shall be monumented and shown on a cadastral survey

1 plat approved by the state. For those areas where the state may wish to convey  
2 surface estate outside of an official rectangular survey grid, the commissioner may  
3 waive monumentation of individual section corner positions and substitute an official  
4 control survey with control points being monumented and shown on control survey  
5 plats approved by the state. The commissioner may not issue more than one  
6 conveyance for each section within a township outside of an official rectangular survey  
7 grid. No portion of land to be conveyed may be located more than two miles from an  
8 official survey control monument except that the commissioner may waive this  
9 requirement on a determination that a single purpose use does not justify the  
10 requirement if the existing status of the land is known with reasonable certainty. The  
11 lots and tracts in state subdivisions shall be monumented and the cadastral survey and  
12 plats for the subdivision shall be approved by the state. Where land is located within  
13 a municipality with planning, platting, and zoning powers, plats for state subdivisions  
14 shall comply with local ordinances and regulations in the same manner and to the same  
15 extent as plats for subdivisions by other landowners. State subdivisions shall be filed  
16 and recorded in the district recorder's office. The requirements of this section do not  
17 apply to land that is to be conveyed to the Alaska Mental Health Trust Authority  
18 established by AS 47.30.011 or to land made available through a cabin permit system,  
19 for material sales, for short-term leases, for parcels adjoining a surveyed right-of-way,  
20 or for land that has been open to random staking under the remote parcel program or  
21 homestead program in the past; however, for short-term leases, the lessee must comply  
22 with local subdivision ordinances unless waived by the municipality under procedures  
23 specified by ordinance. In this subsection, "a single purpose use" includes a  
24 communication site, an aid to navigation, and a park site.

25 \* Sec. 8. AS 38.05.800 is repealed and reenacted to read:

26 Sec. 38.05.800. RECONSTITUTION OF MENTAL HEALTH TRUST  
27 CORPUS. (a) The corpus of the mental health trust includes land and minerals  
28 granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-  
29 830, 70 Stat. 709, that, on the effective date of ch. 66, SLA 1991, have not been  
30 conveyed by the state or reserved by law from the public domain. In this subsection,

31 (1) "conveyed" means that the land or minerals

1 (A) are subject to a contract for the sale of the land entered into  
2 by the state or a municipality of the state;

3 (B) are subject to a patent or deed executed in favor of a  
4 person, a municipality, or the University of Alaska;

5 (C) are subject to a selection by a municipality under AS 29.65  
6 or under former AS 29.18.190 - 29.18.200 that has been approved by the  
7 director before the effective date of ch. 66, SLA 1991;

8 (D) were purchased by the state with federal, state, or joint  
9 federal and state funds in which the related program imposes restrictions on the  
10 management or use of the land or minerals purchased;

11 (E) have been selected by a Native corporation under 43 U.S.C.  
12 1611;

13 (F) are subject to a claim of allotment under 43 U.S.C. 1634 or  
14 is land or minerals for which a certificate of allotment has been issued to a  
15 Native under applicable federal law;

16 (G) have been identified for conveyance as part of an exchange  
17 agreement between the state and a Native corporation or between the state and  
18 the University of Alaska, but the land or minerals were not, on the effective  
19 date of ch. 66, SLA 1991, subject to a patent or deed;

20 (H) are subject to an interagency land management agreement,  
21 interagency land management transfer, management agreement, or management  
22 right and the land or minerals are necessary to carry out the purpose of the  
23 interagency land management agreement, interagency land management  
24 transfer, management agreement, or management right;

25 (2) "reserved by law from the public domain" means that the land or  
26 minerals were, on the effective date of ch. 66, SLA 1991, designated by law as a state  
27 park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state  
28 recreational area, state recreational river, state wilderness park, state marine park, state  
29 special management area, state public use area, critical habitat area, bald eagle  
30 preserve, bison range, or moose range.

31 (b) For purposes of reconstituting the corpus of the mental health trust, the

1 land and minerals described in (a)(1) of this section are includable in the trust corpus  
2 only if both the land and the minerals meet the requirements of (a)(1) of this section.

3 \* Sec. 9. AS 38.05 is amended by adding new sections to read:

4 Sec. 38.05.802. MANAGEMENT OF EXISTING LAND AND MINERAL  
5 INTERESTS IN RECONSTITUTED MENTAL HEALTH TRUST CORPUS. (a)  
6 Land and minerals included in the corpus of the mental health trust under  
7 AS 38.05.800 are subject to the terms, conditions, and provisions, and all rights related  
8 thereto, of a lease, land right convertible to title, timber contract, material sale contract,  
9 land use permit, right-of-way, prospecting permit, exploration permit, water right, or  
10 other land or mineral interest issued by or acquired from the United States or the state  
11 before the effective date of ch. 66, SLA 1991.

12 (b) Land and minerals included in the corpus of the mental health trust under  
13 AS 38.05.800 are subject to a mining claim or mining leasehold location if the claim  
14 or location

15 (1) was acquired on or before the effective date of ch. 66, SLA 1991;

16 (2) was in compliance with applicable laws and regulations that were  
17 in effect on the effective date of ch. 66, SLA 1991; and

18 (3) continues in compliance with applicable laws and regulations at all  
19 times after the effective date of ch. 66, SLA 1991.

20 (c) The department shall manage an interest in land or minerals that is  
21 identified in (a) or (b) of this section as general grant land, subject only to the laws,  
22 including regulations and standards, applicable to general grant land of the state and  
23 without regard to any law that may be applicable to management of other land or  
24 minerals of the trust. However, the proceeds of the management of the land or  
25 minerals managed under this section shall be deposited into the mental health trust  
26 income account under AS 37.14.036(a)(1).

27 (d) The department shall manage an interest in land or minerals that is  
28 identified in (a) or (b) of this section for only as long as the lease, land right  
29 convertible to title, timber contract, material sale contract, land use permit, right-of-  
30 way, prospecting permit, exploration permit, water right, mining claim, mining  
31 leasehold, or other land or mineral interest that qualifies the land or minerals for

1 management under this section continues in effect. When a lease, land right  
2 convertible to title, timber contract, material sale contract, land use permit, right-of-  
3 way, prospecting permit, exploration permit, water right, mining claim, mining  
4 leasehold, or other land or mineral interest identified in (a) or (b) of this section  
5 expires, the land or minerals of the trust that were subject to that interest shall be  
6 managed under AS 37.14.009

7 (e) In the case of land subject to a land right convertible to title issued or  
8 obtained before the effective date of ch. 66, SLA 1991, the authority shall join in  
9 executing the patent or deed that is issued to consummate the issuance of title upon  
10 the conversion of the right. When a patent or deed issues under this paragraph,

11 (A) the land covered by the patent or deed and the minerals are  
12 no longer part of the corpus of the mental health trust; and

13 (B) the land and minerals are released from the mental health  
14 trust established by the enabling Act and from any claim of the authority or of  
15 the beneficiaries of the trust

16 (f) For purposes of (b) of this section, unless closed by court order or by an  
17 order of the department, land and minerals obtained by the state under the enabling  
18 Act are considered to have been open to mineral entry.

19 Sec. 38.05.804. RIGHT OF INTEREST HOLDER TO WAIVE PROVISIONS.

20 A person who holds an interest described in AS 38.05.802(a) or (b) may enter into an  
21 agreement with the authority and with the department to waive the provisions of  
22 AS 38.05.802(c) and have the interest managed as provided by AS 37.14.009.

23 Sec. 38.05.809. DEFINITIONS APPLICABLE TO MENTAL HEALTH  
24 TRUST LAND. In AS 38.05.800 - 38.05.809,

25 (1) "authority" means the Alaska Mental Health Trust Authority;

26 (2) "enabling Act" means the Alaska Mental Health Enabling Act of  
27 1956, P.L. 84-830, 70 Stat. 709;

28 (3) "land right convertible to title" means a lease, entry program right,  
29 or homestead right that includes a right to obtain a patent or deed;

30 (4) "land use permit" means a permit issued by the state authorizing the  
31 use of land;

1 (5) "lease" means an oil and gas lease, coal lease, mining lease, land  
2 lease, and any other surface or mineral lease;

3 (6) "right-of-way" means

4 (A) a right-of-way permit or easement; or

5 (B) a road, utility, or other improvement constructed under an  
6 approved land use application, permit, or letter of entry issued by the  
7 department and for which a right-of-way permit or easement has not, on the  
8 effective date of ch. 66, SLA 1991, been issued;

9 (7) "trust" has the meaning given in AS 47.30.061.

10 \* Sec. 10. AS 47.30.046(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

11 (a) The board shall annually, not later than September 15, submit to the  
12 governor and the Legislative Budget and Audit Committee a budget for the next fiscal  
13 year and a proposed plan of implementation based on the integrated comprehensive  
14 mental health program plan prepared under AS 47.30.660(a)(1). The budget must  
15 include the authority's determination of the amount

16 (1) recommended for expenditure from the mental health trust income  
17 account during the next fiscal year to

18 (A) meet the administrative expenses of the authority, including  
19 the funding for the Department of Natural Resources to manage and  
20 dispose of trust land and minerals under AS 37.14.009 and AS 38.05.809;

21 (B) offset the effect of inflation on the value of the trust corpus;  
22 and

23 (C) meet the necessary operating and capital expenses of the  
24 integrated comprehensive mental health program;

25 (2) recommended for expenditure from the general fund, if any, during  
26 the next fiscal year to meet the necessary operating and capital expenses of the  
27 integrated comprehensive mental health program; and

28 (3) in the mental health trust income account, if any, that is not  
29 reasonably necessary to meet the projected operating and capital expenses of the  
30 integrated comprehensive mental health program that may be transferred into the  
31 general fund.

1 \* Sec. 11. AS 47.30.056(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

2 (a) If appropriated by law, the money in the mental health trust income  
3 account established in AS 37.14.036 shall be used to

4 (1) provide an integrated comprehensive mental health program as  
5 required by this section;

6 (2) meet the authority's annual administrative expenses, including the  
7 costs incurred by the Department of Natural Resources in managing and  
8 disposing of trust land and minerals under AS 37.14.009 and AS 38.05.802 -  
9 38.05.809; and

10 (3) offset the effect of inflation on the corpus of the trust.

11 \* Sec. 12. Section 49, ch. 66, SLA 1991, is amended to read:

12 Sec. 49. AS 37.14.011, 37.14.021, [AS 38.05.800,] AS 47.30.546, secs. 1, 2,  
13 4, and 5, ch. 132, SLA 1986; and secs. 7 - 10, ch. 48, SLA 1987 are repealed.

14 \* Sec. 13. Sections 54, 55, 56, and 57, ch. 66, SLA 1991, are repealed.

15 \* Sec. 14. SPECIAL MASTER. The superior court may refer the proceedings under  
16 AS 22.10.020(j), added by sec. 1 of this Act, to a special master.

17 \* Sec. 15. STATUS OF LAND GRANTED TO THE STATE UNDER THE ALASKA  
18 MENTAL HEALTH ENABLING ACT OF 1956 AND NOT INCLUDED WITHIN THE  
19 CORPUS OF THE RECONSTITUTED MENTAL HEALTH TRUST. On the effective date  
20 of ch. 66, SLA 1991, the land and minerals granted to the state under the Alaska Mental  
21 Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that are not includable within the  
22 corpus of the reconstituted mental health trust under AS 38.05.800(a), repealed and reenacted  
23 by sec. 8 of this Act, are released from the mental health trust established by that Act and  
24 from any claim of the Alaska Mental Health Trust Authority established by sec. 26, ch. 66,  
25 SLA 1991, or the beneficiaries of the trust established by the Alaska Mental Health Enabling  
26 Act of 1956.

27 \* Sec. 16. CONVEYANCE OF LAND TO TRUST. On and after the effective date of ch.  
28 66, SLA 1991, after giving public notice in the manner provided under AS 38.05.945(b) and  
29 (c), the commissioner of natural resources shall convey by patent without survey to the Alaska  
30 Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, title to the land and  
31 minerals that are includable within the corpus of the reconstituted mental health trust under

1 AS 38.05.800(a), repealed and reenacted by sec. 8 of this Act.

2 \* Sec. 17. **CONDITIONAL RETROACTIVE APPLICATION.** If ch. 66, SLA 1991, takes  
3 effect before this Act takes effect, this Act is retroactive to the actual effective date of ch. 66,  
4 SLA 1991.

5 \* Sec. 18. This Act does not take effect unless ch. 66, SLA 1991, takes effect.

6 \* Sec. 19. If this Act takes effect, it takes effect on the effective date of ch. 66, SLA 1991.

# Alaska State Legislature

REPRESENTATIVE  
JEANNETTE JAMES  
P.O. Box 56622  
North Pole, Alaska 99705  
(907) 488-0862



While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-3745

House District 34

## House Of Representatives

### POSITION STATEMENT

### MENTAL HEALTH TRUST LANDS SETTLEMENT

March 29, 1993

3/29/93  
read into record  
by Rep. James  
(907) 488-0862

Legislation cannot solve issues covered in a pending lawsuit such as the Mental Health Trust case; legislation can only make law out of a settlement previously agreed upon by 100% of the involved parties or ordered by the court. I do believe that passing legislation such as HB201 (amendment to Chapter 66) may prompt such a settlement.

I am concerned because HB 201 is open-ended. I think it must include a termination date so as to allow future legislators the freedom to act in accordance with circumstances unforeseen at this time; for example, at some stated future time (ten years?) the security of the legislatively designated lands could be released and the percentage paid to the Mental Health Trust could be altered or eliminated. This of course assumes the continuing obligation of the legislature to appropriate funds as required by law for mental health needs.

According to my calculations, using the value of Mental Health Lands as stated in SB493 in 1990, and applying this value in 1991 dollars to lands not transferable back to the Trust at this date, the balance that would be due to the Mental Health Trust is less than the amount paid to date by the state for mental health capital and operating expenses. Thus the State is PAID UP. I recognize, however, that land alone will not pay for mental health needs and the mental health trust authority will need operating expenses to manage and/or dispose of trust properties. Three percent of unrestricted general fund revenues seems a reasonable allocation and approximates the amount currently being expended and does not preclude the legislature's appropriating additional funds if warranted.

A handwritten signature in cursive script that reads "Jeannette James".

Representative Jeannette James

# FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB201(FIN)

1994 LEGISLATIVE SESSION

Revision Date: 29-Apr-94 REVISED

Dept Affected: Natural Resources

Title: "An Act amending provisions of ch.66 sla 1 191,

BRU: Resource Development

that relate to reconstitution of the corpus of the mental health trust..."

Component: Mental Health Trust (NEW)

Sponsor: House Resources

Requestor: House Resources

Component Serial No. NEW

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	239.9	239.9	239.9	239.9	239.9	239.9
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	475.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>728.9</b>	<b>278.9</b>	<b>278.9</b>	<b>278.9</b>	<b>278.9</b>	<b>278.9</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1004)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	450.0					
1005 GF/Program Receipts						
1006 GF/MHTIA		278.9	278.9	278.9	278.9	278.9
1061 CIP Receipts	278.9					
<b>TOTAL</b>	<b>728.9</b>	<b>278.9</b>	<b>278.9</b>	<b>278.9</b>	<b>278.9</b>	<b>278.9</b>

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

SEE ATTACHED.

The Department of Natural Resources work activities will focus on the conveyance of original trust land and replacement land, the final recordation of the current encumbrances of conveyable original trust land and replacement state land, and the recordation of the aforementioned conveyable lands to the state's status graphics record.

Prepared by: <u>Ron Swanson, Director</u>	Phone: <u>762-2692</u>
Division: <u>Land</u>	Date: <u>29-Apr-94</u>
Approved by Commissioner: <u>Harry A. Noah</u>	Date: <u>29-Apr-94</u>
Agency: <u>Natural Resources</u>	

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB201

Revision Date: \_\_\_\_\_ Dept. Affected: DHSS  
 Title: "An Act amending provisions of ch. 66 SLA 1991, that relate to reconstitution of ..." BRU: Admin Services  
 Component: AMHR  
 Sponsor: House Resources Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. #951

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL	38.5	39.5	40.5	41.5	42.5	43.6
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEDUS						
<b>TOTAL OPERATING</b>	<b>38.5</b>	<b>39.5</b>	<b>40.5</b>	<b>41.5</b>	<b>42.5</b>	<b>43.6</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	38.5	39.5	40.5	41.5	42.5	43.6
Other						
<b>TOTAL</b>	<b>38.5</b>	<b>39.5</b>	<b>40.5</b>	<b>41.5</b>	<b>42.5</b>	<b>43.6</b>

Estimate of any current year (FY94) cost: \$ -0-

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Average travel costs per board member 3500/yr. Fiscal note is calculated on Ch. 66 as passed which would add up to 11 new board members. Inflation after FY 95 is calculated at 2.5%. If amendments, as proposed by the AMHB, pass FY 95 additional cost would be reduced to 10.5, (FY '96=10.8, FY97=11.1, FY98=11.4, FY99=11.7, FY00=12.0).

Prepared by: Deborah Smith, Ex. Director  
 Division: Alaska Mental Health Board

Phone: 465-3071  
 Date: 4/22/94

Approved by Commissioner: \_\_\_\_\_

Date: \_\_\_\_\_

Agency: \_\_\_\_\_

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201(RES)

Revision Date: 12/17/93  
 Title: Mental Health Trust Amendments  
 Sponsor: House Resources  
 Requestor: House Resources

Dept. Affected: Fish and Game  
 BRU: Habitat and Restoration  
 Component: Habitat and Restoration  
 COMPONENT SERIAL NO. 0486

Expenditures/Revenues	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ None

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Prepared By: Frank Rue  
 Division: Habitat and Restoration  
 Approved by Commissioner: [Signature]  
 Agency: Alaska Department of Fish and Game

Phone: 465-4105  
 Date: 12/17/93  
 Date: 12/17/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. Work Draft CSHB 201

Dated 3/27/93

Revision Date: March 28, 1993  
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."  
Sponsor: House Resources Committee  
Requestor: House Resources Committee

Department Affected: Department of Law  
BRU: Legal Services  
Component: Mental Health Lands  
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: March 28, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: March 28, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. Work Draft CSHB 201  
Dated 3/27/93

ANALYSIS CONTINUATION:

Although the March 27 Work Draft of the Resources Committee substitute for HB 201 may help resolve some of the potential constitutional issues raised in our fiscal note analysis of March 11, 1993, it is still likely that there will be substantial challenges to the bill from both without and within the mental health community. For this reason, we cannot predict either a savings or an increase in costs in the Department of Law's current level of effort involving the mental trust and mental health trust lands.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 201

Revision Date: March 11, 1993  
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."  
Sponsor: House Resources Committee  
Requestor: House Resources Committee

Department Affected: Department of Law  
BRU: Legal Services  
Component: Mental Health Lands  
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: March 11, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: March 11, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 201

ANALYSIS CONTINUATION:

Enacting HB 201 as a proposed settlement of the mental health trust lands litigation will require the Department of Law to undertake some substantial effort, including:

1. Efforts to obtain court approval of the settlement. The mental health trust lands litigation is a class action lawsuit. Settlement of that lawsuit must comply with Rule 23 of the Alaska Rules of Civil Procedure. The parties may first need to draft a settlement agreement to present to the court (a settlement agreement may address terms not specifically provided for in the bill). The settlement agreement must then be presented to the court for preliminary approval--the court must determine that the settlement is fair, reasonable, and adequate. Following preliminary approval, notice of the settlement must be given to the class (in general, beneficiaries of the mental health land trust) so that they may comment to the court about the settlement. Only after notice may the court approve the settlement and dismiss the litigation.

The time and effort necessary to obtain final approval of a settlement arising from HB 201 is uncertain because it is not possible to predict what challenges may come. However, possible challenges include:

(a) that the constitutional prohibition against dedicated funds [Article IX, Sec. 7, Alaska Constitution] is violated by the provision in Sec. 4 of HB 201 [to be codified as AS 37.14.036(c)] that allocates 3% of the unrestricted general fund revenue during each fiscal year to the mental health income account, coupled with the restriction that future legislatures and governors may appropriate these amounts for other high priority public needs only if the funds are not "reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program" [Sec. 10, Ch. 66, SLA 1991, to be codified in AS 37.14].

(b) that the dedication of 3% of the unrestricted general fund revenue to the mental health income account [Sec. 4, HB 201], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, HB 201], coupled with the restrictions on appropriating amounts from that account under Sec. 10, Ch. 66, SLA 1991 [see Paragraph (a) above] may be challenged as being contrary to the public interest by persons who believe that the legislature and governor should not be restricted from appropriating public funds for other public needs if those needs are of higher priority (e.g. education, public safety, etc.). Different public interest groups will attach different priorities to the public need for different programs.

(c) that the allocation of 3% of the of the state's unrestricted general fund revenue to the mental health income account in perpetuity [Sec. 4, HB 201], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, HB 201], coupled with restrictions on appropriating "trust funds" [Sec. 10, Ch. 66, SLA 1991] is contrary to the public interest because it provides too much compensation to resolve this litigation. This claim was raised by intervenors Alaska Center for the Environment, et al. with respect to allegations that the state will

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 201

ANALYSIS CONTINUATION:

overcompensate the mental health trust by reconstituting too much land under Ch. 66. This "public interest" challenge could more easily be made as to the state overcompensating the mental health trust with funds under HB 201.

(d) that the transfer of any existing leases to the mental health trust [Sec. 6, HB 201, to be codified as AS 38.05.800(2)] could be challenged by the lessees. Marathon Oil Company and Union Oil Company of California have been permitted to intervene in the mental health trust land litigation to challenge the assignability of state oil and gas leases on state general grant land to the trust authority.

(e) that the combination in one bill of the reconstitution of mental health trust lands [Sec. 6, HB 201] with other substantive provisions [the remainder of HB 201] violates the constitutional provision that bills for appropriation shall be confined to appropriations [Article II, Sec. 13, Alaska Constitution]. The Alaska Center for the Environment, et al. have challenged the constitutionality of Ch. 66 on the grounds that this constitutional provision extends to bills that affect the status of public lands--such as reconstitution of land into the mental health trust.

(f) other challenges may be made by parties opposed to HB 201 as a resolution of the mental health trust lands litigation.

2. Enactment of HB 201 may result in litigation with the mental health trust plaintiffs and third-parties who hold interests in former trust lands over whether particular parcels are suitable for being reconstituted into the trust. The provisions in Sec. 6, HB 201 are ambiguous because the bill does not explicitly validate existing interests in former trust lands nor does it identify the specific parcels that will be reconstituted--e.g. trust land that "has not been conveyed or encumbered by the state" is subject to conflicting interpretations.

The settlement agreement negotiated under Ch. 66, SLA 1991 that provides specifically as to parcels which will be reconstituted will not serve HB 201. Under Ch. 66, SLA 1991 the parties negotiated parcels to be reconstituted with the understanding that for any former trust parcel not reconstituted, the state would provide substitute land of comparable character and equal fair market value--the value obtained by the trust was the same regardless of whether the former trust parcel was reconstituted. Under HB 201, the trust is given an all or nothing choice--reconstitute the former trust parcel or receive nothing. Plaintiffs are likely to claim that any parcel arguably described in Sec. 6, HB 201 for reconstituting must be reconstituted regardless of the impact on the state or third-party interests

The Department of Law currently receives \$589,500 in general funds, and \$1,000,000 in mental health trust funds to implement the Ch. 66, SLA 1991 settlement, including reconstituting the mental health lands trust within the terms of the settlement. The general funds are used to pay for two attorneys, one paraprofessional, and one clerical employee, who carry-out the state's responsibilities under Ch. 66. The mental health trust funds are

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 201

ANALYSIS CONTINUATION:

provided to the plaintiffs who have accepted the settlement so that they can carry-out their responsibilities under Ch. 66.

Because of the uncertainties described above, and because of the potential for continued legal challenges, we do not believe that the current efforts of either the state or the plaintiffs, will be reduced if HB 201 is adopted. This would cause existing resources to be redirected to implement and defend the new law. We cannot say if the bill would cause additional costs due to the uncertainty of potential litigation.

# FISCAL NOTE

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO. HB 201**

Revision Date: Original  
 Title: Mental Health Trust: Alternative Settlement Proposal

Dept. Affected: Natural Resources  
 BRU: Resource Development  
 Component: Land Development

Sponsor: House Resource Committee  
 Requestor: House Resource Committee

COMPONENT SERIAL NO. 431

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	1022.2	817.2	186.1	197.3	209.2	221.8
TRAVEL	7.5	6.0				
CONTRACTUAL	890.0	1625.0	2000.0	2000.0	2000.0	2000.0
SUPPLIES	22.0	14.5				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1941.7</b>	<b>2462.7</b>	<b>2186.1</b>	<b>2197.3</b>	<b>2209.2</b>	<b>2221.8</b>

CAPITAL						
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REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

**FUNDING:**

(Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROG RECEIPTS						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	16	11	2	2	2	2
PART-TIME	1	3				
TEMPORARY	2	2				

Estimate of current year (FY 93) impact \$ 1941.7

**ANALYSIS:** (Attach a separate page if necessary.)

The program impacts of this Legislation are somewhat difficult to determine because of ambiguity in the wording of the legislation. It is unclear if the legislation contemplates the conveyance of unencumbered Original Trust Land to the Trust Authority or its 'redesignation' as Original Trust Land on DNR status plats. We have based our analysis on the premise that the aforementioned land is to be conveyed to the Trust Authority. This interpretation seems appropriate since Sec. 2 AS 37.14.009 (a)(2) allows the Trust Authority to sell, lease, exchange, or otherwise dispose of land in the trust.

Prepared By: Ron Swanson  
 Division: Land

Phone: 762-2692  
 Date: 3/10/93

Approved by Commissioner: Glenn A. Olds  
 Agency: Natural Resources

Date: 3/11/93

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HB 201<sup>1</sup>

DIVISION OF LAND

7100 Personnel Services	FY 94	FY 95
Mental Health Project Team		
(1) Project Manager	80.7	85.5
(1) Lands Manager	55.5	58.8
(2) NRO II	122.6	129.9
(2) NRO I	103.2	130.4
(1) CT III	37.3	39.5
(1) DPC II	39.2	41.3
(2) College Interns	<u>27.5</u>	<u>29.1</u>
	466.0	514.5
Land & Resource Management		
(1) Cadastral Surveyor III	110.2	116.8
Regional Offices		
Northern Regional Office		
(1) NRO II	60.4	32.0
Southcentral Regional Office		
(1) NRO II	60.4	32.0
Southeast Regional Office		
(1) NRO II (6 mo.)	<u>30.2</u>	<u>32.0</u>
Subtotal	727.2	727.3
7200 Travel		
Mental Health Project Team	3.0	3.0
Land & Resources	—	—
Regional Offices		
NRO	1.5	1.0
SCRO	1.5	1.0
SERO	<u>1.5</u>	<u>1.0</u>
Subtotal	7.5	6.0
7300 Contractual Services		
Mental Health Project Team		
Hazardous Substance Inventory	125.0	125.0
Land & Resources		
Cadastral Survey	<u>750.0</u>	<u>1,500.0</u>
Subtotal	875.0	1,625.0

<sup>1</sup> Assumes conveyance of unencumbered OTL to MHTA.

7400 Supplies

Mental Health Project Team	6.0	6.0
Land & Resources	1.5	1.5
Regional Offices		
NRO	1.5	1.0
SCRO	1.5	1.0
SERO	<u>1.5</u>	<u>1.0</u>
Subtotal	12.0	10.5
TOTAL	1,621.7	2,368.8

	<u>94</u>	<u>95</u>
Personnel-Full time	11	9
Part time	1	3
Temporary	2	2

HE 201

LAND RECORD INFORMATION SECTION

	FY 94	FY 95
Personnel Services		
(1) Analyst/Programmer IV	77.0	0
(1) Analyst Programmer III	68.0	0
(1) Natural Resource Officer II	65.0	0
(1) Natural Resource Officer I	50.0	53.0
(1)(Data Processing Clerk I	<u>35.0</u>	<u>37.0</u>
Subtotal	295.0	90.0
Contractual Services		
DOA Data Processing Chargeback	<u>15.0</u>	<u>0</u>
Subtotal	15.0	0
Supplies		
Plotter, Micrographic & Office Supplies	<u>10.0</u>	<u>4.0</u>
Subtotal	10.0	4.0
TOTAL	320.0	94.0

TOTAL PROJECT COST

	FY 94	FY 95
Personnel Services		
Division of Land	727.2	727.3
LRIS	<u>295.0</u>	<u>90.0</u>
Subtotal	1,022.2	817.3
Travel		
Division of Land	7.5	6.0
LRIS	<u>0</u>	<u>0</u>
Subtotal	7.5	6.0
Contractual Services		
Division of Land	875.0	1,625.0
LRIS	<u>10.0</u>	<u>0</u>
Subtotal	890.0	1,625.0
Supplies		
Division of Land	12.0	10.5
LRIS	<u>10.0</u>	<u>4.0</u>
Subtotal	22.0	14.5
TOTAL	1,941.7	2,462.8

Positions	FY 94			FY 95		
	Land	LRIS	Total	Land	LRIS	Total
Full time	11	5	16	9	2	11
Part time	1		1	3		3
Temp.	2		2	2		2

## OUT-YEAR COSTS

Personnel Services	FY 96	FY 97	FY 98	FY 99
Land Manager	62.3	66.1	70.1	74.3
Cadastral Survey	<u>123.8</u>	<u>131.2</u>	<u>139.1</u>	<u>147.5</u>
Subtotal	186.1	197.3	209.2	221.8
Contractural Survey	2,000.0	2,000.0	2,000.0	2,000.0
TOTAL	2,186.1	2,197.3	2,209.2	2,221.8

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 201

Page 2, lines 9 - 13:

Delete all material.

Renumber the following bill sections accordingly.

Page 2, line 31, after "and,":

Insert

"(1) notwithstanding the pledge of the land as security, the state may  
continue to conduct all activities on the land that are authorized by law; and

(2)"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 201

Page 1, line 10, after "(a)":

Delete "The"

Insert "Except for land managed under AS 38.05.802. the [THE]"

Page 2, following line 8:

Insert a new bill section to read:

"\* Sec. 3. AS 37.14.009(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(b) In exercising its power under (a)(1) - (3) [(a)(2) OR (3)] of this section, the authority, or the Department of Natural Resources to the extent it is managing the land assets of the trust under (a)(4) of this section, is not required to comply with AS 38.04 or AS 38.05, except that the authority and the department shall

(1) comply with AS 38.05.285; however, the authority and the department are excused from complying with the requirements of AS 38.05.285 if disposal or use of state land in conformity to that section would conflict with a power, duty, or responsibility of the trustee set out in AS 37.14.007:

(2) give public notice in the manner provided under AS 38.05.945(b)  
and (c)

(A) of a preliminary decision to dispose of trust land and consider any written comments submitted within 30 days of the giving of the public notice before making a final decision; and

(B) of a final decision to dispose of trust land [, BUT IS NOT OTHERWISE BOUND BY THE PROVISIONS OF AS 38.04 OR AS 38.05]."

Re-number the following bill sections accordingly.

Page 2, line 21, after "section.":

Insert "In this subsection, "unrestricted general fund revenue of the state" means all the categories of accounting for money accruing to the state general fund that, under the statewide accounting system as established on the effective date of this bill section, were identified as revenue that was not restricted by law to a specific use."

Page 3, line 12, after "public domain;":

Insert "for purposes of this paragraph, "conveyed or encumbered" means that the land

(A) is subject to a contract for the sale of the land entered into by the state or a municipality of the state;

(B) is subject to a patent or deed executed in favor of a person, a municipality, or the University of Alaska;

(C) has been selected by a corporation under 43 U.S.C. 1611;

(D) is subject to a claim of allotment under 43 U.S.C. 1634 or is land for which a certificate of allotment has been issued to a Native under applicable federal law;

(E) has been identified for conveyance as part of a land exchange agreement between the state and a Native corporation or between the state and the University of Alaska, but the land was not, on the effective date of this Act, subject to a patent or deed;"

Page 3, line 14:

Delete "an oil or gas lease, coal lease, or other lease;"

Inset "a lease;"

Page 3, line 16, after "claim":

Insert "or mining leasehold location"

Page 3, line 19, after "this chapter;":

Insert

"(F) an exploration permit or prospecting permit;

(G) a water right;"

Page 3, following line 24:

Insert a new bill section to read:

\*\* Sec. 8. AS 38.05 is amended by adding new sections to read:

Sec. 38.05.802. MANAGEMENT OF LAND SUBJECT TO EXISTING INTERESTS WITHIN RECONSTITUTED MENTAL HEALTH TRUST CORPUS.

(a) Land included in the corpus of the mental health trust under AS 38.05.800 is subject to the terms, conditions, and provisions of any lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, or water right issued by the United States or by the state before the effective date of this bill section.

(b) Land included in the corpus of the mental health trust under AS 38.05.800 is subject to any mining claim or mining leasehold location if the claim or location

(1) was acquired on or before the effective date of this bill section;

(2) was in compliance with applicable laws and regulations that were in effect on the effective date of this bill section; and

(3) continues in compliance with applicable laws and regulations at all times since the effective date of this bill section.

(c) The department shall manage any land of the trust that is subject to an interest in land that is identified in (a) or (b) of this section as general grant land, subject only to the laws applicable to general grant land of the state and without regard to any law that may be applicable to management of other land of the trust. However, the proceeds of the management of the land managed under this section shall be deposited into the mental health trust income account under AS 37.14.036(a)(1).

(d) The department shall manage land of the trust that is subject to an interest in land that is identified in (a) or (b) of this section for only as long as the lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, or mining leasehold that qualifies the land for management under this section continues in effect. When the last of any lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, or mining leasehold expires, the land of the trust that was subject to that interest must be managed under

AS 37.14.009.

(e) A person who holds an interest described in (a) or (b) of this section may enter into an agreement with the authority and with the department to waive the provisions of (c) of this section and have the land that is subject to the interest managed as provided by AS 37.14.009.

Sec. 38.05.809. DEFINITIONS APPLICABLE TO MENTAL HEALTH TRUST LAND. In AS 38.05.800 - 38.05.809,

- (1) "authority" means the Alaska Mental Health Trust Authority;
- (2) "land"
  - (A) includes both the surface estate and the mineral estate;
  - (B) does not include the land or minerals underlying navigable water;
- (3) "lease" means an oil and gas lease, coal lease, mining lease, land lease, and any other surface or mineral lease;
- (4) "right-of-way" means
  - (A) a right-of-way permit or easement; or
  - (B) a road, utility, or other improvement constructed under an approved land use application, permit, or letter of entry issued by the department and for which a right-of-way permit or easement has not, on the effective date of this bill section, been issued;
- (5) "trust" has the meaning given in AS 47.30.061."

Renumber the following bill sections accordingly.

Page 3, following line 30:

Insert new bill sections to read:

**\*\* Sec. 12. STATUS OF LAND GRANTED TO THE STATE UNDER THE ALASKA MENTAL HEALTH ENABLING ACT OF 1956 AND NOT INCLUDED WITHIN THE CORPUS OF THE RECONSTITUTED MENTAL HEALTH TRUST.** On the effective date of this section, the land, including both the surface and the mineral estate, granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that is not includable within the corpus of the reconstituted mental health trust under AS 38.05.800(a),

repealed and reenacted by sec. 7 of this Act, is released from the mental health trust established by that Act and from any claim of the Alaska Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, or the beneficiaries of the trust established by the Alaska Mental Health Enabling Act of 1956.

\* **Sec. 13. CONVEYANCE OF LAND TO TRUST.** On and after the effective date of this section, after giving public notice in the manner provided under AS 38.05.945(b) and (c), the commissioner of natural resources shall promptly convey to the Alaska Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, title to the land, including both the surface and the mineral estate, that is includable within the corpus of the reconstituted mental health trust under AS 38.05.800(a), repealed and reenacted by sec. 7 of this Act."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 201

Page 1, line 11, after "trust":

Insert "except the land that is managed by the Department of Natural Resources under (4) of this subsection."

Page 2, line 5, after "arrangements":

Insert ": the Department of Natural Resources shall manage the land assets of the trust in a fiduciary manner to fulfill the purposes of the trust"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 201(RES) (8-LS0728\K)

Page 3, line 4:

Delete "state land"

Insert "trust land or minerals"

Page 3, line 8, after "land":

Insert "or minerals"

Page 3, line 11, after "land":

Insert "or minerals"

Page 3, line 18, after "Resources":

Insert ", "

Page 7, line 1:

Delete "(a)(1)"

Insert "(a)"

Page 7, line 2:

Delete "(a)(1)"

Insert "(a)"

Page 9, line 20:

Delete "AS 38.05.809"

Insert "AS 38.05.802 - 38.05.809"

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Juneau, Alaska 99801-2105

### MEMORANDUM

March 18, 1993

**SUBJECT:** Amendments E.5 and E.6 to House Bill 201 (Work Order No. 8-LS0728\E.5 and E.6)

**TO:** Representative Bill Williams, Chair  
House Resources Committee  
ATTN: Mary McDowell

**FROM:** Jack Chenoweth *Chenoweth*  
Legislative Counsel

#### Amendment E.5:

Per suggestion, I had two discussions yesterday with Rick Johansen, attorney for Usibelli Mines, and have redrafted yesterday's amendment E.4 to respond to points covered in that discussion.

Under the changes proposed in House Bill 201 as it is before you, there would be two alternatives available for managing land. The Department of Natural Resources would, under AS 37.14.009(a)(4), manage the trust's land assets. Alternatively, under that same paragraph, the Alaska Mental Health Trust Authority would have the option of making "other arrangements" for management of trust lands.

The mechanism that amendment E.5 would put into place is a third land management alternative, specifically applicable to land that is added back to the reconstituted trust corpus and that is subject to one of the interests in land spelled out by law. That management arrangement is spelled out in the proposed AS 38.05.802. That land, subject to third party interests, would, so long as the interests are operative, be managed by the department as general grant land, not subject to the trust provisions.

I think the amendment drafted, E.5, is responsive to all the points of yesterday's discussion. I told Rick Johansen that you would fax a copy to him for review.

#### Amendment E.6:

The bill, House Bill 201, substitutes a mandatory duty--the Department of Natural Resources "shall . . . manage the land assets of the trust"--for the discretionary

Representative Bill Williams

March 18, 1993

Page 2

authority set out in ch. 66, SLA 1991--"may contract . . . to manage the land assets of the trust." In the middle of my conversation with Mr. Johansen, I realized that, by making that substitution, we neglected to make two very significant related changes.

Those changes are picked up by amendment E.6.

As House Bill 201 is drafted, there is a conflict between proposed AS 37.14.009(a)(1)--"[t]he trust authority shall manage the assets of the trust . . ."--and AS 37.14.009(a)(4)--"the Department shall . . . manage the land assets of the trust." The first part of amendment E.6 recognizes the division of responsibilities between the two.

As House Bill 201 is drafted, there is no management standard stated for the department's management of the trust land, and arguably the department may conclude that it may manage as it pleases. The intent, as I understand, is that the department shall manage to the same standard as the trust authority, that is, "in a fiduciary manner to fulfill the purposes of the trust." Consistent with the intent of the change in AS 37.14.009 as I understand it, the second part of amendment E.6 explicitly sets out that standard.

Amendment E.6 is not dependent on adoption of amendment E.5. It cleans up the bill as currently drafted and should be considered by the committee even if E.5 is not adopted.

JBC:pl  
93-210.plm

Enclosure

## EXPLANATION OF AMENDMENT E.5 TO HOUSE BILL 201

Prepared for House Resources Committee Hearing  
March 19, 1993

### The Basic Structure of Chapter 66, SLA 1991

Establishes the Mental Health Trust Authority. Contains significant "program" provisions. Generally reconstitutes the land trust with non-legislatively designated OMHTLs which have not been conveyed by the state (including OMHTLs that are subject to third-party interests, such as leases). Uses "substitute land" to compensate the trust for the conveyed and legislatively designated OMHTLs not returned to the trust.

The "substituta lands" are the fuel for the fire. The public interest intervenors (PIIs) have challenged Chapter 66 in court, primarily because of issues involving the substitute lands. The oil company intervenors (Unocal and Marathon) have challenged Chapter 66 in court because they have leases on proposed substitute lands (PSLs). The attorneys for the state and the mental health beneficiaries have disagreements over the appropriateness of the plaintiff's PSLs and the nature and quantity of substitute land required to compensate the trust. Developmental interests are adversely affected by the land "freeze" imposed on PSLs (in addition to the land "freeze" continuing to affect OMHTLs and "hypothecated lands").

Chapter 66 contains a "stepdown" funding provision requiring that a percentage of the unrestricted revenue of the state be allocated to the mental health trust income account in each fiscal year beginning with FYE 1992 and ending in FYE 2003.

### The Basic Structure of SB 67 and HB 201

Retains the Mental Health Trust Authority. Retains the significant "program" provisions. Retains reconstitution of the land trust with non-legislatively designated OMHTLs which have not been conveyed by the state (including OMHTLs that are subject to third-party interests, such as leases).

But, under SB 67 and HB 201, the "fuel for the fire" (substitute lands) is removed from the settlement. In its place, the trust receives monetary compensation for the OMHTL that is not being returned to the trust. Under HB 201, that

compensation is 3% of the "unrestricted general fund revenue of the state" during each fiscal year (under SB 67, the number is 6%). Because the money is intended to compensate the trust for the land that cannot be returned, there is no cut-off date for the payment. The "stepdown" funding provision in Chapter 66 is eliminated.

To secure the annual payment to the trust, legislatively designated OMHTLs are pledged as collateral for the state's obligation to allocate the required amount to the mental health trust income account each year.

The reconstituted land trust will consist basically of the same OMHTLs that would have been returned to the trust under Chapter 66. Two differences are: (1) OMHTLs subject to mining claims will be returned to the trust (under Chapter 66, the plaintiffs had the option to accept or reject these lands); and (2) OMHTL contained in the Haines State Forest Resource Management Area and the Tanana Valley State Forest will not be returned to the trust.

#### Summary of Changes Made by Amendment E.3 to HB 201

##### 1. Two Categories of Trust Land for Management Purposes.

The proposed amendments essentially break the OMHTLs being returned to the trust into two categories of land for management purposes.

1.1 "Section 9" Land. The first category, which could be called "Section 9" land (because management of these lands is governed by Section 9 of AS 37.14) consists of OMHTLs that are not currently covered by any third-party interests (such as a lease, contract, mining claim) or appropriated uses (such as rights-of-way) and are truly owned by the state as "vacant" undeveloped lands. These Section 9 lands would be managed under AS 37.14.009 according to whatever land management standards are ultimately adopted to manage trust land under a fiduciary standard that fulfills the purposes of the trust. HB 201 requires the Trust Authority to contract with DNR to manage these Section 9 lands unless the Trust Authority determines that this is not in the best interest of the trust beneficiaries. If DNR manages the Section 9 lands under contract with the Trust Authority, DNR must do so under AS 37.14.009 (which requires that the assets be managed in a fiduciary manner to fulfill the purposes of the trust).

1.2 "Section 802" Land. Under the proposed amendments, the second category of land, which can be referred to as "Sec-

tion 802" land (because management of these lands is governed by new Section 802 of AS 38.05), consists of CMHTLs that are currently subject to a third-party interest (such as a lease, contract, or mining claim) or an appropriated use (such as a right-of-way). These Section 802 lands are returned to the trust, but the proposed amendments require that they be managed by DNR under AS 38.05.802. Section 802 makes it clear that the trust takes these lands subject to the third-party or appropriated interest. In addition, Section 802 requires DNR to manage these lands as general grant land under DNR's normal land management procedures. The Trust Authority does not have management authority over Section 802 lands and they are not managed by DNR pursuant to any contract with the Trust Authority. Because these lands are subject to existing interests, the Trust Authority is simply "divested" of any land management function and it is "business as usual" for DNR and all third-party interest holders. The only exception is that all income and proceeds from the management of these Section 802 lands are required to be deposited by DNR in the mental health trust income account. In addition, the third-party interest holder, the Trust Authority, and DNR can enter into a three-party agreement to waive Section 802 status and to have the land managed under Section 9 of AS 37.14. This allows a third-party interest holder to "opt in" to the Trust Authority land management system once the Trust Authority has established a stable land management program and a successful track record. Finally, when a particular parcel of Section 802 land is no longer subject to any protected third-party interest or appropriated use, management of the land "reverts" to the Trust Authority so that the land becomes Section 9 land.

## **2. Public Interest Safeguards.**

As under Chapter 66, Section 9 trust land can be managed by the Trust Authority (or by DNR as the Trust Authority's contractor) without compliance with AS 38.04 or AS 38.05. But the proposed amendments contain a requirement designed to require "multiple purpose use" of Section 9 trust land whenever possible, consistent with the Trust Authority's fiduciary obligations. In addition, the proposed amendment requires public notice of any disposals of Section 9 trust land, a 30-day comment period, and a final public notice of any Section 9 trust land disposals. Section 802 trust land is managed like general grant land and therefore remains subject to AS 38.04 and AS 38.05.

## **3. Definition of Unrestricted General Fund Revenue.**

The proposed amendments also contain a definition of "unrestricted general fund revenue of the state." The defi-

dition ties the meaning of this phrase to the manner in which money is categorized under the statewide accounting system as of the effective date of the Bill. The purpose of this provision is to remove the possibility that future restrictions imposed by the legislature on general fund revenues will have a negative impact on the dollar amount used for calculating the percentage allocated to the trust. No limitation is placed on the legislature's ability to impose future restrictions, but for purposes of calculating the amount to be paid to the trust, any such future restrictions would be disregarded.

#### 4. Macallanacua Provisions.

The proposed amendments contain several new definitions which are designed to clarify ambiguities in Chapter 66 (such as the meaning of "conveyed or encumbered" CMHTL that is not being returned to the trust). The proposed amendments also clarify that those lands not being returned to the trust are permanently released from any claim of the trust. As under Chapter 66, the proposed amendments also require an actual conveyance of title to reconstituted trust land from DNR to the Trust Authority.

#### Further Discussion of Specific Amendments

##### Page 1, Line 10:

This amendment to AS 37.14.009(a) contains the cross-reference to AS 38.05.802 which overrides AS 37.14.009 and divests the Trust Authority of land management power over reconstituted trust lands that are subject to third-party interests or appropriated uses.

##### Page 2, following Line 8:

This amendment to AS 37.14.009(b) contains the public interest safeguards that are applicable to the management of Section 9 trust lands in lieu of AS 38.04 and AS 38.05. The amendment requires land management decisions affecting Section 9 trust lands to comply with the state constitution and the principles of multiple purpose use consistent with the public interest. However, the amendment also recognizes that the trust principles established in AS 37.14.007 (as they exist in Chapter 66) must take priority if they conflict with multiple purpose use. The remaining language in the proposed amendments provides a 30-day public comment period to precede final Section 3 trust land disposal decisions, in order to insure that trust beneficiaries, trust land developers, people who use trust lands for other purposes, and other

members of the public have an opportunity to have their views considered by the Trust Authority. This proposed amendment also requires public notice of final decisions to dispose of Section 9 trust lands.

**Page 2, Line 21:**

This amendment to AS 37.14.036(c) is the definition of "unrestricted general fund revenue of the state."

**Page 3, Line 12:**

This amendment to AS 38.05.800 contains the definition of "conveyed or encumbered" land that is not being returned to the trust.

**Page 3, Line 14:**

This amendment to AS 38.05.800 simplifies the language because Section 809 now contains a definition of "lease" (which includes an oil or gas lease, coal lease, or other lease).

**Page 3, Line 15:**

This amendment to AS 38.05.800 makes Section 800 consistent with Section 802 by specifying those third-party interests that trigger the return of that particular land to the trust.

**Page 3, Line 19:**

This amendment to AS 38.05.800 makes Section 800 consistent with Section 802 by specifying those third-party interests that trigger the return of that particular land to the trust.

**Page 3, following Line 24:**

This amendment is the new Section 802 which is the heart of the proposed amendments. Subsections (a) and (b) clarify that any land being returned to the trust remains subject to the terms, conditions, and provisions of all third-party rights (such as leases, contracts, mining claims, and permits) and appropriated uses (such as rights-of-way). Unlike third-party interests such as leases, there is no legal document to reflect the terms of mining claims or leasehold locations and DNR normally makes no "validity" determination. The holders of mining claims and leasehold locations would therefore be

subject to the status quo -- they would face whatever challenges they might face from the trust that they could face from DNR. The trust simply takes subject to the claimant's rights, if any. Subparagraph (c) is the mandatory provision requiring DNR to manage all trust land that is subject to any third-party interest or appropriated use. To eliminate the threat of litigation by third parties against the trust and the state over private contract rights, this section requires DNR to manage these Section 802 lands as general grant land for as long as the third-party interests remain in effect. Subsection (d) is the "reverter" provision which converts Section 802 land to Section 9 land when the third-party interests have expired. Subsection (e) is the provision allowing a third party to "opt in" to Section 9 once the Trust Authority has established its land management program and a track record.

The definition of "land" contained in new Section 809 is intended to clarify that if either the surface estate or mineral estate is "conveyed or encumbered" then neither estate is returned to the reconstituted trust. In addition, if any third-party interest or appropriated use has been carved out of either the surface or mineral estate, then DNR must manage the entire estate like general grant land for as long as the third-party interest or appropriated use remains in effect. This is necessary to avoid "split estate" problems that arise when different persons control the surface and mineral estates.

The definitions of "lease" and "right-of-way" are intended to simplify the language of both Section 800 and Section 802 which contain these terms. "Authority" and "trust" are also defined to simplify the language in Section 802 which contains these terms.

Page 3, following Line 30:

New Section 12 is the provision that explicitly releases and removes from the trust all OMHTL not being returned to the trust.

New proposed Section 13 is the provision which explicitly requires DNR to convey title to the reconstituted trust land to the Trust Authority. The provision also clarifies that both the surface estate and the mineral estate are to be conveyed to the trust. The same public notice process (a 30-day public comment period) which was contemplated for conveyances of land under Chapter 66

from DNR to the Trust Authority is retained in  
Section 13.

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

VERN T. WEISS, father and next )  
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child, and EARL HILLIKER, on )  
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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

REVIEW DRAFT

SETTLEMENT AGREEMENT

REVIEW DRAFT

This Review Draft is being provided to interested people prior to formal signing by the parties. There may be some modifications to this Review Draft prior to signing. The Exhibit Package has not yet been completed and will be available upon completion.

QUICK REFERENCE GUIDE  
AND  
BRIEF ANALYSIS ON PAGE 2

ANALYSIS OF PROPOSED AGREEMENT

by  
Philip Volland

The review draft of the proposed settlement agreement further establishes that Chapter 66 is unworkable. This proposed agreement:

\* fails to address the current major legal challenges to Chapter 66. These include the legality of the Legislature's hypothecation (appropriation) of the security land, the applicability of Section 6i of the Statehood Act and other essential terms of the agreement.

\* places severe restrictions on development of some of Alaska's most promising 5 million acres of land during the years of litigation resulting from Chapter 66.

\* misleads innocent third parties into believing that the cloud on their titles will soon be removed.

\* obligates the legislature to pay millions of dollars to DNR and the attorneys each year to implement a settlement that may never be approved.

Key provisions which demonstrate these problems are:

ONGOING AND INCREASING LITIGATION:

Chapter 66 must be reviewed and upheld by the Superior Court, the Alaska Supreme Court, and the U.S. Supreme Court. Only then can Chapter 66 be presented to the court for approval and implementation.

\* The State and the Plaintiffs realize that the U.S. Supreme Court may ultimately decide that the proposed land exchange violates Section 6i of the Statehood Act. If that happens the parties have agreed that they will have 60 days to find a solution or they will terminate the agreement and resume the original litigation. (pp. 29-30) Despite nearly a year of work, this same lack of an adequate response is applied to the problems associated with the hypothecation (p. 32).

\* Other essential terms of the agreement such as the law applicable to reconstitution (pp. 27-28), the management of Trust Lands (p. 39), the management of hypothecated lands (p. 46), and the release of hypothecated lands (p. 29) are subject to legal challenges. If any of these challenges are successful, the settlement may be voided.

#### LAND USE RESTRICTIONS:

During the upcoming years of litigation, the following land use restrictions must apply:

Original Trust Lands (one million acres) The injunction and the Lis Pendens will remain (pp. 56-57). This land will also be totally closed to mineral entry (p. 45).

Hypothecated Lands (four million acres) These lands will not be released until substitute land is conveyed to the Trust (pp. 28-29), a process that must await approval of the agreement, identification of the land, selection of the land, resolution of disputes over the value of the land, and the actual survey and conveyance of the land. Meanwhile, no mineral entry or other actions which devalue the land are allowed (p. 46).

Proposed Substitute Land (additional acres chosen from any state land) These lands are also closed to entry or disposal (p. 47).

Third Party Lands (thousands of individuals) The proposed agreement suggests that the hardships which will be suffered by innocent third parties because of the years of ongoing litigation will be cured by a temporary release of the Lis Pendens and modification of the injunction (p. 34). In fact, the Plaintiffs have retained the right to reassert claims to such lands if and when the proposed settlement fails (p. 35). The third parties gain no benefit or security from such a transparent and illusory arrangement.

#### IMPLEMENTATION COSTS:

As of the signing of the proposed agreement, the Legislature is obligated to appropriate sufficient funds for the plaintiffs to carry out the reconstitution process (p. 42). The plaintiffs are entitled to court orders necessary to carry out this requirement (p. 43). This obligation extends to DNR as well (p. 42). This obligation begins immediately and continues until the end of the litigation over Chapter 66 whether or not the proposed settlement is ever approved (p. 44). The proposed amount for FY 93 is over \$6 million.

#### CONCLUSION

The defects in Chapter 66 have not been cured. Some have been made worse and new ones created. However, the Governor made a bold and good faith attempt last year to settle this issue. That effort has led directly to a viable alternative settlement proposal that would cure the problems with Chapter 66 and could be implemented within months.

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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, )  
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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.

(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 provi-

sions 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 Settle-

ment 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 at 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, homestead, 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) contained in the grant from the federal government, 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 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 contract 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 65, 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 Plain-

tiffs 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 greatly exceeds the amount of land foreseeably required to reconstitute 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 Substance, 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 created 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 dif-

ference 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 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