

CHUGACH ALASKA CORP.

IBLA 95-382

Decided January 28, 1998

Appeal from a Decision of the Alaska State Office, Bureau of Land Management, rejecting historical place selection application AA-11011.

Affirmed as modified.

1. Alaska Native Claims Settlement Act: Conveyances: Cemetery Sites and Historical Places--National Historic Preservation Act: Generally

Section 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (1994), authorizes the Secretary of the Interior to withdraw and convey existing historical places and cemetery sites to the appropriate regional corporation. A selection application for a historical place is properly rejected when the site does not meet the criteria set forth at 43 C.F.R. § 2653.5.

2. Administrative Procedure: Burden of Proof--Alaska Native Claims Settlement Act: Conveyances: Cemetery Sites and Historical Places

A party challenging BLM's rejection of its historical place selection application under section 14(h)(1) of ANCSA bears the burden of establishing by a preponderance of the evidence that such rejection is in error.

APPEARANCES: Peter Giannini, Esq., Chugach Alaska Corp., Anchorage, Alaska, for Appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Indian Affairs and the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Chugach Alaska Corporation (Chugach) has appealed from a Decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 22, 1995, rejecting its historical place application filed December 18, 1975, as amended on September 10, 1980, pursuant to section 14(h)(1) of the

Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1) (1994). The application described lands in sec. 14, T. 3 S., R. 11 E., Seward Meridian.

The site, known as Kweexlak Smokehouse Site, is on Patton Bay on the Gulf of Alaska side of Montague Island. According to the Bureau of Indian Affairs (BIA) Report of Investigation (Report), Chugach "marked the site location on United States Geological Survey (USGS) quadrangle map, 1:63,360, Blying Sound (D-1 and D-2)." (Report at 7.)

A statement in the record states that the Kweexlak Smokehouses were used by the Montague Island people to carry out traditional economic and cultural activities during winter, spring, and summer. The larger smokehouses were described as being made of split logs and being about 55 feet in length. They were used to smoke meat and salmon, and the last smokehouse was reported to be still standing in 1929. According to the statement, "significance is based on site association with traditional history, historical use in support of important cultural and economic activities and resource potential towards development of more refined knowledge of the Chugach Native [p]ast." The statement is undated and does not disclose authorship or sources.

The BIA Report states that, according to information provided by Natives, the Kweexlak Smokehouses were used for traditional economic and cultural activities. In later times, the site at issue was used by Native trappers, and, as of the time of the Report, it was still used by Native and non-Native hunters in the fall.

On June 9, 1980, BIA/ANCSA and National Park Service Cooperative Studies Unit (CPSU) personnel conducted an investigation of the site, which was surveyed and found to embrace approximately 5.4 acres. According to the Report, several notched trees were found near a recently constructed Forest Service cabin. According to CPSU personnel, these trees were probably used by Natives to collect pitch for fire starting purposes. No remains of a smokehouse or other Native artifacts were found.

On December 28, 1981, BIA certified that this application was not eligible for the following reasons:

1. Extensive field investigation by BIA/ANCSA personnel failed to find any evidence to substantiate the claim for Kweexlak Smokehouse site as a historical place.
2. A smokehouse does not qualify as a historical place under 43 C.F.R. § 2653.0-5 Definitions, Subpart (b), and under 43 C.F.R. § 2653.5(d)1-5.

(Certificate of Ineligibility at 1.) The BLM decision under appeal quoted and adopted these findings.

In its statement of reasons (SOR), Chugach recites the facts of use of the site as they appear in the statement of record and BIA's Report. Chugach asserts that, according to Native elders, more than one smokehouse stood on this site. In its own May 1990 field investigation, Chugach "located a deteriorated wooden structure at the southern end of the site location." (SOR at 4.) This structure is described as a 3.3 meter x 6 meter log cabin with "three tiers remaining that are covered by moss." (SOR, Ex. C at 31.) Chugach requested BIA to reinvestigate the site, but BIA declined. Chugach asserts that BIA's site investigation was inadequate and that its discovery of the dilapidated structure warrants reinvestigation and subsurface testing.

In their Answer on page 11, BIA and BLM (Appellees) assert that the site does not meet the threshold definition of a historical place because it is not alleged that a significant, important Native historical event occurred on the site. Appellees note that the general Native activities said to have occurred on the site (seal hunting and salmon fishing) are not qualifying activities under the controlling regulation. Appellees assert that the cabin remains are not large enough to be the remnants of a smokehouse and that there is no indication that the cabin was of Native origin. Appellees state that no showing has been made that the site possesses outstanding and enduring symbolic value, or that, upon additional investigation, it would yield important culturally historic information. (Answer at 11-13.)

[1] Section 4(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (1994), authorizes the Secretary to withdraw and convey fee title to "existing \* \* \* historical places." Regulation 43 C.F.R. § 2653.0-5(b) defines "historical place" as follows:

(b) Historical place means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wool gathering, or reindeer husbandry. However, such uses may be considered in the evaluation of the sustained native historical activity associated with the tract or area.

The criteria for determining whether a site constitutes a historical place are set out at 43 C.F.R. § 2653.5(d), which provides:

For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

- (1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or
- (2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or
- (3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or
- (4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or
- (5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

The regulation at 43 C.F.R. § 2653.5 precisely articulates the criteria to be used in determining whether a site is a "historical place." A qualifying building or structure must possess "artistic distinction or historical importance." If a building is reconstructed, it must be "accurately executed in a suitable environment and preserved in a dignified manner." 43 C.F.R. § 2653.5(e)(1) and (5). Insofar as we can determine, the regulatory criteria do not exclude a building or structure by virtue of its particular purpose. Under 43 C.F.R. § 2653.0-5 Definitions, "hunting, fishing, berry-picking, wood gathering or reindeer husbandry" are generally excluded. However, smokehouses are not mentioned in either these definitions or 43 C.F.R. § 2653.5(e)(1) through (5), which refer only to "buildings," "structures," or "reconstructed" buildings. Consequently, the possibility of a historically significant smokehouse is not foreclosed by the regulations. Therefore, BLM's Decision is modified to the extent it endorsed BIA's conclusion that a smokehouse could not qualify under the regulations as a historically or culturally significant building.

In this case, however, the record does not show that a building or structure bearing the characteristics enumerated in the regulation was found on the site. Chugach asserts that it found a dilapidated structure, but no further information as to origin or use of the building was provided. We agree that the building does not correspond to the description of the historic smokehouses once present in Alaska. Consequently there was no proof of historical or cultural significance. Moreover, no nexus exists between this site and outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Natives. Under these circumstances, Appellees properly concluded that the site did not qualify as a historical place.

Under the circumstances of this case, there is no further duty of BIA to engage in a further cultural or historical survey of the site because there are no identified sources of evidence originating on the site which would justify such an effort.

[2] Chugach, as the party challenging BLM's Decision rejecting its selection application, bears the burden of establishing by a preponderance of the evidence that such Decision is in error. Chugach has failed to meet this burden. See, e.g., Sealaska Corp., 127 IBLA 22, 31 (1993); Minchumina Homeowners Association, 93 IBLA 169, 178 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed as modified.

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David L. Hughes  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge

