

CHUGACH ALASKA CORP.

IBLA 96-20 Decided October 6, 1998

Appeal from a Decision of the Alaska State Office, Bureau of Land Management, rejecting Native historical place selection application AA-11041.

Affirmed as modified.

1. Alaska Native Claims Settlement Act: Conveyances: Cemetery Sites and Historical Places

BLM properly rejects a Native historical place selection application filed pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(h)(1) (1994), and 43 C.F.R. Subpart 2653, where the applicant fails to establish, by a preponderance of the evidence, that the site is the situs of sustained historical Native activity or that it otherwise qualifies as an historical place under the statute and regulations.

APPEARANCES: Peter Giannini, Esq., Chugach Alaska Corporation, Anchorage, Alaska, for the Chugach Alaska Corporation; Maria Lisowski, Esq., Office of the General Counsel, U.S. Department of Agriculture, Juneau, Alaska, for the U.S. Forest Service; Joseph D. Damell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management and the Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Chugach Alaska Corporation (Chugach), a Native regional corporation, has appealed from an August 29, 1995, Decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting its Native historical place selection application AA-11041 for an historical site, filed pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. § 1613(h)(1) (1994), and its implementing regulations, 43 C.F.R. Subpart 2653.

The site, known as the Applegate Island Summer Camp (the site), is located approximately 22 miles south of Whittier in the Chugach National

Forest on the southwest side of Applegate Island, a small island at the southern entrance to the Culross Passage in the Port Nellie Juan area of Prince William Sound. The site originally contained 80 acres of land, but was later reduced to a 2.11-acre area which was surveyed by BLM (U.S. Survey No. 6911) and is described as the SW¹/₄NW¹/₄SW¹/₄ sec. 12, T. 6 N., R. 7 E., Seward Meridian, Alaska.

Regulation 43 C.F.R. § 2653.5(f) required that Chugach's application include a statement "describing the events that took place and the qualities of the site from which it derives its particular value and significance as a[n] historical place." In its statement, Chugach relied on the existence of ruins of subterranean Native dwellings, called barabaras, at the site:

In Frederica de Laguna's book Chugach Prehistory, she states that a Native elder reported in 1911 that there were still barabara ruins on the southern end of Culross Island, on the mainland opposite, and also on Applegate Island.

A sweeping systematic survey of the historical sites [applied for] should reveal outstanding and demonstrably enduring symbolic values that represent a distinctive construction pattern of the barabaras in the prehistoric period of the Chugach culture.

On June 1 and 3, 1981, the site was examined by Bev Niles and Marcella Moore, two field investigators from the Bureau of Indian Affairs (BIA), and William Mitchell, an anthropologist from the Cooperative Park Studies Unit (CPSU), University of Alaska; CPSU was acting on behalf of the National Park Service (NPS). Subsequently, Chugach conducted its own examination of the site in May 1994.

None of the examinations revealed any evidence of barabara ruins. However, structural remains were found indicating the previous existence of a small cabin. (Report (ANCSA 14(h)(1) Site Survey Form, dated May 7, 1982) at 26.) Anthropologist Mitchell reported that

local Native elders told us the cabin was used by Frenchy Eliashansky, a well-known local Native whose winter home was on Crafton Island. It was used while trapping and traveling through the area. The ruin appears to be 20 to 30 years old. The elders say Frenchy used the place since the 1920s and had several tent frames and cabins there at different times. Others had used the area before him, but the elders could not remember much about them.

Frenchy Eliashansky was one of the first Natives in the area to become a successful commercial trapper and fox farmer,

ways of life that eventually led to the abandonment of the traditional subsistence life-style.

(Report (ANCSA 14(h)(1) Site Survey Form, dated May 7, 1982) at 30.)

On September 21, 1983, NPS submitted to BIA the CPSU findings that the site qualified as a Native historical place. However, BIA rejected those findings, and issued a Certificate of Ineligibility pursuant to 43 C.F.R. § 2653.5(j) on August 13, 1984, certifying that the site was not eligible for conveyance to Chugach for the following reasons:

1. Extensive field examination by BIA personnel failed to find any evidence supporting a claim of a Native historical place.
2. The site is described as a summer fishing camp, and, as such, is specifically excluded from selection as a Native historical place by 43 C.F.R. 2653.0-5(b), Definitions.
3. The site is not associated with any event or person of known significance in the history of the Alaska Native peoples.
4. This site does not meet the criteria for selection as a Native historical place as required by 43 C.F.R. 2653, *et seq.*

Relying on BIA's certification, BLM's August 29, 1995 Decision rejected Chugach's selection application in its entirety. Chugach timely appealed that Decision to this Board.

In its statement of reasons for appeal (SOR), Chugach contends that although no barabara ruins were found, "investigation revealed unequivocal evidence of sustained Native habitation" at the site. (SOR at 3-4.) Chugach argues that ethnographic information, together with physical evidence recovered on and around the site, demonstrates that the site was used and inhabited by Eleshansky and other unnamed predecessors since at least the 1920's. *Id.* at 11. Chugach states that during its own investigation in May 1994, it found additional evidence of Native habitation in the form of "structural remains, fire cracked rocks, and several culturally modified trees (CMTs)." *Id.* at 6 (footnotes omitted.) Chugach also notes that it has proof that Norman and Henry Selanoff, two other Natives, were born at Eleshansky's summer camp site in the 1930's. *Id.* at 7.

Chugach asserts that BLM ignored the evidence supporting its application, and asks the Board to reverse BLM's Decision or, in the alternative, set it aside and remand the case to BLM for further investigation and consideration. (SOR at 20-21.)

In their Answer, BIA and BLM argue that Chugach has failed to show, by a preponderance of the evidence, that the site meets any of the regulatory criteria as an historical place.

[1] Section 14(h)(1) of ANCSA authorizes the Secretary of the Interior to "withdraw and convey to [a Native] Regional Corporation fee title to existing * * * historical places." 43 U.S.C. § 1613(h)(1) (1994). Implementing regulations define an historical place as

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, wood gathering, or reindeer industry. However, such uses may be considered in the evaluation of the sustained Native historical activity associated with the tract or area.

43 C.F.R. § 2653.0-5(b). Further, regulations provide that in determining the eligibility of a site as an historical place,

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.

43 C.F.R. § 2653.5(d).

In its Decision, BLM found that the site did not qualify as an historical site because, as a summer fishing camp, it was "specifically excluded from selection as a Native historical place by 43 C.F.R. 2653.0-5(b)." (Decision at 1.) However, we find no language in 43 C.F.R. § 2653.0-5(b) which specifically excludes summer fishing camps from consideration as historical places. While the regulation provides that sustained historical Native activity "shall not include hunting, fishing, berry-picking, wood

gathering, and reindeer industry," it also provides that "such uses may be considered" in evaluating the sustained historical Native activity associated with an area. Thus, under the regulation, the use of a site for fishing does not preclude consideration of other uses which may constitute sustained historical Native activity. BLM's decision is modified accordingly.

While Chugach argues that the site was the situs of a significant Native historical event, we find no evidence in the record to support such finding. See SOR at 13; Ahtna, Inc., 137 IBLA 111, 114 (1996). Therefore, the remaining issue in this appeal is whether the site qualifies as an historical place because it was the situs of sustained historical Native activity. For the reasons set forth below, we conclude it does not.

Chugach must prove, by a preponderance of the evidence, that the site qualifies under section 14(h)(1) of ANCSA and 43 C.F.R. Subpart 2653, as a situs of sustained historical activity by Alaska Natives. See Chugach Alaska Corp., 142 IBLA 387, 391 (1998). Objects found at the site must demonstrate the existence of a particular Native historical endeavor of cultural significance associated with the site. Chugach Alaska Corp., 142 IBLA at 391. Also, the site must be judged on its own merits; it cannot qualify as an historical site based on the historical merits of the surrounding area. Chugach Alaska Corp., 142 IBLA at 390.

In this case, the record establishes that the site was used and occupied by Frenchy Eleshansky, an Alaska Native, for a period of time starting in the 1920's. There is no evidence that the two Selanoff brothers lived on the Island for any length of time after their birth. Nor is there any evidence that others had inhabited the specific site before Eleshansky, other than unspecific allegations of Native elders. (Report at 30.)

Sustained historical Native activity at the site is not established by evidence that past inhabitants of the Native village of Chenega generally used and occupied the surrounding islands, including Applegate Island, during the summer. See SOR at 14. Even if we presume that such activity encompassed Applegate Island, there is no evidence that it included the specific site at issue here. See Chugach Alaska Corp., 142 IBLA at 390.

We also find that the site does not meet any of the following criteria set forth at 43 C.F.R. § 2653.5(d).

The fact that the site "exemplifies a vital part of traditional Native culture in the area, the seasonal return to settlements around Chenega," (SOR at 14), does not demonstrate that it is "associated with events that have made a significant contribution to the history of Alaskan [Natives]." 43 C.F.R. § 2653.5(d)(1). Nor are we persuaded that the site has "outstanding and demonstrably enduring symbolic value" under 43 C.F.R. § 2653.5(d)(3), because it "provides a direct link to a past way of life." (SOR at 16.) The abandonment of migratory subsistence activities in favor of lifestyles tied to commercial fishing operations was not unique to the site at issue. See Ahtna, Inc., 137 IBLA at 115.

Further, the record does not support a finding that Eleshansky was a "person[] significant in the past of Alaskan [Natives]." 43 C.F.R. § 2653.5(d)(2). Chugach states that he was a "well-known character in Chenega and Prince William Sound history" and was one of the first Prince William Sound Natives to "successfully adapt [his subsistence lifestyle] to the international fur trade." (SOR at 15.) The mere fact that he was well-known and adapted to a new lifestyle earlier than many other Chenega villagers does not mean he can be considered "significant in the past" within the meaning of the regulation. See Ahtna, Inc., 137 IBLA at 115.

Moreover, we do not find that the ruins of Eleshansky's cabin found on the site "embody the distinctive characteristics of a type, period, or method of construction." 43 C.F.R. § 2653.5(d)(4). While Chugach states that the construction method was distinctive of the period of Native transition from traditional to modern means, (SOR at 17), we find nothing to distinguish Eleshansky's cabin from other cabins of that era. This does not satisfy the regulatory criterion. See Ahtna, Inc., 137 IBLA at 115.

Also, the "debris scattered about the site," (SOR at 16), has not yielded any "information important in prehistory or history." 43 C.F.R. § 2653.5(d)(5). At best, it provides "evidence of relatively recent (twentieth century) habitation." (SOR at 17-18.) Such evidence does not provide important information regarding the prehistory or even history of the Alaska Natives in the area. Nor is there any evidence that the site is demonstrably likely to provide such information. See Ahtna, Inc., 137 IBLA at 115.

Chugach maintains that BLM did not consider the evidence uncovered by its May 1994 field examination or the recommendation of the CPSU anthropologist, who also examined the site, that it be considered suitable for conveyance as an historical place. (SOR at 2, 18-19.) It argues that the case must be remanded to BLM for that purpose.

In its August 1995 Decision, BLM did not specifically discuss Chugach's evidence or the CPSU anthropologist's recommendation. However, it is clear that such recommendation was considered by BLM. The recommendation, along with its supporting analysis, was presented to and considered by BIA, in making its historical place eligibility determination. See Report at 2, 21-36. BIA's analysis was, in turn, set forth in its April 23, 1984, Report, which was provided to BLM, along with a copy of the recommendation and supporting analysis, and relied upon by BLM in reaching its Decision.

Nor are we convinced that the evidence in support of BLM's determination is inconclusive, thus requiring that we remand the case for further investigation and consideration. (SOR at 19 (citing Sealaska Corp., 126 IBLA 383, 393 (1993)).) Rather, the record substantiates BLM's finding that the site does not qualify as an historical place.

Thus, we find that Chugach has failed to show, by a preponderance of the evidence, that the site was the situs of any sustained historical Alaska Native activity, and conclude that BLM's rejection of Chugach's Native historical place selection application AA-11041 was proper.

To the extent Chugach has raised arguments which we have not specifically addressed herein, they have been considered and rejected.

Accordingly, 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.

John H. Kelly
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

