

CHEFARNRMUTE, INC.

IBLA 82-1218

Decided August 24, 1983

Appeal from decision of Alaska State Office, Bureau of Land Management, finding lands proper for village selection and approving interim conveyance. F-14848-A and F-14848-AZ.

Affirmed as modified.

1. Alaska: Alaska Native Claims Settlement Act--Alaska Native Claims Settlement Act: Generally--Alaska Native Claims Settlement Act: Conveyances: Village Conveyances--Alaska Native Claims Settlement Act: Native Land Selections: Village Selections

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township of townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

2. Alaska: Alaska Native Claims Settlement Act--Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Generally--Withdrawals and Reservations: Generally

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. V 1981).

APPEARANCES: Joe Arugiak, chairman, Chefarnrmute, Inc., Chefnak, Alaska, for Chefarnrmute, Inc.; Bruce Shultheis, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On November 22, 1974, Chefarnrmute, Inc. (Chefarnrmute), filed selection application F-14848-A under the provisions of section 12(a) of the Alaska Native Claims Settlement Act (ANCSA) of 1971, 43 U.S.C. §§ 1601, 1611 (1976), for the surface estate of certain lands in the vicinity of the Native village of Chefnak, Alaska. On December 13, 1974, an amendment to application F-14848-A was filed on behalf of Chefarnrmute. This application was subsequently rejected for not having sufficiently described the lands selected. On October 7, 1975, an amended Chefarnrmute priority list was submitted to

the Bureau of Land Management (BLM). On October 10, 1975, BLM notified Chefarnrmute that the priority list submitted exceeded the allowable acreage by 1,445 acres primarily because two of the rivers and none of the lakes designated by Chefarnrmute as being navigable had been found to be navigable by BLM. This notice discussed excess acreage and noted that sec. 25, T. 1 N., R. 87 W., would be subject to an airport lease.

Following meetings with representatives of Chefarnrmute, a letter of determination was sent to Chefarnrmute on June 29, 1982. It had been determined that 82,977 acres of land selected by Chefarnrmute pursuant to section 12(a) of ANCSA had been found to be proper for acquisition by Chefarnrmute and approved for conveyance. Following this decision, notice of appeal was filed on behalf of Chefarnrmute. A statement of reasons and supplemental statement of reasons were then filed with this Board. 1/

Based upon a motion filed on April 15, 1983, an order was issued segregating the lands subject to this appeal from the balance of the lands formed to be proper for conveyance, and remanding those lands not segregated to BLM for conveyance to Chefarnrmute. 2/ The following lands remain subject to the Chefarnrmute appeal: T. 1 N., R. 86 W., Seward meridian, secs. 19, 22 through 26, 30, 31, 35, and 36; T. 1 N., R. 87 W., Seward meridian, sec. 25.

In its statement of reasons Chefarnrmute outlined four reasons for the appeal. These were:

1. Chefarnrmute did not expressly select lands surrounding two bodies of water in secs. 23 through 26 and secs. 35 and 36, T. 1 N., R. 86 W., Seward meridian.
2. The corporation was "subjugated" to accept a Free Use Permit (M-36-I/D) between the U.S. Fish and Wildlife Service and the State of Alaska, Department of Transportation.
3. "We would like to have Sec. 21 of T. 2 N., and R. 87 W. removed from our DDIC."
4. "We would like a guarantee that we will be allowed to have input in establishment of our land selections boundaries on the aerial photo to be used."

The Native land selection made by Chefarnrmute was made under the provisions of 43 U.S.C. § 1611 (1976 and Supp. V 1981), which provides in pertinent part with respect to the first reasons for appeal stated by Chefarnrmute:

§ 1611. Native land selections

(a) Acreage limitation; proximity of selections and size of selections and units; waiver

1/ The statement of reasons described the land as being within T. 6 N., R. 86 W. No land in this township had been the subject of the decision.

2/ In addition, BLM stated a stipulated description of the sections which were subjected to the appeal and restated the basis for the appeal.

(1) * * * the Village Corporation for each Native village * * * shall select * * * all of the township or townships in which * * * the village is located * * *.

(2) Selections made under this subsection (a) of this section shall be contiguous and in reasonably compact tracts, except as separated by bodies of water * * * and shall be in whole sections and, wherever feasible, in units of not less than 1,280 acres: Provided, That the Secretary in his discretion and upon the request of the concerned Village Corporation, may waive the whole section requirement where--

(A)(i) a portion of available public lands of a section is separated from other public lands in the same section by lands unavailable for selection or by a meanderable body of water;

(ii) such waiver will not result in small isolated parcels * * *; and

(iii) such waiver would result in a better land ownership pattern * * *; or

(B) the remaining available public lands in the section have been selected and will be conveyed to another Native Corporation * * *.

T. 1 N., R. 87 E., Seward meridian, is the township in which the village of Chefornak is located. This is the "core" township for the village selection. ^{3/} The language found in 43 U.S.C. § 1611(a) (1976) is mandatory, not permissive. The village corporation shall select all of the township or townships in which the village is located. Therefore, unless there is a specific legislative exception to the provision that the village corporation shall select all of the township, the village is required to include any lands within the township not otherwise excluded.

Chefarnrmute urges this Board to find that 43 CFR 2650.5-1 applies to secs. 23 through 26 and secs. 35 and 36. The applicable portion of section 2650.5-1 states:

§ 2650.5-1 General.

* * * * *

(b) * * * The beds of all nonnavigable bodies of water comprising one half or more of a section shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlement under the act, unless the section containing the body of water is expressly selected or unless all the riparian

^{3/} A "core" township was defined in House Report (Interior and Insular Affairs Committee) No. 96-97(I) as "that township which encloses all or part of the improved area constituting the Village." H.R. Rep. No. 97, 96th Cong., 2d Sess. 278, reprinted in 1980 U.S. Code Cong. & Ad. News 5070, 5222.

land surrounding the body of water is selected. No ground survey or monumentation will be required to be done by the Bureau of Land Management of bodies of water.

We believe, however, that the code provision more correctly applicable to Chefarnmute's selection can be found at 43 CFR 2651.4(b) and (c) which provides:

§ 2651.4 Selection limitations.

* * * * *

(b) To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available lands within the township or townships within which all or part of the village is located, and shall complete its selection from among all other available lands. Selections shall be contiguous and, taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact, except where separated by lands which are unavailable for selection or a section in which a body of water comprises more than one-half of the total acreage of a section. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

(c) The lands selected under sections 12(a) or (b) shall be in whole sections where they are available, or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres. Lands selected under section 16(b) of the Act shall conform to paragraph (b) of this section and shall conform as nearly as practicable to the U.S. land survey system.

[1] The selection filed on behalf of Chefarnmute in 1974 listed all of the sections which are the subject of this appeal. When listing these sections the portions determined to be covered by a nonnavigable lake (then thought by Chefarnmute to be navigable) were deducted. Chefarnmute now appeals on the basis that these lands were not specifically selected. It does not matter whether or not Chefarnmute did or did not specifically select the lands. Both the statute and the regulation clearly state that the village shall select all available lands within the township within which the village was located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be a part of the selection. We find no error in the determination that the lands were available and within the core township.

[2] The second reason for appeal was the issuance of a permit for an airport right-of-way issued by this Department to the State for certain lands shown on the protraction diagrams to be within T. 1 N., Rs. 86 and

87 W., Seward meridian. The permit describes the land as containing 203.9 acres. The permit also states that it is issued "within the provisions of Section 22(j) of the Alaska Native Claims Settlement Act (43 USC 21(i) (1976 and Supp. IV 1980)." The record shows that the land in question has been used as an airport since 1969 and that the primary purpose for issuance of the permit was to allow the State of Alaska to seek funds for airport improvement from the Federal Aviation Administration. In that the lands were used for airport purposes or have been deemed necessary for the purpose of providing the services related thereto, upon conveyance to Chefarrrmute, the land will be conveyed to the State of Alaska pursuant to the provisions of 43 U.S.C. § 1613(c)(4) (Supp. V 1980) which provides:

(4) the Village Corporation shall convey to the Federal Government, State, or to the appropriate Municipal Corporation, title to the surface estate for airport sites, airway beacons, and other navigation aids as such existed on December 18, 1971, together with such additional acreage and/or easements as are necessary to provide related governmental services and to insure safe approaches to airport runways as such airport sites, runways, and other facilities existed as of December 18, 1971[.]

In that the June 29, 1982, decision found the conveyance should only be subject to the free use permit, it was in error. The conveyance to Chefarrrmute is also subject to the right of the State of Alaska to receive a conveyance of the land pursuant to 43 U.S.C. § 1613(c)(4) (Supp. V 1980). State of Alaska, 67 IBLA 380 (1982); State of Alaska, 67 IBLA 344 (1982). Therefore, conveyance to Chefarrrmute shall include such covenants which the Secretary deems necessary to insure the fulfillment of Chefarrrmute's obligations pursuant to 43 U.S.C. § 1613(c)(4) (Supp. V 1980).

We find that the third and fourth reasons for appeal stated by appellant do not aver to error in the issuance of the determination, but merely state a desire with respect to future action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, as amended, the decision appealed from is affirmed, as modified.

R. W. Mullen
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

