

INTERIOR BOARD OF LAND APPEALS

Ahtna, Inc.

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AHTNA, INC.

IBLA 93-254

Decided December 5, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting historical place selection application AA-60733.

Affirmed as modified.

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

Sec. 14(h)(1) of the Alaska Native Claims Settlement Act, 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. BLM properly rejects a selection application for a historical place when the record fails to establish that the site is associated with Native historical or cultural events or persons or that the site was subject to sustained historical Native activity.

APPEARANCES: Matthew L. Ganley, Glennallen, Alaska, for Ahtna, Inc.; Joseph D. Darnell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Alaska Region, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Ahtna, Inc., has appealed from a January 13, 1993, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting historical place selection application AA-60733, filed on December 17, 1975, pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1) (1994) and 43 CFR 2653.5(a). ^{1/} In the application, as amended, Ahtna selected a small island at the confluence of the MacLaren and Susitna Rivers in sec. 25, T. 32 N., R. 25 E., Seward Meridian, Alaska, containing "an historic Indian trapping cabin." Ahtna identified the selection as "Secondchief's cabin."

^{1/} BLM originally assigned the application serial number AA-10688. Upon the filing of an amendment of the application on Mar. 2, 1987, BLM redesignated the application as AA-60733.

Following an onsite investigation and the preparation of a report of that investigation (Report), the Acting Area Director, Juneau Area Office, Bureau of Indian Affairs (BIA), on September 28, 1989, issued a certificate of ineligibility for the site. In declaring the site ineligible, the Acting Area Director listed the following reasons for his conclusion:

1. A field investigation was conducted by BIA personnel who were unable to find sufficient evidence to support the claim for a Native historical place.
2. This cabin was built primarily as a base for a trapping operation. As such, it is specifically excluded from qualification as a historical place by 43 CFR 2653.0-5(b), Definitions.
3. Secondchief's Cabin does not meet the criteria for qualification as a Native historical place as required by 43 CFR 2650, et seq.

(Report at ii). In rejecting the application in its January 13, 1993, decision, BLM merely repeated the Acting Area Manager's reasons set forth above.

[1] Section 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (1994), authorizes the Secretary to convey fee title to historical places to the appropriate regional corporation under certain circumstances and subject to various restrictions. A "historical place" is defined at 43 CFR 2653.0-5(b) 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 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 the quality of significance in Native history or culture are set out at 43 CFR 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.

Ahtna, 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. Sealaska Corp., 127 IBLA 59, 67 (1993); Sealaska Corp., 115 IBLA 257, 262 (1990).

The issue in this case is not whether Secondchief's cabin is of historical importance to Ahtna, but whether that site constitutes a "historical place" within the meaning of ANCSA and the regulations. We conclude that it does not.

According to Joe Secondchief, he and his brother Jimmy built the cabin in the 1920's, and he and his brother Dick used the cabin as a base for trapping. Joe Secondchief and his wife Morrie lived in the cabin during the winters of 1929 and 1930. Later, apparently sometime in the early 1930's, Joe Secondchief and his wife sold the trapline and cabin to a non-Native trapper named Clark for \$100 (Report at 6-7, 16). Most of the cultural remains found at the site by the BIA investigators, except for the cabin itself, which was in a "moderate state of decay," consisted of material post-dating Native occupancy of the site (Report at 9-11).

On appeal, Ahtna asserts that Secondchief's cabin site qualifies for historical place status because BIA recognized at page 15 of its Report that the site was important to Ahtna Native history and had future research potential with regard to local and regional patterns of cultural change. Such a finding, Ahtna asserts, supports conveyance in accordance with 43 CFR 2653.5(d)(5).

Ahtna denies that Secondchief's cabin should have been rejected solely because it was a base for trapping operations. Ahtna states that "the area in which the site is located is a traditional area of Western Ahtna who were perhaps the first Ahtna people to contact EuroAmerican culture, notably Russian traders at Knik, circa the 1820's, either directly or through

Dena'ina Athabascans. This group of Ahtna then became intensely involved in the fur trade during this period" (Statement of Reasons (SOR) at 1). Ahtna contends that its people and other Natives readapted to trapping during the 1920's and 1930's due to the "economic, health, and social conditions of the period" and that "trapping afforded the Western Ahtna a means of balancing external pressures and internal, cultural traditions" (SOR at 2). Ahtna asserts that "this site is representative of, and a monument to, the Ahtna people's history." Id.

BLM does not denigrate the significance of this site to Ahtna. It points out, however, that the site does not meet the definition of a historical place, as set out in 43 CFR 2653.0-5(b).

Under the definition of historical place, there must first be "a distinguishable tract of land or area." Next, there must either have been a "significant Native historical event" on that land, which is "importantly associated with Native historical or cultural events or persons" or that land must have been "subject to sustained historical Native activity."

The first criterion of the definition is satisfied because Secondchief's cabin is on a distinguishable tract of land. However, the record is devoid of any evidence that there was either a significant Native historical event on that land or that the land was subject to sustained historical Native activity. ^{2/} The only evidence in the record of a Native event taking place on the site was the construction of the cabin by the Secondchief brothers in the 1920's. Although Ahtna's claims that the site lies in a traditional area of Western Ahtna where "perhaps" the first contact between the Ahtna people and Euro-American culture took place, there is no evidence that Secondchief's cabin is in any way related to such an event. The only record evidence of Native historical activity on the site is statements concerning the Secondchiefs' trapping operations in the 1920's and early 1930's. There is no evidence of further Native use of Secondchief's cabin at any time following its sale to a non-Native. The Secondchiefs' trapping operations cannot be considered "sustained" Native historical activity on the site.

It is clear from examination of 43 CFR 2653.5(d) that Native construction and use of Secondchief's cabin does not rise to the level of

^{2/} We find no basis for BIA and BLM's conclusion that a cabin built primarily for a trapping operation is "specifically excluded" from qualification as a historical place under 43 CFR 2653.0-5(b). That regulation states that sustained Native historical activity "shall not include hunting, fishing, berry-picking, wood gathering, or reindeer husbandry." The regulation makes no mention of trapping. To the extent the BLM decision rejected the application on the basis that a cabin built primarily for a trapping operation was "specifically excluded" from qualification as a historical place under the regulation, the decision is modified.

significance in Native history or culture necessary to merit designation as a historical place under section 14(h)(1) of ANCSA. Under that regulation, a place would be significant if it possessed "integrity of location, design, setting, materials, workmanship, feeling and association" and satisfied one of five additional criteria. The first is that it be associated with events that have made a significant contribution to the history of Alaska Natives. While Ahtna asserts that trapping was a significant region-wide activity in the 1920s and 1930s, there is no evidence of specific events at Secondchief's cabin that would distinguish it from any other trapping cabin built and maintained during that period. The second is that it be associated with the lives of persons significant in the past of Alaska Natives. Although the Secondchiefs may have been respected members of the Ahtna people, there is no evidence that they can be considered "persons significant in the past," within the meaning of the regulation.

Third, there is no evidence, nor does Ahtna argue, that the site possesses outstanding and demonstrably enduring symbolic values in the traditions and cultural beliefs and practices of Alaska Natives. Fourth, the cabin itself does not embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values. The cabin is merely the remains of a typical trapping cabin for that period built by Natives and non-Natives alike.

Fifth, there is no evidence that the site would likely yield anything of prehistoric interest and even though BIA stated in its Report that the site was important to Ahtna Native history and has "research potential," there is no evidence that it is "demonstrably likely to yield information important in * * * history." However, even assuming that Secondchief's cabin satisfies this fifth criterion, that alone would not justify a conveyance under section 14(h)(1) of ANCSA.

Therefore, while the Secondchief's cabin is of historical value to Ahtna, it does not qualify as a historical place under ANCSA and the applicable regulations. It may not be conveyed to Ahtna under authority of section 14(h)(1).

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

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Will A. Irwin
Administrative Judge