INTERIOR BOARD OF LAND APPEALS

Chugach Alaska Corp.

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CHUGACH ALASKA CORP.

IBLA 95-386 Decided February 11, 1998

Appeal from a decision of the Alaska State Office, rejecting historical place selection application AA-10791.

Affirmed.

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

Section 14(h)(1) of ANCSA authorizes the Secretary of the Interior to withdraw and convey existing historical places and cemetery sites to the appropriate regional corporation. 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. 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.

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 or the Bureau), dated March 22, 1995, rejecting historical place application AA-10791, filed December 18, 1975, pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1) (1994).

The site, known as "Esther Bay," is located in the Chugach National Forest, 25 miles east of Whittier, Alaska. According to the Bureau of Indian Affairs' (BIA's) Investigation Report (Report), Chugach "marked the site location on United States Geological Survey (USGS) quadrangle map, 1:63,360, Seward (D-3)." (Report at 6.) On June 2, July 27, and

August 17, 1981, a field investigation of the site was conducted. The BIA conducted aerial prelocations of the site with three Native informants. None of these informants could remember specific Native activity within or near the application area. On June 2, 1981, an on-site field investigation was conducted, including an archeological reconnaissance. Two horizontally-cut trees were located, but no other cultural features were found. On August 17, 1981, based on information received from the State Historic Preservation Office, the site was again investigated, and "a rockshelter, containing midden soil * * * was located." 1/ The BIA interviewed Native informants who indicated that old buildings had existed in 1928 and spoke of "about four or five barabara" at the head of the Bay. 2/ However, National Park Service Cooperative Park Studies Unit (CPSU) Archeologist Linda Medlock and BIA Field Investigator Mark Luttrell concluded "that insufficient cultural evidence existed to justify a cadastral survey." (Report at 6-8.)

On July 24, 1984, BIA certified that this application was not eligible for the following reasons:

1. Extensive field investigation by BIA personnel failed to find any evidence supporting the claim of a Native historic place.

2. The site is not associated with any event or person of known significance in the history of the Alaska Native peoples.

3. The site does not meet the criteria for selection as a Native historical place as required by 43 C.F.R. § 2653, et seq.

The Bureau's Decision quoted and affirmed these findings.

In its SOR, Chugach asserts that during its own investigation of the Esther Bay site on April 26, 1994, "a well rounded hammer stone with battered ends" and "[e]vidence of prehistoric man (manuports)" were found. 3/ Chugach states that "it is not clear" whether BIA, in its investigation, "attempted to locate the remains of any of the three to four barabaras (noted at the head of the bay)," as indicated by two Native informants. (SOR at 3.)

Chugach refers to a prehistoric burial cave on an island southeast of Esther Bay. This site, which contained the remains of at least two

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1/ The State Historic Preservation Office stated: "[R]ock shelter, midden soil, no shells, no bones, no artifacts recovered, no burials apparent." (Report at 7.)
2/ "Barabara" is a Russian term that means subterranean dwelling. (Statement of Reasons (SOR) at 2-3.)
3/ Chugach states that a "manuport" is a rock tool indicative of prehistoric man. (SOR at 1-4; Ex. C.)

individuals and four artifacts (a slate blade, whetstone, and two pieces of worked bone) was certified as eligible for conveyance as a cemetery site. (SOR, Ex. D.) 4/ Chugach describes this site as being "in the immediate area of the" Esther Bay site. (SOR at 4.) Chugach asserts that the presence of artifacts, the presence of a burial cave in the area, and the oral record "would seem to warrant a more extensive field investigation by the BIA." Chugach asserts that BIA erred in not conducting a further site investigation. (SOR at 4-5.)

In their Answer, BIA and BLM (Appellees) assert that nothing of significance has been found at the Esther Bay site and that no significant event was identified. Appellees note that the oral reports placed the barabaras "somewhere at the head of the bay," and not on the site. Appellees contend that the artifacts found do not "necessarily indicate the occurrence of a significant event or even sustained Native use for purposes other than generalized uses such as hunting and fishing." (Answer at 9.) They argue that, "[s]ince nothing of historic significance has been found at the site, the site cannot possibly `possess integrity of location, design, setting, materials, workmanship, feeling and association,'" as required by 43 C.F.R. § 2653.5(d). (Answer at 10.)

Appellees note that Chugach merely characterizes the Esther Bay site as "somehow part of the unity of historic activities in Esther Bay." (Answer at 10-11.) This is not enough, Appellees argue, to qualify the site for conveyance, in absence of "any significant finding at the site" or "distinctive characteristics," as required by 43 C.F.R. § 2653.5(d). (Answer at 10-11.)

[1] Section 14(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, 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.

4/ This exhibit includes an unnumbered page from the investigative report of this site. The site, serialized by BLM as AA-10988, is not identified by name, but referred to as "an island in Esther Bay."

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:
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> (1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or
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> (2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or
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> (3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or
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> (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(d) contains a requirement phrased as "integrity of location, design, setting, materials, workmanship, feeling and association." A historical site or place qualifies as such based on the characteristics of the site in its own right or on the historical events that occurred there, not on the characteristics of another site which was evaluated on its particular merits. The regulation does not speak of site "complexes" or clusters. Nor does it indicate that a site lacking the characteristics specified, or evidence of historical events, may qualify as a historical place based on the merits of another site. Nothing in the regulation requires the weighing of geographical proximity between an already certified site and a site being evaluated as a factor bearing on the qualification of the latter. Thus, the qualifications of the cemetery site on the island cannot be borrowed to support the site's status as a historical place.

With respect to the artifacts found, there has been no showing that these objects (1) are associated with significant events; (2) are associated with the lives of persons significant in the past; (3) have outstanding and demonstrably enduring value; (4) have distinctive characteristics of a type, period, or method of construction, or are possessed of high artistic values; or (5) would likely yield important prehistoric or historic information.

Chugach has not shown that the found objects demonstrate the existence of a particular Native historical endeavor of cultural significance associated with the site. Nor has Chugach shown the essential connection between an event or events of specific historical or cultural significance and this particular site. While the artifacts may indicate that Native activities occurred on the site, these activities, without grounding in a particular Native historical endeavor of cultural significance are not sufficient to qualify the selection under section 14(h)(1) of ANCSA. See Sealaska Corp., 127 IBLA 59, 68 (1993).

Chugach asserts that BIA should again examine the site. However, Chugach has not offered evidence that BIA was superficial in its original investigation of the site. The record shows that multiple site investigations were made by BIA and CPSU personnel and that knowledgeable Natives provided their input.

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 decision is in error. Sealaska Corp., 115 IBLA 257, 262 (1990). Chugach has not met this burden, and BLM's determination of ineligibility is properly affirmed.

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.

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David L. Hughes
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge