

INTERIOR BOARD OF LAND APPEALS

Chugach Alaska Corp.

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CHUGACH ALASKA CORP.

IBLA 96-23      Decided January 21, 1999

Appeal from a Decision of the Alaska State Office, Bureau of Land Management, rejecting Native historical place selection application AA-11055.

Affirmed.

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

A BLM decision rejecting 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), will be affirmed where the applicant fails to establish, by a preponderance of the evidence, that the site qualifies as an historical place.

APPEARANCES: Peter Giannini, Esq., Chugach Alaska Corporation, Anchorage, Alaska, for the Chugach Alaska Corporation; Maria C. 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 Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Chugach Alaska Corporation (Chugach), has appealed from a September 1, 1995, Decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting its Native historical place selection application, AA-11055, for the Deer Cove Summer Village site (the 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). Briefing has been completed and includes Chugach's Statement of Reasons (SOR), an Answer and a Supplement to Record filed by the Bureau of Indian Affairs (BIA) and BLM, and Chugach's response to the Supplement to Record.

In its application, Chugach described the site as comprising 80 acres of land in the protracted fractional SE<sup>1</sup>/<sub>4</sub> sec. 13, T. 17 S., R. 9 W., Copper

River Meridian, Alaska. The site is located at Deer Cove on the northwest shore of Hinchinbrook Island, in Prince William Sound. All of the land sought is within the Chugach National Forest, and thus under the jurisdiction of the U.S. Forest Service, U.S. Department of Agriculture.

Chugach asserted that the site had been used historically by Natives from the village of Nuchek as a summer village to collect and process salmon, and as a travel camp when bad weather prohibited travel through the Hinchinbrook entrance to Nuchek. Chugach noted that Native elders recalled the site included a smokehouse, and stated that archaeological excavation should lead to refined understanding of seasonal travel, site use patterns, and variations of smokehouse structures in the Chugach region.

The BIA, together with the Cooperative Park Studies Unit (CPSU), University of Alaska (acting on behalf of the National Park Service), examined the site on July 12, 1979. Two BIA field investigators, accompanied by a CPSU anthropologist, initially performed a transected archaeological survey of the entire site. (BIA Report at 7.) The examiners reported that they "were unable to find any traces of a village." *Id.* The examiners also interviewed several knowledgeable local Natives, and reported: "One resident stated that \* \* \* he did not think that the site was used by the people from Nuchek \* \* \*. Another resident stated that the site may have been used as a fish camp but he was not certain." (BIA Report at 21.) Finally, in establishing the boundaries of the site to include the area of possible use, the examiners surveyed the site, reducing its area to 11.2 acres. (BIA Report at 7.)

On December 28, 1981, BIA issued a Certificate of Ineligibility for the site for the following reasons:

1. Extensive field investigations by BIA\ANCSA personnel failed to find any evidence supporting the claim of a historical site.
2. Interviews with knowledgeable Native informants failed to produce corroborative evidence of the existence of the site.
3. The site does not meet the criteria for a historic site as specified in 43 CFR 2653.0-5(b) and 43 CFR 2653.5(d), et seq.

(BIA Report at B.) Following BIA's certification of ineligibility, Chugach conducted its own investigation of the site during the summer of 1993, and advised BIA of its findings by letter of April 6, 1994. Enclosed in that letter was an amendment splitting the tract of land covered by the original description into two parcels, which were separated by less than 1/4 mile. Chugach moved its original tract 1/4 mile to the north, still next to Deer Cove, to encompass a band of over 100 old culturally-modified trees, which stretched along the shore of Deer Cove which it had discovered in 1993. Chugach's other parcel covered entirely new land just north of Deer

Cove. This land, called Tangimacuaq, was reported to have been a travel camp and smokehouse site, also found in 1993 to encompass over 150 old culturally-modified trees.

Subsequently, on May 3-4, 1995, eight BIA investigators again examined the site as defined in Chugach's original application, and as described in the amendment. (Report of Reinvestigation (Report) at 2.) The examiners confirmed the presence of about 40 scarred trees within and extending beyond the boundaries of the original tract. They also conducted subsurface testing within the tract, digging four small pits, but found no cultural remains, although they dug down to beach gravel. However, they did count more than 325 "aboriginally scarred trees \* \* \* during an extensive foot traverse around the shore of Deer Cove." Id. Additional subsurface testing in the amended area to the north uncovered no cultural remains, but disclosed a layer of charcoal at two different depths, which BIA attributed to forest fires. By letter dated March 12, 1996, BIA provided a copy of its Report to Chugach, indicating that the eligibility status of the site remained unchanged. A copy of the letter and the Report were sent to BLM.

Relying on BIA's December 28, 1991, certification, BLM rendered its September 1995 Decision rejecting Chugach's selection application in its entirety. Chugach timely appealed therefrom.

On appeal, Chugach asks that the Board reverse BLM's Decision, or set aside the Decision and remand the case to BLM for further consideration and investigation.

[1] Section 14(h)(1) of ANCSA authorizes the Secretary of the Interior to "withdraw and convey to the appropriate 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." 43 C.F.R. § 2653.0-5(b). The regulations further 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)

As the party challenging BLM's Decision, Chugach has the burden to prove, by a preponderance of the evidence, that the Decision was in error. See Chugach Alaska Corp., 142 IBLA 387, 391 (1998); Ahtna, Inc., 137 IBLA 111, 113 (1996) and cases cited.

In its SOR, Chugach argues BLM's Decision "failed to consider or even mention the evidence uncovered in the 1993 Chugach survey and the 1995 BIA reinvestigation of the site." (SOR at 15.) Chugach also asserts that BLM's Decision failed to adjudicate its 1994 amendment.

As to Chugach's 1993 survey and 1994 amendment, the record shows that the lands identified in the amendment were, in fact, examined by BIA investigators during their May 1995 reinvestigation, and that their Report considered Chugach's findings in its 1993 survey. (Report at 2.) Moreover, BIA sent a copy of the Report to BLM by letter of March 12, 1996, advising that it had elected not to change its earlier finding that the site was not an historic place. While BLM received the Report after it had issued its 1995 Decision, it had the option of vacating its Decision based on the Report, but elected not to do so. Under these circumstances, we conclude that evidence from the 1993 and 1995 investigations of the site, along with Chugach's 1994 amendment, were adequately considered by BLM.

Chugach has not shown, by a preponderance of the evidence, that the site qualifies under 43 C.F.R. § 2653.0-5(b) as the site of a "significant Native historical event." Even assuming that Natives inhabited the instant site on a seasonal basis, there is no evidence that any events occurred at that particular site which made a "significant contribution" to Native history. 43 C.F.R. § 2653.5(d)(1). While the site was the location of Native traditional culture prior to the Russian influence, and contains culturally-modified trees, Chugach has not shown that the site is of particular historical or cultural significance when compared to other sites in the Prince William Sound area. See Ahtna, Inc., 137 IBLA 111, 114-15 (1996).

Thus, we conclude that Chugach has not carried its burden to demonstrate an essential connection between an event or events of specific historical or cultural significance and the particular tract of land at issue here. See Chugach Alaska Corp., 143 IBLA 127, 132 (1998).

Nor has Chugach met its burden of proof in showing that the site "is importantly associated with Native historical or cultural events or persons." 43 C.F.R. § 2653.0-5(b). Chugach has not demonstrated that the site was associated with the lives of any persons "significant" in the Native past or that it possesses "outstanding and demonstrably enduring symbolic value" in Native traditions and cultural beliefs and practices. 43 C.F.R. § 2653.5(d)(2) and (3). It is not sufficient that the site provides a "meaningful link to the past." (SOR at 12.) Moreover, Chugach has not shown that the site has yielded or is demonstrably likely to yield "information important in [the] prehistory or history" of the Alaska Natives. 43 C.F.R. § 2653.5(d)(5). Regulation 43 C.F.R. § 2653.5(d) provides that significance will be considered present "in places \* \* \* [t]hat have yielded, or are demonstrably likely to yield," important information. (Emphasis added.) Thus, Chugach must show that the site itself has yielded or is demonstrably likely to yield important information. While the site has yielded a number of culturally-modified trees, there is nothing to indicate that these trees have provided any information important to understanding the history or prehistory of the Alaska Natives. 43 C.F.R. § 2653.5(d)(5). Nor is there any evidence that the site is, for any reason, "demonstrably likely" to do so in the future. Id.; see Ahtna, Inc., 137 IBLA at 115.

The remaining issue in this case is whether the site was the situs of "sustained historical Native activity." 43 C.F.R. § 2653.0-5(b). Chugach argues that the site's geographic location made it a particularly important site because "Deer Cove is one of few safe harbors offering a place to land a kayak and seek protection from the violent wind and ocean." (SOR at 3.) Chugach asserts that the site "also supported sustained activity and habitation as Native families returned seasonally, year after year, continuing the pulse and rhythm of their subsistence culture." (SOR at 9.) Chugach argues that the culturally-modified trees on the site "signify a longstanding and significant connection between a people and a place which transcends mere subsistence activities alone." Id.

There is no evidence that the specific site was the location of a Native village or subject to sustained human habitation. Both BIA and CPSU reported that they could find no trace of a Native village anywhere within the site in 1979. (BIA Report at 7, 21.) While charcoal, which Chugach attributes to the smokehouse, was unearthed by subsurface testing on the amended area to the north, the BIA investigators determined that the charcoal "appeared to derive from forest fires." (Report at 3.)

Further, despite an extensive survey and subsurface testing in 1995, BIA did not find any buried cultural remains or lag deposits. (Report at 2-3, 5.) At best, all of the examinations by Chugach, BIA, and CPSU in 1979, 1993, and especially 1995 have revealed the presence of about 40 old culturally-modified trees within and extending beyond the boundaries of the site. (BIA Report at 7; Report at 2.) While BIA determined that the 40 trees were evidence of historic Native use, it did not conclude that this was evidence of sustained historical Native activity.

We note that BIA concluded in its 1995 Report that the continuous band of culturally-modified trees along the shore of Deer Cove and the unnamed cove to the north, together with the fact that the coves received annual salmon runs and were close to the Native village of Nuchek, made it "almost certain that undiscovered sites exist somewhere in the vicinity" of the two coves. (Supplemental SOR at 2 (quoting Report at 5).) However, BIA did not conclude that the instant site, or even the area immediately to the north, was the location of such a place.

Thus, Chugach has failed to establish, by a preponderance of the evidence, that the instant site was the situs of any sustained historical activity, either permanent or seasonal, by Alaska Natives, as required by 43 C.F.R. § 2653.0-5(b). See Chugach Alaska Corp., 142 IBLA 273, 275, 277 (1998).

We therefore conclude that BLM properly rejected Chugach's Native historical place selection application, AA-11055, for the Deer Cove Summer Village site, and that its Decision must be affirmed.

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.

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John H. Kelly  
Administrative Judge

I concur.

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C. Randall Grant, Jr.  
Administrative Judge