

JUL 21 1999



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
 ALASKA STATE OFFICE
 222 W. 7th Avenue, #13
 ANCHORAGE, ALASKA 99513-7599

22

CHIEF R/W AGENT	
PRE AUDIT	
ENGINEERING	
APPRAISALS	
NEGOTIATIONS	
Relocation/Prop. Mgmt.	
UTILITIES	
RETURN TO:	
FILE	

AA-5705 (2561)
 NPS-WRST
 (964) bp/sbc/jl

CERTIFIED MAIL
 RETURN RECEIPT REQUESTED

15 JUL 1999

DECISION

Roy Eskilida	:	AA-5705
P.O. Box 34	:	Native Allotment Application
Chitina, Alaska 99566	:	
	:	
Alaska Legal Services Corporation	:	
1016 West 6th Avenue, Suite 200	:	
Anchorage, Alaska 99501-1963	:	
	:	
National Park Service	:	Wrangell-St. Elias
Land Resources Division	:	National Park & Preserve
2525 Gambell Street	:	
Anchorage, Alaska 99503	:	

Native Allotment Subject to the Chitina-McCarthy Road

On August 7, 1969, the Bureau of Indian Affairs filed Native allotment application AA-5705 and evidence of use and occupancy on behalf of Roy Eskilida. The application was filed under the provisions of the Act of May 17, 1906, as amended.¹ The application was before the Department on December 18, 1971, indicates use and occupancy since April 15, 1967, for 71.97 acres of surveyed land located as follows:

U.S. Survey No. 8102, Alaska, within protracted Sec. 3, T. 6 S., R. 10 E.,
 Copper River Meridian.

¹ 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by Sec. 18(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1617(a) (1994).

On January 23, 1984, a decision was issued approving Native allotment AA-5705 pursuant to the Alaska Native Allotment Act of May 17, 1906, as amended. That decision did not address the existence of the Chitina-McCarthy Road on the allotment.

The Act of May 17, 1906, as amended, allows Alaska Natives to acquire an allotment by proof of substantially continuous use and occupancy for a period of five years. As defined in the regulations in 43 CFR 2561.0-5a:

. . . Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others. . . .

According to information in the case file, public use of Chitina-McCarthy Road began in 1908 as a railroad right-of-way, which is prior to the applicant's claimed use and occupancy of April 15, 1967. The type of use identified is mostly for motor vehicle use. Therefore, the applicant's use of this Chitina-McCarthy Road was not potentially exclusive of others and the Certificate of Allotment, when issued, will be subject to:

An easement for highway purposes, extending fifty (50) feet² each side of the centerline of the Chitina-McCarthy Road which was transferred to the State of Alaska pursuant to the quitclaim deed dated June 30, 1959, and executed by the Secretary of Commerce pursuant to the authority of the Alaska Omnibus Act, Pub. L. 86-70, 73 Stat. 141 (1959).

All applications approved pursuant to the Act of May 17, 1906, are subject to the provisions of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 (1982) (repealed, with a savings clause, effective 1986) and 270-12 (1982) (amended, with a savings clause, effective 1986). It has been determined that the above-described lands are without value for minerals; therefore, none shall be reserved to the United States.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and Form 1842-1 (copies enclosed). If an appeal is taken, the notice of appeal must be filed with the:

Bureau of Land Management
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7599

² State of Alaska, Department of Transportation & Public Facilities, 127 IBLA 137, decided August 25, 1993. IBLA ruled that the easement should be for only 50 feet on each side of the centerline of the Chitina-McCarthy Road.

within 30 days from receipt of this decision. Failure to file the notice of appeal with the Bureau within the time allowed is a jurisdictional defect and will result in dismissal of the appeal. In order to avoid dismissal of the appeal, there must be strict compliance with the regulations. The appellant has the burden of showing that the decision appealed from is in error. Copies of the notice of appeal must also be submitted to each party named in the heading of this decision and to the:

Office of the Regional Solicitor, Alaska Region
U.S. Department of the Interior
4230 University Drive, Suite 300
Anchorage, Alaska 99508-4626

at the same time the original documents are filed with this office. The following parties must also be served with a copy of the notice of appeal:

State of Alaska
Department of Transportation
Northern Region, Right of Way Section
2301 Peger Road, MS-2553
Fairbanks, Alaska 99709-5399

State of Alaska
Department of Natural Resources
Division of Land
Realty Services Section
3601 C Street, Suite 960
Anchorage, Alaska 99503-5936

Bureau of Indian Affairs
Anchorage Agency, Realty
1675 C Street
Anchorage, Alaska 99501-5198

The Departmental regulations in 43 CFR 4.21 (58 FR 4939, copy enclosed) provide that parties entitled to file an appeal may file a request for a stay of the effectiveness of this decision during the time that the appeal is being reviewed by the Board. The request for a stay must accompany the notice of appeal submitted to the Bureau of Land Management (BLM) and a copy of both documents must be served on the:

Interior Board of Land Appeals
Office of Hearings and Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

at the same time they are submitted to the BLM. A copy of the request for a stay must also accompany each copy of the notice of appeal submitted to the parties listed in the heading of this decision or listed as parties to be served in the preceding paragraph. A request for a stay is required to show sufficient justification based on the standards listed below.

Standards for Obtaining a Stay

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, the regulations in 43 CFR 4.21(b) provide that a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

/s/ Robert A. Perry

Robert A. Perry
Land Law Examiner
Branch of Native Allotment
Adjudication

Enclosures:
Form 1842-1
Appeal Regulations
Federal Register Publication
(58 FR 4939, dtd 1/19/93)
Decision dated 11/17/87
MTP

Copy furnished to:

Bureau of Indian Affairs (CM-RRR)
Anchorage Agency, Realty
1675 C Street
Anchorage, Alaska 99501-5198
(w/MTP)

State of Alaska (CM-RRR)
Department of Transportation
Northern Region, Right of Way Section
2301 Peger Road, MS-2553
Fairbanks, Alaska 99709-5399
(w/cy of enclosures)

State of Alaska (CM-RRR)
Department of Natural Resources
Division of Land
Realty Services Section
3601 C Street, Suite 960
Anchorage, Alaska 99503-5936
(w/MTP)

Chitina Native Corporation
P.O. Box 3
Chitina, Alaska 99566
(w/MTP)

Ahtna, Inc.
P.O. Box 649
Glennallen, Alaska 99588
(w/MTP)

Bureau of Indian Affairs
Alaska Title Services Center
1675 C Street
Anchorage, Alaska 99501-5198
(original signature)

FM, Glennallen (050)