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Office of the Attorney General  
State of Alaska

File No. A66-021-78

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CIRI Selection Pool Nomination of Nike Site Jig.

Mr. William Beaty  
Planning Supervisor

By your memorandum of July 16, 1980 you have requested that I analyze the opposite positions taken by the University of Alaska and the United States Department of the Interior regarding the selectability by Cook Inlet Region, Incorporated of 60 improved acres comprising Nike Site Jig, located in a portion of Section 33, T. 4 S., R. 4 E., Fairbanks Meridian.

The basic question presented is whether the University of Alaska, by itself or through the State, presently has title to the subject property by virtue of the Educational Land Grant Act of March 4, 1915 (38 Stat. 1214-1215, 48 U.S.C. § 353). My conclusion, based upon the language of that Act and the sequence of events which have transpired subsequent to its passage in 1915, is that neither the State nor the University now 'owns' Nike Site Jig, but that the State has a claim to an equal amount of in-lieu acreage to replace that acreage lost by the reservation of Nike Site Jig by PLO 1345 on October 16, 1956 or PLO 1523 on October 8, 1957.

The Act of March 4, 1915 reserved Sections 16 and 36 in each township of the Territory of Alaska, and Section 33 in each township in the Tanana Valley between certain specified longitude and latitude, for the support of public education. However, the reservation of these lands was, until statehood, merely a reservation, and not a grant, of the lands; further, it attached only when the public lands were surveyed. The subject lands were apparently surveyed on October 27, 1933, and the reservation for the benefit of the University was effective on that date.

However, it must be noted that the reservation contained in 48 U.S.C. § 353 was a reservation only '... from sale or settlement'; such a reservation did not prevent the United States from subsequently appropriating the reserved lands by public land order for other governmental purposes (here for national defense purposes). Section 353 deals specifically with such a situation:

... Provided, that where settlement with a view to homestead entry has been made upon any part of the sections reserved hereby before the survey thereof in the field, or where the same have been sold or otherwise appropriated by or under the authority of any Act of Congress, or are wanting or fractional in quantity, other lands may be designated and reserved in lieu thereof in the manner provided by Sections 851 and 852 of Title 43: . . .

[Emphasis supplied]

It is clear from this quotation that a homestead entry on the lands prior to survey would have precluded attach-

ment of the reservation for the University, but that no homestead entry subsequent to survey would have been permitted. Further, it is apparent that a sale or other appropriation '. . . by or under the authority of any Act of Congress', whether occurring before or after the date of survey, would remove the specific lands involved from the educational reservation. (With regard to sales subsequent to survey, this language appears to conflict with the prior provision reserving the designated sections '. . . from sale or settlement', but is of only academic interest here, since appropriations by the United States for other federal purposes, either before or after survey, as in the situation involved here, were not forbidden by the statute). Thus the University, through the State, would appear to have a claim for 60 acres of in-lieu lands to replace the lands at Nike Site Jig which were reserved by survey in 1933, but were subsequently appropriated for other federal purposes by the United States in 1956 or 1957.

Pursuant to Section 6(k) of the Alaska Statehood Act, all lands reserved under the 1915 school legislation were granted to the State on January 4, 1959. Of course, subsequent to that date, the authority of the United States to appropriate school sections for other federal purposes ceased to exist.

I would appreciate it if you would communicate the conclusions reached in this letter to the U.S. Bureau of Land Management, the University of Alaska, and the Fairbanks North Star Borough, together with your recommendations regarding the placement of Nike Site Jig in the CIRI selection pool.

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