

ALASKA NATIVE ALLOTMENT SUBDIVISION

Pub. L. 108-337, Oct. 18, 2004, 118 Stat. 1357, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Alaska Native Allotment Subdivision Act’.

“SEC. 2. DEFINITIONS.

“In this Act:

“(1) RESTRICTED LAND.—The term ‘restricted land’ means land in the State that is subject to Federal restrictions against alienation and taxation.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(3) STATE.—The term ‘State’ means the State of Alaska.

“SEC. 3. SUBDIVISION AND DEDICATION OF ALASKA NATIVE RESTRICTED LAND.

“(a) IN GENERAL.—An Alaska Native owner of restricted land may, subject to the approval of the Secretary—

“(1) subdivide the restricted land in accordance with the laws of the—

“(A) State; or

“(B) applicable local platting authority; and

“(2) execute a certificate of ownership and dedication with respect to the restricted land subdivided under paragraph (1) with the same effect under State law as if the restricted land subdivided and dedicated were held by unrestricted fee simple title.

“(b) RATIFICATION OF PRIOR SUBDIVISIONS AND DEDICATIONS.—Any subdivision or dedication of restricted land executed before the date of enactment of this Act [Oct. 18, 2004] that has been approved by the Secretary and by the relevant State or local platting authority, as appropriate, shall be considered to be ratified and confirmed by Congress as of the date on which the Secretary approved the subdivision or dedication.

“SEC. 4. EFFECT ON STATUS OF LAND NOT DEDICATED.

“Except in a case in which a specific interest in restricted land is dedicated under section 3(a)(2), nothing in this Act terminates, diminishes, or otherwise affects the continued existence and applicability of Federal restrictions against alienation and taxation on restricted land or interests in restricted land (including restricted land subdivided under section 3(a)(1)).”

§ 1618. Revocation of reserved rights; excepted reserve; acquisition of title to surface and subsurface estates in reserve; election of Village Corporations; restoration of land to Elim Native Corporation

(a) Revocation of reserved rights; excepted reserve

Notwithstanding any other provision of law, and except where inconsistent with the provisions of this chapter, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for administration of Native affairs, including those created under section 497 of title 25, are hereby revoked subject to any valid existing rights of non-Natives. This section shall not apply to the Annette Island Reserve established by section 495 of title 25 and no person enrolled in the Metlakatla Indian community of the Annette Island Reserve shall be eligible for benefits under this chapter.

(b) Acquisition of title to surface and subsurface estates in reserve; election of Village Corporations

Notwithstanding any other provision of law or of this chapter, any Village Corporation or Cor-

porations may elect within two years to acquire title to the surface and subsurface estates in any reserve set aside for the use or benefit of its stockholders or members prior to December 18, 1971. If two or more villages are located on such reserve, the election must be made by all of the members or stockholders of the Village Corporations concerned. In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in section 1613(g) of this title, and the Village Corporation shall not be eligible for any other land selections under this chapter or to any distribution of Regional Corporations funds pursuant to section 1606 of this title, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock.

(c) Restoration of land to Elim Native Corporation

(1) Findings

The Congress finds that—

(A) approximately 350,000 acres of land were withdrawn by Executive orders in 1917 for the use of the United States Bureau of Education and of the Natives of Indigenous Alaskan race;

(B) these lands comprised the Norton Bay Reservation (later referred to as Norton Bay Native Reserve) and were set aside for the benefit of the Native inhabitants of the Eskimo Village of Elim, Alaska;

(C) in 1929, 50,000 acres of land were deleted from the Norton Bay Reservation by Executive order;

(D) the lands were deleted from the Reservation for the benefit of others;

(E) the deleted lands were not available to the Native inhabitants of Elim under subsection (b) of this section at the time of passage of this chapter;

(F) the deletion of these lands has been and continues to be a source of deep concern to the indigenous people of Elim; and

(G) until this matter is dealt with, it will continue to be a source of great frustration and sense of loss among the shareholders of the Elim Native Corporation and their descendants.

(2) Withdrawal

The lands depicted and designated “Withdrawal Area” on the map dated October 19, 1999, along with their legal descriptions, on file with the Bureau of Land Management, and entitled “Land Withdrawal Elim Native Corporation”, are hereby withdrawn, subject to valid existing rights, from all forms of appropriation or disposition under the public land laws, including the mining and mineral leasing laws, for a period of 2 years from May 2, 2000, for selection by the Elim Native Corporation (hereinafter referred to as “Elim”).

(3) Authority to select and convey

Elim is authorized to select in accordance with the rules set out in this paragraph, 50,000 acres of land (hereinafter referred to as “Conveyance Lands”) within the boundary of the Withdrawal Area described in paragraph (2). The Secretary is authorized and directed to

convey to Elim in fee the surface and subsurface estates to 50,000 acres of valid selections in the Withdrawal Area, subject to the covenants, reservations, terms and conditions and other provisions of this subsection.

(A) Elim shall have 2 years from May 2, 2000, in which to file its selection of no more than 60,000 acres of land from the area described in paragraph (2). The selection application shall be filed with the Bureau of Land Management, Alaska State Office, shall describe a single tract adjacent to United States Survey No. 2548, Alaska, and shall be reasonably compact, contiguous, and in whole sections except when separated by unavailable land or when the remaining entitlement is less than a whole section. Elim shall prioritize its selections made pursuant to this subsection at the time such selections are filed, and such prioritization shall be irrevocable. Any lands selected shall remain withdrawn until conveyed or full entitlement has been achieved.

(B) The selection filed by Elim pursuant to this subsection shall be subject to valid existing rights and may not supercede prior selections of the State of Alaska, any Native corporation, or valid entries of any private individual unless such selection or entry is relinquished, rejected, or abandoned prior to conveyance to Elim.

(C) Upon receipt of the Conveyance Lands, Elim shall have all legal rights and privileges as landowner, subject only to the covenants, reservations, terms and conditions specified in this subsection.

(D) Selection by Elim of lands under this subsection and final conveyance of those lands to Elim shall constitute full satisfaction of any claim of entitlement of Elim with respect to its land entitlement.

(4) Covenants, reservations, terms and conditions

The covenants, reservations, terms and conditions set forth in this paragraph and in paragraphs (5) and (6) with respect to the Conveyance Lands shall run with the land and shall be incorporated into the interim conveyance, if any, and patent conveying the lands to Elim.

(A) Consistent with paragraph (3)(C) and subject to the applicable covenants, reservations, terms and conditions contained in this paragraph and paragraphs (5) and (6), Elim shall have all rights to the timber resources of the Conveyance Lands for any use including, but not limited to, construction of homes, cabins, for firewood and other domestic uses on any Elim lands: *Provided*, That cutting and removal of Merchantable Timber from the Conveyance Lands for sale shall not be permitted: *Provided further*, That Elim shall not construct roads and related infrastructure for the support of such cutting and removal of timber for sale or permit others to do so. "Merchantable Timber" means timber that can be harvested and marketed by a prudent operator.

(B) Public Land Order 5563 of December 16, 1975, which made hot or medicinal springs

available to other Native Corporations for selection and conveyance, is hereby modified to the extent necessary to permit the selection by Elim of the lands heretofore encompassed in any withdrawal of hot or medicinal springs and is withdrawn pursuant to this subsection. The Secretary is authorized and directed to convey such selections of hot or medicinal springs (hereinafter referred to as "hot springs") subject to applicable covenants, reservations, terms and conditions contained in paragraphs (5) and (6).

(C) Should Elim select and have conveyed to it lands encompassing portions of the Tubutulik River or Clear Creek, or both, Elim shall not permit surface occupancy or knowingly permit any other activity on those portions of land lying within the bed of or within 300 feet of the ordinary high waterline of either or both of these water courses for purposes associated with mineral or other development or activity if they would cause or are likely to cause erosion or siltation of either water course to an extent that would significantly adversely impact water quality or fish habitat.

(5) Rights retained by the United States

With respect to conveyances authorized in paragraph (3), the following rights are retained by the United States:

(A) To enter upon the conveyance lands, after providing reasonable advance notice in writing to Elim and after providing Elim with an opportunity to have a representative present upon such entry, in order to achieve the purpose and enforce the terms of this paragraph and paragraphs (4) and (6).

(B) To have, in addition to such rights held by Elim, all rights and remedies available against persons, jointly or severally, who cut or remove Merchantable Timber for sale.

(C) In cooperation with Elim, the right, but not the obligation, to reforest in the event previously existing Merchantable Timber is destroyed by fire, wind, insects, disease, or other similar manmade or natural occurrence (excluding manmade occurrences resulting from the exercise by Elim of its lawful rights to use the Conveyance Lands).

(D) The right of ingress and egress over easements under section 1616(b) of this title for the public to visit, for noncommercial purposes, hot springs located on the Conveyance Lands and to use any part of the hot springs that is not commercially developed.

(E) The right to enter upon the lands containing hot springs for the purpose of conducting scientific research on such hot springs and to use the results of such research without compensation to Elim. Elim shall have an equal right to conduct research on the hot springs and to use the results of such research without compensation to the United States.

(F) A covenant that commercial development of the hot springs by Elim or its successors, assigns, or grantees shall include the right to develop only a maximum of 15 percent of the hot springs and any land within ¼ mile of the hot springs. Such commer-

cial development shall not alter the natural hydrologic or thermal system associated with the hot springs. Not less than 85 percent of the lands within ¼ mile of the hot springs shall be left in their natural state.

(G) The right to exercise prosecutorial discretion in the enforcement of any covenant, reservation, term or condition shall not waive the right to enforce any covenant, reservation, term or condition.

(6) General

(A) Memorandum of Understanding

The Secretary and Elim shall, acting in good faith, enter into a Memorandum of Understanding (hereinafter referred to as the "MOU") to implement the provisions of this subsection. The MOU shall include among its provisions reasonable measures to protect plants and animals in the hot springs on the Conveyance Lands and on the land within ¼ mile of the hot springs. The parties shall agree to meet periodically to review the matters contained in the MOU and to exercise their right to amend, replace, or extend the MOU. Such reviews shall include the authority to relocate any of the easements set forth in subparagraph (D) if the parties deem it advisable.

(B) Incorporation of terms

Elim shall incorporate the covenants, reservations, terms and conditions, in this subsection in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Conveyance Lands, including without limitation, a leasehold interest.

(C) Section 1616(b) easements

The Bureau of Land Management, in consultation with Elim, shall reserve in the conveyance to Elim easements to the United States pursuant to subsection¹ 1616(b) of this title that are not in conflict with other easements specified in this paragraph.

(D) Other easements

The Bureau of Land Management, in consultation with Elim, shall reserve easements which shall include the right of the public to enter upon and travel along the Tubutulik River and Clear Creek within the Conveyance Lands. Such easements shall also include easements for trails confined to foot travel along, and which may be established along each bank of, the Tubutulik River and Clear Creek. Such trails shall be 25 feet wide and upland of the ordinary high waterline of the water courses. The trails may deviate from the banks as necessary to go around man-made or natural obstructions or to portage around hazardous stretches of water. The easements shall also include one-acre sites along the water courses at reasonable intervals, selected in consultation with Elim, which may be used to launch or take out water craft from the water courses and to camp in non-permanent structures for a period not to exceed 24 hours without the consent of Elim.

(E) Inholders

The owners of lands held within the exterior boundaries of lands conveyed to Elim shall have all rights of ingress and egress to be vested in the inholder and the inholder's agents, employees, co-venturers, licensees, subsequent grantees, or invitees, and such easements shall be reserved in the conveyance to Elim. The inholder may not exercise the right of ingress and egress in a manner that may result in substantial damage to the surface of the lands or make any permanent improvements on Conveyance Lands without the prior consent of Elim.

(F) Iditarod trail

The Bureau of Land Management may reserve an easement for the Iditarod National Historic Trail in the conveyance to Elim.

(7) Implementation

There are authorized to be appropriated such sums as may be necessary to implement this subsection.

(Pub. L. 92-203, §19, Dec. 18, 1971, 85 Stat. 710; Pub. L. 106-194, §1, May 2, 2000, 114 Stat. 239.)

REFERENCES IN TEXT

The time of passage of this chapter, referred to in subsec. (c)(1)(E), probably means the date of enactment of Pub. L. 92-203, which was approved Dec. 18, 1971.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106-194 added subsec. (c).

GRANTS TO NATIVE GROUP CORPORATIONS FOR PLANNING, DEVELOPMENT, AND OTHER PURPOSES

Pub. L. 96-487, title XIV, §1413, Dec. 2, 1980, 94 Stat. 2498, provided that: "The Secretary shall pay by grant to each of the Native Group Corporations established pursuant to section 14(h)(2) of the Alaska Native Claims Settlement Act [section 1613(h)(2) of this title] and finally certified as a Native Group, an amount not more than \$100,000 or less than \$50,000 adjusted according to population of each Group. Funds authorized under this section may be used only for planning, development, and other purposes for which the Native Group Corporations are organized under the Settlement Act [this chapter]."

GRANTS TO VILLAGE CORPORATIONS FOR PLANNING, DEVELOPMENT AND OTHER PURPOSES

Pub. L. 94-204, §14, Jan. 2, 1976, 89 Stat. 1154, provided that:

"(a) The Secretary shall pay, by grant, \$250,000 to each of the corporations established pursuant to section 14(h)(3) of the Settlement Act [section 1613(h)(3) of this title].

"(b) The Secretary shall pay, by grant, \$100,000 to each of the following Village Corporations:

- "(1) Arctic Village;
- "(2) Elim;
- "(3) Gambell;
- "(4) Savoonga;
- "(5) Tetlin; and
- "(6) Venetie.

"(c) Funds authorized under this section may be used only for planning, development, and other purposes for which the corporations set forth in subsections (a) and (b) are organized under the Settlement Act [this chapter].

"(d) There is authorized to be appropriated to the Secretary for the purpose of this section a sum of \$1,600,000 in fiscal year 1976."

¹ So in original. Probably should be "section".

§ 1619. Attorney and consultant fees**(a) Holding moneys in Fund for authorized payments**

The Secretary of the Treasury shall hold in the Alaska Native Fund, from the appropriation made pursuant to section 1605 of this title for the second fiscal year, moneys sufficient to make the payments authorized by this section.

(b) Claims; submission

A claim for attorney and consultant fees and out-of-pocket expenses may be submitted to the Chief Commissioner of the United States Court of Claims for services rendered before December 18, 1971, to any Native tribe, band, group, village, or association in connection with:

(1) the preparation of this chapter and previously proposed Federal legislation to settle Native claims based on aboriginal title, and

(2) the actual prosecution pursuant to an authorized contract or a cause of action based upon a claim pending before any Federal or State Court or the Indians Claims Commission that is dismissed pursuant to this chapter.

(c) Final date for filing of claims; form; information

A claim under this section must be filed with the clerk of the Court of Claims within one year from December 18, 1971, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. Claims not so filed shall be forever barred.

(d) Rules for receipt, determination, and settlement of claims

The Chief Commissioner or his delegate is authorized to receive, determine, and settle such claims in accordance with the following rules:

(1) No claim shall be allowed if the claimant has otherwise been reimbursed.

(2) The amount allowed for services shall be based on the nature of the service rendered, the time and labor required, the need for providing the service, whether the service was intended to be a voluntary public service or compensable, the existence of a bona fide attorney-client relationship with an identified client, and the relationship of the service rendered to the enactment of proposed legislation. The amount allowed shall not be controlled by any hourly charge customarily charged by the claimant.

(3) The amount allowed for out-of-pocket expenses shall not include office overhead, and shall be limited to expenses that were necessary, reasonable, unreimbursed and actually incurred.

(4) The amounts allowed for services rendered shall not exceed in the aggregate \$2,000,000, of which not more than \$100,000 shall be available for the payment of consultants' fees. If the approved claims exceed the aggregate amounts allowable, the Chief Commissioner shall authorize payment of the claims on a pro rata basis.

(5) Upon the filing of a claim, the clerk of the Court of Claims shall forward a copy of such claims to the individuals or entities on whose behalf services were rendered or fees and expenses were allegedly incurred, as shown by the pleadings, to the Attorney General of the United States, to the Attorney General of the State of Alaska, to the Secretary of the Interior, and to

any other person who appears to have an interest in the claim, and shall give such persons ninety days within which to file an answer contesting the claim.

(6) The Chief Commissioner may designate a trial commissioner for any claim made under this section and a panel of three commissioners of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding commissioner of the panel.

(7) Proceedings in all claims shall be pursuant to rules and orders prescribed for the purpose by the Chief Commissioner who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Claims insofar as feasible. Claimants may appear before a trial commissioner in person or by attorney, and may produce evidence and examine witnesses. In the discretion of the Chief Commissioner or his designate, hearings may be held in the localities where the claimants reside if convenience so demands.

(8) Each trial commissioner and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, and shall have the power of subpoena, the power to order audit of books and records, and the power to administer oaths and affirmations. Any sanction authorized by the rules of practice of the Court of Claims, except contempt, may be imposed on any claimant, witness, or attorney by the trial commissioner, review panel, or Chief Commissioner. None of the rules, regulations, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(9) The findings and conclusions of the trial commissioner shall be submitted by him, together with the record in the case, to the review panel of commissioners for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the decision of the trial commissioner to the claimant and any party contesting the claim for consideration, exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the trial commissioner.

(10) The Court of Claims is hereby authorized and directed, under such conditions as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing, and dispatch of claims made pursuant to this section and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the items herein listed) the salaries and traveling expenses of its auditors and the commissioners serving as trial commissioners and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries, reporters, auditors, and law clerks).

(e) Report to Congress; payment of claims; interest restriction

The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Sec-