THE SECRETARY OF THE INTERIOR

WASHINGTON

FEB 11 2005

Memorandum

To: Assistant Secretary - Indian Affairs
Assistant Secretary - Land and Minerals Management
Assistant Secretary - Fish and Wildlife and Parks
Director, Bureau of Indian Affairs
Director, Fish and Wildlife Service
Director, Bureau of Land Management

From: Secretary

Subject: Revisions to the Procedures for Reopening of Closed Applications for Historical Places and Cemetery Sites Filed Pursuant to Section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1).

The purposes of this memorandum are to advise you that Secretary's Order 3220 which expired January 5, 2003, is being reissued and amended with a new expiration date; and that the procedures have been revised for processing and considering reopening of closed applications filed under the Order.

The Order allows reopening of certain applications which were timely filed under Section 14(h)(1) of ANCSA but subsequently closed. Attached to the Order is a list of 196 applications eligible for reopening under the Order. The Order waives certain requirements that might bar reopening an application(s). It also requires a written request from an ANCSA regional corporation to initiate the process attendant to a reopening. Finally, the Order permits the Bureau of Indian Affairs (BIA) to review applications for land that is unavailable for conveyance, but not to reopen those applications.

Revisions have also been made to paragraph 12 of the procedures for reopening cases under the Order. These revisions allow applications located on lands selected by or previously conveyed to the State of Alaska to be reopened if the State concurs and is willing to relinquish its selection or reconvey the lands.

Each ANCSA regional corporation that has submitted a request to have an application reopened under this Order must be advised on the revised procedures outlined herein and must agree to have its request considered and processed in accordance with the amended Order and the revised procedures provided in the Attachment.

Attachment

**ATTACHMENT**

## Revised Procedures for Reopening of Closed Applications for Historical Places and Cemetery Sites Filed Pursuant to Section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1).

1. Requests to reopen 14(h)(1) applications must include a statement of justification explaining why the application should be reopened. Examples of possibly sufficient justification include evidence that the BIA did not examine the place or site (site) claimed, the site could not be found previously but has now been located, or that evidence discovered later supports the eligibility of the application. Applications may only be reopened if the reasons given in the associated corporation requests are based on the BIA field investigation and certification process. Requests to reopen applications based on alleged land adjudication errors will be denied.

2. The submitting regional corporation must demonstrate that information submitted in support of a requested reopening is directly and clearly associated with the historical place or cemetery site claimed in its original application.

3. All new information submitted in support of reopening of a 14(h)(1) application must meet the following standards:

(A) As indicated in 2, above, all new information must be directly and clearly associated with the historical place or cemetery site the corporation claimed in the original application.

(B) Reported oral history or written accounts about the site in question must be submitted with sufficient references (e.g., names, documents, and other sources), to allow the BIA ANCSA staff to verify the accuracy of the reported accounts and their relevancy to the specific application. The BIA ANCSA staff must be provided access to recordings and documentation, if any exist, in order to effect the necessary verification and to determine the appropriate weight to give to such evidence.

(C) Information which reports the presence of buried cultural remains or surface artifacts in association with a given applied-for site must be documented to a degree adequate to allow BIA ANCSA archeological staff to (a) evaluate the authenticity of the material, and (b) physically locate the deposits in the event additional fieldwork is undertaken in connection with the site. Minimally, adequate documentation will include photographs or to-scale sketches of artifacts or areas containing the reported deposits, as well as accurate and precise legal or topographic descriptions (including map plots) of their field location. The requesting corporation is also encouraged to submit GPS or other coordinate information.

4. Applications for new sites or additions of new land to original sites will not be allowed. Corrections to the legal description of a 14(h)(1) site must be limited to established procedures and can only occur for such purposes as correcting a legal description mistake based on mapping or other technical description problems so that the description accurately describes the originally

applied-for site, conforming the boundaries to the actual on-the-ground position of the site, and to conform the boundaries to survey.

5. Applications will be reopened to the extent the requesting ANCSA regional corporation has adequate existing land entitlement. Nothing in the Order or this memorandum shall be construed to change or increase existing ANCSA 14(h)(1) land entitlement allocations for any ANCSA corporation.

6. Only the 196 applications listed in the attachment to the Order are eligible to be reopened.

7. The BIA may, at any time prior to expiration of the deadline set by the Order, on its own initiative, notify the appropriate ANCSA regional corporation that it has determined that a particular application appear to meet the criteria of the Order and this memorandum. The regional corporation may request reopening on the basis of BIA's determination any time within the time frame set by the Order.

8. The BIA may establish additional criteria for determining whether to reopen a 14(h)(1) application, provided that it may not change any of the criteria articulated in this memorandum and that it notifies the ANCSA regional corporation, the Bureau of Land Management (BLM), and any other affected federal land manager of the additional criteria.

9. In addition to meeting the criteria set out in the Order and this memorandum, no 14(h)(1) application filed by Chugach Alaska Corporation will be reopened unless reopening would also be consistent with the requirements of paragraph 16 of the 1982 CNI Agreement. Paragraph 16 provides in pertinent part that: ". . . CNI shall not apply for, nor shall it seek any waiver of regulations in order to make future selections under 14(h) of ANCSA . . . nor shall CNI assert or seek to acquire any other legal authority to make future selections pursuant to Section 14(h) of ANCSA within the national forests. Any selections on record on the date of this [1982 CNI] Agreement for a particular site, or any amendments thereto, shall not be regarded as a future selection for the purpose of this paragraph."

10. Prior to submitting an application to BLM for possible reopening, the BIA shall ensure that the location of the applied-for site has been properly identified, shall cure any defects in the prior investigation, and may correct mistakes in previously issued certificate of eligibility or ineligibility.

11. If BIA determines that an application should be further considered for reopening, BIA shall forward the application and relevant supporting documentation to BLM. The BIA shall simultaneously inform the requesting ANCSA regional corporation and any affected federal land managing agency that the application has been forward to BLM for possible reopening.

12. Upon receipt of an application and supporting documentation from BIA, BLM will review the legal description of the applied-for site to determine if the land was available at the time the original application was filed and that the land is still available for conveyance at the present time. If BLM finds that the land was not available at the time the original application was filed (e.g., the land was reserved at the time of the original application) or if the land is no longer

available for conveyance (e.g., the land is part of a congressionally-designated wilderness area), BLM shall notify the BIA, any affected federal land managing agency, and the requesting corporation that the application cannot be reopened. This is an exercise of discretion under the Order and this memorandum and is not an appealable action. If a site listed in the Order is certified eligible by the BIA in accordance with 43 C.F.R. 2653.5 and if BLM determines the land was available for conveyance at the time the original application was filed and is still available for conveyance, BLM shall issue a notice that the application has been reopened. The notice shall be served on the requesting ANCSA regional corporation and copies shall be sent to BIA, any affected federal land managing agency, and all other interested parties. If after BLM issues a notice of reopening, it is determined that the land is not available for conveyance, BLM shall issue a final, appealable decision. In the event the land containing the applied-for site has been conveyed to the State of Alaska after closure of the 14(h)(1) application or has been selected by the State, the BLM and BIA shall make a good faith attempt to facilitate a meeting between the State and the applicant regional corporation to discuss the case. The BLM is authorized to accept voluntary relinquishments of selection applications and voluntary reconveyances of title from the State of Alaska for the purpose of conveying the sites to the applicant regional corporations, and the original Sec. 14(h)(1) applications may be reopened for that purpose with the consent of the State of Alaska. The BLM is not authorized to pursue a suit to recover title.

13. If BLM determines that third-party interests (e.g., rights-of-way, leases or permits) have been created after the 14(h)(1) application was closed and prior to reopeneing and that conveyance of the applied-for historical place or cemetery site would impair that third party right, BLM shall notify the BIA, any affected federal land managing agency, and the requesting corporation that the application cannot be reopened. If the third party interest can be adequately protected by making the conveyance subject to the interest, then the application may be reopened and the conveyance, if otherwise proper, will be made subject to the third party interests. This is consistent with 43 C.F.R. § 2650.0-8 which provides for waiver of nonstatutory ANCSA regulations "when the rights of third parties will not be impaired."

THE SECRETARY OF THE INTERIOR

WASHINGTON

ORDER NO. 3220, Amendment No. 1 ***(Amended material italicized)***

Subject: Reopening of Selected Applications for Historical Places and Cemetery Sites Under ANCSA

The purposes of this amendment are to reissue and extend the expiration date of Secretary's Order 3220, dated January 5, 2001. The amended Order provides authority for reopening certain applications for consideration and processing in accordance with revised procedures.

Sec. 7 **Expiration Date.** This Order is effective immediately and will remain in effect until ***five*** years from the date hereof or its conversion into the Departmental Manual or until it is superseded or revoked, whichever occurs earlier.

Secretary of the Interior

Date: FEB 11 2005

# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ORDER NO. 3220

Subject: Reopening of Selected Applications for Historical Places and Cemetery Sites Under ANCSA

Sec. 1 **Purpose.** The purpose of this Order is to permit the reopening of certain applications which were filed in a timely fashion under Section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), but which were subsequently closed.

Sec. 2 **Authority.** As provided in 43 CFR §2650.0-8, the Secretary has discretionary authority to waive any non-statutory regulation implementing ANCSA. There is no statutory deadline for filing or reopening Section 14(h)(1) applications.

Sec. 3 **Policy Decision.** Based on difficulties that occurred in the past adjudication of Section 14 (h)(1) applications, it is in keeping with the intent of ANCSA to reopen certain Section 14(h)(1) applications. Any Section 14(h)(1) applications for land that would be unavailable for conveyance may not be reopened; however, they are subject to administrative review by the Bureau of Indian Affairs. Furthermore, in order to be eligible for reopening hereunder, the application must be one of the 196 closed applications listed on the attachment to this Order.

Sec. 4 **Requests for Reopening.** All requests for reopening of Section 14(h)(1) applications under this Order must be submitted in writing by the selecting ANCSA regional corporation to the Bureau of Indian Affairs, ANCSA Office, Anchorage, Alaska within two years of the effective date of this Order. By submitting a request to reopen an application hereunder, the submitting regional corporation agrees to have the request considered and processed in accordance with this Order and any implementing procedures established by the Secretary. A request by the Chugach Alaska Corporation to reopen a 14(h)(1) application may be approved only if reopening would be consistent with the requirements of paragraph 16 of the 1982 CNI Agreement.

Sec. 5 **Waivers.** The following are waived:

a. 43 CFR §2653.4(b) to the extent it may set a regulatory deadline that prevents the reopening of closed Section 14(h)(1) applications at this time.

b. Specific extensions of the regulatory deadline to file applications under Section 14(h)(1) granted and published in the Federal Register (for example, extension for NANA

published in 43 Fed. Reg. 29818, July 20, 1976), to the extent such extensions may be construed as preventing reopening of Section 14(h)(1) applications under this Order.

Sec. 6 **Appeal Rights.** Nothing in this Order is intended to create new or additional rights, and actions taken under this Order on ANCSA regional corporations' requests to reopen closed application(s) shall not be appealable.

Sec. 7 **Effective Date.** This Order is effective immediately and will remain in effect until two years from the date hereof or its conversion into the Departmental Manual or until it is superseded or revoked, whichever occurs earlier.

Secretary of the Interior

Date: JAN 5 . 2001

Attachment

## ATTACHMENT TO SECRETARIAL ORDER ON REOPENING OF CLOSED ANCSA SECTION 14(h)(1) APPLICATIONS

| AHTNA, INCORPORATED | ALEUT CORPORATION | BERING STRAITS NATIVE CORPORATION | |
|---|---|---|---|
| AA-58713 | AA-11923 | AA-10696 | F-21977 |
| AA-58724 | AA-11934 | AA-10699 | F-21980 |
| AA-58725 | AA-11935 | AA-10701 | F-21982 |
| AA-60733 | AA-12085 | AA-10705 | F-22002 |
| | AA-12086 | AA-10706 | F-22003 |
| | AA-12094 | AA-10707 | F-22007 |
| | AA-12103 | AA-11786 | F-22010 |
| | AA-12106 | AA-11792 | F-22011 |
| | AA-12112 | AA-11799 | F-22013 |
| | AA-12114 | F-21883 | F-22847 |
| | AA-12115 | F-21908 | F-22857 |
| | AA-12119 | F-21909 | F-22872 |
| | AA-12120 | F-21933 | F-22886 |
| | AA-12135 | F-21939 | F-22891 |
| | AA-12196 | F-21946 | F-22895 |
| | AA-12223 | F-21948 | F-22896 |
| | AA-12227 | F-21955 | F-22901 |
| | AA-12237 | F-21965 | F-22903 |
| | | F-21969 | F-22904 |
| | | F-21976 | |

| BRISTOL BAY NATIVE CORPORATION | CHUGACH ALASKA CORPORATION | CALISTA CORPORATION | |
|---|---|---|---|
| AA-10629 | AA-10753 | AA-9502 | AA-10079 |
| AA-11863 | AA-10785 | AA-9631 | AA-10182 |
| AA-11865 | AA-10791 | AA-9774 | AA-10188 |
| AA-11866 | AA-10962 | AA-9823 | AA-10220 |
| AA-11870 | AA-10986 | AA-9836 | AA-10232 |
| AA-11876 | AA-11011 | AA-9841 | AA-10233 |
| | AA-11030 | AA-9890 | AA-10285 |
| | AA-11041 | AA-9897 | AA-10332 |
| | AA-11059 | AA-9934 | AA-10336 |
| | AA-11066 | AA-9935 | AA-10339 |
| | AA-11084 | AA-9981 | AA-10349 |
| | AA-12434 | AA-9985 | AA-10367 |
| | AA-12437 | AA-10006 | AA-11388 |
| | AA-12438 | AA-10027 | AA-11422 |
| | AA-12455 | AA-10056 | AA-11484 |
| | AA-12551 | AA-10057 | AA-11582 |
| | AA-12587 | AA-10060 | AA-11639 |
| | AA-12620 | AA-10076 | AA-11753 |
| | AA-12621 | | |
| | | | |

| COOK INLET REGION, INC. | DOYON, LIMITED | | | |
|---|---|---|---|---|
| AA-11817 | AA-12296 | AA-12341 | F-22476 | F-22644 |
| AA-11819 | AA-12303 | AA-12355 | F-22495 | F-22645 |
| AA-11821 | AA-12311 | AA-12357 | F-22496 | F-22653 |
| | AA-12317 | AA-12358 | F-22497 | F-22662 |
| | AA-12320 | AA-12360 | F-22579 | F-22710 |
| | AA-12321 | AA-12365 | F-22583 | F-22711 |
| | AA-12322 | AA-12369 | F-22584 | F-22734 |
| | AA-12323 | AA-12371 | F-22597 | F-22768 |
| | AA-12324 | F-22451 | F-22600 | F-22772 |
| | AA-12327 | F-22456 | F-22604 | F-22790 |
| | AA-12335 | F-22461 | F-22605 | F-22791 |
| | AA-12337 | F-22465 | F-22609 | F-22794 |
| | AA-12338 | F-22473 | F-22611 | F-22795 |
| | AA-12339 | F-22474 | F-22626 | |

| KONIAG, INCORPORATED | NORTHWEST ALASKA NATIVE ASSOCIATION | SEALASKA CORPORATION |
|---|---|---|
| AA-10555 | F-22120 | AA-10471 |
| AA-10562 | F-22163 | AA-10484 |
| AA-10573 | F-22168 | |
| AA-10575 | F-22189 | |
| AA-11722 | F-22216 | |
| AA-11723 | F-22298 | |
| AA-11731 | | |
| AA-11732 | | |
| | | |