

H B

678

Alaska State Legislature

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VICE-CHAIRMAN
Judiciary
Legislative Regulations Review

MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Representative John J. Liska

April 11, 1984

M E M O R A N D U M

FROM: Rep. John J. Liska

REFERENCE: HB 678, "An act prohibiting removal of WW II artifacts from State land."

The purpose of this bill is to insure World War II artifacts are included in the State Statutes under the Alaska Historic Preservation Act.

Presently, we have a major problem in the State of Alaska with the removal of World War II artifacts. These historical items are being removed either in tact, for museums in the lower 48, or disassembled to supply a very lucrative demand for spare parts for these vintage planes.

Your packet contains:

- A. Pages 30, 31 and 32 from a publication entitled "The Historical "Battle of Alaska" remains." These pages refer to various types of aircraft that crashed in Alaska and where they have been removed to:
1. Douglas - O - 38F - removed to Air Force Base Museum in Dayton Ohio in 1968.
 2. Stinson - A Trimotor - to Wisconsin in 1972 by J.D. Berry.
 3. P - 51H and P - 40 - Steve Myers, Washington.
 4. U.S. Navy Vough OS 2U King Fisher - removed to the Smithsonian Institute.
 5. P - 39 Airacobras, on display in Seattle.

Additionally, page 73 shows Japanese artifacts from World War II.

Page two
HJR 66

In addition in your packets, but not nearly as interesting, are letters from CAVPAC supporting HJR 66 and HB 678 and a copy of a letter from General Talley who was involved in the Alutian Campaign.

Another piece of back up material has been submitted by the North Star Chapter Pearl Harbor Survivors Association. I have made copies of the first three pages - which may or may not be the same artifacts as previously submitted in your packet.

JJL/tm

Besides the public museums such as the Smithsonian Institute and the Anchorage Historical and Fine Arts Museums, there are many small or private collections which display items of Alaskan history. Unfortunately, in many cases, Alaskans have no say in how the collections are handled.

History is repeating itself in the area of aviation history. It is seen in many examples of aircraft downed during World War II which are leaving the state.

A Douglas O-38F had engine problems and crashed in 1941. It was removed to the Air Force Museum in Dayton, Ohio in 1968.

In 1972 a Stinson 'A' Trimotor which crashed in 1947 was removed to Wisconsin by J.D. Berry. Berry wrote to Wien Air Alaska and followed it up with a phone call to try and get the airline to purchase the plane for the cost of its removal, but there was no interest, so it was sent outside in order to pay the costs for its removal.

Two P-51H's were pulled out near Stevens Village. Two more were found near Kotzebue, and three were removed from across Cook Inlet. One P-40 was removed from Amchitka Island in the Aleutians. All of these aircraft were removed by Steve Myers of Washington.

Another P-40 was removed from a site near Fairbanks in 1977 and was sold to a buyer at an unknown Lower 48 destination.

A United States Navy Vought OS2U Kingfisher which crashed during WW II on one of the small islands near Kodiak, was removed in the early summer months of 1979 for removal to the Smithsonian.

There have been numerous other cases. An ad in Flying Magazine's June '80 issue states that sale of "P-39 Airacobras. Recently recovered from a fresh water lake in the Alaskan Peninsula. Russian armament, 117 hour totals hours each. Make offer, would like aviation museum or same to purchase...Yakima, Washington..." A call from the United States Historical Aircraft Preservation Museum in Anchorage brought no response.

Three B-25 Mitchell bombers have left the state in the past two years, in flyable condition, headed for the Outside.

The United States Historical Aircraft Preservation Museum has been trying for several years to open a museum facility located at Merrill Field, but has been blocked from doing so because it has no planes to put into the facility. At the same time, the Planes of Fame Museum from Chino, California has been soliciting donations of Alaska aircraft on a promise of opening an Alaskan branch museum at some undetermined later date.

It has successfully acquired an A-26 from Dr. Donald Rogers, an H-21 helicopter from Bill Swift to help in removing aircraft downed in Alaska, a B-25 from Fairbanks. A wing insignia was donated to the Air Force Museum by Ted Spencer - the insignia coming from the wing on an

aircraft downed at Nome which was to have been used in reconstructing a P-63 Airacobra.

The Committee contends that Planes of Fame has an established reputation for flying, crashing and destroying one-of-a-kind aircraft, and of selling aircraft and aircraft parts in the Lower 48 and abroad in order to keep itself solvent.

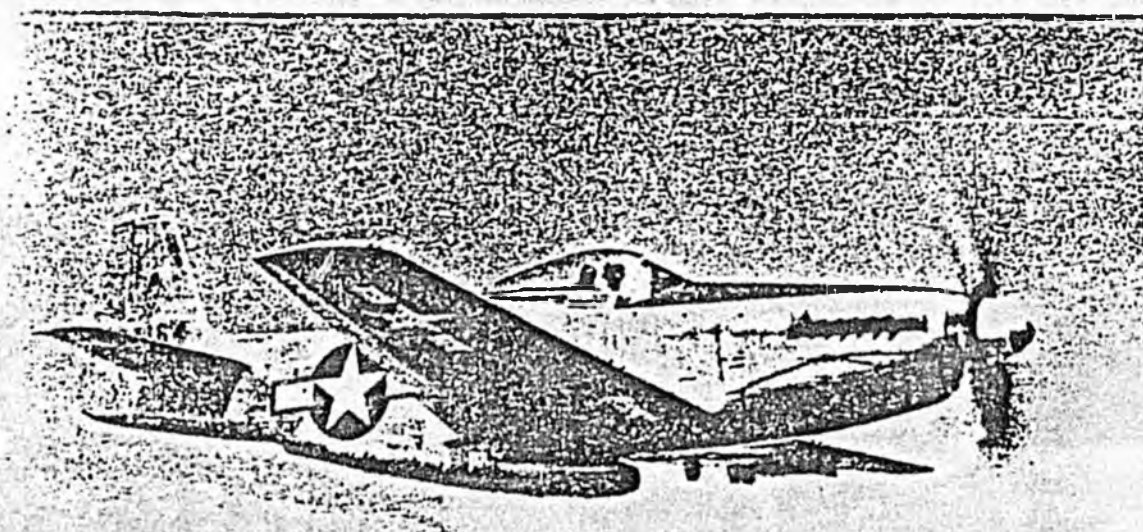
Flying in races and demonstrations for trophies and prize money has taken its toll on the vintage military aircraft.

The Committee feels that if it can adhere to those goals, Alaska will have one of the finest aviation museums in the U.S., preserving that part of Alaskan history.

The United States Historical Aircraft Preservation Museum is currently conducting negotiations for several planes of significant historical value, as well as parts and planes to be retrieved from bush areas.

Access to battlefields in the Aleutians is difficult because of the expense and weather conditions involved, but the area promises to be a fertile area to search.

If the museum has had a difficult time collecting actual aircraft for its displays, there has been no shortage of donations of other treasures. Photographs, blue prints from the Bell Factory which

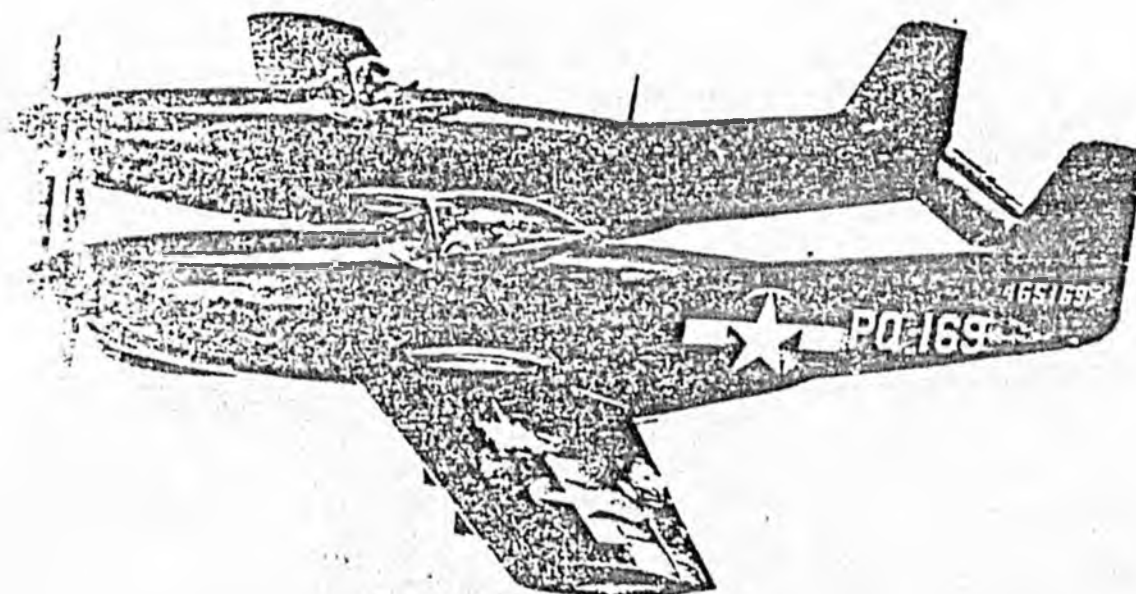


These fighters, P-51's Mustang, were used toward the end of WW II in Alaska. They did not see combat in the Aleutian Campaign. Three downed P-51's were located.

AAHS

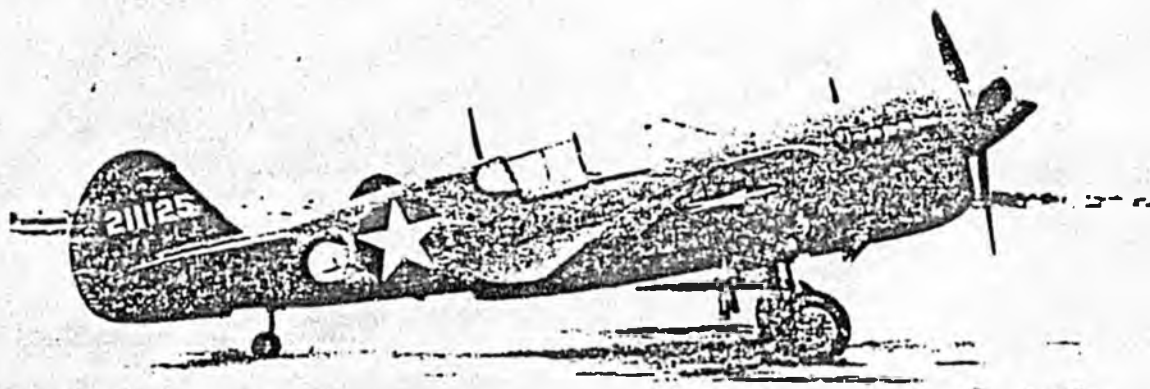
The P-82 Twin Mustang was based in Alaska after WW II. One was located that bellied in and is intact in the Interior.

USAF



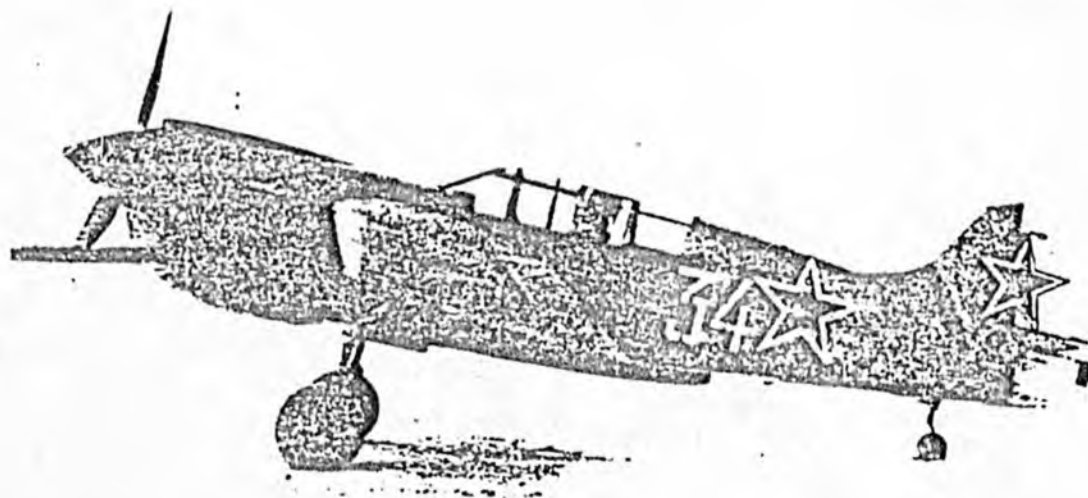
Curtiss P-40 was used by the USAF during the Aleutian Campaign. Eight P-40's were located: Five of them were abandoned, two were downed, and one is in the bottom of a fresh water lake. Also several brand new P-40's were buried in crates in the Aleutians.

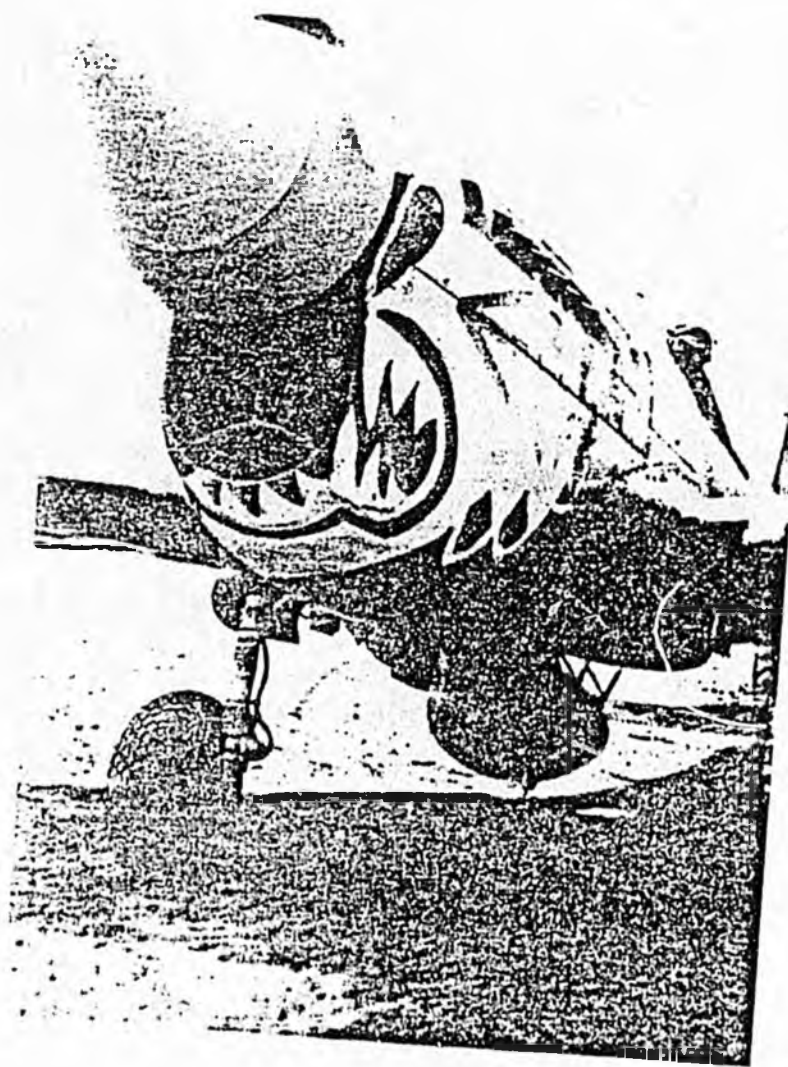
RWT



Approximately 48 Lend Lease P-40's came through Alaska on their way to Siberia. At present Moscow is the only place in the world that has one of the Lend Lease P-40's. Two more were located in the Interior.

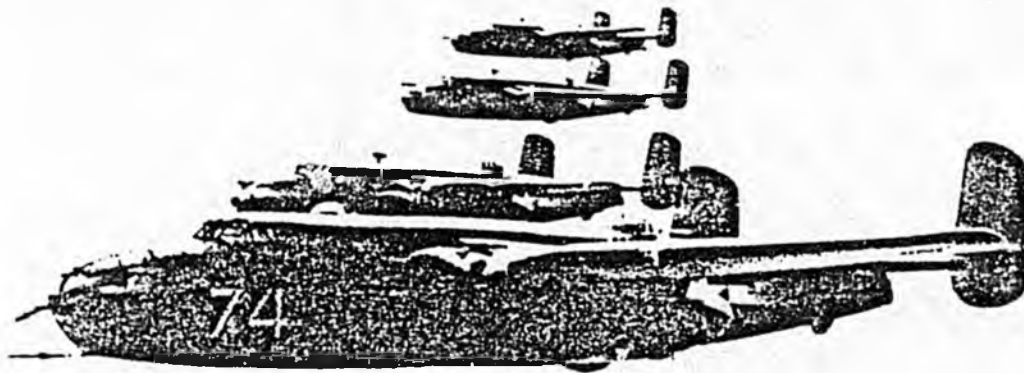
GFP





This is a Curtiss P-40 called the "Aleutian Tiger." It was used in combat by the United States during the Aleutian Campaign. Four of them were located.

USAF

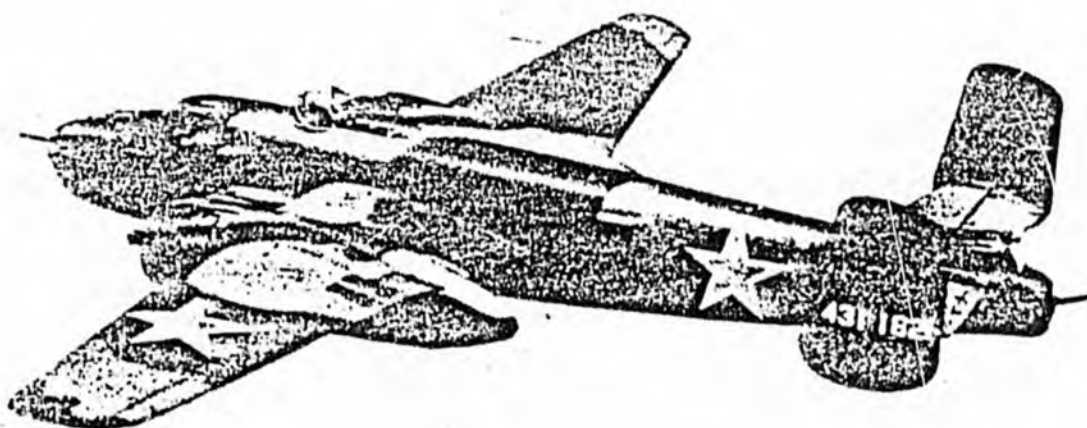


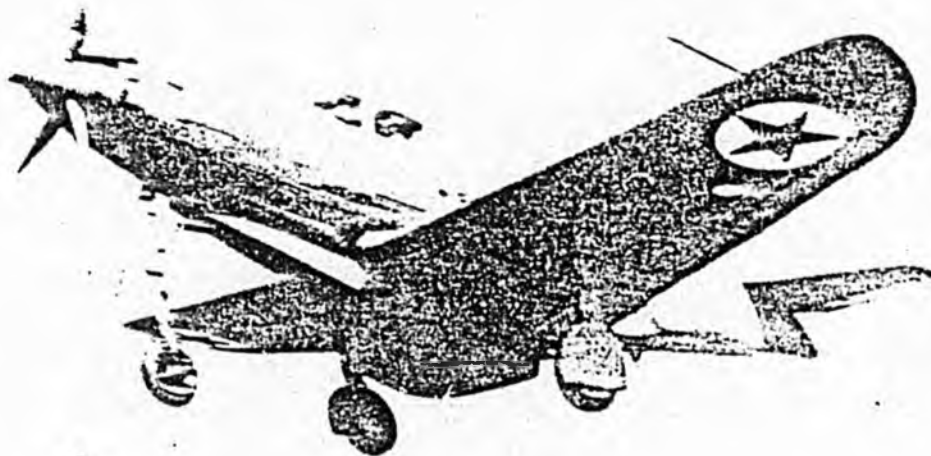
Two of these B-25 Medium Bombers went down in the Aleutians during the Aleutian Campaign.

USAF

Approximately 732 of these Lend Lease B-25 Mitchell Bombers were ferried from Great Falls, Montana, Whitehorse to Fairbanks to Siberia, Russia to be used against the Germans during WW II. Three of these aircraft went down in the Interior Alaska.

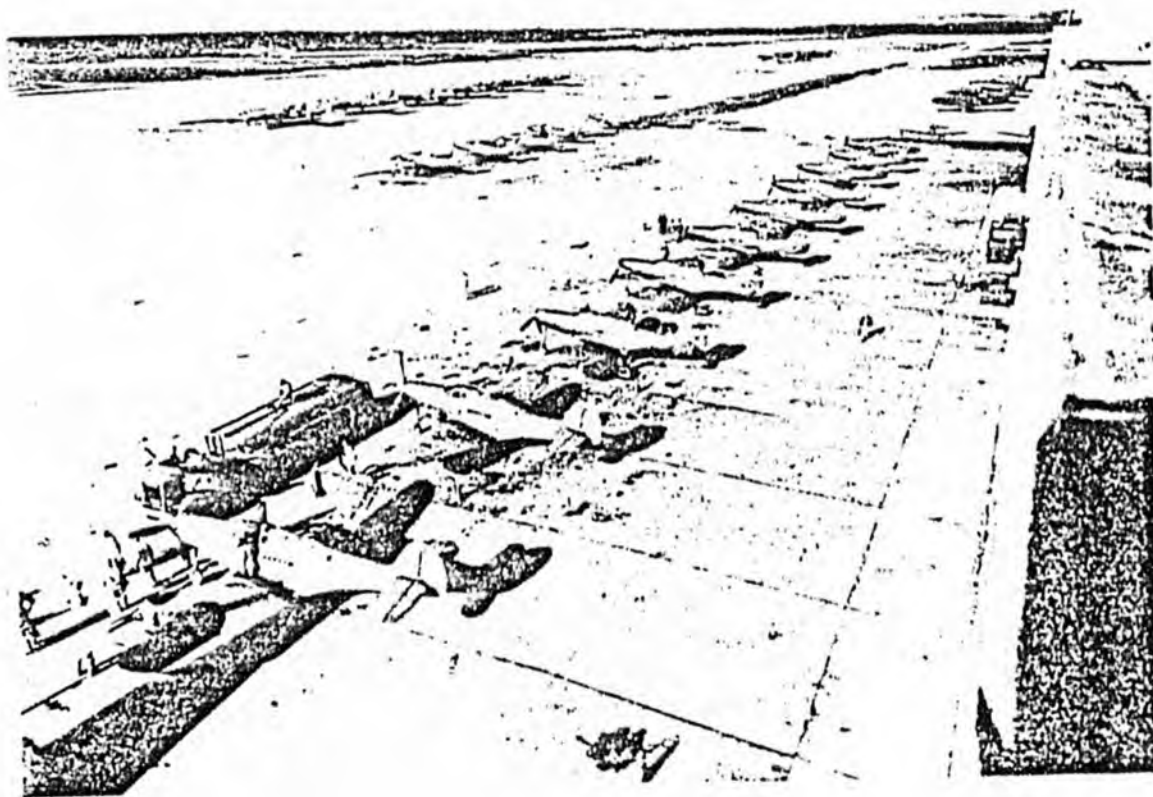
NAA

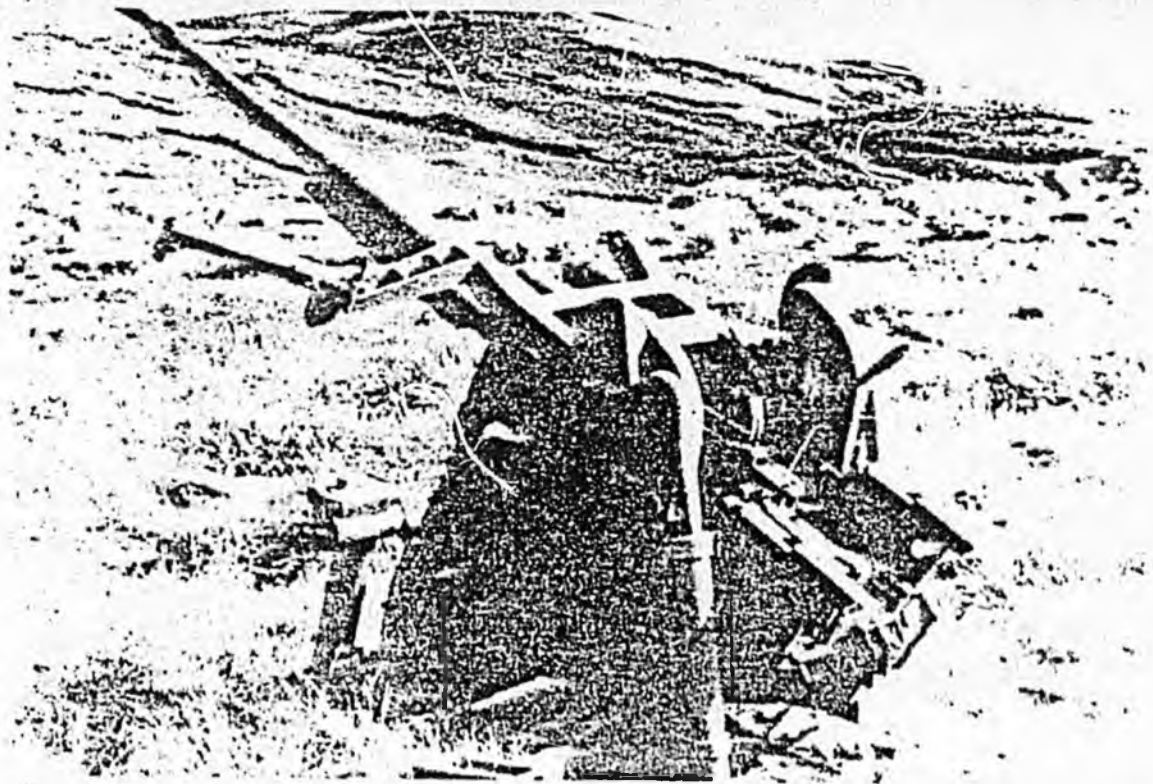




Approximately 2,618 P-39 Airacobra came through Alaska on their way to Siberia under the Lend Lease Program. Eleven of the P-39's went down in the Interior, and six of these are in fresh water lakes.

USAF

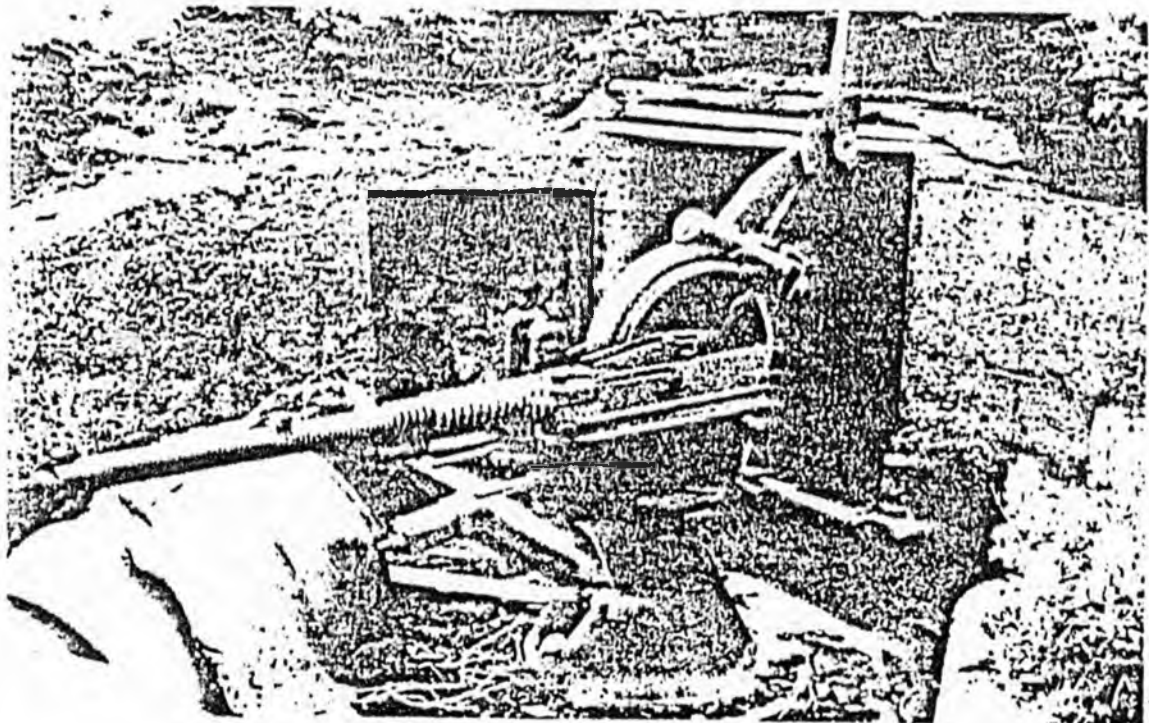




Japanese Model 96 (1936), Type 2, 25 mm Anti-aircraft Gun and Mount. This gun is very rare and was not extensively used by the Japanese.

COE

Japanese Model 93 Heavy Machine Gun, 13.3 mm on an Anti-Aircraft Mount. USFWS





HJR66 and HB678 BACKUP INFORMATION

The Alaska Historical and Transportation Museum and other interested non-government organizations are focusing on long range planning, development, and preservation of pioneer, transportation and military history throughout the State and especially on the Aleutian Island Chain.

The projects of the organizing committees are to: (1) Survey and inventory significant relics, artifacts, and related historical material pertaining to transportation (surface, maritime, and with major emphasis on aviation); (2) Develop plans for the historic preservation and interpretation of these artifacts; (3) Recommend an appropriate museum site(s); (4) Coordinate with other public and private sector museums to insure that all groups interested in aircraft recovery can participate in recovery and restoration of aircraft, and that the restored aircraft will remain in Alaska; and (5) Prepare a presentation for submittal to the Governor and the Legislature in 1985 on a statewide program of cultural and historical preservation, including programs on pioneer, transportation, military, and the historically related areas, which are either not currently included in existing museum services or are inadequate in scope.

These projects and assessments will supplement the existing Statewide Museum Plan and will include recommendations for future museum development in the State of Alaska.

There has been no comprehensive statewide assessment or inventory of Alaska's historical artifacts that are constantly being removed from the State. Although many agencies have worked with each other on various aspects of preservation, an overall coordinated appraisal of the most critical needs in this area has never been possible.

Alaska's military history covers a wide range of topics: the Alaska Purchase to World War II era, aviation, maritime, World War II Aleutian campaign, DEW Line, and post-WW II history, etc. A number of agencies have shown an interest and have done limited statewide planning to locate historical Alaskan artifacts, but have discovered that big money in the lower 48 is stealing many of our WW II aircraft from federal and state land without any interference and are selling them to museums and making a fortune. It's big business. Many of these U.S. and Japanese aircraft have been salvaged almost intact.

It is hoped that HJR66 and HB678 will assist, when implemented, to retain valuable artifacts in Alaska and in 1985 some funds can be made available to improve our historical museums. The Army, Air Force, and National Guard have already assisted in salvaging and restoring some of these artifacts.

CAV Needs You And You Need CAV
for

VETERAN POWER

Army Navy Air Force Marines Coast Guard National Guard Reserves

The historically significant relics, artifacts and other materials are part of Alaska's history and should be preserved before it is too late. Many WWII aircraft, both friendly and enemy, have been literally stolen from the Aleutian Chain and are now in museums in the States of Ohio, Tennessee, Washington and California that we know of. They are a part of Alaska's wartime history and should remain here. They will also be of tourist interest.

Draft prepared by B. B. Talley
with contribution by
Col. Evan J. Griffith, USAF

BACKGROUND MATERIAL IN SUPPORT OF HB _____
APPROPRIATING FUNDS FOR A COMPREHENSIVE DOCUMENTARY FILM
OF WWII IN ALASKA

There exist several books and papers, some official, which purport to document the history of WWII in Alaska. In addition, the military services have extensive motion pictures of their operations in Alaska. In recent years there has been a rebirth of interest on the part of individuals and organizations, particularly veterans organizations, in this part of Alaska's history. These individuals and groups have many important visual records which can be obtained for a comprehensive documentary film of WWII in Alaska.

In 1980, on the 40th anniversary of its arrival in Alaska, the veterans of the 11th US AF held a reunion in Alaska. It included a visit to the Aleutians as far out as Shemya. Weather prohibited their going to Attu. Extensive motion pictures and video tapes were made of this celebration, including interviews and oral history from many of the veterans present.

In 1982 extensive motion pictures and video tapes were made by individuals, organizations and by TV stations of the ceremony in dedication of a memorial on Unalaska Island to all those who lost their lives in the Aleutians during WWII. This included the Armed Forces of the United States and Canada, the Aleuts, and the Japanese Armed Forces. The two Japanese officers, now retired, who led the first and second waves of bombers in the attack on Dutch Harbor on 4 June 1942 participated in this dedication. The dedication was preceded by a flight from Unalaska Island to the Umnak Air Base, and to the position of the Japanese carrier from which the attack was launched, thence following the course of the planes to the rendezvous point and returning to Dutch Harbor. The plane was piloted by the Japanese officer who led the attack, flying

in reverse the course flown in the attack. From the rendezvous point, the plane flew the course at the same altitude flown in the actual attack. In the plane were Admiral James S. Russell, USN-Ret. who commanded the US Navy Catalinas in Alaska during WWII, BG B. B. Talley, Corps of Engineers, retired, who was responsible for building the secret air base on Umnak Island from which the US AF P-40s broke up the Japanese aerial attack on Dutch Harbor, and Admiral Hiroichi Samejima, JMSDF (Ret.) who led the first wave of Japanese bombers, and Colonel Zenji Abe, JMSDF (Ret.) who led the second wave which consisted of dive bombers. (Then Lieutenant Commander Abe later transferred to the army, as the reconstituted Naval defense force did not have dive bombers.) Also in the plane were Mr. Ted Spencer who arranged the dedication ceremony and the aerial flight here described. There was also a motion picture camera crew aboard who recorded the flight on film.

In view of the advancing age of the still living participants in WWII in Alaska, delay in the production of this visual history might preclude their participation in this important chapter in Alaska's history.

Inasmuch as the State of Alaska would be the primary beneficiary, the State should be the primary sponsor of the project. Such a project is within the purview of the Alaska Historical Commission of the Department of Education.

The project would include, but not necessarily be limited to, bringing together into a single compilation the best of the existing film, editing it into a single comprehensive historical document. There should be included in this compilation such additional footage as may be appropriate, with commentary by selected veterans who took part in the action.

Upon being instructed to carry out this project and being provided with the necessary funds for its accomplishment, the Alaska Historical Commission formed by AS Title 44, Article 3,

would have power to prepare or to authorize and coordinate the preparation and production by others of a documentary film covering this important portion of Alaska's history. Such a history should include but not be limited to the stills and motion pictures already in existence, but should include additional visual components as may be appropriate. Such a project should be completed by June 30, 1986.

A conceptual organizational structure for executing this project is shown in Figure 1.

C O N T E N T S

Part I. Facts of Aircraft and Aircraft Parts, Flyable and Non-Flyable, that Left the State of Alaska.

- Page 1. Douglas C-38F Aircraft that left the state of Alaska in 1968.
- Page 2. Flying Magazine add in June 1980 regarding the removal of two P-30 Airacobras from Alaska. Six years ago two P-30 Airacobras were located at Minchumina Lake. In 1982 approximately \$10,000 were spent by a company to retrieve these aircraft. The group found out these were no longer there. We suspected that the aircraft mentioned in the Flying Magazine add are the same ones that were in Minchumina Lake.
- Page 3. A letter to Mr. Aldrich in California who sells vintage airplane parts. He sent to the USHAFM the original letter of Mr. Steve Matthews of Fairbanks who illegally removed airplane parts from state land and was attempting to sell them. The present whereabouts of the parts are unknown.
- Page 4. Photographs of two P-30 Airacobras on state land near Fairbanks. For the past four years illegal salvagings had been done to these.
- Page 5. Alaska Magazine Jan. 1981 two articles about a Stinson aircraft that was removed from the dump at Merrill Field, Anchorage and which is now on display at Seattle. The man who removed the aircraft, J. Berry, also removed in the early 1970's a P-40 aircraft from the Alaskan bush which was later transported to the Lower 48.
- Page 6 and 7. An article from a vintage/WW II aircraft book regarding the removal of a P-40 from the Aleutians.
- Page 8 thru 12. A Flying Magazine article regarding the removal of one P-40, four P-51 Mustangs, and three other P-50 Mustangs that were just removed for parts out of the state of Alaska.
- Page 13. Photographs of the P-40 that was removed from the Aleutians.
- Page 14. Oct. 1978 Alaska Magazine article on donation of a P-30 Airacobra's wing portion to the Lower 48.
- Page 15. Air Classics Magazine 1979 article with photographs of mutilation of a Lend Lease Russian aircraft's wing which is now in Ohio.
- Page 16. A letter from Dept. of Interior regarding the unlawful removal of aircraft parts from Amchitka Island. The two individuals who were involved in this unlawful act were fined \$500 each.
- Page 17 and 18. A letter from the Smithsonian Institution about the removal of a Navy CSRU Kingfisher from Afognak Island. The aircraft is now on loan from Smithsonian to Bradley Museum in Connecticut.

C O N T E N T S

Part I. Continued

- Page 19. A Douglas S3D-5 Dauntless wing which was in the Aleutian but is now in California.
- Page 20. Four photographs of helicopter parts and aircraft parts being shipped by Sealard from Anchorage to California.
- Page 21. B-25 aircraft engines that were donated to an aviation group in Alaska and are now in California.
- Page 22. A letter to Paul Caulkett regarding two B-25 aircraft that were to be used as static display within the state of Alaska.
- Page 23 and 24. A letter from the Alaska Department of Transportation in Fairbanks showing that one of the B-25 aircraft (paragraph 4) was sold to Mr. John C. Morgan by one of the aviation societies in Anchorage.
- Page 25. Two photographs of the B-25 that one of them was sold to Calif.
- Page 26. Alaska Magazine Dec. 1980 article on a Stearman that was in Alaska and is now in the Lower 48. (If interested, a copy of the article can be provided.)
- Page 27. Three photographs of P-38 Lightning which was removed from Alaska and is now in California.
- Page 28. A letter from State of Alaska, Dept. of Natural Resources regarding the attempts of Castle AFB in California to remove the remains of a P-38 from the Aleutians.
- Page 29. Air Classics Magazine April 1981 article on A-26 Invader that was given to California as a donation.
- Page 30. Two photos of the A-26 flyable aircraft that ^{was} donated to Calif.
- Page 31. Top - photo of the three B-25's which two of them left the state of Alaska. Destination unknown. Bottom - another photo of the A-26 that was donated to California.
- Page 32. Picture of a B-25 flyable aircraft that is now in California.
- Page 33. A Lockheed Constellation that was donated to City of Kenai, later was sold for \$30,000 and is now in Florida.

Part II. Aircraft and artifacts that had left the state of Alaska which cannot be stated as illegally been salvaged. Records at the Air Force Rescue Coordination Center at Elmendorf AFB show these WW II aircraft are no longer in their crash sites, there are no indication of their present whereabouts, or who retrieved them. Reports from bush pilots, who spotted the aircraft earlier, show that the same aircraft are no longer in their crash sites.

C O N T E N T S

Part II. Continued

1. Bulken Island in the Aleutians: The crashed P-38 Lightning's complete booms (two) and vertical stabilizer were removed two years ago. Can be verified thru Dept. of Fish and Wildlife.
2. A Lend Lease P-40, which crashed in 1944 in Nome area, was found in 1978. The aircraft was no longer there in 1952. Verified through bush pilots.
3. A Canadian P-40 that was located in 1968 was not there in 1976. The aircraft was completely removed. Only a few remaining parts are there. Verified through bush pilots.
4. P-51 Mustang, which crashed in 1944 at Broad Pass, was removed in early 1970's by an Anchorage resident couple and was shipped to the Lower 48. Also the husband removed P-40 parts of four aircraft that are on Unalaska in the Aleutians. This can be verified through U.S. Hist. Aircraft Preservation Museum.
5. WW II aircraft parts from Nome, Fairbanks and Northway that were removed three years ago and are now in Lower 48. Can be verified through USHAFM.
6. A vintage aircraft that crashed in Ketchikan: Its parts were removed for souvenir and are still in Alaska. Can be verified through USHAFM.
7. There are numerous stories told by state agencies, the local military, bush pilots and individuals that know, had seen, and have been involved in the removal of WW II aircraft, aircraft parts, and artifacts out of the state of Alaska.

If at the present time there were laws protecting the WW II aircraft and artifacts, these individuals and groups of people in the state of Alaska can be checked out and their residences be searched to prove the statements. The USHAFM knows several of these people.

It is difficult to prove that there is illegal salvaging of WW II aircraft, aircraft parts, and artifacts because the individuals who are involved are never caught. The only way we can prove that such a thing is happening is when these aircraft and aircraft parts come to surface in private hands and/or in the Lower 48 when the serial numbers and tail numbers can be verified that they came out of the state of Alaska. This takes time of hours and years. Alaska is slowly being stripped of its WW II aircraft, aircraft parts and materials that the average persons do not realize it till they are actually involved in the research of the WW II artifacts and materials in the state and in the Aleutians.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 678
 Title: "An act relating to
 World War II artifacts"
 Sponsor: Representative Liska
 Requestor: House State Affairs
 Date of Request: March 3, 1984

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

FILE COPY

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan ^{FAC} Phone: 269-5691
 Division: Alaska State Troopers Date: 03/02/84
 Approved by Commissioner: Robert J. Sundberg Date: 3/6/84
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

MEMORANDUM

State of Alaska

TO: Honorable Esther Wunnicke
Commissioner
Department of Natural Resources

DATE: April 3, 1984

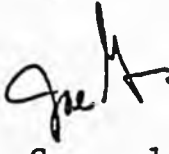
FILE NO: 366-544-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Ownership of abandoned airplanes located on state land

By: Joseph W. Geldhof
Assistant Attorney General



You have requested our counsel with respect to the disposal of property located on state land. This inquiry arose because of competing ownership claims to a Consolidated PBY/OA-10 "Catalina" flying boat (PBY) of World War II vintage abandoned at Dago Lake approximately 30 flying minutes south of King Salmon, Alaska. The PBY has remained at Dago Lake since 1947. During the intermittent years the PBY has been stripped of the engines, certain components and slightly vandalized. The plane is located on land which belongs to the State of Alaska. Several organizations claim title to the aircraft and seek removal of the aircraft from state property. The aircraft is listed on the Alaska Heritage Resource Survey (#UGA-037).

The essential question in this situation is who owns the aircraft. A secondary question is answered involving the means by which the state may dispose of the aircraft assuming the state owns the aircraft and elects to pursue a disposal of the plane.

We believe the State of Alaska, through the Department of Natural Resources, has a colorable claim of ownership to the PBY located on state property near Dago Lake. The source of this ownership claim is found at AS 41.35.020(a) which states in relevant part that:

The state reserves to itself title to all historic, prehistoric and archaeological resources situated on land owned or controlled by the state

....

While the PBY is neither a prehistoric nor an archaeological resource, the aircraft is probably a historic resource according to AS 41.35.230(4) which defines "historic resources" as including:

deposits, structures, ruins, sites, buildings, graves, artifacts, fossils or other objects of antiquity which provide information pertaining to

the historical or prehistorical culture of people in the state as well as to the natural history of the state.

(Emphasis added.) The PBY is probably a historic resource because it is an artifact or ruin located on state property which provides information pertaining to the historical culture of the people in the state. The plane is a type used during the Second World War during the Aleutian campaign, a campaign which saw the only land battles fought on North American soil during that war and which made extensive use of PBY's.

In the alternative, the aircraft is probably a historic resource because it is an object of antiquity which provides information pertaining to the historical culture of the people in the state. There can be no specific definite time limit as to when an object becomes an "antiquity." United States v. Diaz, 368 F. Supp. 856, 858 (D.C. Ariz. 1973). The Diaz case is instructive for the antiquity analysis. In that case, a Magistrate made a finding pursuant to a prosecution for appropriation of Indian artifacts on government land. The Magistrate ruled that artifacts less than five years old were objects of "antiquity." In light of testimony as to the significance and the importance of the artifacts to the Indian culture and heritage, as well as the uniqueness of such artifacts, and the fact that the case was one of first impression, the court held that the findings of the Magistrate were not clearly erroneous. Id. at 857.

Our inquiry on the question of ownership does not rest with the determination that the state has a legitimate claim to the aircraft in question. Because the state was not the original owner of the PBY, the possibility exists that a superior claim may be asserted with respect to the aircraft.

While in possession of the aircraft, the state has certain rights, including the right to continue possession against everyone except those who have a better right; the right to recover the plane if it is wrongly taken; and the right to recover for damages to the aircraft. See generally, C. Smith & R. Boyer, Survey of the Law of Property (2d ed. 1971). In addition, the state may elect to bring criminal charges against an individual that removes, destroys or injures the PBY or other historic, prehistoric or archaeological resources in the state's possession based on AS 41.35.200.

At common law, property for which an owner was not known, was classified in the following ways:

a) lost property; b) treasure trove; c) mislaid goods.

The characterization of lost property, treasure trove or mislaid property is dependent on the situation or location of the property in question. Lost property is property unintentionally lost by the true owner. Treasure trove consist of coin, money or other precious commodities concealed in the earth or other private place. A finder of lost property acquires title to the found property against all but the true owner. Generally, in the United States treasure trove is treated as lost property and belong to the finder in the absence a superior claim by the true owner. Mislaid goods are those which were intentionally placed by the owner where they were found, and then forgotten or left there. The finder of misplaced or mislaid goods does not obtain title to right to possession of the property. The owner of the property on which misplaced goods are found is deemed to hold the goods for the true owner. See generally, id. at 456-457; see also, 1 Am.Jur.2d Abandoned, Lost, Etc., Property §§ 18-26 (1962). In Alaska, unclaimed property is governed by AS 34.45.010, et seq., a statutory provision which is not particularly helpful for our analysis.

The PBY in question does not have any of the characteristics of lost property or misplaced goods. The PBY is certainly not treasure trove within the classic definition, although some of the competing aviation groups seeking possession of the plane treat the plane as a "treasure."

Because one of the organizations seeking possession of the aircraft has a certificate of title filed with the United States Government which gives them a claim against the PBY, we have reviewed the doctrine of abandonment in order to ascertain whether that organizations claim of title to the aircraft is still valid. Abandonment divests a former owner of title to property, as if the owner never had any right or interest in the property. The burden of proof is upon one alleging abandonment and the evidence in support of a charge of abandonment must be clear and convincing. Burr v. House, 3 Alaska 641 (Alaska 1909). Abandonment is a matter of intention. Harkrader v. Carroll, 76 F. 474 (D.C. Alaska 1896). Accord Loeser v. Gardiner, 1 Alaska 641 (Alaska 1902), and Whites Guardian v. Martin, 2 Alaska 495 (Alaska 1905). But cf. Gurgel v. Nichol, 429 P.2d 47, 48 (Utah 1967), for the proposition that nonuse and lapse of time are proper considerations for determining abandonment.

In the current situation, the actual act of relinquishment accompanied by an intention to abandon the PBY by the true owner has not been shown. Absent intention to abandon and given the difficulty of convincing a jury that the planes circumstantial neglect constituted abandonment, the interest asserted by the individual with the certificate of title is probably superior to the state's general claim based on legislation found at AS 41.35.020. This of course assumes the deed of title to the PBY is valid. A claim supported by a valid title is also superior to a general claim of ownership based on a previous owners letter of disinterest in the property or a quit claim to the property in question exercised subsequent to a valid conveyance.

Once the determination of who has a superior ownership claim to the PBY is sorted out, the state may be faced with a question of how the Department of Natural Resources might dispose of aircraft or other personal property located on state lands. 1/

Under article IX, section 6, of the Alaska Constitution, public property can only be transferred to promote a public purpose. 2/ Consequently, the Department of Natural Resources may not make a gift of state property to any entity absent showing that it would promote a public purpose. See 1983 Op. Att'y Gen. (Nov. 2). Ac cord 1980 Op. Att'y Gen. (May 28).

Assuming there is a legitimate public purpose for disposing of historic, prehistoric or archaeological resources, statutory authority must exist for a particular department to dispose of property. See generally 1969 Op. Att'y Gen. (Mar. 27). As it happens, the Department of Natural Resources, Division of Lands has such authority in AS 38.05.035(14) which provides in relevant part that the director of the Division of Lands may:

1/ In passing we note that if the state ever locates or attempts to dispose of historic, prehistoric or archaeological resources on state land, caution should be exercised to comply with provisions of AS 41.35.020 which protect aboriginal Alaskan interests in historic, prehistoric and archaeological resources.

2/ Alaska Constitution article 9, section 6, provides that "[n]o tax shall be levied or appropriation of public money made or public property transferred, nor shall the public credit be used except for a public purpose."

with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interest in them, and in addition to the condition and limitations imposed by law, [the director] may impose additional conditions or limitations in the contracts ... [which] will best serve the interest of the state

(Emphasis added.)

There is no constitutional requirement for a competitive sale in a situation like this. Such requirements as exist are to be found in the statute. Cf. Libby v. City of Dillingham, 612 P.2d 33, 40-41 (Alaska 1980).

In this situation, it is the best interest of the state which must be served. If the Department of Natural Resources finds that it owns a resource like the PBV and finds that disposal to an entity would best serve the public, we would recommend that the department make a formal written finding and commence work on a transfer agreement in conjunction with the Department of Law and the individual or the entity which seeks possession of the resource. Transfer of an aircraft or other valuable cultural resources owned by the state should be conditioned upon completion of an agreement which adequately protects the state and public interest. At a minimum this agreement should contain a provision for display and access to the resource for the citizens of the state. In addition, any agreement transferring property like an airplane should allocate responsibility for damages to persons or property associated with the movement, storage or display of the aircraft.

In conclusion, we believe the state has a legitimate ownership claim to the aircraft now resting near Dago Lake. This ownership claim is not absolute however, and is probably inferior to the assertion of ownership claimed by the Alaskan Historical Aircraft Society (AHAS). If, after inspection of the title documents presented by the AHAS, it appears that AHAS has an unbroken chain of title following the original conveyance from the United States Government to the first private citizen owner via a surplus sale in 1948, then we would recommend that you accede to the request of the AHAS and allow that organization access to the PBV for purposes of removal. If you are at all concerned about the AHAS's chain of title, a title search by any firm conducting such reviews may be warranted. The Department of Law is available to inspect or otherwise assist your agency in a

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review of any title documents pertaining to the various ownership claims.

Please call if we can be of additional assistance on this matter.

JWG:eer

cc: Ty L. Dilliplane
Chief, Office of History and
Archaeology
Alaska State Parks