

1 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

2 **FIRST JUDICIAL DISTRICT AT JUNEAU**

3 **LARRY HOOTON,**)

4))
5 **Appellant,**)

6 **v.**)

7 **STATE DEPARTMENT OF**)
8 **COMMUNITY AND ECONOMIC**)
9 **DEVELOPMENT, DIVISION OF**)
10 **OCCUPATIONAL LICENSING,**)
11 **BIG GAME COMMERCIAL**)
12 **SERVICES BOARD, OFFICE OF**)
13 **ADMINISTRATIVE HEARINGS.**)

14))
15 **Appellee.**)

16) **Case No. 1JU-16-633 CI**
17) **OAH No. 16-1068-GUI**

18 **DECISION**

19 Mr. Hooton appeals the Alaska Big Game Commercial Services Board’s (Board)
20 March 15, 2016 decision to adopt Administrative Law (ALJ) Judge Seifert’s December 21, 2015
21 Order of Summary Adjudication upholding the Alaska Department of Commerce, Community,
22 and Economic Development’s (State) March 26, 2015 decision to cancel his 2015 Guide Use
23 Area registrations for Guide Use Areas (GUA) 01-03 and 01-04. Neither party has requested
24 oral argument. The Board’s decision is, for the following reasons, affirmed.

25 **I. ISSUES**

 Mr. Hooton’s appeal presents the following two issues:

- a. Whether the Board erred in adopting ALJ Seifert’s December 21, 2015 Order on Summary Adjudication as the Board’s final decision with respect to GUA 01-04 because he submitted the required authorization from the City and Borough of Juneau (CBJ); and

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- 1 b. Whether the Board erred in adopting ALJ Seifert’s December 21, 2015 Order
2 on Summary Adjudication as the Board’s final decision with respect to GUA
3 01-03 and GUA 01-04 because the USFS, in denying his application for a
4 permit to guide hunts therein, violated the Alaska National Interest Land
5 Conservation Act (ANILCA).

6 II. JURISDICTION

7 This court has appellate jurisdiction herein pursuant to Alaska Rule of Appellate
8 Procedure 601(a), Alaska Rule of Appellate Procedure 602(a)(2), AS 44.62.330(19), AS
9 44.62.560(a), and AS 22.10.020(d).

10 III. STANDARDS OF REVIEW

11 The Alaska Supreme Court has recognized that:

12 In reviewing administrative decisions...[there] are at least four principal standards
13 of review. “These are the ‘substantial evidence test’¹ for questions of fact; the
14 ‘reasonable basis test’ for questions of law involving agency expertise; the
15 ‘substitution of judgment test’ for questions of law where no expertise is
16 involved; and the ‘reasonable and not arbitrary test’ for review of administrative
17 regulations.” We review an agency’s interpretation of its own regulation under
18 the reasonable basis standard, deferring to the agency unless the interpretation is
19 ‘plainly erroneous and inconsistent with the regulation.’ We review questions of
20 law and issues of constitutional interpretation de novo under the substitution of
21 judgment standard.²

22 ¹ “Substantial evidence is evidence that a ‘reasonable mind might accept as adequate to support
23 a conclusion.” *May v. CFEC*, 175 P.3d 1211, 1216 (Alaska 2007). An appellate court does not
24 “reweigh the evidence nor choose between competing factual inferences.” *State of Alaska,
25 Division of Corporations, Business and Professional Licensing v. Platt*, 169 P.3d 595, 601
(Alaska 2007) (quoting *Doyon Universal Services v. Allen*, 999 P.2d 764, 767 (Alaska 2000)).
And the court must uphold an administrative agency’s decision if it is support by substantial
evidence “[e]ven though there are competing facts that might support a different conclusion.”
Platt, 169 P.3d at 601. An appellate court may reverse an agency’s decision “only if we ‘cannot
conscientiously find the evidence supporting [the agency’s decision] is substantial’.” *Powercorp
Alaska, LLC v. State, Alaska Industrial Development and Export Authority*, 171 P.3d 159,
163(Alaska 2007) (quoting *Leigh v. Seekins Ford*, 136 P.3d 214, 216 (Alaska 2006) (citation
omitted)).

² *Simpson v. CFEC*, 101 P.3d 605, 609 (Alaska 2004) (quoting *Jager v. State*, 537 P.2d 1100,
1107 n. 23 (Alaska 1975), *See also, May*, 175 P.3d at 1215; *Lauth v. State*, 12 P.3d 181, 184
(Alaska 2000) (quoting *Bd. of Trade, Inc. v. State, Dep’t of Labor, Wage & Hour Admin.*, 968
P.2d 86, 89 (Alaska 1998)).

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1 **IV. RECORD**

2 GUA 01-04 consists of private land, including land owned by Mr. Hooton, land
3 owned by CBJ and land owned by the United States. GUA 01-03 contains land owned by the
4 United States. The federal land in GUA 01-03 and GUA 01-04 is managed by the United States
5 Forest Service (USFS).

6 Mr. Hooton submitted an application for a permit to conduct guided hunting for
7 black bear, brown bear, and wolf in GUA 01-03 and GUA 01-04 to the USFS on January 15,
8 2015.

9 Mr. Hooton submitted a 2015 Registration Application for GUA 01-03 and GUA
10 01-04 to the State on February 3, 2015. The Application form sets forth the “documentation of
11 authorization” requirements of 12 AAC 75.230(a)(4). He represented therein that he had applied
12 for the required authorization. And he submitted therewith a February 2, 2015 letter to Cindy
13 Hansen, Licensing Examiner, expressing concerns about the USFS’s practices with respect to
14 issuing use permits and attached copies of related emails between him and the USFS.³

15 The State issued Mr. Hooton a Guide Use Area Registration Confirmation on
16 February 5, 2015 for GUA 01-03 and GUA 01-04, effective March 4, 2015 and expiring on
17 December 31, 2015.
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23 _____
24 ³ The emails included a November 11, 2014 email from Rebecca Havens, a USFS Special Use
25 Permit Administrator, informing Mr. Hooton that his request for a bear hunt permit was denied,
noting that the issuance of a permit would require the production of a prospectus and the USFS
did not have the administrative capacity to take on the preparation of a prospectus.

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1 USFS District Ranger Brad Orr informed Mr. Hooton in a March 9, 2015 letter
2 that the USFS would not issue him the requested special use permit for GUA 01-03 or GUA 01-
3 04.⁴

4 Mr. Hooton disputed the basis for Mr. Orr’s decision in a March 25, 2015 letter to
5 Mr. Orr.

6 Cindy Hansen, State Licensing Examiner for Big Game Guides & Transporters,
7 informed Mr. Hooton in a letter dated March 26, 2015 that, due to the USFS denying his
8 application for a special use permit for GUA 01-03 and 01-04, he is “no longer registered in
9 those guide use areas” due to non-compliance with 12 AAC 75.230(a)(4).
10

11 Mr. Orr reaffirmed his March 9, 2015 decision in a letter to Mr. Hooton dated
12 April 29, 2015.

13 Mr. Hooton sent Ms. Hansen a letter, dated July 13, 2015, in which he disputed
14 the March 26, 2015 decision to cancel his registration for GUA 01-03 and 01-04. He argued
15 with respect to GUA 01-03 that: said GUA is bordered by both USFS and CBJ land; the CBJ
16 does not require a permit; and, the USFS improperly denied his permit request. He argued with
17 respect to GUA 01-04 that the USFS had improperly denied his permit request and the State
18 should direct the USFS to process his permit request or except him from the permit process.
19

20 Ms. Hansen, in a letter dated July 23, 2015, informed Mr. Hooton of his rights
21 with respect to challenging the State’s March 26, 2015 decision. On August 10, 2015 Mr.
22 Hooton filed a request with the State for a hearing. The matter was assigned to ALJ Bride
23

24
25 ⁴ Mr. Orr’s stated reasons appear, at leastin part, to be similar to those expressed by Ms. Havens
in her November 11, 2014 email.

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1 Seifert on August 21, 2015. The State filed a Notice of Filing Agency Record on August 21,
2 2015.

3 Mr. Hooton filed a brief on September 23, 2015. The parties agreed that, per 2
4 AAC 64.250, the brief would be treated as a motion for summary adjudication. The State filed
5 an opposition on October 21, 2015 and Mr. Hooton filed his reply on November 3, 2015.

6 ALJ Seifert issued an Order on Summary Adjudication on December 21, 2015.
7 She found that there were no genuine disputes concerning a material issue of fact and that the
8 State was entitled to judgment for the following seven reasons:
9

- 10 1. Alaska Statute 08.54.720(a)(4) prohibits big game hunting guides in Alaska
11 from knowingly entering or remaining on private, state, or federal land during
12 the course of providing big game hunting or transporting services without
13 prior authorization.
- 14 2. 12 AAC 75.230(a)(4) requires that a registered guide-outfitter submit certain
15 information to the State, including:
16 documentation from the landowner or land manager that the
17 applicant has the authorization to provide big game hunting
18 services on at least 5,000 contiguous acres of the uplands in the
19 guide use area; proof of prior year authorization, if still valid, will
20 be accepted to meet the requirement of this paragraph; a letter of
21 intent to authorize use for the current year, from the landowner or
22 land manager, will be accepted to meet the requirement of this
23 paragraph.
- 24 3. The USFS did not authorize Mr. Hooton to provide big game hunting services
25 on USFS land in GUA 01-03 or GUA 01-04.
4. The State cannot force the USFS to grant Mr. Hooton such authorization, and
whether a state agency should work with the USFS to increase guide
opportunities in GUA 01-03 or GUA 01-04 is beyond the scope of the matters
at issue.
5. ANILCA does not allow hunting guides to have temporary access on the
federal land in GUA 01-03 or GUA 01-04 despite the USFS refusal to grant

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1 Mr. Hooton the requested authorization as he has not shown that 16 U.S.C. §
2 3171(a)⁵ applies in the present circumstances.

- 3 6. With regards to CBJ, Mr. Hooton was told during a November 9, 2015 status
4 conference that he must submit documented permission from CBJ as required
5 by 12 AAC 75.230(a)(4). His representation that CBJ does not require its
6 permission for hunting on its land in GUA 01-04 is not sufficient. He
7 acknowledged the requirement and stated the intent to obtain the
8 documentation from CBJ. On December 18, 2015 he submitted a copy of
9 emails between him and Dan Bleindorn, CBJ's Deputy Land Manager, which
10 are incomplete and cutoff and does not clearly show that he has the required
11 permission.⁶
- 12 7. The State "was correct to deny Mr. Hooton's application based on the record
13 at the time of the decision."

14 The Office of Administrative Hearings issued a Notice Regarding Proposed Order
15 on Summary Adjudication on December 22, 2015. The Notice advised that the parties could
16 request that the final decision-maker:

- 17 1. adopt the proposed order as the final agency decision;

18 _____
19 ⁵ 16 U.S.C. § 3171(a) provides that the Secretary of Agriculture:

20 shall authorize and permit temporary access by the state or a private landowner to
21 or across any conservation system unit, national conservation area, the National
22 Petroleum Reserve-Alaska or those public lands designated as wilderness study or
23 managed to maintain the wilderness character or potential thereof, in order to
24 permit the State or private landowner access to its land for purposes of survey,
25 geophysical, exploratory, or other temporary uses thereof whenever he determines
such access will not result in permanent harm to the resources of such unit, area,
Reserve or lands.

⁶ It appears that the referenced email is a December 16, 2015 email from Mr. Hooton to Dan
Blaidorn, CBJ Deputy Land Manager which does not contain the substance of the email (Record
at 085) and a paragraph (Record at 086) that is not accompanied by a date or listing of who it is
to or from, with the right margin cut off so that letters and possibly words are missing, and which
appears to state that Alaska Registered Guides may use CBJ lands provided that all Alaska
regulations regarding the safe use of firearms are followed, and that: "T [right margin cut off]
current CJB codes [gap] that require a permit for this type of activity as Regis [right margin cut
off] are required to have insurance/bonding by the State."

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- 1 2. return the case to the administrative law judge to take additional evidence or
2 make additional findings or for other specific proceedings;
- 3 3. revise the proposed . . . order . . . or other disposition of the case;
- 4 4. reject, modify, or amend a factual finding;
- 5 5. reject, modify, or amend an interpretation or application of a statute or
6 regulation.

7 ALJ Seifert issued a Notice on January 14, 2016 which set forth certain deadlines
8 for the parties to file Proposals for Action and related briefing with the final decision-maker.

9 The State filed a Proposal for Action on January 15, 2016 requesting that the final
10 decision-maker adopt ALJ Seifert's proposed order as the final decision in the matter.⁷

11 Mr. Hooton filed a Proposal for Action on January 20, 2016. He argued that: CBJ
12 does not require a permit for guided hunting on its land so he had the necessary approval; it
13 would be reasonable for the State to request that the USFS process special use permits for the
14 GUAs at issue, particularly since the USFS practices conflict with Articles 3 and 8 of the Alaska
15 Constitution; and, he also mentioned ANILCA.

16 Mr. Hooton apparently submitted with his Proposal for Action a document titled
17 "Permit Not Required" addressed to him from Greg Chaney, CBJ Lands and Resources
18 Manager, dated January 13, 2016 in which Mr. Chaney, in part, stated:

19
20 The purpose of this letter is to verify that permits are not currently required by the
21 City and Borough of Juneau to guide for hunting or fishing under a State Guide
22 License on CBJ remote property. As I understand it, this use will be non-
23 exclusive, transient, occasional, and will not require erection of permanent
24 structures. . .

25 This letter is subject to the following terms:

⁷ The State had filed an Adoption of Final Decision on January 13, 2016, which it then withdrew on procedural grounds per a January 14, 2016 Errata and Correction.

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- 1 A. Guide agrees to indemnify, defense, and hold harmless the CBJ,
2 and its agents and employees, from any claim or liability for loss
3 or damages to property, or injury or death to persons, arising in any
4 way out of Guide’s activities.
- 5 B. The Guide assumes all risk and is solely responsible for conducting
6 all activities in a safe, diligent and professional manner in light of
7 access, weather, terrain and other related environmental conditions.
- 8 C. The CBJ makes no claims as to the stability or the safety of access
9 trails or site locations in regard to its suitability for the Guide’s
10 intended purpose.
- 11 D. The Guide shall ensure that the guiding is carried in a safe manner
12 so as to not pose a danger to other uses of the property.
- 13 E. The Guide shall obey all laws and ensure that activities will be
14 conducted in a manner that will result in the least practical
15 temporary harm to the property; and that the Property will be
16 returned to its original condition prior to leaving the property.

17 The State submitted a Supplemental Memorandum dated January 21, 2016 in
18 which the State expressed its agreement that for this particular case the final decision-maker is
19 the Board.

20 ALJ Seifert sent a letter to the Board on January 29, 2016 advising that she was
21 therewith submitting her proposed decision and the parties’ related responses for the Board’s
22 consideration during its March, 2016 meeting, and setting forth the same five decision options
23 listed in the December 22, 2015 Notice.

24 The Board adopted ALJ Seifert’s December 21, 2015 Order on Summary
25 Adjudication as the Board’s final decision on March 15, 2016 and sent notice to the parties on
26 April 7, 2016 of the same and that they had 30 days within which to file an appeal in the Alaska
27 Superior Court per Appellate Rule 602(a)(2).

28 Mr. Hooton filed his Notice of Appeal on May 23, 2016. He presented two points
29 on appeal. First, that ALJ Seifert had failed in her December 21, 2015 Order on Summary

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1 Adjudication to consider his Response to the same, which included the January 13, 2016 Permit
2 Not Required document from the CBJ, which relates to GUA 01-04. Second, the Board was not
3 informed of the significance of the USFS's failure to process guide use permits.

4 **V. DECISION**

5 **a. CBJ**

6 The court finds that the Board did not err in adopting ALJ Seifert's December 21,
7 2015 Order on Summary Adjudication as its final decision because the CBJ had given Mr.
8 Hooton the necessary documentary authorization with respect to GUA 01-04 for four reasons.

9 The first reason concerns the procedural status of the case. The State revoked Mr.
10 Hooton's 2015 registration for GUA 01-03 and GUA 01-04 on March 26, 2015 because he had
11 not provided the documentary proof of authorization required by 12 AAC 75.230(a)(4). At that
12 point he had not provided anything from CBJ and the USFS had expressly declined to give him
13 authorization to guide hunts on the federal land in the GUAs. ALJ Seifert affirmed the State's
14 decision in this regard. The only additional evidence in the record at that point concerning CBJ
15 was the partial email described in footnote 6 above. Mr. Hooton submitted Mr. Chaney's
16 January 13, 2016 "Permit Not Required" document with his Proposal for Action. He apparently
17 was implicitly therein asking that the Board return the case to ALJ Seifert so that additional
18 evidence, such as the January 13, 2016 letter, could be considered and additional related findings
19 made. The Board declined to take that step and chose instead to decide the matter based on the
20 evidence in the record before ALJ Seifert.

21 Second, there was substantial evidence in the record to support the State's initial
22 decision and ALJ Seifert's decision with respect to the CBJ authorization situation. There was
23 no evidence of CBJ authorization when the State made its decision and the email evidence
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1 presented to ALJ Seifert thereafter was sufficiently vague and incomplete that a reasonable ALJ
2 in her position could conclude that it did not support a finding that CBJ had provided the
3 authorization required by 12 AAC 75.230(a)(4).

4 Third, the Board acted reasonably in declining to remand the case to ALJ Seifert
5 so that additional evidence, including Mr. Chaney's January 13, 2016 "Permit Not Required"
6 document could be considered. The court notes that: the matter involved 2015 GUA
7 registrations; at that point it was 2016; the CBJ document apparently was generated in 2016; the
8 CBJ document does not reference 2015; and, a remand and subsequent hearing and briefing
9 would result in the 2015 GUA registrations matter not being decided until a still later date.⁸

10 Fourth, there was substantial evidence to support the Board's decision to adopt
11 ALJ Seifert's December 21, 2015 Order on Summary Adjudication as its final decision with
12 respect to this issue for the same reasons that there was substantial evidence to support ALJ
13 Seifert's related findings, as discussed above.

14
15 **c. USFS**

16 Mr. Hooton has not shown that the USFS has violated ANILCA. In particular, he
17 has not shown that ANICLA either obviates the need for USFS authorization under 12 AAC
18 75.230(a)(4) or that ANILCA, or some other statute, rule, or proposition of law, somehow
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24 ⁸ The court notes that the State has not argued that the issues raised by Mr. Hooton are moot so
25 the court is not employing a mootness analysis. But the court is considering the timing matters
in the context of making this determination. The court also notes that the State has not argued
that the court should not consider Mr. Hooton's appeal because it was filed after the 30 day filing
period referenced in the notice sent to the parties on April 7, 2016.

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1 obligates the State to take action to require the USFS to issue authorizations for GUA 01-03 or
2 GUA 01-04.⁹

3 **VI. CONCLUSION**

4 The Board is affirmed for the reasons stated above.

5 **IT IS SO ORDERED.**

6 Dated at Ketchikan, Alaska this 2nd day of February 2017.

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10 *Signed* _____

11 Trevor N. Stephens
12 Superior Court Judge

13 [This document has been modified to conform to the technical standards for publication.]
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25 ⁹ The court also notes that neither ALJ Seifert nor this court can order the USFS to do anything as the USFS is not a party to this case. And that it appears that if Mr. Hooton wants a court to order the USFS to take action in this regard he may need to seek such relief in federal court.

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