



COMPLETING the Transfer of PORT CLARENCE

Navigating the complex environmental regulations that were necessary to divest aboriginal Alaskan land once part of a former U.S. Coast Guard long-range navigation station required the expertise of a third-party facilitator and keeping all stakeholders accountable.

By Karina Quintans, M.S.A.M.E. and Sara Hadden

The *Alaska Native Claims Settlement Act* is one of three laws that govern the transfer of 45.7-million-acres of aboriginal lands in Alaska. The Bureau of Land Management administers the legislation under the Alaska Land Transfer Program—the largest land transfer program in the country. To date, 96 percent of native Alaskan lands have been returned under the *Alaska Native Claims Settlement Act* since 1971, leaving 1.8-million-acres yet to be settled.

The Bering Straits Native Corporation (BSNC), as part of its entitlement transfer, had selected Point Clarence for reclamation in 1977. However, the land, located in the vicinity of Nome, Alaska, was still in active use by the U.S. Coast Guard, which owned and operated a long-range navigation station at the site, so the transfer was unable to move forward.

REVISITING LAND TRANSFER

When the Port Clarence Long-Range Navigation Station was decommissioned in 2010 following 50 years of service, BSNC was able once again to pursue the return of its native land. The corporation resubmitted its claim in 2013. The next seven years proved to be a complex navigation of the environmental legalities that govern land divestiture from federal entities to non-federal entities, including compliance with Section 120(h) of the *Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)*.

In 2018, Brice Engineering was contracted to address these final environmental requirements, making the long-awaited divestiture imminent. Working under the leadership of the Coast Guard, Brice was also tasked with supporting the divestiture as a third-party facilitator to conduct regular meetings and keep a cadre of diverse stakeholders focused on the end goal.



A 1,900-ft tunnel connects the facility buildings at Port Clarence, Alaska, with the 1,350-ft tall long-range navigation tower transmitter buildings. Divesting this former federal land to a non-federal entity required navigating many complex environmental legalities.

PHOTOS COURTESY BRICE ENGINEERING



The Heavy Duty Shed at Port Clarence is the only remaining building from its time as an airbase during World War II. In order to keep a diverse group of stakeholders accountable to execute the land divestiture, utilizing a third-party facilitator to coordinate and achieve consensus was key.

RICH AND STORIED PAST

The Bering Straits Region is located in northwest Alaska and considered one of the most culturally diverse areas within the state. Port Clarence sits within the Seward Peninsula of the Bering Straits and has a long history of indigenous use. In the 19th century, it served as a gathering place for the native Alaskans, as well as a trading site for Russian fur traders and commercial whalers. Today, the area is used for seasonal hunting and fishing.

Port Clarence was converted to military use in 1945, when the U.S. Army erected a base to run operations during World War II. In 1961, the Coast Guard took over to build and operate a long-range navigation station until 2010, when the long-range navigation tower was demolished and the facilities mothballed.

Economic Potential. In addition to its historical and cultural significance, Port Clarence offers tremendous economic potential. Protected by a narrow strip of land known as Port Spencer, Port Clarence is one of the only natural deepwater ports in the American Arctic. Along with increased maritime activity in the region, a longer shipping season today, and the site's active

runway, the land is attractive for the development needed to further support the BSNC shareholders.

Strategic Location. Port Clarence also continues to hold strategic importance to the U.S. military and to national security. A host of public-private partnerships are envisioned by both BSNC and the federal government that together see the area as vital to the future of Alaska's coastal communities and its economy.

MAKING IT A PRIORITY

To ultimately expedite the land transfer of Port Clarence, specific language was placed into the *Coast Guard Authorization Act of 2016* that outlined the process by which each Coast Guard-defined tract of land would be offered and conveyed to BSNC.

Because a swift transfer was the primary goal, language was included to allow for one year's time to complete the divestiture from the date of signing, subject to statutory compliance. In effect, the legislation re-prioritized the site, moving it to the top of the Coast Guard's environmental program and signifying its importance, making this land transfer a high-profile case.



STEP-BY-STEP PROCESS

Previous environmental investigations at Port Clarence had demonstrated there were no CERCLA contaminants on the land. Compliance with environmental laws would be approved at the state level by the Alaska Department of Environmental Conservation and required the completion of an environmental due diligence audit and decision document. A team of environmental scientists was assigned to work on these two documents while the project manager and the Coast Guard began to hold regular meetings with key stakeholders to proceed step by step through the environmental regulations.

Compliance with CERCLA 120(h) certifies that either the land is clear of contaminants or a remedy has been put in place. At the start of the divestiture, the Coast Guard noted it could not outright sign the compliance document because a few of the defined tracts of land still needed further environmental action. Because Tracts 2 and 5 were the priority—comprising 91 percent of the total land divestiture and requiring few environmental actions to meet CERCLA 120(h) requirements—the stakeholders agreed to focus the divestiture on these tracts first.

To further expedite the process, areas within Tracts 2 and 5 that required environmental actions other than institutional controls were carved out for divestiture at a later date. A charter flight was scheduled for surveyors with the Bureau of Land Management to visit the site and perform the survey to make this change official.

Emerging Contaminants. A glitch to CERCLA 120(h) compliance remained: per- and polyfluoroalkyl substances (PFAS) had become a high-profile national issue. Though not a CERCLA requirement, these emerging contaminants required the Coast Guard to comply with state PFAS regulations.

To this end, a preliminary assessment was performed at Port Clarence regarding the potential use of PFAS. As part of its conclusions, a site investigation was recommended to further the results of the assessment. This additional information allowed the Coast Guard to complete its CERCLA 120(h) obligations at Tracts 2 and 5.

Institutional Controls. Adherence to the *Uniform Environmental Covenants Act* (UECA) was the next point of negotiation. UECA was designed to provide consistency nationwide for the transfer of lands where contamination remains in place or where institutional controls are necessary for the protection of human health and the environment. Though Alaska adopted the use of UECA in 2018, the state had yet to work out the details of its practical application.

For Port Clarence, institutional controls were required to complete the divestiture of Tracts 2 and 5 to document potential remaining contaminants and minimize risk to human health and the environment. The Alaska Department of Environmental Conservation wanted these institutional controls documented in accordance with UECA to ensure that the controls would stay with the land, should any future land transfers occur. However, some of the stakeholders were not comfortable with this form of documentation.

To resolve this issue, the parties agreed that the final decision

document and draft deed language would include a discussion of the institutional controls applicable to Tracts 2 and 5, and though not generally done, a copy of the draft deed language would also be included as an appendix.

One More Law. With environmental actions still outstanding at Port Clarence, additional legislation was signed in December 2019 to document that the lands could be divested to BSNC prior to the Coast Guard's completion of CERCLA 120(h) obligations. The amendment, again, signified the importance of achieving this divestiture.

A DEAL GETS DONE

By March 2020, the draft deed language, final decision document, and the assessment report were submitted to the Alaska Department of Environmental Conservation. Upon signature, the Coast Guard turned the documents over to the Bureau of Land Management, which finalized the deed language and obtained a release of claims from the State of Alaska.

The eventual success of the project owes to the creativity, compromise, and commitment to teamwork of the agencies and organizations involved. But above all, it was having a third-party with in-depth knowledge and experience navigating environmental regulations, coupled with the ability to keep a team of diverse stakeholders accountable to their respective tasks and achieve consensus. This cross-cutting facilitation made all the difference in completing this long-awaited land transfer.

After seven long years of advocacy, teamwork, and supporting legislation, a signing ceremony was officially scheduled. And on July 30, 2020, the divestiture of Port Clarence was fully completed, achieving an historic moment for BSNC's 8,000 Native Alaskan shareholders.

TME

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A ONCE-CRITICAL MISSION

In the mid-1900s, more than 40 Coast Guard radio navigation systems were established at locations nationwide to support ships and aircraft operating in the Pacific theater. The Port Clarence Long-Range Navigation Station and its 1,350-ft long-range navigation tower was built in 1961, claiming titles at the time as both the northernmost Coast Guard station and the tallest structure in Alaska.

During its operational years, the installation performed life-saving and navigational missions. In the 1970s and 1980s, new technology began to replace long-range navigation, and one by one, the Coast Guard began to turn off the radio signals at these sites across Alaska. The Port Clarence Long-Range Navigation Station was decommissioned in 2010.