

## The Story of Tracts B and C

### Introduction

Tracts B and C of ATS 1464 (**Attachment A** to this paper) have a confusing history. Prior to 1992 there was a series of events relating to both Tracts B and C which confused the ownership issue. It is the purpose of this paper to trace the history of events relating to the ownership of these parcels up to the present time and explain the basis for the Alaska Department of Transportation and Public Facilities (DOT/PF or "the Department") offer to purchase Tract C from the Haines Borough while also seeking recognition from the Borough that it owns Tract B. Although the history of ownership of both parcels can be traced back prior to Statehood, we shall begin for present purposes in January of 1977.

### The Conveyances of January 1977

What became known as Tract B was part of a conveyance of a significant amount of land from the federal government to the City of Haines in 1977. On January 4, 1977 the United States of America (GSA) quitclaimed approximately 55 acres to the city. The conveyance included both uplands and filled tidelands. The filled tidelands included a dock, known as the Lutak Inlet Dry Cargo Dock. **Attachment B** to this paper is a drawing developed by the Right of Way Section which shows most of the area of this conveyance. The deed was recorded January 4, 1977 at Book 4 Page 292, Haines Recording District. It is attached hereto as **Attachment C**. The conveyance included what became Tract B. On the very same day, the City of Haines quitclaimed approximately 10.2 acres to the State of Alaska, Department of Public Works; recorded at Book 4 Page 297, Haines Recording District on January 4, 1977. This deed conveyed the area required by the State for its Haines ferry terminal. A copy of this deed is attached hereto as **Attachment D**. The area conveyed by this deed is shown by a drawing prepared by the Right of Way Section which is **Attachment E** to this paper. Notably, it also includes the area which later became Tract C. It should also be noted that the deed from the City of Haines included a reservation, to wit:

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A reservation of the right of the City of Haines to exclusively occupy and utilize that portion of Lot 7 northwesterly of a line described as follows:

[metes and bounds description omitted]

Excepting that portion of the Lutak Highway therein. Said reservation shall terminate at any time the State of Alaska,

Department of Public Works, or its successors, requires the use and occupancy of said area for an expansion of its terminal facility, including parking for vehicles.

This area is shown with a red pattern on **Attachment E**.

### **1983 Lease to the City of Haines by the Department of Natural Resources**

In January of 1983, the City of Haines entered into a lease agreement with the Department of Natural Resources (DNR) for Alaska Tidelands Survey No. 1194 “. . . according to the plat filed in the Haines Recording District on December 2, 1981 as Plat #81-9, containing 12.792 acres, more or less.” The lease is recorded at Book 11 Page 311 of the Haines Recording District. DNR’s ADL No. is 101665. The lease may be seen as having two components, viz. the filled tidelands, viz. the Lutak Dock, and the unfilled tidelands. It is to be noted that the dock is something the city already owned by virtue of the 1977 quitclaim deed from the United States of America. This lease included Tract B.

### **The 1992 Joint Use Agreement**

In August of 1992, the City of Haines and the State of Alaska, Marine Highway System entered into an agreement entitled **Joint Use Dock Agreement**. A copy of this agreement, including an attachment labeled *Attachment ‘A’*, is attached to this paper as **Attachment F**. It is this document which created Tract B. Unfortunately, both the agreement and the attached drawing refer to **two** Tract Bs. However, one Tract B is really Tract C; the tract closest to the dock face, consisting of .3719 acres. With regard to the true Tract B, the agreement states the following:

*Whereas*, the City, in support of the project, has consented to make available to the State a tract of City leased land Alaska Tidelands Survey 1194 (Proposed Tract B) and other tracts of land under separate agreement and,

*Whereas*, the State, in exchange for this consideration is willing to allow the City to use a portion of its managed Alaska Tidelands Survey 246 (Proposed Tract B) [now Tract C] and consent to common usage of the existing State owned portion of the Lutak Dock face, hereinafter referred to as the dock.

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The joint use agreement also provides that “The City shall continue to have beneficial use of the dock, in perpetuity , so long as the terms and conditions contained herein are conformed with.” [emphasis added] the agreement contains no other provision regarding its duration.

### **Intentions of the Parties; Actions of the Parties since the 1992 Joint Use Agreement**

Since the Joint Use Agreement, both the City (now the Borough), and the Department of Transportation and Public Facilities have behaved as though the Borough owned Tract C and DOT/PF owned Tract B. Soon after the Joint Use Agreement, DOT/PF constructed major improvements to the Haines Ferry Terminal. The title of the project was: *Haines Ferry Terminal Upland Improvements; Project No. RS-099(3) & 75034*. As part of the project, Tract B was paved with asphalt and became a part of the terminal’s parking and staging area. At the same time, a six-foot high chain link fence was built around Tract C to separate the terminal area from the Borough’s dock area. Since that time, until the failure of a cell at the face of the dock in 2004, Tract C was used by the Borough as a storage area and staging area for its dock operations. See **Attachment G** which is a photograph taken of Tract C on June 28, 2003.

There is evidence of the intention of the parties to exchange ownership of the two tracts even before execution of the Joint Use Agreement. **Attachment H** to this paper is a copy of a memorandum to Andy Pekovich of the Department of Natural Resources from James A. Lowell, Design Chief of Marine Engineering of the Department of Transportation and Public Facilities. The memorandum is dated December 11, 1991. The subject of the memorandum was a proposed new subdivision for the Haines ferry terminal. It includes the following:

The purpose of the subdivision is to accommodate the future expansion of the Haines Ferry Terminal staging area. The City of Haines has given their conceptual approval in this plan and our mutual desire is to modify our existing ILMA and the city’s lease to give management authority over the proposed Tract B of ATS 1194 to DOT/PF and in turn convey our interest in proposed Tract B of ATS 246 to the City.

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A copy of this memorandum was sent to Walt Wilcox, City Manager, City of Haines.

## **ATS 246 Superseded by ATS 1464**

It is to be noted that the original tideland survey (A.T.S. 246) which was for the ferry terminal was superseded in 1993 by Alaska Tideland Survey No. 1464.

## **1996 Amendment to Inter-Agency Land Management Agreement (ILMA)**

In 1996, The Department of Natural Resources and the Department of Transportation and Public Facilities executed an amendment to an Inter-Agency Land Management Transfer which purportedly conferred jurisdiction to DOT/PF over Tracts B, D and E of ATS 1464. A copy of this amendment is attached hereto as **Attachment I**. A drawing that shows the area covered by the 1996 ILMA amendment is attached hereto as **Attachment J**.

## **1999 Patent by the Department of Natural Resources to the City of Haines**

In 1999 the Department of Natural Resources conveyed certain tidelands to the City of Haines, including:

Tracts A AND C OF ALASKA TIDELAND SURVEY NO. 1464,  
CONTAINING 12.17 ACRES, MORE OR LESS, ACCORDING  
TO THE SURVEY PLAT RECORDED IN THE HAINES  
RECORDING DISTRICT ON MAY 8, 1995, AS PLAT 95-5.

However, this the Patent continues the mistake made in the 1983 lease in that it conveyed to the city property which the city already owned by virtue of the 1977 conveyance from the federal government. The patent also purported to convey land (Tract C) which the State, Department of Transportation already owned by virtue of the 1977 quitclaim deed from the city.

## **Failure of Cell Four and Accommodation**

In October 2004, a State owned portion of the bulkhead failed. The fourth cell, the cell adjacent to the Borough's property, split open vertically at the center of the exposed face. Fill material spilled out through the split over a period of a few weeks and suddenly a sinkhole appeared in the paved surface of the dock. The fill under the concrete cap subsided leaving the cap to span unsupported across the cell arc. This in turn prevented the Borough's use of a portion both of the dock face and Tract C. The Borough expressed concern about this loss of use. This concern then led to an informal agreement between the Department and the Borough by which the borough

was allowed to use a portion of Tract B to replace the area of Tract C lost by dint of the failure.

## **Making Sense**

In studying the history of Tracts B and C, it is hard to escape the conclusion that that ownership of both became clouded when the Department of Natural Resources asserted jurisdiction over both, and both the City of Haines and the Department of Transportation and Public Facilities acquiesced. Counting from perhaps the 1983 lease by DNR to the city, both the city and the department ceded authority to the Department of Natural Resources. And it is clear that since the Joint Use Agreement, the parties themselves have carried on since 1992 as though the City owned Tract C and DOT/PF owned Tract B. Under the totality of the circumstances, the Borough has color of title to Tract C and DOT/PF has color of title to Tract B. Thus when it became necessary to acquire the necessary property rights for the proposed ferry improvement project, the department appraised Tract C and offered to purchase Tract C, which offer, after some negotiations, was accepted by the Haines Borough. However, since the department was purchasing land which it arguably already owns, the department has sought concomitant recognition from the borough that it owns Tract B. The recognition sought was a quitclaim deed from the Haines Borough to DOT/PF for Tract B.

### List of Attachments:

- A: ATS 1464;
- B: Drawing of area conveyed by the US government to the City of Haines on January 4, 1977;
- C: Quitclaim Deed dated January 4, 1977 to the City of Haines from the United States of America;
- D: Quitclaim Deed dated January 4, 1977 to the State of Alaska, Department of Public Works from the City of Haines;
- E: Drawing of area quitclaimed by the City of Haines to the Department of Public Works on January 4, 1977;
- F: Joint Use Dock Agreement dated August 19, 1992;
- G: Photograph of Tract C on June 28, 2003;
- H: Memorandum dated December 11, 1991 to Andy Peckovich of DNR from James A. Lowell, Design Chief, Alaska Marine Highway System;

- I: Inter-Agency Land Transfer Amendment (ILMT), No. ADL 19891 dated July, 1996;
- J: Drawing showing area transferred by Amendment No. 1.
- K. Affidavit of Randal V. Davis